

Smoke-free Environment Regulation 2000

[2000-556]



New South Wales

Status Information

Currency of version

Repealed version for 10 February 2006 to 31 August 2007 (accessed 26 November 2024 at 13:47)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

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

Notes—

- **Repeal**

The Regulation was repealed by sec 10 (2) of the [Subordinate Legislation Act 1989 No 146](#) with effect from 1.9.2007.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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Contents

1 Name of Regulation	3
2 Commencement	3
3 Definition	3
4 Signs displayed in smoke-free zones	3
5 Exemption from requirement to display signs	4
6 Exempt areas—prescribed requirements.....	4
7 Authorisation for second room to be part of exempt area	4
8 Guidelines for determining what is an enclosed public place etc	5
9 Requirement to keep doors and windows locked open	6

Smoke-free Environment Regulation 2000



New South Wales

1 Name of Regulation

This Regulation is the *Smoke-free Environment Regulation 2000*.

2 Commencement

This Regulation commences on 6 September 2000.

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:

- (a) the smoking prohibited symbol with a diameter of at least 90 mm, and
- (b) the words "NO SMOKING" in letters of at least 20 mm in height, and
- (c) a reference to the name of the Act, and
- (d) the words "Penalties may apply",

are prescribed.

(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 Australian Standard 2899.1—1986 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 Exempt areas—prescribed requirements

The occupier of premises that contain an exempt area is required:

- (a) to separate the exempt area from any other part of the premises that is a smoke-free area by the use of partitions or other similar barriers, or
- (b) to ensure that a space of at least 1.5 metres is maintained between the exempt area and any other part of the premises that is a smoke-free area.

7 Authorisation for second room to be part of exempt area

(1) The Minister may grant an authorisation under section 11B (6) of the Act to set aside a second room or part of a second room of a club, hotel, nightclub or casino as part of an exempt area only if an application is made in accordance with subclause (2) and the Minister is satisfied that:

- (a) all public places that are part of the premises in respect of which the exemption is being sought are enclosed, and
- (b) the existing exempt area is a gaming machine room the area of which is less than 15% of the total area of all the rooms in the club, hotel, nightclub or casino, and
- (c) the second room or part of a second room that is proposed to be set aside is as close as possible to the existing exempt area, and
- (d) the area of the second room or part of a second room that is proposed to be set aside, when added to the existing exempt area, will be less than 25% of the total area of all the rooms in the club, hotel, nightclub or casino.

(2) An application for an authorisation to set aside a second room or part of a second room of a club, hotel, nightclub or casino as part of an exempt area:

- (a) is to be made by, or on behalf of, the licensee, secretary or casino operator, as the case may be, and

- (b) is to be lodged with the Director-General, and
- (c) is to be in the form of a written statement setting out the reasons why the exemption should be granted taking into account the requirements of the Act and this Regulation, and
- (d) is to be accompanied by a floor plan of the premises in respect of which the exemption is sought showing the location, dimensions and area of:
 - (i) the exempt area, and
 - (ii) the second room or part of a second room that is proposed to be set aside as part of the exempt area, and
 - (iii) each other room of the club, hotel, nightclub or casino, and
- (e) is to be accompanied by an application fee of \$500.

Note—

Section 307A of the [Crimes Act 1900](#) provides for a maximum penalty of 2 years imprisonment, or a fine of 200 penalty units (\$22,000), or both for an offence of making a false or misleading application.

- (3) Words and expressions used in this clause have the same meanings as they have in Part 3 of the Act, including the definition of **room** in section 11B.

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.