

The Tobacco Products Control Amendment Act, No. 23 of 2007, and the Tobacco Products Control Amendment Act, No. 63 of 2008, came into operation on 21 August 2009.

The intention of the original act (Tobacco Products Control Act 83 of 1993) was to limit the amount of smoking in public places. The amendment acts have not deviated from this intention and have, in fact, strengthened the government's position against smoking in public.

A noteworthy provision in the original act in relation to the Restaurant community (other than the general prohibition of smoking in public) was the prohibition of having a vending machine which sold tobacco products in an area accessible to persons under the age of 16.

Of specific interest to the Restaurant community is a notice published under Government Gazette 21610 of 29 September 2000. This notice deals with smoking in public places. Clause 2 of the notice permits smoking in restaurants and bars subject to clause 3. Clause 3 provides, *inter alia*, that:

- 1) the designated smoking area does not exceed 25% of the total floor area of the public place;
- 2) the designated smoking area is separated from the rest of the public place by a solid, labelled partition;
- 3) the designated smoking area is ventilated in such a way that air from the area is directly exhausted to the outside and is not re-circulated; and
- 4) the relevant notices and signs are displayed.

The designated smoking area has been left largely unaffected by the new amendments.

The aim of Act No. 23 of 2007 is to provide anew for the control over the smoking of tobacco products, to extend the minister's power to make regulations and to increase penalties.

The aim of Act No. 63 of 2008 is to provide anew for the advertising, sponsorship, promotion, distribution and information required in respect of the packaging and labelling of tobacco products; to prohibit the sale of tobacco products; to and by persons under the age of 18 years; to provide anew for tobacco sales by means of vending machines, to extend the minister's power to make regulations and to adjust the provisions in respect of offences and penalties.

The definition of "public places" has been amended to include "a partially enclosed area which is open to the public or any part of the public" and includes a workplace and a public conveyance.

"Public conveyance" includes transporting people by means of any commercial or chartered aircraft, ship, boat, train, buss, minibus or taxi.

Section 2 of the amendment (23 of 2007) states that no person may smoke any tobacco product in:

- i) a public place;
- ii) any area within a prescribed distance from a window of, ventilation inlet of, door way to or entrance into a public place;
- iii) any motor vehicle when a child under the age of 12 years is present in that vehicle; or

iv) any place contemplated in sub section 3.

Sub section 3 states that the Minister may prohibit the smoking of any tobacco product in any prescribed outdoor public place, or such portion of an outdoor public place as may be prescribed, where persons are likely to congregate within close proximity of one another or where smoking may pose a fire or other hazard.

Sub section 2 stipulates that an owner or person in control over a place or area contemplated within the Act, or an employer in respect of a workplace, shall ensure that no persons smoke in that place or area.

In addition to sub section 3 the owner shall display the prescribed signs and shall make the prescribed public announcements in order to inform any person who enters or who is in or on such place or area of any prohibition on smoking.

An employer must further ensure that:

- a) his/her employees may object to smoking in the workplace in contravention of this Act without retaliation of any kind;
- b) employees who do not want to be exposed to tobacco smoke in the workplace are not so exposed;
- c) it is not a condition of employment, expressly or implied, that any employee is required to work in any portion of the workplace where smoking is permitted; and
- d) employees are not required to sign any indemnity for working in any portion of the workplace where smoking is permitted.

The owner of or person in control of a place or area contemplated in the Act shall ensure that no person under the age of 18 years is present in any portion of the workplace where smoking is permitted or in an area within a public place contemplated within the Act in or on which smoking is permitted [section 2(6)].

The clear effect of these amendments is that the scope of the Act has been extended and will be further reaching than before.