

## SMOKING

Information from:

Strata Titles Institute of WA

<http://www.tobaccocontrol.health.wa.gov.au/publicplaces/index.cfm>

<http://www.tobaccocontrol.health.wa.gov.au/publications/docs/3456-Public%20Places.pdf>

The latest restrictions on smoking in enclosed public spaces came into being on 31<sup>st</sup> July 2006 will have an affect on strata's. The new legislation introduces a slightly different and detailed definition of "enclosed public places" as well as introducing new penalties and enforcement procedures.

A "public place" is defined as a place or vehicle that

- a. the public, or a section of the public is entitled to use by invitation or otherwise;
- b. is open to, or is 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, by invitation or otherwise.

A public place is an "enclosed public place" if it has a ceiling or roof and is greater than 50% enclosed by walls or other vertical structures or coverings.

The surface area of walls or other vertical structures or coverings located under a ceiling or roof as well as those located at or within 1 metre from the perimeter of a ceiling or roof are to be used to determine if a public place is greater than 50% enclosed. The surface areas of windows, doors and other closable openings must also be included when calculating the percentage of vertical surfaces surrounding a place, regardless of whether they are open or closed.

Note: if a public place does not have a roof or ceiling then it is not an "enclosed public place".

You can't smoke or allow smoke to enter an enclosed public place. So the building entrances, foyers, garages, commercial properties (shopping centres) and other areas could fall within the restrictions.

It is not only the person who is smoking committing an offence but so is the "occupier". Under the Occupiers' Liability Act 1985 an "occupier" means the person occupying or having control of the land or other premises.

An "occupier" in relation to an enclosed public place means a person or business that has the management or control or otherwise being in charge of that place. The occupant may be the owner, proprietor, manager or supervisor of an enclosed public place.

Some consideration needs to be given by strata managers and their councils as to what measures need to be put in place, apart from signage, to prevent units or ashtrays within an enclosed public place. If an occupier provides cigarette disposal units or ashtrays within an enclosed public place they may be seen to be encouraging smoking and may not be able to claim as a defence that there was no reasonable expectation that an offence may occur.

Consideration may need to be given to putting cigarette disposal units at the entry to the buildings and garages – with signage to the entry to the garages to "butt out" before entering. Also the Health Department information website recommends that no smoking be allowed within 5 metres of the entry to prevent smoke entering the enclosed public place.