#

Protection from tobacco smoke –
Work Health and Safety Regulations for Western Australia

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# Introduction

Part 3 – Workplace safety requirements, Division 3 – Atmosphere and respiratory protection, Subdivision 2 – Protection from tobacco smoke, of the Occupational Safety and Health Regulations 1996 (Subdivision 2 of the OSH regulations), prescribes requirements in relation to:

1. preventing persons from smoking in an enclosed workplace.

2. the meaning of an enclosed workplace

3. specifying certain persons cannot smoke in an enclosed workplace

4. a defence for persons to smoke for the purposes of performance

5. a notice being given or displayed that smoking is prohibited at the workplace

6. inspectors having the authority to require certain persons to extinguish tobacco products.

These requirements are not included in the model Work Health and Safety Regulations. It is intended that, subject to consultation, the Protection from tobacco smoke requirements of the OSH regulations will be included in the WA WHS regulations.

For mines, regulation 9.31 of the Mines Safety and Inspection Regulations 1995 (MSI regulations) lists the places where smoking is prohibited.

While adopting smoking provisions from OSH regulations, necessary changes will be made to maintain the current status for underground non-coal mines.

For your information, below is a copy of Subdivision 2 of the OSH regulations and regulation 9.31 of the MSI regulations. If you require further information such as specific definitions, these can be obtained from the [Occupational Safety and Health Regulations 1996](https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_s4665.html) and the [Mines Safety Inspection Regulations 1995](https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_1819_homepage.html).

**Occupational Safety and Health Regulations 1996**

# Subdivision 2 — Protection from tobacco smoke

[Heading inserted: Gazette 22 Jul 1997 p. 3840.]

## 3.44A. Terms used

 In this Subdivision —

enclosed workplace has a meaning affected by regulation 3.44AA;

roof includes a ceiling, and any material —

 (a) through which air cannot flow; and

 (b) that is used for the same purpose as a ceiling or roof;

smoke has the meaning given to that term in the *Tobacco Products Control Act 2006* glossary;

tobacco product has the meaning given to that term in the *Tobacco Products Control Act 2006* glossary;

wall means a wall or any other vertical structure, covering or device, whether fixed or moveable, but does not include a balustrade —

 (a) that is one metre or less in height; and

 (b) of which more than 50% of its total vertical surface is open.

 [Regulation 3.44A inserted: Gazette 7 Nov 2008 p. 4823.]

## 3.44AA. Enclosed workplace, meaning of

 (1) A workplace or a part of a workplace that has the features mentioned in subregulations (2) and (3) is an enclosed workplace for the purposes of this Subdivision.

 (2) An enclosed workplace is covered by a roof or a part of a roof.

 (3) An enclosed workplace is configured so that the total vertical surface area of the solid material in the walls is more than 50% of the notional vertical surface area of the place as assessed in accordance with regulation 3.44AB.

 (4) The total vertical surface area of the solid material in the walls is to be assessed by —

 (a) multiplying the following —

 (i) the length of each wall under the roof or the part of a roof plus the length of each wall and each section of a wall that is one metre or less beyond the perimeter of the roof or the part of a roof when measured horizontally from the perimeter of the roof or the part of the roof;

 (ii) the actual height of the walls and wall sections mentioned in subparagraph (i);

 and

 (b) deducting the total vertical surface area of the open parts of the walls or wall sections mentioned in paragraph (a)(i).

 (5) The total vertical surface area of solid material in a wall is to be assessed as if each window, door or vertical retractable covering in or adjacent to the wall —

 (a) is closed; and

 (b) forms part of the wall.

 (6) A place is not an enclosed workplace for the purposes of this Subdivision if it is covered by a roof or a part of a roof and is bounded by only —

 (a) one straight wall; or

 (b) 2 straight walls that are set in an angle of 90 degrees or more.

 (7) A part of a workplace may be an enclosed workplace even though —

 (a) it is part of a workplace that is not an enclosed workplace; or

 (b) it is part of another part of a workplace that is not an enclosed workplace.

 [Regulation 3.44AA inserted: Gazette 7 Nov 2008 p. 4823‑4.]

## 3.44AB. Notional vertical surface area, assessment of

 (1) The notional vertical surface area of a workplace is to be assessed by multiplying the following —

 (a) the length of the perimeter of the roof, or the part of a roof, covering the workplace;

 (b) the average height of the roof, or the part of a roof, covering the workplace.

 (2) The notional vertical surface area of a part of a workplace is to be assessed by multiplying the following —

 (a) the length of the perimeter of the roof, or the part of a roof, covering the part of the workplace;

 (b) the average height of the roof, or the part of a roof, covering the part of the workplace.

 [Regulation 3.44AB inserted: Gazette 7 Nov 2008 p. 4824‑5.]

##### 3.44B. Certain persons not to smoke in enclosed workplace

 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: the regulation 1.15 penalty.

 [Regulation 3.44B inserted: Gazette 26 Mar 1999 p. 1282; amended: Gazette 14 Dec 2004 p. 6016‑17.]

## *[3.44C. Deleted: Gazette 7 Nov 2008 p. 4825.]*

## 3.44D. Defence to r. 3.44B, smoking in 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.

 [Regulation 3.44D inserted: Gazette 26 Mar 1999 p. 1282.]

## 3.44E. Defence to r. 3.44B, smoking by actor etc. 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.

 [Regulation 3.44E inserted: Gazette 26 Mar 1999 p. 1283.]

## *[3.44F. Deleted: Gazette 7 Nov 2008 p. 4825.]*

## 3.44G. Notice of smoking restrictions, employer etc. to give etc.

 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: the regulation 1.16 penalty.

 [Regulation 3.44G inserted: Gazette 26 Mar 1999 p. 1283; amended: Gazette 14 Dec 2004 p. 6018.]

## *[3.44H. Deleted: Gazette 7 Nov 2008 p. 4825.]*

**Mines Safety Inspection and Regulations 1995**

# Part 9 — Ventilation and control of dust and atmospheric contaminants

## *9.31*  Smoking prohibited in certain workplaces

               A person must not smoke in any of the following places —

                  (a)     an enclosed workplace;

                  (b)     a workplace where —

                               (i)     the air contains asbestos;

                              (ii)     solvents are used; or

                             (iii)     flammable vapours are present;

                  (c)     a package depot or above ground bulk depot;

                  (d)     a conveyance in a shaft;

                  (e)     a refuge chamber during an emergency; or

                   (f)     the underground workings of a coal mine.