

2005

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**SMOKING (PROHIBITION IN ENCLOSED PUBLIC PLACES)
REGULATION 2005**

Subordinate Law SL2005 - 21

EXPLANATORY STATEMENT

Circulated by the authority of

Simon Corbell
Minister for Health

Overview

The purpose of this Regulation is to explain the meaning of ‘enclosed’ in relation to an ‘enclosed public place’ pursuant to the *Smoking(Prohibition in Enclosed Public Places) Act 2003*(the Act). The Act prohibits smoking in all enclosed public places, as from 1 December 2006.

The Regulation defines what is meant by ‘enclosed’ and explains how to determine if a public place meets this definition. The Regulation should be read in the context of the Object of the Act: ‘to promote public health by minimising the exposure of people in enclosed public places to environmental smoke.’ In the context of the Act and this Regulation, smoke means smoke from an ignited tobacco or herbal smoking product.

Revenue/Cost Implications

The Regulation will be implemented within existing resources.

PART 1 Preliminary

Section 1 Name of Regulation

This Section specifies that the name of the Regulation is ‘*Smoking(Prohibition in Enclosed Public Places) Regulation 2005*’.

Section 2 Commencement

This Section provides for the Regulation to commence on 1 December 2006.

Section 3 Dictionary

This Section states that the dictionary at the end of the Regulation is part of the Regulation.

Section 4 Notes

This Section states that a note included in the Regulation is explanatory and is not part of the Regulation.

PART 2 Enclosed public places

Section 5 purposes of part 2

Section 5(1) This subsection notes that the Act prohibits smoking in enclosed public places and creates offences that give effect to that prohibition.

Section 5(2) This subsection notes that the object of the Act is to promote public health by minimising the exposure of people in enclosed public places to environmental smoke.

Section 5(3) This subsection states that under the Act, an enclosed public place is a public place, or part of a public place, as prescribed by the Regulation.

Section 5(4) This subsection states that the purpose of this Regulation is to set out what makes a place enclosed pursuant to the Act's definition.

Section 6 The basic rule- covered and 75% or more enclosed

This section states a place is enclosed if it is covered and is 75% or more enclosed. The term "75% or more enclosed" is defined in section 8.

Section 7 Meaning of covered

Section 7(1) This subsection states that a place is covered if it is under an overhead cover. Ceilings, roofs and or other structure that prevents or impedes upward airflow will count as an overhead cover.

Section 7(2) This subsection explains that an area under the overhead cover is only covered to the extent that the overhead cover is present at a particular time. An example is provided in relation to a moveable awning.

Section 8 Meaning of 75% or more enclosed

This Section defines the term '75% or more enclosed' by reference to the 'closed area' of the place and the 'open area' of the place. 'Closed area' and 'open area' are defined in sections 8, 9, 10, 11 and 12. A place will be enclosed if the open area that opens directly to the outside air is 25% or less than the sum of the closed area and the open area.

Section 9 How to work out the closed area- walls

The closed area of the walls of a place is determined as set out in this section. Walls are defined as structures that prevent or impede lateral airflow. The area of the solid surface of the walls of the place will make up the closed area.

Specific provision is made for moveable walls (which will be part of the closed area only when present) and door and windows (which will be treated as always closed). Further, subsection (7) provides that flyscreen, shade cloth and canvas will be taken to have a solid surface (and will therefore be part of the closed area).

Section 10 How to work out the closed area- overhead cover

The closed area of the overhead cover of a place is worked out as set out in this section. As the examples make clear, the area of the vertical projection of the cover is the area plan view of the cover (that is, when viewed directly from above).

As with walls, flyscreen, shade cloth and canvas will be treated as solid, and therefore closed.

Section 11 How to work out the open area- walls

The open area of the walls of a place is determined as set out in this section. The open area will be the minimum area required to fill gaps in the walls, any gaps between the walls and the overhead cover and any gaps between the walls and the floor or ground.

Section 12 How to work out the open area- overhead cover

The open area of the overhead cover of a place is determined as set out in this section. If there are any gaps in the cover (such as when the cover is made of lattice) then the gaps in the cover will count as part of the open area of the place. As with the walls, flyscreen, shade cloth and canvas will be treated as solid, and therefore closed.

The Dictionary sets out the definitions for the regulation.