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HEALTH ACT 1911

**HEALTH
(SMOKING IN ENCLOSED
PUBLIC PLACES)
REGULATIONS 2003**

Western Australia

Health (Smoking in Enclosed Public Places) Regulations 2003

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Health Act 1911

Health (Smoking in Enclosed Public Places) Regulations 2003

Made by the Governor in Executive Council.

1. Citation

These regulations may be cited as the *Health (Smoking in Enclosed Public Places) Regulations 2003*.

2. Commencement

These regulations come into operation on 1 December 2003.

3. Interpretation

In these regulations, unless the contrary intention appears —

“adequate ventilation” means natural or mechanical ventilation, or both, that meets the ventilation performance requirements described in FP4.3, FP4.4 and FP4.5 of the Building Code of Australia 1996 issued by the Australian Building Codes Board as amended from time to time;

“adjoining” means contiguous to and forming part of the same physical space;

“bar or lounge area” means an area of licensed premises that is primarily or predominantly used for the consumption of liquor;

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“Burswood Casino” means the premises at Burswood Island that are the subject of a casino gaming licence granted under the *Casino Control Act 1984*;

“cabaret or nightclub” means the public area of premises that are the subject of —

- (a) a cabaret licence granted under the *Liquor Licensing Act 1988*; 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 cabaret licences applies to that area; or
 - (ii) that otherwise has an effect in relation to that area that is similar to a provision of that Act relating to cabaret licences;

“covered area” means an area of premises that —

- (a) is predominantly outside the permanent external walls of the premises;
- (b) has a ceiling or roof; and
- (c) has at least 2 sides that —
 - (i) border an outdoor area of the premises or an area outside the premises; and
 - (ii) are primarily or predominantly comprised of openable windows, doors or retractable coverings;

“dining area” means an area of licensed premises that is primarily or predominantly used for the consumption of meals rather than liquor;

“licensed premises” has the same meaning as in the *Liquor Licensing Act 1988*;

“liquor” has the same meaning as in the *Liquor Licensing Act 1988*;

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“meal” means a genuine meal, not supplied in sandwich form, eaten or to be eaten by a person while seated at a dining table or counter;

“non-smoking area” means a non-smoking area referred to in item 2 or 4, of Schedule 1;

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

“premises”, without limiting its definition in section 3(1) of the Act, includes a building or part of a building that comprises one or more areas that are a subject of one or more licences, orders, permits or approvals granted or issued under the *Casino Control Act 1984*, the *Gaming Commission Act 1987* or the *Liquor Licensing Act 1988* where the grant or issue of such a licence, order, permit or approval is to the same person as the grant or issue of the other licences, orders, permits or approvals;

“prohibited”, in regulations 13(1), 13(2) and 14(1), means prohibited by regulation 4(1);

“public area” means an area of premises normally frequented by the public, other than a corridor, stairway, lift, toilet, lobby or waiting area;

“restaurant licence”, in relation to an area, means —

- (a) a restaurant licence granted under the *Liquor Licensing Act 1988* that applies to that area; 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 area; or
 - (ii) that otherwise has an effect in relation to that area that is similar to a provision of that Act relating to restaurant licences;

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“smoking prohibited symbol” means the symbol designated in Australian Standard 2899.1 — 1986, published by the Standards Association of Australia, to indicate that smoking is prohibited.

4. Prohibition on smoking in enclosed public places

- (1) Smoking is prohibited in an enclosed public place.
- (2) A person who smokes in an enclosed public place in contravention of subregulation (1) commits an offence.

5. Exemptions

- (1) Regulation 4(1) does not apply to an enclosed public place specified, or of a kind specified, in the first column of Schedule 1 if the conditions specified in respect of that place, or kind of place, in the second column of that Schedule are met.
- (2) Despite subregulation (1), regulation 4(1) applies to an enclosed public place that —
 - (a) is located in premises referred to in regulation 7(1) but is not one of the 2 enclosed public places referred to in regulation 7(2); or
 - (b) is located in premises referred to in regulation 7(3) but is not the enclosed public place referred to in regulation 7(4).
- (3) Despite subregulation (1), regulation 4(1) applies to a bar or lounge area referred to in regulation 8(1) if —
 - (a) the area is not one of the 2 enclosed public places referred to in regulation 7(2); or
 - (b) regulation 8(2) has not been complied with.
- (4) The exemption provided for in subregulation (1) in respect of an enclosed public place of the kind specified in item 4 of Schedule 1 (about cabarets and nightclubs) has no effect on and from 1 January 2007.

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(5) Subregulation (3) has no effect on and from 1 January 2007.

6. Prohibition on smoking in non-smoking areas in certain exempt enclosed public places

Despite regulation 5(1), a person who smokes in a non-smoking area commits an offence.

7. Limitation on number of places in certain premises where smoking not prohibited

(1) Subregulation (2) applies to premises comprising more than 2 enclosed public places of a kind referred to in item 1, 2, 3, 4 or 5 of Schedule 1.

(2) Until 31 December 2006, smoking is prohibited in all but 2 of the enclosed public places referred to in subregulation (1) at any one time.

(3) Subregulation (4) applies to premises comprising more than 2 enclosed public places of a kind referred to in item 1, 2, 3 or 5 of Schedule 1.

(4) On and from 1 January 2007, smoking is prohibited in all but one of the enclosed public places referred to in subregulation (3) at any one time.

8. Size restrictions where 2 bar or lounge areas set aside for smoking in certain premises until 31.12.06

(1) This regulation applies to a bar or lounge area of a kind referred to in item 2 of Schedule 1 that is located in premises comprising more than 2 such bar or lounge areas but not comprising any other enclosed public place of a kind referred to in that Schedule.

(2) Despite regulation 7(2), smoking is prohibited in all the bar or lounge areas referred to in subregulation (1) unless at least one of the bar or lounge areas other than one of the 2 enclosed public places referred to in regulation 7(2) has a floor area that

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is greater than, or equal to, the floor area of one of those 2 enclosed public places.

- (3) Subregulation (2) does not apply to any of the bar or lounge areas referred to in subregulation (1) if only one of those areas is an enclosed public place where, because of regulation 7(2), smoking is not prohibited.
- (4) This regulation has no effect on and from 1 January 2007.

9. Defence to prosecution for smoking in certain places

A person does not commit an offence under regulation 4(2) or 6 if, proof of which is on the person, the person is an actor, artist or other performer who smokes for the purposes of a performance.

10. Environmental health officers to notify occupiers before taking action under these regulations

- (1) An environmental health officer must take reasonable steps to notify the occupier of an enclosed public place of the officer's presence before the officer takes any action for purposes connected with the operation of these regulations.
- (2) Subregulation (1) does not apply to action that is taken only for the purposes of assessing whether or not these regulations are being complied with.

11. Directions by environmental health officers

- (1) If an environmental health officer has reason to believe that a person has committed or is committing an offence under regulation 4(2) or 6, the environmental health officer may direct the person to state his or her name and residential address.
- (2) If an environmental health officer has reason to believe that a person is committing an offence under regulation 4(2) or 6 the environmental health officer may direct the person to stop

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smoking in the enclosed public place or non-smoking area of the place.

- (3) A direction under subregulation (1) or (2) may be given orally or in writing and if given orally must be reduced to writing as soon as is practicable.
- (4) A person who —
- (a) does not comply with a direction under subregulation (1) or (2); or
 - (b) gives information that is false or misleading in a material particular in response to a direction under subregulation (1),
- commits an offence.
- (5) In proceedings for an offence under subregulation (4) a statement —
- (a) signed or purporting to be signed by the Executive Director, Public Health;
 - (b) to which is attached a copy of a direction given under subregulation (1) or (2); and
 - (c) stating that the direction —
 - (i) was given by the environmental health officer referred to in the statement; and
 - (ii) was in force at the time specified in the statement,

is, in the absence of evidence to the contrary, sufficient evidence of the direction and of the facts set out in the statement.

12. Offence by occupier

- (1) If a person commits an offence under regulation 4(2) or 6 the occupier of the enclosed public place commits an offence.

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- (2) It is a defence to a prosecution for an offence under subregulation (1) if the defendant proves that neither the defendant nor any employee or agent of the defendant provided any ashtray, matches, lighter, or other thing that could facilitate smoking, in the enclosed public place or non-smoking area of the place and that —
- (a) neither the defendant nor any employee or agent of the defendant was aware, or could reasonably be expected to have been aware, that the offence was occurring; or
 - (b) as soon as the defendant or an employee or agent of the defendant became aware that the offence was occurring, the defendant or an employee or agent of the defendant —
 - (i) informed the person concerned that the person was committing an offence;
 - (ii) requested the person to stop smoking in the enclosed public place or non-smoking area and to extinguish, and properly dispose of, the tobacco product;
 - (iii) (if the person failed to comply with a request under subparagraph (ii)) requested the person to leave the enclosed public place or non-smoking area until the person finished smoking the tobacco product;
 - (iv) (if the person failed to comply with requests under subparagraphs (ii) and (iii)) informed the person that the person would be required to leave the enclosed public place or non-smoking area if the person did not comply with either of the requests; and
 - (v) (if, after being informed under subparagraph (iv) the person did not comply with a request under subparagraph (ii) or (iii)) required the person to

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leave the enclosed public place or non-smoking area immediately.

13. Duty to prevent spread of smoke

- (1) If smoking is prohibited in an enclosed public place but not in another part of the premises where the place is located, the occupier of the place must, unless the place has adequate ventilation, take reasonable steps to prevent smoke caused by smoking in the other part of the premises from penetrating the place.
- (2) If smoking is prohibited in an enclosed public place but not in another part of the premises where the place is located, the occupier of the other part of the premises must, unless the place has adequate ventilation, take reasonable steps to prevent smoke caused by smoking in the other part of the premises from penetrating the place.
- (3) A person who fails, without reasonable excuse, to comply with subregulation (1) or (2) commits an offence.

14. Occupier to display signs

- (1) An occupier of an enclosed public place where smoking is prohibited or of a non-smoking area must display, or cause to be displayed, at the place or area 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 likely to be seen by a person at a public entrance to the place or by a person in the place or area.
- (2) A sign must —
 - (a) contain —
 - (i) the phrase “no smoking” or “smoking prohibited” in letters that are at least 20 mm in height;

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- (ii) the smoking prohibited symbol with a diameter of at least 70 mm; or
 - (iii) other words or symbols that indicate clearly that smoking is prohibited;
 - and
 - (b) indicate clearly where smoking is prohibited.
- (3) A person who contravenes subregulation (1) commits an offence.
- (4) It is a defence to a prosecution for an offence under subregulation (3) if the defendant proves that —
- (a) persons within the place or area could reasonably be expected to know, by custom or otherwise, that smoking is not permitted in the place or area; and
 - (b) persons do not usually smoke in the place or area.

15. Penalties

A person who is convicted of an offence under these regulations is liable —

- (a) if the offender is an individual —
 - (i) to a penalty which is not more than \$500; and
 - (ii) if the offence is a continuing offence, to a daily penalty which is not more than \$50;
- and
- (b) if the offender is a body corporate —
 - (i) to a penalty which is not more than \$5 000; and
 - (ii) if the offence is a continuing offence, to a daily penalty which is not more than \$500.

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**16. *Health (Smoking in Enclosed Public Places) Regulations 1999*
repealed**

The *Health (Smoking in Enclosed Public Places) Regulations 1999* are repealed.

Health (Smoking in Enclosed Public Places) Regulations 2003**Schedule 1** Exempt places

Schedule 1 — Exempt places

[r.5(1)]

Enclosed public place	Conditions
1. Bar or lounge area adjoining (but not including) a dining area*	1. The bar or lounge area is not a subject of a restaurant licence. 2. Meals are not served or consumed in the bar or lounge area except at a bar counter. 3. The bar or lounge area has adequate ventilation. 4. There is no other separately enclosed public place within the premises in which the bar or lounge area is located that comprises another bar or lounge area.
2. Bar or lounge area not adjoining a dining area*	1. The bar or lounge area is not a subject of a restaurant licence. 2. Meals are not served or consumed in the bar or lounge area except at a bar counter. 3. The bar or lounge area has adequate ventilation. 4. If the bar or lounge area is located in premises that comprise only one other bar or lounge area that is an enclosed public place but no other enclosed public place of a kind referred to in item 1, 3, 4, 5 or 6, a non-smoking area is set aside in the public area of at least one of the bar or lounge areas.

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Enclosed public place	Conditions
3. Allocated room in restaurant*	<ol style="list-style-type: none"> 1. The allocated room is a separate and enclosed room within an area that is a subject of a restaurant licence. 2. Meals are not served or consumed in the allocated room. 3. The allocated room has adequate ventilation. 4. There is only one allocated room in the area referred to in condition 1. 5. The allocated room is not, or does not form part of, the main access way to the area referred to in condition 1.
4. Cabaret or nightclub*	<ol style="list-style-type: none"> 1. The cabaret or nightclub has adequate ventilation. 2. Until 30 June 2004, 50% of the floorspace of the cabaret or nightclub is set aside as a non-smoking area. 3. On and from 1 July 2004, 80% of the floorspace of the cabaret or nightclub is set aside as a non-smoking area.
5. Covered area*	<ol style="list-style-type: none"> 1. One or more of the windows, doors or retractable coverings referred to in paragraph (c)(ii) of the definition of "covered area" in regulation 3 are open so that the covered area is not substantially enclosed.

Health (Smoking in Enclosed Public Places) Regulations 2003**Schedule 1** Exempt places

Enclosed public place	Conditions
6. International room at Burswood Casino	1. The room has adequate ventilation.

***Notes:**

1. Until 31.12.06 smoking is prohibited in all but 2 enclosed public places located in the same premises at any one time. After that time, smoking is prohibited in all but one enclosed public place located in the same premises at any one time: see regulation 7.
2. Size restrictions apply where 2 bar or lounge areas are set aside for smoking in certain premises until 31.12.06: see regulation 8.

By Command of the Governor,

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

