



Western Australia

# Health Amendment Act 1998

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No. 62 of 1998

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An Act to amend the *Health Act 1911*.

[Assented to 12 January 1999]

The Parliament of Western Australia enacts as follows:

**1. Short title**

This Act may be cited as the *Health Amendment Act 1998*.

**2. Commencement**

This Act comes into operation on the day on which it receives the Royal Assent.

**3. The Act amended**

The amendments in this Act are to the *Health Act 1911*.

[\* Reprinted as at 11 March 1997.

*For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, pp. 104-5, and Acts Nos. 31 of 1997 and 10 and 15 of 1998.]*

**4. Section 3 amended**

Section 3(1) is amended in the definition of “Public place” by inserting before “includes” —

“ , except in Part IXB, ”.

**5. Part IXB inserted**

After section 289D the following Part is inserted —

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**Part IXB — Smoking in enclosed public places**

**289E. Interpretation**

(1) In this Part, unless the contrary intention appears —

“**enclosed public place**” means a public place that has, whether permanently or temporarily —

(a) a ceiling or roof; and

(b) walls, sides or other vertical coverings,

so that when the public place’s existing closeable openings are closed, the public place is completely or substantially enclosed;

“**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, or otherwise;

“**regulations**” means regulations, if any, made under section 341 as read with section 289F;

“**smoke**” means smoke, hold, or otherwise have control over, an ignited tobacco product;

“**tobacco product**” has the same meaning as in the *Tobacco Control Act 1990*;

“**vehicle**” means any thing used or capable of being used to transport people by air or water or on rails or roads.

- (2) For the purposes of the definition of “enclosed public place” in subsection (1) it is immaterial that an existing closeable opening is open at any particular time.

**289F. Regulations**

- (1) Subject to subsection (3), the Governor may make regulations under section 341 for the regulation or prohibition of smoking in enclosed public places.
- (2) Without limiting subsection (1), the regulations may —
- (a) require occupiers of enclosed public places to display signs about smoking, and may prescribe the content, dimensions and location of those signs; and
  - (b) confer powers on environmental health officers in relation to persons who are smoking in enclosed public places where smoking is prohibited.

- (3) The regulations shall not permit smoking, where the premises contain more than two enclosed public places, in more than two of those enclosed public places.
- (4) Subsection (3) does not apply to the Burswood Casino.

**289G. Consent required for prosecutions**

- (1) Proceedings for an offence against the regulations must not be taken without the written consent of the Executive Director, Public Health.
- (2) If a complaint alleging an offence against the regulations purports to be made with the written consent of the Executive Director, Public Health, it is to be presumed, in the absence of proof to the contrary, that the complaint is so made.

**289H. No right to smoke in enclosed public places**

Nothing in the regulations is to be construed as creating or preserving a right of a person to smoke in an enclosed public place.

**289I. Review**

- (1) The Minister is to carry out a review of the operation and effectiveness of this Part and the regulations as soon as is practicable after the expiry of 3 years from the commencement of the *Health Amendment Act 1998*.
- (2) The Minister is to prepare a report based on the review recommending further steps to be taken to achieve smoke free enclosed public places and, is to cause it to be laid before each House of Parliament as soon as is practicable after the report is prepared, and in any

event not later than 4 years after the commencement referred to in subsection (1).

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**6. Section 360 amended**

After section 360(4) the following subsection is inserted —

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(5) Notwithstanding anything in subsection (2), regulations made under section 341 as read with section 289F may create offences and provide in respect of any such offence —

(a) if the offender is an individual —

(i) a penalty that is not more than \$500;  
and

(ii) if the offence is a continuing offence, a daily penalty that is not more than \$50;

and

(b) if the offender is a body corporate —

(i) a penalty that is not more than \$5 000;  
and

(ii) if the offence is a continuing offence, a daily penalty that is not more than \$500.

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