

## Health (Smoking in Enclosed Public Places) Regulations 1998

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### Schedule 1 — Exempt places

## Health (Smoking in Enclosed Public Places) Regulations 1998

Made by the Governor in Executive Council.

1. **Citation**

These regulations may be cited as the *Health (Smoking in Enclosed Public Places) Regulations 1998*.

2. **Commencement**

These regulations come into operation on 29 March 1999.

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;

“Bingo Centre” means the premises operated by the Royal W.A. Institute for the Blind (Inc.) at 496 Guildford Road, Bayswater that are the subject of an approval granted under section 55 of the *Gaming Commission Act 1987*;

“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 cabaret licence issued under the *Liquor Licensing Act 1988*;

“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;
- (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 or 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;

“gaming area” means —

- (a) in relation to the Bingo Centre, the area designated as the main bingo hall and bordered in red on the plan of the centre held in the offices of the department at Perth; and
- (b) in relation to Burswood Casino, an area of the casino, other than a bar or lounge area, fixed under clause 4(b) or (c) of the *Casino Control (Area of Gaming Licence) Notice 1994* as an area to which the casino gaming licence relates;

“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*;

“main gaming floor”, in relation to Burswood Casino, means that part of the gaming areas of the casino shown in the Schedule to the *Casino Control (Area of Gaming Licence) Notice 1994* as the casino main gaming floor;

“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;

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

“prohibited” 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 ETP area” means an area that —

- (a) is part of licensed premises that are the subject of a restaurant licence and are also the subject of an extended trading permit issued under section 60 of the *Liquor Licensing Act 1988* that applies for the purpose specified in subsection (4)(ca) of that section; and
- (b) is available, or used, for the consumption of liquor in accordance with section 50(1a) of the *Liquor Licensing Act 1988*;

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

“smoking prohibited symbol” means the symbol designated in Australian Standard 2899.1 — 1986, published by the Standards Association of Australia, to indicate areas where 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) A person does not commit an offence under subregulation (2) if, proof of which lies on the person, the person is an actor, artist or other performer who smokes during a performance.

**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) The exemption provided for in subregulation (1) in respect of an enclosed public place of the kind specified in item 3 of Schedule 1 has no effect after 31 December 1999.
- (3) The exemption provided for in subregulation (1) in respect of the enclosed public place specified in item 7 of Schedule 1 has no effect after 31 December 2001.

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**6. Requirements for environmental health officers entering enclosed public places**

- (1) This regulation applies if an environmental health officer enters an enclosed public place for purposes connected with the operation of these regulations.
- (2) The environmental health officer must, as soon as practicable after entering the enclosed public place, take reasonable steps to notify the occupier of the place of his or her presence.
- (3) The environmental health officer must, at all times while the environmental health officer is in the enclosed public place, wear an identity card, in a form approved by the Executive Director, Public Health, stating that he or she has been appointed as an environmental health officer.

**7. 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 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 fails to comply with a direction under subregulation (1) or (2) 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.

**8. Offence by occupier**

- (1) If a person commits an offence under regulation 4(2), the occupier of the enclosed public place commits an offence.
- (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 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; and
    - (ii) requested the person concerned to stop smoking in the enclosed public place.

**9. 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 is provided with 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 is provided with adequate ventilation, take reasonable steps to prevent smoke caused by smoking in the other part of the premises from penetrating the place.

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- (3) A person who fails, without reasonable excuse, to comply with subregulation (1) or (2) commits an offence.

**10. Occupier to display signs**

- (1) An occupier of an enclosed public place where smoking is prohibited 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,

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.

- (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) if the defendant proves that —
- (a) persons within the place could reasonably be expected to know, by custom or otherwise, that smoking is not permitted in the place; and
  - (b) persons do not usually smoke in the place.

**11. 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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Schedule 1 Exempt places

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Schedule 1 — Exempt places

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Enclosed public place	Conditions
1. Bar or lounge area adjoining a dining area	<ol style="list-style-type: none"><li>1. The licensed premises are not the subject of a restaurant licence.</li><li>2. Smoking is only permitted in the bar or lounge area.</li><li>3. Meals are not served or consumed in the bar or lounge area except at a bar counter.</li><li>4. The bar or lounge area is provided with adequate ventilation.</li><li>5. On and from 1 January 2000, the bar or lounge area is the only bar or lounge area in the licensed premises.</li></ol>
2. Bar or lounge area not adjoining a dining area	<ol style="list-style-type: none"><li>1. The licensed premises are not the subject of a restaurant licence.</li><li>2. Meals are not served or consumed in the bar or lounge area except at a bar counter.</li><li>3. The bar or lounge area is provided with adequate ventilation.</li></ol>
3. Restaurant ETP area	<ol style="list-style-type: none"><li>1. Meals are not served or consumed in the restaurant ETP area.</li><li>2. The restaurant ETP area is provided with adequate ventilation.</li></ol>

	Exempt places	Schedule 1
4. Cabaret or nightclub	<ol style="list-style-type: none"><li>1. The cabaret or nightclub is provided with adequate ventilation.</li><li>2. On and from 1 January 2000, 50% of the floorspace of the cabaret or nightclub is set aside as a non-smoking area.</li></ol>	
5. Covered area		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.
6. Gaming areas of Burswood Casino	<ol style="list-style-type: none"><li>1. The gaming areas are provided with adequate ventilation.</li><li>2. On and from 1 January 2001, 50% of the floorspace of the main gaming floor is set aside as a non-smoking area.</li></ol>	
7. Gaming area of Bingo Centre	<ol style="list-style-type: none"><li>1. The gaming area is provided with adequate ventilation.</li><li>2. 50% of the floorspace of the gaming area is set aside as a non-smoking area.</li></ol>	

By Command of the Governor,

Clerk of the Executive Council.

## Types of premises and their requirements under the Health (Smoking in Enclosed Public Places) Regulations 1998

Type of premises	Conditions of exemption	Time-limiting conditions
Hotel, Bar, Tavern, Licensed Club Other licensed premises with a bar or lounge area (not including restaurant licence)	Smoking is permitted in bar or lounge areas only, provided these areas are adequately ventilated. All other areas are required to be non-smoking. Counter meals will be permitted to be served and consumed at the bar counter.	Not applicable.
Bar or lounge areas of licensed premises that adjoin dining areas (adjoin is defined as located in the same physical space).	Smoking is permitted in the bar or lounge area only, provided these areas are adequately ventilated.	After 1 January 2000, both the dining area and bar or lounge area will be required to be <b>non-smoking</b> .
Licensed premises (not including restaurant licences) that have only one bar or lounge area that adjoins a dining area	Smoking is permitted in the bar or lounge area only provided these areas are adequately ventilated.	Not applicable
Restaurants with liquor licence under section 50 of the <i>Liquor Licensing Act 1988</i> as well as an extended trading permit (ETP) under section 60 (4) (ca).	Smoking is permitted in the area, specified by the conditions of the ETP licence, which has for its primary purpose the consumption of alcohol provided this area is adequately ventilated.	After 1 January 2000, all enclosed areas of licensed restaurants will be required to be <b>non-smoking</b> .
Cabaret Nightclub	Smoking is permitted in all public areas, EXCEPT for foyers, lobbies, stairwells, waiting areas, corridors and toilets, provided public areas are adequately ventilated.	After 1 January 2000, 50% of previously exempt areas will be required to be non-smoking.
Casino	Smoking is permitted in bar or lounge areas and in gaming areas, provided these areas are adequately ventilated.	After 1 January 2001, 50% of main gaming floor will be required to be non-smoking.
Royal WA Institute for the Blind Bingo Centre	Smoking is permitted in the gaming area provided the area is adequately ventilated.	From 29 March 1999, 50% of the gaming area to be non-smoking. Exemption expires <b>31 December 2001</b> .
<p>All other enclosed public places (other than the above)</p> <ul style="list-style-type: none"> <li>• Shopping centres, malls and plazas;</li> <li>• Restaurants, cafes, cafeterias and other eating places;</li> <li>• Schools, colleges, universities;</li> <li>• Professional, trade, commercial and other business premises;</li> <li>• Community centres, theatres, cinemas, libraries and galleries;</li> <li>• Trains, buses, trams, taxis and hire cars and ferries and other vessels;</li> <li>• Public areas of hostels, nursing homes, boarding houses and other multi-unit residential premises;</li> <li>• Fitness centres, bowling alleys and other facilities; and childcare facilities.</li> </ul>	<p>No exemption permitted. All enclosed areas are required to be non-smoking.</p> <p>A special exemption has been included for covered 'al fresco' and outdoor areas of public premises that will allow these areas to be exempt when they are not substantially enclosed. For example, when a covered verandah or outdoor area of a premises has moveable and openable walls, whether they are wooden shutter arrangements or plastic sheeting – and these structures are closed – this area will be non smoking (if it not able to access another exemption). But when one or more of these structures are open so that the area is not substantially enclosed, no restrictions will apply.</p>	Not applicable.