

SMOKE-FREE COMMERCIAL OUTDOOR DINING

A guide for licensed venues,
restaurants and cafés



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SHPN (CPH) 140478
ISBN 978-1-74187-102-9

Further copies of this document can be downloaded from the
NSW Health website www.health.nsw.gov.au

November 2014



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Overview

Purpose

On 6 July 2015 some important changes to the *Smoke-free Environment Act 2000* (Act) come into effect for the hospitality industry in New South Wales.

The key changes are that:

- **commercial outdoor dining areas** in licensed venues (including clubs and hotels), restaurants and cafés must be smoke-free; and
- areas within 4 metres of a **pedestrian entrance to or exit from** a licensed venue, restaurant or café must be smoke-free.

The purpose of this guide is to assist you, as a business owner, operator or staff member of a hospitality venue, to comply with these new outdoor smoking bans.

It is important to note that there will be **penalties** for customers and business owners who do not comply with the new smoking bans. Penalties will be enforced by NSW Health Authorised Inspectors following introduction of these bans.

What this guide covers

This guide can help you to manage the change to smoke-free commercial outdoor dining. The guide is based on three steps:

1. Understand the law
2. Assess what you need to do to comply
3. Act and review.

The guide also includes information on signage, free resources, frequently asked questions and enforcement.

NOTE: This guide provides practical assistance on complying with the *Smoke-free Environment Act 2000*. Please refer to the exact wording of the Act and associated regulations on points of law. You may need to seek independent legal advice on your specific business circumstances.

STEP ONE

Understand the new laws

The first step involves developing an understanding of your obligations for the outdoor smoking bans which come into force on 6 July 2015. Smoking includes the use of cigarettes, cigars, pipes and water-pipes (shisha). Key points are outlined below:

Commercial outdoor dining

- From 6 July 2015 smoking will be banned in commercial outdoor dining areas. A commercial outdoor dining area is a public place that is:
 - a seated dining area; or
 - within 4 metres of a seated dining area at a licensed venue, restaurant or café; or
 - within 10 metres of a place at a food fair where food is sold or supplied for eating at the event.
- A 'seated dining area' is an outdoor area in which the business provides food and seating where the food is being eaten. This food must have been served or packaged to be eaten straight away.
- An area is only a 'seated dining area' when food is being eaten there or is available to be purchased and eaten there.
- An area is not a 'seated dining area' if the area is designated as a no-eating area through suitable signage. In this case, the business owner must take reasonable steps to ensure that food is not eaten in the area.
- 'Food' does not include drink under the Act.
- 'No smoking' signage is mandatory. See section on *Signage requirements*.

Examples of foods that are **packaged for immediate consumption** include:

- Meals on a plate such as a stir fry, steak and salad, a dessert, slice of cake
- Foods in a bowl such as hot soup, ice cream or fruit salad.
- Hot foods that are bagged, wrapped or in a container such as a tub of hot chips, a burger, a pie, fish and chips
- A sandwich in paper wrapping or plastic packaging.

Examples of foods that are **NOT packaged for immediate consumption** include:

- A packet of chewing gum, a packet of crisps or nuts, a wrapped chocolate bar, confectionery
- An intact piece of fruit such as an unpeeled banana.

Pedestrian entrances and exits

From 6 July 2015 smoking is banned within four metres of a pedestrian entrance to or exit from a licensed venue, restaurant or café. This is known as the '4 metre rule'.

Buildings that have multiple uses, such as residential and commercial purposes, will only be subject to the '4 metre rule' at those entrances and exits which are used for non-residential purposes.

It will not be an offence to pass through a smoke-free area outside the entrance of a licensed venue, restaurant or café while smoking.

Factsheets on the '4 metre rule' can be accessed online at:

- health.nsw.gov.au/smokefree

Signage requirements

The requirements for signage vary for commercial outdoor dining areas and the '4 metre rule'.

Mandatory signage for commercial outdoor dining areas

From 6 July 2015 mandatory prescribed 'no smoking' signage must be displayed within a commercial outdoor dining area. 'Prescribed' signage means that it is clear and meets each of the following conditions:

- the smoking prohibited symbol (or an equivalent symbol) with a diameter of at least 90 mm;
- the words "NO SMOKING" in letters of at least 20 mm in height;
- a reference to the name of the Act; and
- the words "Penalties may apply".

'No smoking' signs must be prominently displayed in appropriate numbers and places. NSW Health Authorised Inspectors will monitor compliance.

Free 'prescribed' signage is available from NSW Health as shown in the box below. Venues are permitted to create their own signs for a commercial outdoor dining area provided they meet with the above conditions.

Optional signage for commercial outdoor dining areas

Additional 'no smoking' signage which does not meet the prescribed conditions listed above may be used for educational purposes, such as small signs and stickers. This additional optional signage should complement, but not replace, the mandatory signage.

Mandatory signage for 'no eating' areas

An area is not a 'seated dining area' if the area is designated as a place where food cannot be eaten. NSW Health is developing 'no eating' signage which will be available from early 2015.

Entrances to buildings

Signage is not mandatory for pedestrian access points to licensed venues, restaurants and cafés. However, it is strongly encouraged to help customers comply with the law.

Signage is available free of charge from NSW Health. See section on Signage available from NSW Health for further information.

To access the order form go to health.nsw.gov.au/smokefree and select '*smoke free laws*'.

STEP TWO

Assess what you need to do

This section, including the *Smoke-Free Commercial Outdoor Dining Area Checklist*, may help you prepare for and comply with smoke-free commercial outdoor dining by 6 July 2015.

The example on page 9 provides some tips on planning a course of action.

The checklist is not mandatory but it may be a useful tool. It focuses on:

- Your obligations under the Act; and
- Managing a smooth transition to smoke-free commercial outdoor dining.

Answer the first three questions in the checklist to determine if an area is deemed as a 'commercial outdoor dining area'. If yes, complete the rest of the checklist.

In sections 2 and 3 of the checklist - if you have already achieved the change management practice, write 'Yes' in the second column. If not met, or only partially met, write 'No' in the second column. Add comments in the 'Action needed' column, ideally following discussion with those responsible.

Add the name of the person responsible for the action in the 'Who' column and the deadline for action in the 'By when' column.

The completed checklist will help you plan a course of action for going smoke-free in a way which minimises inconvenience for your customers and yourself.

It may be useful to revisit the checklist periodically, especially when management arrangements change, to check whether further action is needed.

Checklist

SMOKE-FREE COMMERCIAL DINING AREA

1. Is your area deemed a 'commercial outdoor dining area' under the *Smoke-free Environment Act 2000* (Act)? Check by answering the following 3 questions.

Criteria	Tick for Yes
1. Does the area contain seating provided by the owner or operator of the business where the food is sold?	
2. Are there times when food is eaten, or is available for purchase and may be eaten, in the area?	
3. Is the food (in question 2 above) served on plates or packaged so it should be eaten straight away?	

If you answered 'yes' to all 3 questions, your area is a 'commercial outdoor dining area' and must comply with the Act by 6 July 2015.

2. Complete the action planning checklist below for tips on changing to smoke-free dining in your business.

Management practices	Yes/No	Action needed	Who	By when	Progress
1. Is someone taking responsibility for coordinating the change to smoke-free outdoor dining in your business?					
2. Have policies or procedures been developed to guide your staff on the changes they need to make for smoke-free outdoor dining?					
3. Have all staff been instructed on the requirements of the smoking ban for commercial outdoor dining, related policies and procedures for your business and their role in customer relations?					
4. Are plans in place to ensure customers are informed of the change leading up to the deadline of 6 July 2015 for smoke-free outdoor dining?					
5. Are there other practice(s) needed for your business context? If yes, list.					

3. Signage - complete the following checklist to identify your signage requirements

Signage requirements	Yes/No	Action needed	Who	By when	Progress
<p>1. Commercial outdoor dining area - prominent, prescribed mandatory signage must be erected from 6 July 2015 to indicate this area is smoke-free.</p>					
<p>2. Pedestrian entrance/exit - Has signage been erected to show that smoking is banned within 4 metres of a pedestrian access point of your licensed venue, restaurant or café?</p> <p><i>NOTE: This signage is not mandatory but is strongly encouraged from 6 July 2015.</i></p>					

Checklist

SMOKE-FREE COMMERCIAL DINING AREA - EXAMPLE

1. Is your area deemed a 'commercial outdoor dining area' under the *Smoke-free Environment Act 2000* (Act)? Check by answering the following 3 questions.

Criteria	Tick for Yes
1. Does the area contain seating provided by the owner or operator of the business where the food is sold?	✓
2. Are there times when food is eaten, or is available for purchase and may be eaten, in the area?	✓
3. Is the food (in question 2 above) served on plates or packaged so it should be eaten straight away?	✓

If you answered 'yes' to all 3 questions, your area is a 'commercial outdoor dining area' and must comply with the Act by 6 July 2015.

2. Complete the action planning checklist below for tips on changing to smoke-free dining in your business.

Management practices	Yes/No	Action needed	Who	By when	Progress
1. Is someone taking responsibility for coordinating the change to smoke-free outdoor dining in your business?	YES		Facility manager (FM)		Facility manager (FM) delegated to coordinate
2. Have policies or procedures been developed to guide your staff on the changes they need to make for smoke-free outdoor dining?	NO	Develop procedures for changes during, and after, the change to smoke-free outdoor dining. Develop a policy for situations where a customer refuses to stop smoking.		2 mths prior to the start of the bans	
3. Have all staff been instructed on the requirements of the smoking ban for commercial outdoor dining, related policies and procedures for your business and their role in customer relations?	NO	Plan and arrange a short session to instruct staff	FM	1 mth prior	
4. Are plans in place to ensure customers are informed of the change leading up to the deadline of 6 July 2015 for smoke-free outdoor dining?	NO	Order and display free support materials about the new bans from NSW Health.	FM	Start 4-6 mths prior	
5. Are there other practice(s) needed for your business context? If yes, list.	YES	If a designated outdoor smoking area is in place, check that it complies with the '4 metre rule' for pedestrian exits and entrances and that correct signage is erected.	FM	4 mths prior	

3. Signage - complete the following checklist to identify your signage requirements

Signage requirements	Yes/No	Action needed	Who	By when	Progress
<p>1. Commercial outdoor dining area – prominent, prescribed mandatory signage must be erected from 6 July 2015 to indicate this area is smoke-free.</p>	NO	Identify numbers and positions of signs required so the 'no smoking' message is easily seen	Admin officer	4 mths prior to start on the new ban	
Order signage from NSW Health at least 2 months before deadline		Admin officer	2 mths prior		
Erect signage by the deadline.		Handy man	6.7.15		
<p>2. Pedestrian entrance/exit - Has signage been erected to show that smoking is banned within 4 metres of a pedestrian access point of your licensed venue, restaurant or café?</p> <p><i>NOTE: This signage is not mandatory but is strongly encouraged from 6 July 2015.</i></p>		Identify all pedestrian access points	Admin officer	4 mths prior to start of new bans	
		Identify suitable signage - see kit			
		Order signage from NSW Health.	Admin officer	2 mths prior	
		Erect signage.	Admin officer	2 mths prior	
			Handy man	6.7.15	

STEP 3

Act and review

To ensure your action plan for complying with the *Smoke-free Environment Act 2000* (the Act) is properly carried out, it is recommended that you set aside regular times with staff involved in ensuring compliance. Review and document the progress in the last column of the checklist. Refine the plan if necessary.

Staff and customers are likely to be more accepting of change when it is gradual, with plenty of communication and good reasoning to support it. Ensure you don't leave action to the last minute.

Establishment of a smoke-free commercial outdoor dining area is the first important achievement. However, some ongoing management processes should be built in to your business to sustain the change, and possibly to improve on it. Ways that this can be done are listed below:

- Revisit and redo the checklist periodically.
- Follow up with staff on the approach used for the change to smoke-free commercial outdoor dining in your business. Refine procedures and policies as needed.
- Periodically ask some customers (smokers and non-smokers) about their awareness of the smoking ban in commercial outdoor dining areas. Consider whether more needs to be done.

Communications with staff and customers

Staff

The transition to smoke-free commercial outdoor dining is likely to go more smoothly if your staff are involved. It is important that staff are clear about the requirements of the legislation, the reasons for the change and their role in dealing with likely situations which may arise. Key points for staff to be aware of are:

- The requirements of the new law.
See Step 1: Understand the new laws...
- The reasons for the new laws.
See Frequently asked questions
- Where smoking is allowed and not allowed. Staff should explain to anyone who smokes in the outdoor dining area that smoking is not permitted within 4 metres of that area and indicate where the person may smoke if they wish to do so.
- If a customer insists on smoking in the commercial outdoor dining area, there is an obligation to ask that person to leave that area. Inform staff of the law and your venue's recommended approach if a customer does not leave the area when requested.
- 'No smoking' signs must be prominently displayed in appropriate places.

Customers

Customers can be informed that an area is smoke-free in the following ways:

- NSW Health will undertake a public notice campaign in the lead up to the smoking ban in commercial outdoor dining areas;
- Display of 'No smoking' signs (mandatory in commercial outdoor dining areas);
- Removal of ashtrays, matches and lighters (strongly encouraged);
- Inclusion of items in newsletters and on notice boards within the venue (optional);
- Use of consumer materials provided by NSW Health; and
- Through advising customers of the smoke-free requirement when food is ordered (optional).
- Information on the venue's website.

Enforcement

NSW Health is responsible for compliance monitoring and enforcement of the Act.

From 6 July 2015:

- An on the spot fine of \$300 may apply to customers who smoke in a commercial outdoor dining area.
- An on the spot fine of \$300 may apply to individuals who do not comply with the '4 metre rule' in relation to a hospitality venue.
- A \$300 on the spot fine may apply for a business owner who does not comply with the requirement to prominently display 'no smoking' signs in commercial outdoor dining areas.
- Penalties of up to \$5,500 may apply to business owners of commercial outdoor dining areas if a customer is found to be smoking in that area.

NOTE: Remember that penalties also apply for breaches of indoor smoking bans.
For more information see health.nsw.gov.au/smokefree

The Act provides a defence to prosecution for business owners of commercial outdoor dining areas in which customers are found to smoke if they can establish that neither they nor any member of their staff provided ashtrays, matches, lighters or other smoking paraphernalia in the area; AND neither they nor their staff could reasonably have known that there was a person or persons smoking in the area; AND as soon as either they or their staff found out about the person smoking in the area:

- the customer was asked to stop smoking in the area;
- the customer was informed that they were committing an offence; and
- if the customer continues to smoke after having been asked to stop, the person is requested to leave the area.

Members of the public commonly report breaches of the Act to NSW Health. See *Frequently Asked Questions* for information on the online reporting form.

Frequently Asked Questions

Why ban smoking in outdoor public places?

There is no safe level of exposure to second-hand tobacco smoke. This is the smoke which smokers exhale after inhaling from a lit cigarette and the smoke emitted from a burning cigarette.

In adults, breathing second-hand tobacco smoke can increase the risk of cardiovascular disease, lung cancer and other lung diseases. It can worsen the effects of other illnesses such as asthma and bronchitis. Exposing ex-smokers to other people's tobacco smoke increases the chance of relapsing to smoking. Children are particularly vulnerable to the harmful effects of inhaling second-hand smoke. Smoke-free commercial dining areas support those who have quit and make smoking less visible to children and young people.

Will people be able to smoke outdoors in licensed venues, restaurants and cafés?

Yes, under some conditions. Smoking can occur in a commercial outdoor dining area if food is not being served **and** is not being eaten **and** is not available for purchase and consumption in the area.

The law does not prevent the creation of designated outdoor smoking areas in licensed venues, restaurants and cafés. However, such spaces cannot be located in or within 4 metres of the seated dining area and must comply with all other requirements, under the Act.

Smokers will not be able to smoke within 4 metres of a pedestrian access point of a licensed venue, restaurant or café from 6 July 2015, which may affect existing smoking areas.

Is there public support for the new outdoor smoking bans?

Yes. The 2013 NSW Smoking and Health Survey shows strong community support for smoking bans in commercial outdoor dining areas and at entrances to public buildings by both non-smokers and smokers:

- 78% of respondents supported the smoking ban within 4 metres of a pedestrian access point to a public building; and
- 75% approved banning smoking in all outdoor areas in hotels, restaurants and cafés;
- 73% of smokers agreed that their smoking affects the health of people around them.

Why have some licensed venues, restaurants and cafés established smoke-free outdoor dining areas before 6 July 2015?

The *Smoke-free Environment Act 2000* says that a commercial outdoor dining area is not required to be a smoke-free area until 6 July 2015.

There is no obligation to ban smoking in a commercial outdoor dining area ahead of this date. However, if a proprietor of a licensed venue, restaurant or café wishes to provide a smoke-free commercial outdoor dining area before 6 July 2015, he/she can do so.

Is it legal to smoke water-pipe tobacco in an outdoor dining area?

No. The smoke from a water-pipe, like all smoking products, endangers the health of smokers and of others exposed to it. Contrary to common myths, the nicotine and/or toxins in water-pipe smoke are not filtered out by the water in the pipe. Fruit flavouring does not make water-pipe smoking a healthier choice than cigarette smoking.

Water-pipe is known by various names such as *nargila*, *argileh*, *hubble bubble*, *hookah*, *shisha* and *goza*.

Does this law affect local council bans on smoking?

The provisions for smoking ban in outdoor areas under the Act will not affect additional provisions against smoking put in place by local councils.

How does the law apply to a footpath area leased from the local council for the purpose of commercial outdoor dining?

From 6 July 2015, the *Smoke-free Environment Act 2000* will ban smoking on footpath areas leased from councils when food is being consumed in those areas or if such leased areas are within 4 metres of any pedestrian access point to a public building.

Why ban smoking near entrances to licensed venues, restaurants and cafés?

The number of people who congregate immediately outside the entrances of licensed venues, restaurants and cafés can be significant. This has the effect of forcing people entering and leaving those buildings to 'run the gauntlet' and walk through groups of smokers clustered around doorways, exposing them to second-hand smoke. This is why the '4 metre rule' has been introduced.

How can someone report a breach of a smoking ban in a commercial outdoor dining area?

A simple NSW Health online form is available where people can report suspected breaches of outdoor smoking bans. To access the form go to: health.nsw.gov.au/smokefree and select 'Please Let Us Know'.

Information provided by the public through this form will help NSW Health Authorised Inspectors to focus their enforcement and education efforts to areas where bans are being broken.

Why is smoke-free commercial dining being introduced two and a half years later than smoking bans in other smoke-free outdoor areas in NSW?

A staged approach to the introduction of smoke-free commercial outdoor dining areas has been taken to provide the community and businesses with adequate time to get ready and adjust.

Consumer education materials

NSW Health has produced a range of consumer materials and 'no smoking' signage which may assist business owners to prepare customers of licensed venues, restaurants and cafés for the change to smoke-free commercial outdoor dining areas.

A variety of public education materials will progressively be available at no charge to NSW residents and NSW businesses. These will include:

- Fact Sheet (A4): *No smoking in commercial outdoor dining areas*
- Fact Sheet (A4): *No smoking near the entrance to or exit from a public building*
- Posters to alert customers to the forthcoming bans
- Optional signage related to the '4 metre rule' for pedestrian entrances and exits.

Consumer education materials are available free from NSW Health for use in NSW.

To access the smoke-free resources order form, go to health.nsw.gov.au/smokefree, select 'smoke-free laws' and see the menu on the left.

Signage available from NSW Health

Licensed venues (including clubs and hotels) and other businesses such as restaurants, cafés and shops can order free signage from NSW Health. This signage is available on an ongoing basis to businesses operating in NSW.

Compliant signage

Refer to *Signage Requirements* on page 4 for further information on mandatory signage, specifications for prescribed signage and how signs must be displayed.

- 'No smoking' sticker on white background – suitable for walls (210 x 295mm) – 000103



- Durable, plastic 'No smoking' outdoor sign (297 x 210mm) 120485



NOTE: 'No eating' signage is being developed and will be available from NSW Health in early 2015. Watch for updates at health.nsw.gov.au/smokefree

- Durable, plastic 'No smoking area' outdoor sign (297 x 210mm) 120483



Additional information

Other useful sources of information to support the transition to smoke-free dining include:

- The NSW Health tobacco website:
health.nsw.gov.au/smokefree
- **The Tobacco Information Line** on 1800 357 412. This Line can be accessed by non-English speaking persons via the translating and interpreting service (TIS) on 13 14 50.
- **The Quitline:** For the cost of a local call (except mobiles), professional telephone advisors provide encouragement and support to help smokers quit.
- **For Quitline callers in NSW only:** In addition to the English-speaking Quitline (13 7848), there are now seven dedicated lines to assist people who speak the following languages:

Arabic:

1300 7848 03

Chinese (Cantonese and Mandarin):

1300 7848 36

Vietnamese:

1300 7848 65

Messages can also be left in **Korean** on
1300 7848 23

Also see the 'I can quit' website:

<http://www.icanquit.com.au/>

The NSW Health tobacco website: health.nsw.gov.au/smokefree

Tobacco Information Line: **1800 357 412**

Translating and interpreting service (TIS): **13 14 50**

The Quitline: **13 78 48**