

**WESTERN  
AUSTRALIAN  
GOVERNMENT**  
**Gazette**  
ISSN 1448-949X

5507



**PERTH, TUESDAY, 30 NOVEMBER 2004 No. 203 SPECIAL**

PUBLISHED BY AUTHORITY JOHN A. STRIJK, GOVERNMENT PRINTER AT 3.45 PM

© STATE OF WESTERN AUSTRALIA

HEALTH ACT 1911

---

**HEALTH  
(SMOKING IN ENCLOSED  
PUBLIC PLACES)  
REGULATIONS 2004**



Health Act 1911

## Health (Smoking in Enclosed Public Places) Regulations 2004

Made by the Governor in Executive Council.

**1. Citation**

These regulations are the *Health (Smoking in Enclosed Public Places) Regulations 2004*.

**2. Commencement**

These regulations come into operation on 31 July 2006.

**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;

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

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

**Health (Smoking in Enclosed Public Places) Regulations 2004****r. 4**

---

**“smoking prohibited symbol”** means the symbol designated in Australian Standard 2899.1 — 1986, published by Standards 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.
- (3) Subregulation (1) does not apply to the International room at Burswood Casino if the room has adequate ventilation.
- (4) A person does not commit an offence under subregulation (2) if the person is an actor, artist or other performer who smokes for the purposes of a performance.

**5. 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.

**6. 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), 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) the

**Health (Smoking in Enclosed Public Places) Regulations 2004**

---

**r. 7**

environmental health officer may direct the person to stop smoking in the enclosed public 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.

**7. Offence by occupier**

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

**Health (Smoking in Enclosed Public Places) Regulations 2004****r. 8**

---

- (2) It is a defence to a prosecution for an offence under subregulation (1) that neither the defendant nor any employee or agent of the defendant provided at the enclosed public place any ashtray, matches, lighter, or other thing that could facilitate smoking 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 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.

**8. Occupier to display signs**

- (1) An occupier of an enclosed public place 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 likely to be seen by a person at a public entrance to the place or by a person in the place.

**Health (Smoking in Enclosed Public Places) Regulations 2004**

---

**r. 9**

- (2) A sign must —
- (a) contain —
    - (i) the phrase “no smoking” or “smoking prohibited” in letters that are at least 20 mm in height;
    - (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) that —
- (a) persons within the place could reasonably be expected to know that smoking is not permitted in the place; and
  - (b) persons do not usually smoke in the place.

**9. 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.

***Health (Smoking in Enclosed Public Places) Regulations 2004***

**r. 10**

---

**10. *Health (Smoking in Enclosed Public Places) Regulations 2003*  
repealed**

*The Health (Smoking in Enclosed Public Places)  
Regulations 2003* are repealed.

By Command of the Governor,

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

