

Western Australia

Tobacco Products Control Regulations 2006

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Defined Terms

Tobacco Products Control Act 2006

Tobacco Products Control Regulations 2006

Made by the Governor in Executive Council.

Part 1 — Preliminary

1. Citation

These regulations are the *Tobacco Products Control Regulations 2006*.

2. Commencement

These regulations come into operation on 31 July 2006.

3. Interpretation

In these regulations —

“section” means a section of the Act.

Tobacco Products Control Regulations 2006**Defined Terms**

Part 2 — Sale and supply**4. Proof of age**

A proof of age card issued to a person under the *Liquor Licensing Regulations 1989* regulation 18B is prescribed for the purposes of section 15(1)(c).

5. Vending machines

The number of vending machines prescribed for the purposes of section 27(2)(a) is 2.

6. Smokeless tobacco

- (1) A tobacco product that comprises tobacco in a powdered form (“snuff”) is prescribed for the purposes of section 30(2).
- (2) The circumstances of the manufacture or sale of snuff that are prescribed for the purposes of section 30(2) are that the snuff is prepared, packed and clearly labelled to be used by way of inhalation through the nostrils.

Tobacco Products Control Regulations 2006**Defined Terms**

Part 3 — Smoking in enclosed public places**Division 1 — Preliminary****7. Terms used in Part 3**

In this Part —

“adequate ventilation” means natural or mechanical ventilation that complies with FP4.3, FP4.4 and FP4.5, F4.5, F4.6 and F4.7 of the Building Code of Australia 2006 issued by the Australian Building Codes Board as amended from time to time;

“enclosed public place” has a meaning affected by regulation 8;

“occupier”, in relation to an enclosed public place, means a person having the management or control, or otherwise being in charge, of that place;

“roof” includes a ceiling, and any material —

- (a) through which air cannot flow; and
- (b) that is used for the same purpose as a ceiling or roof;

“wall” means a wall or any other vertical structure, covering or device, whether fixed or moveable, but does not include a balustrade —

- (a) that is one metre or less in height; and
- (b) of which more than 50% of its total vertical surface is open.

8. Enclosed public places

- (1) A public place or a part of a public place that has the features mentioned in subregulations (2) and (3) is an enclosed public place for the purposes of this Part.
- (2) An enclosed public place is covered by a roof or a part of a roof.

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- (3) An enclosed public place is configured so that the total vertical surface area of the solid material in the walls is more than 50% of the notional vertical surface area of the place as assessed in accordance with regulation 9.
- (4) The total vertical surface area of the solid material in the walls is to be assessed by —
 - (a) multiplying the following —
 - (i) the length of each wall under the roof or the part of a roof plus the length of each wall and each section of a wall that is one metre or less beyond the perimeter of the roof or the part of a roof when measured horizontally from the perimeter of the roof or the part of the roof;
 - (ii) the actual height of the walls and wall sections mentioned in subparagraph (i);and
 - (b) deducting the total vertical surface area of the open parts of the walls or wall sections mentioned in paragraph (a)(i).
- (5) The total vertical surface area of solid material in a wall is to be assessed as if each window, door or vertical retractable covering in or adjacent to the wall —
 - (a) is closed; and
 - (b) forms part of the wall.
- (6) A place is not an enclosed public place for the purposes of this Part if it is covered by a roof or a part of a roof and is bounded by only —
 - (a) one straight wall; or
 - (b) 2 straight walls that are set in an angle of 90 degrees or more.

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- (7) A part of a public place may be an enclosed public place even though —
- (a) it is part of a public place that is not an enclosed public place; or
 - (b) it is part of another part of a public place that is not an enclosed public place.

9. Notional vertical surface area

- (1) The notional vertical surface area of a public place is to be assessed by multiplying the following —
 - (a) the length of the perimeter of the roof, or the part of a roof, covering the public place;
 - (b) the average height of the roof, or the part of a roof, covering the public place.
- (2) The notional vertical surface area of a part of a public place is to be assessed by multiplying the following —
 - (a) the length of the perimeter of the roof, or the part of a roof, covering the part of the public place;
 - (b) the average height of the roof, or the part of a roof, covering the part of the public place.

Division 2 — Offences**10. Prohibition on smoking in enclosed public places**

- (1) A person must not smoke in an enclosed public place.
Penalty: a fine of \$2 000.
- (2) Subregulation (1) does not apply to the International Room at the premises at Burswood Island that are the subject of a casino gaming licence granted under the *Casino Control Act 1984*, if the International Room has adequate ventilation.

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- (3) A person does not commit an offence under subregulation (1) if—
- (a) the person is an actor, artist or other performer who smokes for the purposes of a performance; and
 - (b) the occupier of the enclosed public place consented to the person's smoking for the purposes of the performance; and
 - (c) the consent was given before the performance commenced.

11. Offence by occupier

- (1) If a person commits an offence under regulation 10(1) the occupier of the enclosed public place commits an offence.
Penalty: a fine of \$2 000.
- (2) It is a defence to a prosecution for an offence under subregulation (1) that—
- (a) neither the accused nor any employee or agent of the accused was aware, or could reasonably be expected to have been aware, that the offence was occurring; or
 - (b) as soon as the accused or an employee or agent of the accused became aware that the offence was occurring, the accused or an employee or agent of the accused—
 - (i) informed the person concerned that the person was committing an offence; and
 - (ii) requested the person to stop smoking in the enclosed public place and to extinguish, and properly dispose of, the tobacco product; and
 - (iii) (if the person failed to comply with a request under subparagraph (ii)) requested the person to leave the enclosed public place until the person finished smoking the tobacco product.

Tobacco Products Control Regulations 2006**Defined Terms****12. Display of no smoking signs in entrances to licensed premises**

(1) An occupier of an enclosed public place that comprises, or is part of, licensed premises must display, or cause to be displayed, at the place signs that comply with the requirements of subregulation (2)—

- (a) in such numbers; and
- (b) in such positions,

as would ensure that a sign is clearly visible to a person at a public entrance to the place.

Penalty: a fine of \$2 000.

(2) A sign must contain—

- (a) the phrase “no smoking” or “smoking prohibited” in letters that are at least 20 mm in height; or
- (b) the symbol, designated in Australian Standard 2899.1 — 1986 published by Standards Australia, to indicate that smoking is prohibited and having a diameter of at least 70 mm; or
- (c) other words or symbols that indicate clearly that smoking is prohibited.

(3) Subregulation (1) does not apply to an occupier of an enclosed public place that is a subject of a restaurant licence.

(4) In subregulation (3)—

“restaurant licence”, in relation to a place, means—

- (a) a restaurant licence granted under the *Liquor Licensing Act 1988* in relation to that place; or
- (b) a condition of any other kind of licence, order or permit under the *Liquor Licensing Act 1988*—
 - (i) to the effect that a provision of that Act relating to restaurant licences applies to that place; or

Tobacco Products Control Regulations 2006**Defined Terms**

- (ii) that otherwise has an effect in relation to that place that is similar to a provision of that Act relating to restaurant licences.

13. Duty to prevent smoke entering enclosed public places

The occupier of an enclosed public place must, unless the place has adequate ventilation, take reasonable steps to ensure that smoke from a tobacco product does not enter the place.

Penalty: a fine of \$2 000.

Division 3 — Investigators**14. Investigators to notify occupiers before taking action under Part 3**

- (1) An investigator must take reasonable steps to notify the occupier of an enclosed public place of the investigator's presence before the investigator takes any action for purposes connected with the operation of this Part.
- (2) Subregulation (1) does not apply to action of a kind mentioned in section 85.

15. Directions by investigators

- (1) If an investigator has reason to believe that a person is committing an offence under regulation 10(1) the investigator may direct the person to stop smoking in the enclosed public place.
 - (2) A direction under subregulation (1) may be given orally or in writing and if given orally must be reduced to writing as soon as is practicable.
 - (3) A person must comply with a direction given to the person under subregulation (1).
- Penalty: a fine of \$2 000.

Tobacco Products Control Regulations 2006**Defined Terms**

- (4) In proceedings for an offence under subregulation (3) a document purporting to have been signed or certified by the CEO, an investigator or a police officer —
- (a) to which is attached a copy of a direction given under subregulation (1); and
 - (b) stating that the direction —
 - (i) was given by the person referred to in the document; and
 - (ii) was in force at the time specified in the document,

is, in the absence of evidence to the contrary, evidence of the direction and of the facts stated in the document.

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Defined Terms

Part 4 — Western Australian Health Promotion Foundation and administration

16. Funds of the Foundation

For the purposes of section 71(2) the amount of \$18 153 000.00 is prescribed for the financial year beginning on 1 July 2006.

By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.
