SMOKE-FREE
outdoor dining areas

Guidelines for pubs, clubs, restaurants, cafes and other venues with outdoor dining areas in South Australia

Government of South Australia

SA Health

Any enquiries should be directed to:
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A copy of this publication is available from: **www.sahealth.sa.gov.au/tobaccolaws**
Public, I2, A1

Disclaimer
This information is provided for guidance only and is not to be taken as an expression of the law. It should be read in conjunction with the *Tobacco Products Regulation Act 1997*. The State of South Australia, its agents, instrumentalities, officers and employees will not be responsible for any loss, however arising, from the use of, or reliance on this information.

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Overview

From **1 July 2016,** smoking is banned in public outdoor dining areas in South Australia under section 52 of the *Tobacco Products Regulation Act 1997.*

The South Australian Government has introduced this new law to protect the community from exposure to second hand tobacco smoke and increase the comfort and enjoyment of non-smokers using outdoor dining areas. The changes to the law reflect the very high level of community support for smoke-free outdoor dining in South Australia.

These guidelines have been written to help proprietors, operators and staff of venues with public outdoor dining areas understand what they need to do to comply with the new law.

Contact details for enquiries

For any enquires about information contained in these Guidelines, please contact Health Protection Operations, SA Health:

Email: HealthProtectionOperations@sa.gov.au

Phone: (08) 8226 7100

Does the law apply to your business?

If you have an outdoor area where food, other than snack food, is offered or provided for consumption, that area must be smoke-free from 1 July 2016. The area must have signs displayed to show there is no smoking and be separate from any other outdoor areas where smoking is permitted.

If you answer **Yes** to both of the following questions the new law applies to your business from 1 July 2016:

1. Do you have an outdoor area in which tables, or tables and chairs, are permanently or temporarily provided for customer dining?

☐ **Yes**

☐ **No**

AND

2. At any time, do you offer food for purchase, or otherwise provide food (other than pre-packaged snack food such as potato crisps, nuts, chocolate bars and pre-packaged biscuits) for consumption in the outdoor area?

☐ **Yes**

☐ **No**

Key points of the new smoke-free outdoor dining law

The *Tobacco Products (Smoking Bans in Public Areas – Longer Term) Variation Regulations 2015* come into operation on 1 July 2016.

From this date:

- Smoking is banned in ***outdoor dining areas*** at any time that food is being offered for purchase, or otherwise provided, by or on behalf of the occupier of the outdoor dining area for the purpose of consumption in the area (whether or not a person is, in fact, dining in the area).

  For example, if a hotel offers meals between 12pm and 2pm in an outdoor dining area, then smoking will be banned in the area during that period, regardless of whether anyone is actually eating in the area.

- The ban does not include ***snack food.*** For the purposes of this legislation, snack food means pre-packaged food of a kind generally intended to be eaten between meals.

  For example, snack food includes foods such as potato crisps, nuts, chocolate bars and pre-packaged biscuits. **Sandwiches and hot chips are not considered to be snack food.**

- ***Outdoor dining area*** means an unenclosed* public area in which tables, or tables and chairs, are permanently or temporarily provided for the purpose of public dining in the area.

  If an unenclosed public area is separated from the part in which dining occurs, by a wall or other solid barrier of not less than 2 metres in height, then this is not included as part of the outdoor dining area.

  For example, a barrier could be either temporary or permanent, and could include the use of a non-permeable plastic blind.

* A place or area is ***enclosed*** if it is fully enclosed or is at least partially covered by a ceiling and has walls such that the total area of the ceiling and wall surfaces exceeds 70 per cent of the total notional ceiling and wall area.

Enforcement

There are penalties for breaches of the smoke-free outdoor dining areas law. These penalties can apply to both a person who smokes in a public outdoor dining area and to an occupier (e.g. owner; proprietor) of venues where smoking takes place in an outdoor dining area.

- Under section 52(2) of the *Tobacco Products Regulation Act 1997*, a person who smokes in an outdoor dining area is guilty of an offence.

  Maximum penalty: $750
  Expiation fee: $105

- Under regulation 7 of the *Tobacco Products (Smoking Bans in Public Areas – Longer Term) Variation Regulations 2015*, if smoking occurs in an outdoor dining area, the occupier of the outdoor dining area is guilty of an offence.

  Maximum penalty: $2,500
  Expiation fee: $210

  It is a defence to prosecution if the occupier proves that:

  (a) He or she was not aware, and could not reasonably be expected to have been aware, that the smoking was occurring; or

  (b) He or she requested the person smoking to stop smoking and informed the person that they were committing an offence.

How to comply with the smoke-free outdoor dining law

The regulations establish the requirement for all public outdoor dining areas to be smoke-free from 1 July 2016, while also enabling individual businesses to determine the best way to configure their premises to meet their business and customer needs.

The following information is provided as a guide to help ensure businesses comply with the smoke-free outdoor dining regulations, acknowledging the variety in building sizes, layouts, outdoor areas, street frontages and business models that are possible for venues and premises that offer public outdoor dining.

It should be remembered that, even in compliant businesses, there is the possibility of smoke drift occurring from time to time between separate areas. Business owners and operators should try to minimise the possibility of smoke drift when establishing smoke-free outdoor dining areas. Minimising smoke drift helps protect the health and comfort of customers, and will reduce the chance of complaints from patrons.

You could also consider making your whole venue completely smoke-free. This would provide the most protection from second hand smoke for customers and would be the most effective way to reduce the risk of non-compliance with the new regulations.

Some key considerations are:

- **Display 'no smoking' or 'smoke-free area' signage**

  Signs must be displayed to show that there is no smoking in your outdoor dining area. There must be a sufficient number of signs in positions of prominence so that they are likely to be seen by people within the area. A lack of signage increases the chance of customers unintentionally smoking in the outdoor dining area, which could lead to enforcement action being taken against the occupier (e.g. owner; proprietor).

Tip – organise your signage early (at least two months in advance) so that you are ready for 1 July 2016. Free 'no smoking' signs can be downloaded from the SA Health website.

For further information visit ***www.sahealth.sa.gov.au/tobaccolaws***

- **Make sure outdoor dining is separated from any other outdoor areas where smoking may occur.**

  If your business allows smoking in an outdoor area then you will need to make sure it is separate to an outdoor dining area. This can be achieved in different ways:

  Time
  You can choose to separate dining from smoking in the same outdoor area by allowing them to occur at different times. You could provide an outdoor area for dining during a set period of time and at other times allocate the same outdoor area for non-dining purposes, including smoking. To ensure compliance you must have signage in place during dining hours setting out that there is no smoking in the outdoor dining area.

  Separate locations
  You can make sure that outdoor dining is smoke-free by allocating dining to an area that is located in a completely separate (i.e. not connected or continuous) area to any other outdoor area/s on the premises where smoking may occur. The following diagrams (Figure 1 and Figure 2) illustrate some key factors that would be considered when assessing whether multiple locations on the same premises could be deemed to be separate areas:

Figure 1: Corner locations

Area 1 is separate to Area 2, with tables and chairs set back and on different sides of the building.

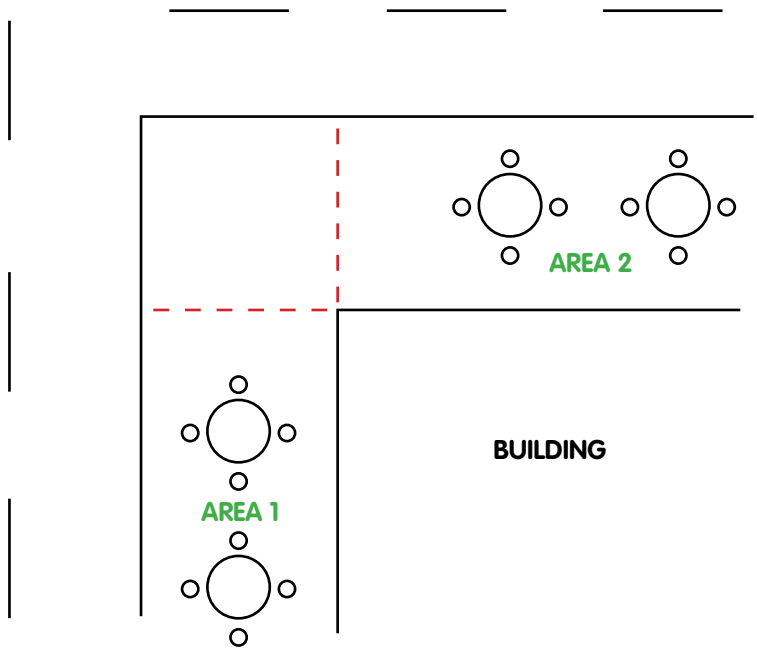
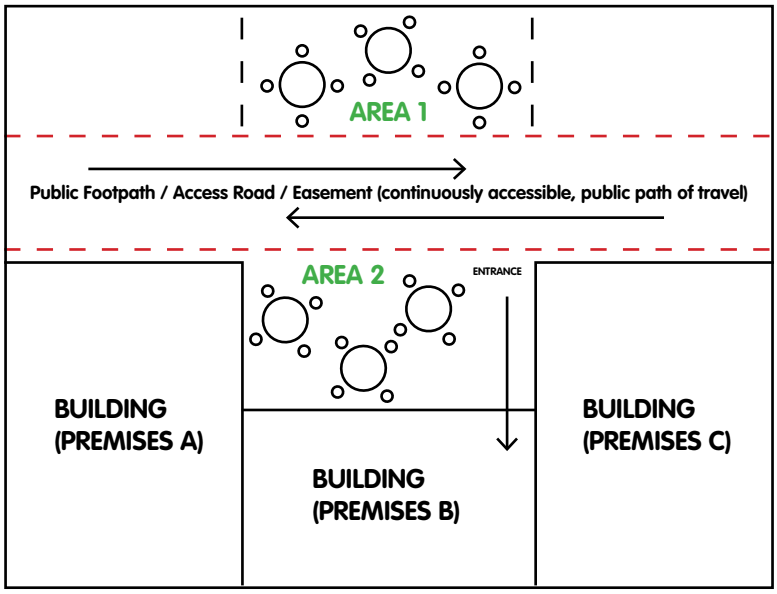


Figure 2: Public thoroughfares; footpaths; easements

Areas 1 and 2 are separate areas as they have a permanent, continuously accessible public thoroughfare (e.g. footpath; access road; easement) between them.



Creating areas (separating one area into two)
You can choose to separate dining from smoking in the same outdoor area by using a wall or solid barrier of not less than 2 metres in height. A barrier can be either temporary or permanent, and can include the use of a non-permeable plastic blind. This would then separate one outdoor area into two outdoor areas. One area can then be used for dining and the other separate area can be used for non-dining purposes, including smoking.

If you are intending to install a barrier on a footpath area, you should seek advice from your local council in regards to any approvals that may be required.

- **Staff training**

Make sure all staff are aware of, and understand, the new law. Have procedures in place so that your outdoor dining area is compliant, including procedures to deal with any customers seeking to smoke in the outdoor dining area. This includes staff informing anyone who smokes in the outdoor dining area that this is an offence, and requesting that they stop smoking. Customers could then be directed to another area where smoking is permitted if they wish to continue smoking.

Staff need to be familiar with your venue's recommended action if a customer refuses to stop smoking or leave the area when requested. This is best managed in the same way you would manage any other behaviour in your venue.

The change to smoke-free outdoor dining is likely to go more smoothly if your staff have plenty of time to prepare, have a good understanding of the requirements of the new law and your venue has clearly established where smoking cannot occur.

- **Prepare customers for the change in the lead up to 1 July 2016**

Free posters about smoke-free outdoor dining can be downloaded for displaying at your venue to remind customers about the new law so they are ready for the change. Visit **www.sahealth.sa.gov.au/tobaccolaws**

There will be a media campaign before 1 July 2016 to inform the public about the new smoke-free outdoor dining law.

Frequently Asked Questions

Q. Why ban smoking in outdoor dining areas?

A. There is no safe level of exposure to second hand smoke from cigarettes, cigars, water pipes or other smoking products, regardless of whether or not they contain tobacco. Second hand smoke is the smoke which smokers exhale as well as the smoke emitted from the cigarette or other smoking product.

Breathing second hand smoke can increase the risk of cardiovascular disease, lung cancer and other diseases. It can worsen the effects of other illnesses such as asthma and bronchitis. Children and pregnant women are particularly vulnerable to the harmful effects of breathing second hand smoke. Exposing ex-smokers to other people's tobacco smoke can increase their likelihood of relapsing to smoking.

Smoke-free outdoor dining areas support those who have quit smoking and make smoking less visible to children and young people. They also increase the comfort and enjoyment of non-smokers using outdoor dining areas.

Q. Is there public support for smoking bans in outdoor dining areas?

A. Yes. There is strong community support in South Australia for smoke-free outdoor dining areas. The most recent survey of South Australians showed that 91% supported some form of smoking restriction in alfresco dining areas.[1]

Q. What does a public outdoor dining area mean?

A. An outdoor dining area is an unenclosed public area* where tables, or tables and chairs, are permanently or temporarily provided for the purpose of public dining in the area.

Q. What does it mean for my business?

A. If you have an outdoor area with tables, or tables and chairs, where food is offered or provided (e.g. by staff taking orders or serving tables in that area), that area will need to be smoke-free. The dining area must have adequate signs displayed and be separated from any other outdoor area where smoking is permitted.

For example – if meals are offered between 12pm and 2pm in an outdoor dining area, then smoking will be banned in the area during this period, regardless of whether anyone is actually eating in the area.

Q. Can smoking and drinking occur in an outdoor area?

A. Yes, as long as the area is not an outdoor dining area.

Q. Is coffee considered a food or drink under the regulations?

A. Coffee and other hot drinks are considered to be drinks and can be consumed in non-dining outdoor areas where smoking is permitted.

Q. Can I be flexible with how I use my outdoor area(s)?

A. Yes. The law does not affect outdoor areas unless they are outdoor dining areas. Businesses can choose how they use an outdoor area. This could be by:

- Allowing either smoking or dining (but not both) in an outdoor area at all times; or
- Providing an outdoor area for dining for a set period of time (with appropriate signage in place) and at other times providing the same outdoor area for smoking but not dining; or
- Separating one outdoor area into two separate outdoor areas by the use of a wall or solid barrier of not less than 2 metres in height. A barrier could be either temporary or permanent, and could include the use of a non-permeable plastic blind. One area could then be used for dining and the other area could be used for any other purpose including smoking.

[1] Dono J & Miller C. *Key Smoking Statistics for SA – 2013*. Adelaide. South Australian Health and Medical Research Institute (SAHMRI), April 2014.

* Public area means an area that the public or section of the public is entitled to use or that is open to, or used by, the public or a section of the public (whether access is unrestricted or subject to payment or membership).

Q. Can shade cloth or plants be used to separate an outdoor dining area from another area?

A. No, only solid, non-permeable barriers or walls not less than 2 metres in height can be used. Non-permeable plastic blinds can be used as these can prevent smoke drifting into an outdoor dining area.

Q. My business only has one outdoor area, can one part of the area be allocated for dining and the other for smoking?

A. The purpose of the new law is to separate smoking from dining in outdoor areas. A wall or solid barrier of no less than 2 metres in height (which can be a non-permeable plastic blind) needs to be put in place if smoking and dining would otherwise occur in the same outdoor area.

Q. Can water pipes/shisha/hookah be smoked in outdoor dining areas?

A. No. Smoking relates to any ignited tobacco product or non-tobacco product and includes smoking from a cigarette, pipe, water pipe or any other smoking device. They cannot be used in an outdoor dining area.

Water pipes are also known as shisha, sheesha, hookah, nargila, argileh, hubble bubble and goza.

Q. How far away from the outdoor dining area do people need to be to smoke?

A. The separation of smoking from dining is not based on a set distance. The purpose of this law is to separate smoking from dining in outdoor areas. Venues must make sure that there is no smoking in an outdoor dining area.

Q. Does the law apply to large outdoor events?

A. An area that is clearly set aside for dining at an outdoor event (has tables, or tables and chairs, for this purpose) will need to be smoke-free and compliant with the regulations in the same way as any other public outdoor dining area.

Q. Can snack food be provided in an outdoor area where smoking is permitted?

A. Yes. The ban does not include snack food. For the purposes of the *Tobacco Products (Smoking Bans in Public Areas – Longer Term) Variation Regulations 2015*, snack food means pre-packaged food of a kind generally intended to be consumed between meals. For example, this would include foods such as potato crisps, nuts, chocolate bars and pre-packaged biscuits. Foods such as sandwiches, hot chips, cakes or muffins are not considered to be snack food.

Q. What do I do if a customer takes their meal into a non-dining area where smoking is occurring?

A. While the law does not specifically prohibit this, allowing customers to take their meals into non-dining areas may cause confusion and potentially increase non-compliance. It is recommended that businesses develop their own approaches to prevent this from occurring (e.g. very clear signage, staff training and strong workplace procedures similar to managing any other customer behaviour).

Q. Do I have to put up 'no smoking' or 'smoke-free area' signs to show that there is no smoking in the outdoor dining area?

A. Yes. From 1 July 2016, signs must be displayed to show that there is no smoking allowed in the outdoor dining area. There must be a sufficient number of signs in positions of prominence so that they are likely to be seen by people within the area.

Q. Where can I get signs from?

A. Businesses and venues can download 'no smoking' signs from the SA Health website at: www.sahealth.sa.gov.au/tobaccolaws.

Q. Can I create my own 'no smoking' signs?

A. Yes. The *Tobacco Products Regulation Act 1997* requires that signs must be displayed, but there are no specific requirements about the signs you must use. The signs must clearly indicate that smoking is not allowed in the outdoor dining area. Using the 'no smoking' logo is recommended – see Page 11 of these Guidelines for an example of a sign with the 'no smoking' logo.

Q. Can I put up signage showing customers where they can smoke?

A. No. Under the *Act* it is an offence to display signs designed to promote a business as permitting smoking on its premises. Smoking is permitted in any other outdoor part of your premises that is not an outdoor dining area. You are only required to display signs showing there is no smoking if you have an outdoor dining area.

Q. What should I do if a customer smokes in an outdoor dining area?

A. Inform the customer that they are committing an offence by smoking in the dining area and request that they stop smoking. Customers could then be directed to another area where smoking is permitted if they wish to continue smoking. If the smoker refuses to comply, the usual procedures for dealing with customer behaviour should be followed.

Q. Can customers be fined for smoking in an outdoor dining area?

A. Yes. It is an offence for a person to smoke in an outdoor dining area. The maximum penalty is $750, the expiation fee is $105.

Q. What is the penalty for me if someone smokes in my outdoor dining area?

A. If someone smokes in your outdoor dining area, you could be found guilty of an offence that has a maximum penalty of $2,500, the expiation fee is $210.

Q. Can I be fined if a passer-by outside my premises smokes whilst walking past my outdoor dining area?

A. No, you are not responsible for smoking that occurs in areas that are not under your control such as on public footpaths.

Q. If a customer is still eating a meal after the designated dining period has finished, can people start smoking in that area?

A. Smoking cannot occur in the outdoor dining area when food is being offered for purchase or provided. If you intend to transition an area from dining to smoking, it is recommended that businesses allocate a reasonable time for people to finish their meal after food service has stopped, before they allow smoking to occur. It is recommended that businesses have a procedure in place to inform customers that the area will no longer be a dining area, that smoking may occur, and offer customers an alternative place to finish their meal on the premises.

Q. How do I prevent someone from smoking in my outdoor dining area?

A. Display 'no smoking' or 'smoke-free area' signs that can be easily seen by customers and do not provide ashtrays or other smoking items. Train staff to inform customers that they cannot smoke in the area and have a procedure in place for situations where a customer refuses to stop smoking.

Q. The business next door has an outdoor area bordering my outdoor dining area, but they don't provide food. Can people smoke in that area?

A. Yes. If the business next door does not have an outdoor dining area then the smoke-free outdoor dining law does not apply to them.

Q. Where can I get more information?

A. For more information, please visit www.sahealth.sa.gov.au/tobaccolaws or if you have further questions, please contact Health Protection Operations, SA Health on 08 8226 7100.

Q. How can someone report possible non-compliance with a smoking ban in an outdoor dining area?

A. To report a breach of the law to SA Health, contact Health Protection Operations, SA Health by email: HealthProtectionOperations@sa.gov.au or phone: (08) 8226 7100.

No smoking signage

Free 'No Smoking' signage is available for download from the SA Health website at: **www.sahealth.sa.gov.au/tobaccolaws**.

These documents are able to be downloaded and sent to a professional printer. Printing Instructions are also available to help guide you to be able to print the materials in a similar way to what they are provided by SA Health.

Further information

For more information on smoke-free outdoor dining:

- SA Health website
  - www.sahealth.sa.gov.au/smokefree – for the general public
  - www.sahealth.sa.gov.au/tobaccolaws – for businesses
- Health Protection Operations, SA Health – phone (08) 8226 7100
- Email: HealthProtectionOperations@sa.gov.au
- PO Box 6, Rundle Mall, Adelaide SA 5000 .

A range of smoke-free outdoor dining area resources are available to download from the SA Health website.

For support to quit smoking:

- Call the Quitline on 13 7848
- Visit www.quitlinesa.org.au

Government of South Australia

SA Health

Example of sign with no smoking logo

NO SMOKING IN THIS AREA

Thank you for respecting the health of others.

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