

Smoke-free NSW



What does it mean for strata schemes and community schemes?

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, property owners and occupiers may be 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 smoke-free enclosed public places.

Benefits to owners and occupiers in going smoke-free include reduced cleaning and maintenance costs, reduced fire risk 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 the 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
- an occupier must not allow smoking in a smoke-free area
- occupiers 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.

Are there special requirements for strata schemes and community schemes?

The same law applies to all enclosed public places. Strata and community schemes can encompass hotels, resorts, commercial office blocks, shopping centres, residential parks and residential living. Requirements under the *Smoke-free Environment Act 2000* for owners, occupiers and owner corporations of strata schemes and community schemes will depend on whether or not the area is an enclosed public place.

Enclosed public places within strata schemes and community schemes are required to be smoke-free. Enclosed public places may include main entrances and common property spaces to which the public have access. It does not include security buildings that have secured areas that are only accessible through invitation by the owner or occupier. Similarly, private residential units are not required to be smoke-free under this legislation.

The occupier of the premises has obligations not to allow smoking in a smoke-free area and to display signs. In a mixed-use shopping mall or arcade, the occupiers of retail premises are responsible for ensuring that the enclosed public premises are smoke-free. The owner corporation is responsible for ensuring that common areas that are enclosed public places, such as thoroughfares and car parks, are smoke-free.

Outdoor areas that are not 'enclosed', such as recreational areas, are not required to be smoke-free.

Owners of premises need to be aware that they may have other legal obligations in relation to smoking on their premises.

Can strata schemes and community schemes voluntarily go smoke-free?

Yes they can. Owners and occupiers may choose to go voluntarily smoke-free in areas which are not required to be smoke-free under the *Smoke-free Environment Act 2000*, such as areas not open to the public. Ashtrays, lighters and other smoking items can be removed from smoke-free areas and appropriate No Smoking signage can be displayed.

Consideration can also be given as to whether the by-laws can be amended to provide for certain smoke-free requirements. For example, the by-laws may be amended to provide for smoke-free areas in enclosed secured places. The terms of any such by-law could refer to the owner corporation's policy to create smoke-free areas. Professional advice should be sought for drafting the terms of any by-law.

What if a person insists on smoking?

A person may occasionally fail to notice that the area is now smoke-free. In such circumstances, an occupier may wish to adopt the following procedure:

- 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 person insists on continuing to smoke in a smoke-free area, there is an obligation on the occupier to require the person to leave that area. If the person continues to smoke and doesn't leave the area, the occupier should implement their policy for situations where such a person'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.

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 occupier is also guilty of an offence. The maximum penalty is currently \$1,100 for an occupier or \$5,500 for a body corporate.

Penalties also apply for occupiers 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. Complaints about non-compliance with the legislation should in the first instance be directed to property owners or occupiers or, if it involves common property, the owner corporation. Occupiers have their own legal obligations to ensure that there is no smoking in smoke-free areas. Should occupiers fail to meet this obligation after an initial complaint, individuals are then encouraged to contact their local Public Health Unit.

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.