



New South Wales

# Smoke-free Environment Amendment Regulation 2009

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 DELLA BOSCA, MLC  
Minister for Health

## Explanatory note

Clause 6 of the *Smoke-free Environment Regulation 2007* sets out guidelines for determining what is an enclosed public place for the purposes of the *Smoke-free Environment Act 2000*. In order to make that determination, a notional ceiling and wall area of a place is calculated (essentially by imagining the ceiling and walls to be flat and continuous and to not contain any gaps, doors or windows). This is then compared with the actual enclosed area (essentially by looking at the actual ceiling and wall areas). If the actual enclosed area is more than 75 per cent of the notional area then the public place is enclosed and smoking is prohibited. Windows, doors and other moveable structures are included as part of the actual enclosed area (which means that they are considered to be part of the wall or ceiling) unless they are locked fully open.

The area of all locked-open doors and windows that can be excluded from the actual enclosed area is capped at 15 per cent of the notional ceiling and wall area. Any area of locked-open doors and windows that exceeds that cap is to be included as part of the actual enclosed area regardless of whether the window or door is locked open.

The objects of this Regulation are:

- (a) to remove the cap so there is no longer a limit on the area of locked-open doors and windows that can be excluded from the actual enclosed area, and
- (b) to provide that 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, is not a moveable structure and so does not have to be counted as if it were part of the actual enclosed area.

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

## 2009 No 297

Clause 1 Smoke-free Environment Amendment Regulation 2009

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## Smoke-free Environment Amendment Regulation 2009

under the

Smoke-free Environment Act 2000

### 1 Name of Regulation

This Regulation is the *Smoke-free Environment Amendment Regulation 2009*.

### 2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

### 3 Amendment of Smoke-free Environment Regulation 2007

#### (1) Clause 6 Guidelines for determining if a place is enclosed

Omit clause 6 (4) (c).

#### (2) Clause 6 (5A)

Insert after clause 6 (5):

(5A) 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.

#### (3) Clause 6 (7), definition of “moveable structure”

Insert “, 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” after “device”.