



New South Wales

Smoke-free Environment Amendment (Enclosed Places) Regulation 2006

under the

Smoke-free Environment Act 2000

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

JOHN HATZISTERGOS, M.L.C.,
Minister for Health

Explanatory note

The object of this Regulation is to amend the *Smoke-free Environment Regulation 2000* to 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 *Smoke-free Environment Act 2000*.

A public place is considered to be substantially enclosed if the total area of the ceiling and wall surfaces of the public place is more than 75 per cent of its total notional ceiling and wall area. In determining the total area of the ceiling and wall surfaces, any door, window or moveable structure that is, or is part of, a ceiling or wall is taken to be closed whether or not the door, window or structure is open unless (in the case of a door or window) it is locked fully open and the total area of all such doors and windows do not make up more than 15 per cent of the total notional ceiling and wall area.

This Regulation also requires an occupier of an enclosed public place where smoking is allowed because doors or windows are locked open to keep those doors or windows locked fully open for the entire hours of operation when smoking is allowed.

This Regulation is made under the *Smoke-free Environment Act 2000*, including section 23 (the general regulation-making power) and, in particular, section 23 (2) (e).

2006 No 43

Clause 1 Smoke-free Environment Amendment (Enclosed Places) Regulation 2006

Smoke-free Environment Amendment (Enclosed Places) Regulation 2006

under the

Smoke-free Environment Act 2000

1 Name of Regulation

This Regulation is the *Smoke-free Environment Amendment (Enclosed Places) Regulation 2006*.

2 Amendment of Smoke-free Environment Regulation 2000

The *Smoke-free Environment Regulation 2000* is amended as set out in Schedule 1.

Schedule 1 Amendment

(Clause 2)

Clauses 8 and 9

Insert after clause 7:

8 Guidelines for determining what is an enclosed public place etc

- (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),
 - (c) the area of any locked-open doors or windows, but only that part of the total area of all such doors and windows that exceeds 15 per cent of the total notional ceiling and wall area.
- (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) 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.
- (7) In this clause:
- ceiling** includes a roof or any structure or device (whether fixed or movable) 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.
- 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.