

Smoke-free Environment Regulation 2007

[2007-426]



New South Wales

Status Information

Currency of version

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Authorisation

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Smoke-free Environment Regulation 2007



New South Wales

1 Name of Regulation

This Regulation is the *Smoke-free Environment Regulation 2007*.

2 Commencement

This Regulation commences on 1 September 2007.

Note—

This Regulation replaces the *Smoke-free Environment Regulation 2000* which is repealed on 1 September 2007 under section 10 (2) of the *Subordinate Legislation Act 1989*.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*.

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

4 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 mm,
- (b) the words “NO SMOKING” in letters of at least 20 mm 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.

5 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.

6 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).

(c) (Repealed)

- (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.
- (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.
- (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 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.

7 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 6) 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.

8 Proceedings for offences

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

- (a) the chief executive of a local health district 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 against section 7 (1) of the Act that relates to a smoke-free area under section 6A (1) (k) of the Act, and
- (c) a police officer may bring proceedings for an offence against the Act that relates to smoking in a smoke-free area referred to in section 6A (1) (d)-(h) of the Act.

9 Penalty notice offences and penalties

- (1) For the purposes of section 20A of the Act:
 - (a) each offence created by a provision specified in Column 1 of Schedule 1 is an offence for which a penalty notice may be served, and
 - (b) the penalty prescribed for each such offence is the amount specified opposite the provision in Column 2 of the Schedule.
- (2) If the reference to a provision in Column 1 of Schedule 1 is qualified by words that restrict its operation to specified kinds of offences, an offence created by the provision is a prescribed offence only if it is an offence of a kind so specified or committed in the circumstances so specified.

Schedule 1 Penalty notice offences

(Clause 9)

Column 1	Column 2
Provision	Penalty (\$)
Offences under the Act	
Section 7 (1)	300