



New South Wales

Smoking Regulation Act 1997 No 16

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New South Wales

Smoking Regulation Act 1997 No 16

Act No 16, 1997

An Act to regulate smoking in enclosed public places. [Assented to 29 May 1997]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Smoking Regulation Act 1997*.

2 Commencement

This Act commences on the earlier of the following days:

- (a) the day that is 6 months after the date of assent,
- (b) a day to be appointed by proclamation.

3 Definitions

In this Act:

enclosed, in relation to a public place, means having a ceiling or roof and, except for doors and passageways, completely or substantially enclosed by walls, sides or windows.

exercise a function includes perform a duty.

function includes a power, authority or duty.

inspector means an inspector appointed under section 11.

occupier of an enclosed public place means a person having the management or control, or otherwise being in charge, of that place.

public place means a place or vehicle that the public, or a section of the public, is entitled to use or that 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).

smoke means smoke, hold or otherwise have control over, an ignited tobacco product.

tobacco product means a cigarette, cigar or other product of which tobacco is a substantial ingredient.

vehicle means a train, bus, tram, aeroplane, taxi or hire car, or ferry or other vessel.

4 Object of Act

The object of this Act is to promote public health by reducing exposure to environmental tobacco smoke.

5 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

6 Smoke-free areas

- (1) Smoking is prohibited in an enclosed public place on and from the day that is 5 years after the commencement of a regulation that prescribes an air quality standard for the purposes of this section.
- (2) Without limiting subsection (1), smoking is prohibited on and from that day in any place of a kind described in Schedule 1 that is an enclosed public place (irrespective of the name by which the particular place is known).
- (3) This section does not prohibit smoking in:
 - (a) an enclosed public place that is so constructed or equipped as to ensure that the air within the place complies with the air quality standards prescribed by the regulations, or
 - (b) an enclosed public place of a kind specified in Schedule 2 at the times or in the circumstances so specified in relation to that place, or
 - (c) a particular enclosed public place (or an enclosed public place of a kind) prescribed by the regulations, or
 - (d) a particular enclosed public place (or an enclosed public place of a kind) prescribed by the regulations, at the times or in the circumstances so prescribed.

7 Offence by smoker

A person who is smoking in contravention of section 6 must comply with a direction to stop smoking in the enclosed public place concerned, given by:

- (a) an inspector under section 12 (5), or
- (b) the occupier of the enclosed public place concerned or an employee or agent of such an occupier.

Maximum penalty: 5 penalty units.

8 Offence by occupier

- (1) If a person smokes in contravention of section 6, the occupier of the enclosed public place concerned is guilty of an offence.

Maximum penalty:

- (a) 10 penalty units, in the case of a natural person, or
- (b) 50 penalty units, in the case of a body corporate.

- (2) It is a defence to a prosecution for an offence under subsection (1) if the defendant establishes that neither the defendant nor any employee or agent of the defendant provided (otherwise than by sale) any ashtray, matches or lighter (or other thing that could facilitate smoking) in the enclosed public place concerned 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 contravention was occurring, or
- (b) as soon as the defendant or any employee or agent of the defendant became aware that the contravention was occurring, the defendant (or that or any employee or agent of the defendant):
 - (i) directed the person concerned to stop smoking in the enclosed public place concerned, and
 - (ii) informed the person that the person would be committing an offence if the person smoked after receiving the direction.

9 Duty to display signs

The occupier of an enclosed public place where smoking is prohibited under section 6 must not, without reasonable excuse, fail to display within that place the signs (if any) prescribed by the regulations, in the manner (if any) prescribed by the regulations.

Maximum penalty:

- (a) 5 penalty units, in the case of a natural person, or
- (b) 25 penalty units, in the case of a body corporate.

10 Duty to prevent spread of smoke

- (1) If section 6 prohibits smoking in an enclosed public place but not in another part of the premises where the place is located, the occupier of that place must not, without reasonable excuse, fail to take reasonable steps to prevent smoke caused by smoking in the other part of the premises from penetrating that place.

Maximum penalty:

- (a) 10 penalty units, in the case of a natural person, or
(b) 50 penalty units, in the case of a body corporate.
- (2) If section 6 prohibits smoking in an enclosed public place but not in another part of the premises where the place is located, the occupier of that other part must not, without reasonable excuse, fail to take reasonable steps to prevent smoke caused by smoking in that part from penetrating the enclosed public place.

Maximum penalty:

- (a) 10 penalty units, in the case of a natural person, or
(b) 50 penalty units, in the case of a body corporate.

11 Inspectors

- (1) The Minister may, by instrument in writing, appoint persons to be inspectors for the purposes of this Act.
- (2) An inspector has such functions as the regulations prescribe for the purpose of promoting compliance with this Act and the regulations.
- (3) Each person appointed as an inspector is to be issued with an identity card that states the name of the inspector and the fact of his or her appointment, as well as containing a recent photograph of the inspector.
- (4) A former inspector must not, without reasonable excuse, fail to return his or her identity card to the Minister on demand.

Maximum penalty (subsection (4)): 1 penalty unit.

- (5) The regulations may prescribe classes of inspectors (however described) appointed under other legislation who are to be taken to be inspectors appointed under this section. If an inspector of a

class so prescribed has an identity card by virtue of the other legislation under which he or she is an inspector (however described):

- (a) the card may be used by the inspector for the purposes of this Act as if it had been issued under subsection (3), and
- (b) subsection (4) does not apply to the card.

12 Powers of inspectors

- (1) An inspector has power to do all things necessary or convenient to be done in the exercise of the inspector's functions.
- (2) For the purpose of performing his or her functions, an inspector may at all reasonable times enter an enclosed public place that he or she is not otherwise entitled to enter.
- (3) An inspector who enters an enclosed public place pursuant to subsection (2) is not entitled to remain in that place if, on request by the occupier of that place, the inspector does not produce his or her identity card.
- (4) An inspector who has reason to believe that a person is committing or has committed an offence against this Act or the regulations may, on producing his or her identity card, require the person to furnish his or her name and residential address.
- (5) An inspector may, on producing his or her identity card, direct a person who is smoking in contravention of section 6 to stop smoking in contravention of that section.

13 Obstruction of inspectors

A person must not, without reasonable excuse:

- (a) fail to comply with a requirement made of the person under this Act by an inspector, or
- (b) hinder or obstruct an inspector in the exercise of his or her functions under this Act, or
- (c) impersonate an inspector.

Maximum penalty: 5 penalty units.

14 Proceedings for offences

Proceedings for an offence against this Act or the regulations are to be taken before a Local Court constituted by a Magistrate sitting alone.

15 No right to smoke in enclosed public place

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

16 Promotion of objects of Act

- (1) The Director-General of the Department of Health is to conduct an information and education campaign about the provisions of this Act. The Director-General is to do so out of money otherwise lawfully available for the purpose.
- (2) The Minister administering Division 2 of Part 3 of the *Environmental Planning and Assessment Act 1979* must do everything within his or her power under that Division to ensure that, within 6 months after the commencement of this Act, a State environmental planning policy is made for the promotion of the provision of outdoor areas or facilities by restaurants, cafes, bars, cafeterias and other eating places.

17 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for the following:
 - (a) the display within enclosed public places of signs relating to smoking,
 - (b) the content, dimensions and location of those signs,
 - (c) the requirements to be observed by occupiers of enclosed public places to facilitate compliance with this Act and the regulations,
 - (d) the powers of inspectors.

- (3) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units in the case of a natural person and 25 penalty units in the case of a body corporate.

18 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review must include an examination of the relationship between this Act and the *Occupational Health and Safety Act 1983* and other legislation that regulates or otherwise affects smoking in enclosed public places.
- (3) The review is to be undertaken as soon as possible after the period of 3 years (or if a shorter period is prescribed by the regulations, the shorter period) from the date of assent to this Act.
- (4) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period that applies under subsection (3).

Schedule 1 Examples of places where, if they are enclosed public places, smoking is prohibited

(Section 6 (2))

- 1 Shopping centres, malls and plazas
- 2 Restaurants, cafes, bars, cafeterias and other eating places
- 3 Clubs
- 4 Schools, colleges and universities
- 5 Professional, trade, commercial and other business premises
- 6 Community centres or halls and places of worship
- 7 Theatres, cinemas, libraries and galleries
- 8 Trains, buses, trams, aeroplanes, taxis and hire cars, and ferries and other vessels
- 9 Hostels, nursing homes, boarding houses and other multiple-unit residential premises
- 10 Hotels and motels
- 11 Fitness centres, bowling alleys and other sporting and recreational facilities
- 12 Childcare facilities

Schedule 2 Places exempted at certain times or in certain circumstances

(Section 6 (3))

	Place	Time or circumstance
1	A theatre or performance space	if the smoking is by a performer during a performance
2	A common area of a hotel or motel, of a club that offers accommodation or of a hostel, nursing home, boarding house or other multiple-unit residential premises (other than a lobby, hall, stairway, elevator or dining area)	if a similar area of a comparable standard in which smoking is not permitted is provided

[Member's second reading speech made in—
Legislative Council on 24 October 1996
Minister's second reading speech made in—
Legislative Assembly on 21 May 1997]