

Smoke-free NSW



What does it mean for restaurants and cafes?

The *Smoke-free Environment Act 2000* requires enclosed public places in NSW to be smoke-free.

Why has this Act been introduced?

There are clear health benefits and legal reasons for going smoke-free.

Research demonstrates that passive smoking increases the risk of lung cancer and heart disease as well as causing irritation to the eyes, nose, throat and lungs. Children are particularly susceptible to the health effects of passive smoking. Exposure increases their risk of middle ear infections, Sudden Infant Death Syndrome and respiratory infections including asthma, bronchitis and croup.

There is a range of legislation which may oblige proprietors to take steps to address passive smoking in their premises, such as the *Occupational Health & Safety Act 2000 (NSW)* and the *Workers Compensation Act 1987 (NSW)*. In addition, proprietors are under common law obligations to employees and visitors.

This is generally expressed as a duty of care owed to those who may suffer harm from a person's negligent acts or omissions. This is on the same basis that people risk being sued if others suffer injury by being negligently exposed to slippery or dangerous floors.

Community support for smoke-free enclosed public places is extremely strong. Surveys consistently indicate that an overwhelming majority of people want smoking bans in enclosed public places.

Benefits to proprietors in going smoke-free include reduced cleaning and maintenance costs, reduced fire risk, less absenteeism due to tobacco-related illnesses and improved public image.

Will these laws affect business?

There is no evidence to suggest smoking bans have a long-term detrimental effect upon business. These bans have been successfully introduced in other states in Australia as well as overseas.

Surveys demonstrate that most people avoid places where they may be exposed to other people's tobacco smoke.

What are the key requirements of this law?

The *Smoke-free Environment Act 2000* requires enclosed public places in NSW to be smoke-free. Occupiers need to take reasonable steps to prevent smoke caused by smoking in outdoor areas from drifting into smoke-free areas.

A 'public place' is a place or vehicle that is open to or 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.

An 'enclosed' public place has a ceiling or roof and, except for doors and passageways, is completely or substantially enclosed on a permanent or temporary basis.

An 'occupier' means a person having the management or control, or otherwise being in charge, of the premises.

Key requirements include:

- a person cannot smoke in a smoke-free area
- a proprietor must not allow smoking in a smoke-free area
- a proprietor must prominently display No Smoking signs in smoke-free areas
- all ashtrays, matches, lighters and other items used in smoking should be removed from smoke-free areas
- the ban covers the consumption of all types of cigarettes, cigars, pipes and non-tobacco smoking products.

What if a person insists on smoking?

A patron may occasionally fail to notice that the venue is smoke-free. In such circumstances, a number of procedures should be adopted:

- briefly explain that smoking in enclosed public places is no longer permitted in NSW
- suggest they step outside if they wish to smoke

- if a patron insists on continuing to smoke in the enclosed area, there is an obligation to ask the person to leave that area. Proprietors should develop a policy for situations where a patron doesn't leave the area when requested. If the person continues to smoke and doesn't leave the area, the proprietor should implement their policy for situations where a patron's behaviour is unacceptable.

Some smokers may be upset about the smoke-free requirement because of their nicotine dependence. Remember most smokers will be happy to comply.

Are there special requirements for restaurants and cafes?

The same law applies to all enclosed public places.

Areas that are not 'enclosed', such as outdoor eating areas, are not required to be smoke-free under this legislation.

Local councils have power under the *Local Government Act 1993 (NSW)* to ban smoking in public places under their control. Some councils have banned smoking in and around parks and recreational areas, beaches and outdoor dining areas. The Cancer Council NSW has developed a resource kit for local councils on establishing smoke-free outdoor areas. These resources can be accessed from The Cancer Council NSW website www.cancerCouncil.com.au.

Proprietors of such premises need to be aware that they have other legal obligations to employees and patrons under the *Occupational Health & Safety Act 2000 (NSW)*.

Do penalties apply under the Smoke-free Environment Act 2000?

The maximum penalty for a person smoking in an enclosed public place is currently \$550.

If a person smokes in an enclosed public place the proprietor is also guilty of an offence. The maximum penalty is currently \$1,100 for an individual proprietor or \$5,500 for a body corporate.

Penalties also apply for proprietors who fail to display No Smoking signs. The maximum penalty is currently \$550 for an individual and \$2,750 for a body corporate.

How is the law enforced?

Health officers based in Public Health Units are authorised as inspectors to enforce the legislation. Health officers monitor compliance, investigate complaints and carry out inspections.

Individuals have responsibilities not to smoke in smoke-free areas. Individuals are encouraged to take up complaints about non-compliance with the legislation directly with proprietors. Proprietors have their own legal obligations to ensure that patrons are not smoking.

Both individuals and proprietors are encouraged to contact their local Public Health Unit for advice or to make a complaint.

Where can I get more information?

Need further help in going smoke-free? Or perhaps more information on issues related to smoking? Contact NSW Health on 1800 357 412 or the local Public Health Unit in your Area Health Service. For general information you can also contact The Cancer Council NSW on 13 11 20.