
WORKSAFE

WS301*

Occupational Safety and Health Act 1984

**Occupational Safety and Health Amendment
Regulations (No. 2) 1999**

Made by the Governor in Executive Council.

1. Citation

These regulations may be cited as the *Occupational Safety and Health Amendment Regulations (No. 2) 1999*.

2. Commencement

These regulations come into operation on 29 March 1999 immediately after the *Occupational Safety and Health Amendment Regulations (No. 2) 1997* come into operation.

3. Regulations 3.44A to 3.44F replaced

Regulations 3.44A, 3.44B, 3.44C, 3.44D, 3.44E and 3.44F of the *Occupational Safety and Health Regulations 1996** are repealed and the following regulations are inserted instead —

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3.44A. Definitions

(1) In this Subdivision —

“**designated smoking area**” means an area of a workplace designated under regulation 3.44F(1) to be an area in which persons may smoke;

“enclosed workplace” means a workplace that has, whether permanently or temporarily —

- (a) a ceiling or roof; and
 - (b) walls, sides or other vertical coverings,
- so that when the workplace’s existing closeable openings are closed, the workplace is completely or substantially enclosed;

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

“tobacco product” has the definition it has in the *Tobacco Control Act 1990*.

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

3.44B. Certain persons prohibited from smoking in enclosed workplaces

A person who, at an enclosed workplace, is an employer, a self-employed person or an employee must not smoke in the enclosed workplace.

Penalty: \$5 000.

3.44C. Defence: smoking in a designated area of workplace

A person does not commit an offence under regulation 3.44B if, proof of which is on the person —

- (a) the person smokes in a designated smoking area;
- (b) the person is not working at the time he or she smokes; and
- (c) in the case of an employer, no employee is working in the designated area when the employer is smoking.

3.44D. Defence: smoking in a private vehicle or residence

A person does not commit an offence under regulation 3.44B if, proof of which is on the person —

- (a) the enclosed workplace is —
 - (i) a vehicle supplied by the person; or
 - (ii) the person’s residence;and
- (b) no other person is present —
 - (i) who, in the case of an employer, is that person’s employee; or
 - (ii) who, in the case of an employee, is also an employee of that person’s employer.

3.44E. Defence: smoking in a performance

A person does not commit an offence under regulation 3.44B 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.

3.44F. Designated smoking areas

- (1) A person who, at an enclosed workplace, is an employer or a person having control of the workplace may, subject to subregulations (2) and (3), designate an area of the workplace to be an area in which persons may smoke.
- (2) A person who, at an enclosed workplace, is an employer or a person having control of the workplace must not designate an area of the workplace to be an area in which persons may smoke unless —
 - (a) the area is designed or arranged so that tobacco smoke from the area does not enter any other part of the workplace; and
 - (b) there is provided an exhaust system that effectively extracts tobacco smoke from the area and which is arranged so as to prevent circulation of the extracted tobacco smoke into any part of the workplace.
- (3) A person who, at an enclosed workplace, is an employer or a person having control of the workplace must not designate an area of the workplace to be an area in which persons may smoke if it is an offence under the *Health (Smoking in Enclosed Public Places) Regulations 1999* to smoke in that area.

Penalty applicable to subregulations (2) and (3): \$25 000.

3.44G. Notice to be given as to restrictions on smoking

A person who, at an enclosed workplace, is an employer or a person having control of the workplace must ensure that notice is given or displayed to persons working in the workplace to the effect that smoking by those persons is prohibited in the workplace.

Penalty: \$25 000.

3.44H. Persons not to work in a designated smoking area when persons are smoking in that area

- (1) A person who, at an enclosed workplace, is an employer must ensure that no employee is required to work in a designated smoking area when a person is smoking in that area.

- (2) A person who, at an enclosed workplace, is a self-employed person must not work in a designated smoking area when a person is smoking in that area.
Penalty applicable to subregulations (1) and (2): \$25 000.

3.44I. Inspectors may require certain persons to extinguish tobacco products

- (1) If an inspector has reasonable cause to believe that a person is smoking in contravention of regulation 3.44B the inspector may require the person to extinguish the tobacco product that the person is smoking.
- (2) A person must comply with an inspector's requirement under subregulation (1).
Penalty: \$5 000.

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[* *Published in Gazette 27 September 1996, pp. 4837-5080.*
For amendments to 26 February 1999 see 1997 Index to Legislation of Western Australia, Table 4, p. 196 and Gazette 6 February, 9 June, 17 July and 31 December 1998.]

By Command of the Governor,

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