

In accordance with the *Tobacco Control Regulations*, I provide the Enclosed Area Guidelines to assist all Territorians in achieving compliance with the *Tobacco Control Act*, and to ensure an appropriate level of consistency and transparency in the enforcement process.

The onus to demonstrate compliance with the guidelines rests with the owner or occupier of any place/premises, and the regulator maintains the power to deem any area as an enclosed area if it does not comply with the intentions of the guidelines and/or the Act.

Importantly it remains open to all occupiers to identify any area, regardless of whether the area is considered to be open (outdoors) or substantially enclosed, as a smoke free area; and this will be enforceable in accordance with the legislation.

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Chief Health Officer

Enclosed Area

The object of *Tobacco Control Act* (the Act) is: *to reduce the harm to people's health from the consumption of tobacco and other smoking products –*

- (a) by discouraging people from smoking;*
- (b) **by reducing people's exposure to environmental tobacco smoke;** and*
- (c) by supporting people to stop smoking.*

Any provision of the Act is to be read with the above in mind.

Section 7(1)(a) of the *Tobacco Control Act* provides that any 'enclosed public area' should be a smoke free area subject to the other conditions of the Act and Regulations.

In this respect the Act defines an enclosed public area as:

*a place, or a part of a place, that is used or is intended to be used by members of the public and has a ceiling or roof and (except for doorways and passageways) is completely or **substantially enclosed** by walls, windows, blinds, curtains or other objects, materials or things;*

The prescribed assessment criteria, for judging whether a place is 'substantially enclosed', take into account the layout and structural components of the ceiling or roof and walls, windows or other materials. These guidelines however, are primarily based on the need for an area to satisfy a minimum 75% closed and 25% open ratio.

Where pre-existing areas within licensed premises do not meet this prescribed ratio, and there is evidence from a structural engineer that certifies the premises cannot reasonably undertake structural modifications, areas will be assessed on a case by case basis and may be deemed to be compliant. All new structures must comply with the prescribed ratio.

Assessment Criteria

The criteria for determining whether a public place is considered 'substantially enclosed' are set out below.

Please note that these are only guidelines and must be read in light of the objectives of the legislation and what a reasonable person would consider 'substantially enclosed'. Ultimately each area will need to be assessed on its individual merits and compliance determined based on adherence to the relevant legislative provisions and the objects of the Act.

- **Roof/ceiling**: If a public place has no roof or ceiling, it will *not* generally be considered substantially enclosed.
- **Proportion of the place that is 'open'**: If the area (of the space surrounding a public place) that is 'open' to the outdoors is greater than 25% of the total surface area of the ceiling or roof (assuming that this is flat) and the walls and windows (whether fixed or able to be opened), then the area will *not* be considered 'substantially enclosed' and as such the Act's smoking prohibition does not apply.
- **Layout of the walls and windows, including partial walls**: If an area has a ceiling or roof and is enclosed on all sides by a wall, which is 1m or less high, the area will generally *not* be considered substantially enclosed – on the basis that the ceiling or roof is of a standard or greater height.
- **Material of the surrounding walls and roof/ceiling**: Generally, walls and ceilings constructed of materials that allow free and unimpeded airflow will not be regarded as walls or overhead covers. A public place completely surrounded by such material will generally *not* be considered substantially enclosed.
- **Walls and windows**: Windows are always assumed to be closed and are considered to be a 'wall' for the purposes of determining the extent to which a public place is enclosed. If the public place is completely or substantially surrounded by windows, it will normally be considered to be *enclosed* even if the windows are open.
- **Temporary structures (eg marquees)**: The temporary or permanent nature of a structure on a public place is not relevant to whether or not the public place is deemed to be enclosed. An occupier must still ensure that smoking is prohibited at a place during all times that it is capable of being substantially enclosed in accordance with the prescribed 75:25 ratio and other criteria above.

It should be noted that if a footpath or courtyard is covered by a roof or ceiling and is at least 75% surrounded by walls, windows or other buildings, smoking is prohibited in such a place (such as those forming part of restaurants, cafes or licensed premises).

Occupiers, when determining the boundaries of enclosed areas, must consider the objects of the Act carefully.

Disclaimer

The information contained in this document is intended only as a general guide and introduction to the relevant provisions of the *Tobacco Control Act* and regulations regarding smoking in enclosed public places. No warranty as to the completeness of the information is given. No person should act solely on the basis of the information contained in this document without having first obtained appropriate professional legal advice about obligations in specific circumstances. The Northern Territory Government does not accept any liability for any expense, loss or damages suffered as a result of reliance on this guide.