

Tobacco Products Control Act 2006

Smoking in Enclosed Public Places

Version 1.0

SMOKING IS PROHIBITED IN ALL ENCLOSED PUBLIC PLACES FROM 31 JULY 2006

From 31 July 2006, the *Tobacco Products Control Act 2006* and associated regulations (the legislation) prohibit smoking in all enclosed public places including those on licensed premises. The only exception to this is the Burswood Casino's International Room.

This means that in addition to venues which were required to be smoke free prior to 31 July 2006 (e.g. shopping centres, theatres, airports, cinemas, etc), enclosed public places in venues such as pubs, sporting clubs, nightclubs and restaurants are now also required to be smoke free.

This legislative change has been brought about to further reduce community exposure to second hand smoke (SHS). The health effects of exposure to SHS are well documented and indisputable. Numerous scientific studies have demonstrated that exposure to SHS causes or promotes a number of illnesses and diseases, including lung cancer and heart disease.

What is an enclosed public place?

To understand the meaning of “enclosed public place”, it is important to firstly understand the meaning of a “public place”.

A “public place” means a place or vehicle that –
(a) the public, or a section of the public, is entitled to use; or
(b) is open to, or is being used by, the public, or a section of the public, whether on payment of money, by virtue of membership of a club or other body, by invitation, or otherwise.

A public place is an “enclosed public place” if it has a ceiling or roof and is greater than 50% enclosed by walls, or other vertical structures or coverings.

The surface area of walls, or other vertical structures or coverings located under a ceiling or roof as well as those located at or within 1 metre from the perimeter of a ceiling or roof are to be used to determine if a public place is greater than 50% enclosed. The surface areas of windows, doors and other closable openings must also be included when calculating the percentage of vertical surfaces surrounding a place, regardless of whether they are open or closed.

Note: If a public place does not have a roof or ceiling then it is not an “enclosed public place”.

What are my responsibilities as an occupier of an enclosed public place?

An “**occupier**” in relation to an enclosed public place, means a person or business that has the management or control, or otherwise being in charge of that place. The occupier may be the owner, proprietor, manager or supervisor of an enclosed public place.

1) Display of Signs:

Occupiers of only licensed premises must display signs that comply with the requirements outlined below, at all public entrances to an enclosed public place, in such numbers and positions so they are clearly visible to a person at the entrance to the place. Enclosed public places that are subject to a restaurant licence are not required to display signs.

The signs must contain:

1. The phrase “no smoking” or “smoking prohibited” in letters that are at least 20 mm in height
or
2. The smoking prohibited symbol with a diameter of at least 70 mm
or
3. Other words or symbols that indicate clearly that smoking is prohibited.



Stickers that comply with the above requirements are available free of charge. Order forms can be obtained online at www.health.wa.gov.au/tobaccocontrol

2) Duty to Prevent the Spread of Smoke:

If an enclosed public place is **not** provided with adequate ventilation in accordance with the requirements of the Building Code of Australia 2006 (the BCA), occupiers must take reasonable steps to ensure that smoke from a tobacco product does not enter the enclosed public place.

Reasonable steps may include but are not limited to the following:

1. Closing doors or windows;
2. Designating outdoor smoking areas away from entrances and openings to an enclosed public place. The Department of Health recommends no smoking within at least 5 m from entrances and openings;
3. Restricting smoking around air intakes for ventilation equipment. The Department of Health recommends no smoking within at least 10 m of air intakes; or
4. Anything else which may assist in preventing the spread of smoke into an enclosed public place.

Note: “adequate ventilation” is either mechanical ventilation complying with AS 1668.2 and AS/NZS 3666.1 or natural ventilation as prescribed in the BCA.

3) Educating Employees:

Occupiers of enclosed public places are strongly encouraged to ensure all employees are aware of the law and their obligations under the legislation.

What to do if someone smokes in an enclosed public place?

If someone is committing or commits an offence by smoking in an enclosed public place, the occupier of that place also commits an offence.

Occupiers should actively enforce the smoking ban as they would enforce any other standards or codes of conduct that they have for their premises (e.g. dress standards, antisocial behaviour, etc).

The legislation provides guidance on the steps an occupier or employee should follow if someone is known to be smoking in an enclosed public place. These are:

1. Inform the person concerned that he/she is committing an offence; and
2. Request that the person stop smoking in the enclosed public place and to extinguish, and properly dispose of, the tobacco product; and
3. If the person fails to comply with a request to stop smoking, request that the person leave the enclosed public place until the person has finished smoking the tobacco product.

Note: Undertaking the above steps may be used as a defence to a prosecution.

The Department of Health recommends against placing ash trays, matches or any other thing that could facilitate smoking, on tables, counters etc, within any enclosed public place as it may encourage customers to smoke in these places.

Lodging a complaint

(See Enforcement of the Legislation, page 7)

Is smoking permitted on balconies, verandas and other covered areas outside the external walls of a building?

Areas that have a roof or ceiling and are enclosed or able to be enclosed to an extent where they would be considered an enclosed public place (i.e. greater than 50% enclosed by walls or other vertical structures or coverings, will be treated the same as any other enclosed public place (i.e. smoking is prohibited).

Is smoking permitted in outdoor dining areas?

Smoking may be permitted in outdoor areas (i.e. those areas which are not enclosed public places), including outdoor areas used for dining.

Note: The legislation does not prevent an occupier from making outdoor areas or parts of outdoor areas “smoke free”.

Is smoking permitted during private functions or in private guest rooms?

Yes. An enclosed public place used exclusively for private functions (e.g. weddings, birthday parties) to which attendance is ‘by invitation’ only, is **not** considered a public place during the period of hire or use.

Private guest rooms of hotels and motels for example are also **not** considered to be public places, although other areas, including corridors, foyers, lobbies, public toilets and so on of premises that have such rooms, are required to comply with the legislation.

Public places include places to which the public or a section of the public, such as members of a sporting club, whether on payment of money (e.g. membership fees) or due to their membership of a club or group, have access.

Therefore, functions held by clubs, associations or other similar groups, for their members, are **not** private functions. If these functions are held in enclosed public places, smoking is not permitted.

Note: The legislation does not prevent an occupier from designating private function rooms or private guest rooms as “no smoking” areas.

Smoking in enclosed workplaces

Under occupational safety and health legislation, smoking by employers, employees and self-employed persons in an enclosed workplace is prohibited. For more information on workplace legislation contact WorkSafe on 1300 307 877.

Penalties

An individual or business convicted of an offence under the legislation is liable to a maximum penalty of \$2,000. If the offence is a continuing offence, a daily penalty which is not more than \$50 may apply.

Infringement notices which have a modified penalty may also be issued for certain offences.

Enforcement of the Legislation

Enforcement of the legislation may be undertaken by environmental health officers in local government authorities, police officers and officers from the Department of Health.

If you have any questions in relation to enforcement of the legislation, contact your local government authority in the first instance and ask to speak with an environmental health officer.

To lodge a complaint about a person or persons smoking in an enclosed public place, contact the local government authority in which the enclosed public place is located.

Where can I get more information?

For more information visit the Department of Health website www.health.wa.gov.au/tobaccocontrol

Disclaimer

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