



New South Wales

Smoke-free Environment Regulation 2016

under the

Smoke-free Environment Act 2000

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Smoke-free Environment Act 2000*.

JILLIAN SKINNER, MP
Minister for Health

Explanatory note

The object of this Regulation is to remake, with minor changes, the *Smoke-free Environment Regulation 2007*, which is to be repealed on 1 September 2016 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following:

- (a) smoke-free areas in respect of courtyards and gardens that adjoin buildings,
- (b) the signs that occupiers of smoke-free areas are required to display under section 9 (1) of the *Smoke-free Environment Act 2000* (**the Act**), and the manner in which such signs are required to be displayed,
- (c) the exemption of certain public places from the requirements relating to the display of such signs (exempt places are public places where persons would reasonably be expected to know that smoking is not permitted and in which persons do not usually smoke),
- (d) guidelines for determining what is an enclosed public place and when a covered outside area is considered to be substantially enclosed for the purposes of the Act,
- (e) the creation of an offence of failing to keep certain doors and windows locked fully open in certain circumstances,
- (f) the persons, or class of persons, who may bring proceedings for certain offences under the Act,
- (g) prescribing the offence of smoking in a smoke-free area as an offence for which a penalty notice may be given.

This Regulation is made under the *Smoke-free Environment Act 2000*, including sections 4A, 6A, 9, 20 (2) (b), 20A and 23 (the general regulation-making power).

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Smoke-free Environment Regulation 2016

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Smoke-free Environment Act 2000

1 Name of Regulation

This Regulation is the *Smoke-free Environment Regulation 2016*.

2 Commencement

This Regulation commences on 1 September 2016 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *Smoke-free Environment Regulation 2007*, which is repealed on 1 September 2016 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definition

- (1) In this Regulation:

the Act means the *Smoke-free Environment Act 2000*.

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

- (2) Notes included in this Regulation do not form part of this Regulation.

4 Courtyards and gardens adjoining buildings

- (1) In this clause:

applicable courtyard or garden means a courtyard or garden that:

- (a) adjoins a building, and
 - (b) is substantially surrounded by a fixed fence, wall or other similar structure, and
 - (c) is set aside for persons using the adjoining building, and
 - (d) does not form part of any public thoroughfare that is generally used by pedestrians, other than persons using the adjoining building.
- (2) For the purposes of section 6A (1) (l) of the Act, an outside area that is a public thoroughfare, footpath or street is prescribed as a smoke-free area if it is within 4 metres of an entrance to or exit from an applicable courtyard or garden.
- (3) For the purposes of section 6A (4) of the Act, section 6A (1) (i) does not apply in respect of a pedestrian access point to a building if the pedestrian access point is an entrance to or exit from an applicable courtyard or garden that adjoins the building.

5 Signs displayed in areas designated as not being for the consumption of food

For the purposes of section 4A (4) of the Act, signs must comply with the following:

- (a) they must be clearly legible,
- (b) they must contain:

- (i) a symbol or picture, with a diameter of at least 90 millimetres, that indicates that eating is prohibited in the area, and
 - (ii) the words “NO FOOD TO BE CONSUMED IN THIS AREA”, in letters of at least 20 millimetres in height, and
 - (iii) a reference to the name of the Act,
- (c) they must be displayed in such numbers and with such prominence that they are likely to be seen by a person at the entrance to the area concerned or within that area.

6 Signs displayed in smoke-free zones

- (1) For the purposes of section 9 (1) of the Act, signs that are clearly legible and contain each of the following are prescribed:
- (a) the smoking prohibited symbol (or an equivalent symbol) with a diameter of at least 90 millimetres,
 - (b) the words “NO SMOKING” in letters of at least 20 millimetres in height,
 - (c) a reference to the name of the Act,
 - (d) the words “Penalties may apply”.
- (2) For the purposes of section 9 (1) of the Act, the prescribed manner of displaying signs within a smoke-free area is:
- (a) in such numbers, and
 - (b) in positions of such prominence,
- that they are likely to be seen by a person at a public entrance to, or within, the area.
- (3) In this clause:
- smoking prohibited symbol*** means the symbol designated in the Australian Standard entitled AS 1319—1994, *Safety signs for the occupational environment* to indicate where smoking is prohibited.

7 Exemption from requirement to display signs

In accordance with section 9 (2) of the Act, any public place:

- (a) in respect of which persons would reasonably be expected to know, by custom or otherwise, that smoking is not permitted, and
 - (b) in which persons do not usually smoke,
- is exempt from section 9 (1) of the Act.

8 Guidelines for determining if a place is enclosed

- (1) The provisions of this clause prescribe guidelines in relation to determining what is an enclosed public place and when a covered outside area is considered to be substantially enclosed for the purposes of the Act.
- (2) A public place is considered to be substantially enclosed if the total area of the ceiling and wall surfaces (the ***total actual enclosed area***) of the public place is more than 75 per cent of its total notional ceiling and wall area.
- (3) The ***total notional ceiling and wall area*** is the sum of:
- (a) what would be the total area of the wall surfaces if:
 - (i) the walls were continuous (any existing gap in the walls being filled by a surface of the minimum area required for that purpose), and
 - (ii) the walls were of a uniform height equal to the lowest height of the ceiling, and

- (b) what would be the floor area of the space within the walls if the walls were continuous as referred to in paragraph (a).
- (4) The following are to be included as part of the total actual enclosed area:
 - (a) any gap in a wall or ceiling that does not open directly to the outside,
 - (b) any door, window or moveable structure that is, or is part of, a ceiling or wall, regardless of whether the door, window or structure is open (other than the area of any locked-open door or window).
- (5) A gap in a wall or ceiling that opens directly to the outside (other than a gap caused by a door, window or moveable structure being open) is not to be included as part of the total actual enclosed area.
- (6) The area of a locked-open door or a locked-open window is not to be included as part of the total actual enclosed area.
- (7) A gap, door, window or moveable structure required to be included as part of the total actual enclosed area is to be included as if the wall or ceiling were continuous and the gap, or the space occupied by the door, window or moveable structure, were filled by a surface of the minimum area required for that purpose.
- (8) In this clause:
 - ceiling** includes a roof or any structure or device (whether fixed or moveable) that prevents or impedes upward airflow.
 - locked-open door** or **locked-open window** means a door or window that opens directly to the outside and is locked fully open (that is, secured in its fully open position by means of a key operated lock).
 - moveable structure** includes a retractable awning, umbrella or any other moveable structure or device, but does not include a security grill, shutter or screen that is used to secure premises only when the premises are not open for business and is fully open at all other times.
 - wall** includes any structure or device (whether fixed or moveable) that prevents or impedes lateral airflow.

9 Requirement to keep doors and windows locked open

- (1) The occupier of an enclosed public place who facilitates smoking in that place (in reliance on clause 8) as a result of doors or windows being locked fully open is guilty of an offence unless the doors or windows concerned are kept locked fully open for the entire hours of operation of the place on each day during which the occupier facilitates smoking there.

Maximum penalty:

 - (a) 5 penalty units, in the case of a natural person, or
 - (b) 25 penalty units, in the case of a body corporate.
- (2) The **hours of operation** of a place are the hours during which the place is open as a public place.

10 Proceedings for offences

For the purposes of section 20 (2) (b) of the Act:

- (a) the chief executive of a local health district (within the meaning of the *Health Services Act 1997*) may bring proceedings for an offence against section 7 (1) of the Act, and
- (b) the chief executive of:

- (i) a statutory health corporation (within the meaning of the *Health Services Act 1997*), or
 - (ii) a public hospital controlled by the Crown (including the Minister for Health or the Health Administration Corporation, within the meaning of that Act),
- may bring proceedings for an offence under section 7 (1) of the Act that relates to smoking in a smoke-free area referred to in section 6A (1) (k) of the Act, and
- (c) a police officer may bring proceedings for an offence under the Act that relates to smoking in a smoke-free area referred to in section 6A (1) (d)–(h) of the Act.

11 Penalty notice may be given for smoking in a smoke free area

For the purposes of section 20A of the Act, an offence under section 7 (1) of the Act is an offence for which a penalty notice may be served and the penalty prescribed for the offence is \$300.