

Smoking restrictions in outdoor drinking areas

A guide for businesses and event organisers incorporating reforms from 1 August 2017

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Authorised and published by the Victorian Government, 1 Treasury Place, Melbourne.

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ISBN 978-0-7311-7143-9 (Print)

978-0-7311-7144-6 (Pdf/online)

Available at www.health.vic.gov.au/tobaccoreforms

(1703024)

Disclaimer

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incorporating reforms from 1 August 2017

Contents

Overview	1
Smoking restrictions in outdoor drinking areas	1
Smoke-free outdoor dining	1
Separating outdoor drinking from outdoor dining areas	1
How to use this guide	1
Outdoor drinking areas and outdoor dining areas	2
Outdoor drinking areas	2
Outdoor dining areas	2
Snacks	2
Differences between outdoor drinking and outdoor dining areas	2
Existing smoking restrictions	3
Total notional wall area	3
Roofs and walls	3
How can I determine what is a roof or wall?	3
Outdoor drinking areas with no roof	3
Outdoor drinking areas with angled roofs	3
Determining whether smoking can be permitted in an outdoor drinking area	4
Outdoor drinking on footpaths	5
Examples of existing smoking restrictions at outdoor drinking areas	6
Additional restrictions for outdoor drinking areas within 4 metres of outdoor dining areas	9
How to comply	9
Who is responsible for creating the 4-metre buffer zone or installing a 2.1-metre high wall?	14
Signage	15
How do I display 'No smoking' signs?	15
Should 'No smoking' signs be displayed at all times?	15
Can I make my own 'No smoking' signs?	15
What must the 'No smoking' signs look like?	15

Obligations and penalties: outdoor drinking areas	16
Can I face a penalty for breaches of the law?	16
Can customers who smoke also face a penalty?	16
What happens if a customer does not comply with the smoke-free law?	16
What if a customer refuses to stop smoking in the smoke-free area?	16
Is an occupier always liable when a customer smokes in smoke-free areas?	16
Can I face a penalty for not displaying a 'No smoking' sign at my venue?	17
Who will enforce the smoking restrictions?	17
What are the offences and penalties?	18
Frequently asked questions	19
What are 'snacks'?	19
What is 'food' for the purposes of the smoke-free outdoor dining law?	19
Can I package my own snacks?	19
If a business only permits coffee and drinks to be consumed outdoors, is it an outdoor drinking area?	19
What if a business with a new outdoor dining area starts trading next to an existing outdoor drinking area?	19
How do the smoking restrictions apply at outdoor events?	20
Are outdoor drinking areas at events required to be separated from food stalls and vendors?	20
Are e-cigarettes and shisha tobacco permitted to be used in outdoor drinking areas?	20
Can I display a 'Smoking permitted' sign in an area not required to be smoke-free?	20
What do I need to do if I want to change my venue to provide an outdoor drinking area?	21
How can I find out whether my outdoor drinking area can allow smoking?	21
Checklists and planning	22
Glossary	24
Resources and information	25

Overview

This guide provides general guidance for businesses and event organisers to understand how to comply with smoking restrictions in outdoor drinking areas.

It contains information on:

- existing smoking restrictions that apply from 1 July 2007
- additional smoking restrictions that apply from 1 August 2017.

Businesses and event organisers that provide an outdoor dining area should read the *Smoke-free outdoor dining guide* in conjunction with this guide.

Smoking restrictions in outdoor drinking areas

Smoking is banned in an outdoor drinking area if:

- there is a roof, and the walls cover more than 75 per cent of the total notional wall area¹ (from 1 July 2007), or
- any part of that area is within 4 metres of an outdoor dining area, unless separated by a wall at least 2.1 metres high (from 1 August 2017).

Smoke-free outdoor dining

From 1 August 2017, changes to the *Tobacco Act 1987* (Tobacco Act) mean that smoking is banned in outdoor dining areas in Victoria.

The introduction of smoke-free outdoor dining now means that there are two types of outdoor areas for dining and drinking activities. The status of an outdoor area can be either:

- an outdoor dining area, or
- an outdoor drinking area.

Separating outdoor drinking from outdoor dining areas

Outdoor drinking areas (where smoking is permitted under certain conditions) must be separated from outdoor dining areas by either:

- a 4-metre buffer zone, or
- a wall at least 2.1 metres high.

If the separation requirement is not met, smoking is banned in an outdoor drinking area.

This only affects venues where any part of an outdoor drinking area is located within 4 metres of an outdoor dining area at:

- the same venue
- a neighbouring venue (a different venue that is located next to your venue).

How to use this guide

This guide explains the smoking restrictions in two sections:

- existing smoking restrictions in outdoor drinking areas (see p. 3)
- additional smoking restrictions in outdoor drinking areas that are **within 4 metres of outdoor dining areas** (see p. 9).

The term 'smoke-free' is used in this guide to describe an area where smoking is banned.

This guide provides general guidance only. Please refer to the Tobacco Act for the exact wording of the law. A link is provided on page 25.

Other information in the guide

This guide also includes information on signage requirements, resources, obligations and penalties, as well as frequently asked questions, a checklist to help you comply with the law, and a glossary of terms.

¹ See p. 3 for the definition of notional wall area.

Outdoor drinking areas and outdoor dining areas

Outdoor drinking areas

Outdoor drinking areas include the following places if they are mainly used for the consumption of drinks (both alcoholic and non-alcoholic):

- a balcony or veranda
- a courtyard
- a rooftop
- a marquee
- a street or footpath
- any similar outdoor area.

Outdoor drinking areas are typically operated by pubs and licensed premises where alcoholic drinks are consumed.

An area does not have to be part of a licensed premises to be considered an outdoor drinking area. For example, a footpath trading area of a non-licensed cafe is considered an outdoor drinking area if the occupier chooses to serve coffee and snacks, but not serve food.

Outdoor dining areas

In summary, **outdoor dining** areas include the following:

- outdoor areas at hospitality and food venues during times when food is:
 - actually being eaten, or
 - available to be purchased and eaten (regardless of whether anyone is eating)
- outdoor areas at food fairs
- outdoor areas within 10 metres of a food stall or food vendor at organised events.

From 1 August 2017, smoking is banned in outdoor dining areas. If you permit food to be consumed in an outdoor area, you will need to be aware of this law. Please refer to the *Smoke-free outdoor dining guide*.

Snacks

For the purposes of the smoking ban in outdoor dining areas, food does not include snacks.

Customers can eat snacks in outdoor drinking areas.

A snack is a pre-packaged shelf-stable food that:

- is sealed in the container or package in which the manufacturer intended it to be sold, and
- does not require any preparation prior to serving.

Shelf-stable food is generally taken to mean food that can be stored safely for long periods (months) at room temperature.

Snacks also include uncut and unpeeled fruit.

Examples include pre-packaged potato crisps, nuts and chocolate bars. Pre-packaged sandwiches and hot chips are not snacks. See p. 19 for more examples of snacks.

Differences between outdoor drinking and outdoor dining areas

Table 1 summarises the characteristics and differences of the two areas at hospitality and food venues.

Table 1: Characteristics of outdoor drinking and outdoor dining areas

Outdoor area status	Characteristics	Smoking status
Outdoor dining	<ul style="list-style-type: none">• Food is eaten, or is available to be eaten, in the area• Drinks (alcoholic and non-alcoholic) are consumed	Smoke-free
Outdoor drinking	<ul style="list-style-type: none">• No food (other than snacks) is eaten, or is available to be eaten, in the area• Drinks (alcoholic and non-alcoholic) are consumed, e.g. coffee and tea	Smoking restrictions apply under certain conditions

Existing smoking restrictions

Smoking is banned in an outdoor drinking area:

- where the area has a roof in place, **and**
- the total actual area of the wall surfaces exceeds 75 per cent of the total notional wall area.

Total notional wall area

The total notional wall area is the total area of the wall surfaces if the walls were:

- at the perimeter of the roofed area, and
- continuous, and
- of a uniform height equal to the lowest height of the roof.

Roofs and walls

A **wall** includes any structure or device (whether fixed or movable) that prevents or significantly impedes lateral airflow, including a window or door.

A **roof** includes any structure or device (whether fixed or movable) that prevents or significantly impedes upward airflow, including a ceiling.

How can I determine what is a roof or wall?

The roof/walls do not need to be continuous – they may have gaps and openings, including doors and windows. The roof/walls can also be made out of any material (including plastic and canvas).

If the purpose of a structure or device is to protect customers from the elements, such as the wind, it is likely it will also significantly impede airflow. For example, if louvres are fixed completely open, they will not be considered to significantly impede upward/lateral airflow and therefore not be considered to be a 'roof' or 'wall'. If the louvres are angled, however, they may impede airflow and therefore may constitute a 'roof' or 'wall'.

Outdoor drinking areas with no roof

If an outdoor drinking area has no roof, smoking is permitted regardless of the wall coverage. Partial roofs are discussed on p. 6.

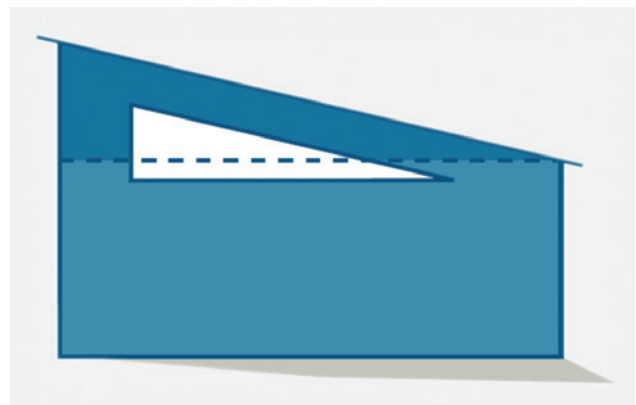
Outdoor drinking areas with angled roofs

If an outdoor drinking area has an angled roof, the total notional wall area needs to be measured as if the walls were:

- at the perimeter of the roofed area and continuous
- of a uniform height equal to the **lowest height of the roof**.

Figure 1 shows a side view of an outdoor area. The dotted line shows where the lowest point of the roof is along the perimeter of the roofline. All measurements should be taken from this point.

Figure 1: Lowest point of the roof



Determining whether smoking can be permitted in an outdoor drinking area

To determine whether smoking can be permitted in an outdoor drinking area with a roof, you need to work out the actual wall area as a percentage of the total notional wall area. In many cases, it will be possible to determine whether the walled area is 75 per cent or less of the total notional wall area just by looking at it. However, if this is difficult to determine on sight alone, you need to take measurements using the following steps:

1. Is it an outdoor drinking area?

If you permit food (other than snacks) to be eaten in an outdoor area, it is an outdoor dining area and smoking is banned.

2. Does the area have a roof?

If not, smoking is permitted. If yes, you need to calculate the wall dimensions.

3. Total notional wall area

Work out the total notional wall area that would be required to enclose all walls up to the lowest point of the roof along the perimeter of the roofline – this is the total notional wall area.

4. Actual wall area

Work out the actual wall area² that exists.

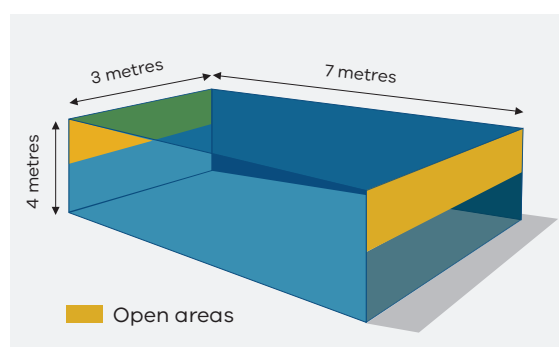
5. Determine the actual wall area as a percentage of the total notional wall area

If the amount is 75 per cent or less, smoking is permitted. If the amount is more than 75 per cent, smoking is not permitted.

Case study

A roofed beer garden is 7 metres long, 3 metres wide and 4 metres high.

There are four walls surrounding the courtyard but the two 3-metre wide side walls are only 1.5 metres high.



1. It is an outdoor drinking area, with no food other than snacks served.
2. There is a roof, so the walls need to be considered.
3. Total notional wall area: back and front notional walls are 7 m x 4 m (56 m²) and two notional side walls are 3 m x 4 m (24 m²).
Total notional wall area is 56 + 24 = 80 m².
4. Actual wall area: the back and front walls are 7 m x 4 m (56 m²) + two side walls are 3 m x 1.5 m (9 m²).
Actual wall area is 56 + 9 = 65 m²
5. Total notional wall area = 80 m².
Actual wall area = 65 m².
65 as a percentage of 80 = 81 per cent.

As more than 75 per cent of the total notional wall area is enclosed, smoking is banned.

² If a wall prevents or significantly impedes lateral airflow in an area, despite any openings or gaps in the wall including doors and windows, disregard those openings when calculating the total actual wall area.

The smoking status of outdoor drinking areas can change depending on the position of the roof and walls.

Unlike enclosed premises, the smoking status of an outdoor drinking area can change, depending on the position of the roof and walls.

For example, Figures 2 and 3 show a balcony with a roof and retractable wall awnings.

When the awnings are retracted, leaving the walled area 75 per cent or less of the total notional wall area (as per Figure 2), smoking is permitted on the balcony.

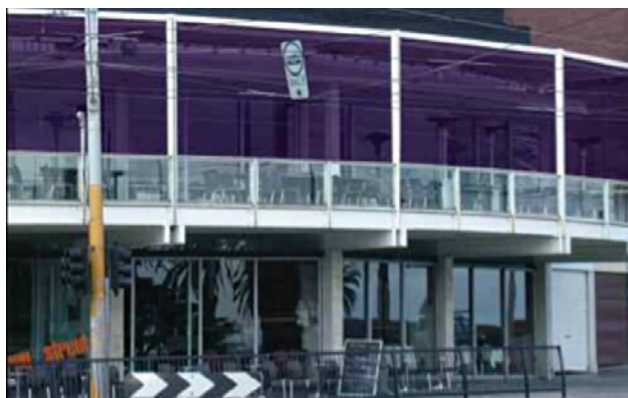
If the awnings are closed as represented by the shaded area in Figure 3 and the wall area is more than 75 per cent of the total notional wall area, then smoking is banned on the balcony.

Figure 2: Awnings are retracted



Smoking is permitted on balcony

Figure 3: Note the shaded area depicts a closed awning



Smoking is banned on balcony

Outdoor drinking on footpaths

A street or footpath where the consumption of drinks is the predominant activity is an outdoor drinking area.

In Figure 4, the outdoor drinking area has a roof so the walls need to be considered. If the walls are more than 75 per cent of the total notional wall area, as is the plastic awning below, smoking is banned.

If the plastic awnings were retracted so the walls are 75 per cent or less than the total notional wall area, smoking would be permitted.

Figure 4: Outdoor drinking on a footpath



Examples of existing smoking restrictions at outdoor drinking areas

Please note that figures 5–10 do not consider outdoor drinking areas within 4 metres of outdoor dining areas. Please refer to the next section if your outdoor drinking area is within 4 metres of an outdoor dining area at the same and/or a neighbouring venue.

There are two scenarios that apply to outdoor drinking areas under existing smoking restrictions.

No roof

If an outdoor drinking area **has no roof**, smoking is permitted regardless of the wall coverage, providing:

- no food (other than snacks), is permitted to be eaten in the area
- no part of the area is within 4 metres of an outdoor dining area, unless separated by a wall at least 2.1 metres high.

Roof

If an outdoor drinking area **has a roof**, smoking is permitted if:

- no food (other than snacks), is permitted to be eaten in the area
- the total actual wall area covers less than 75 per cent of the total notional wall area
- no part of the area is within 4 metres of an outdoor dining area, unless separated by a wall at least 2.1 metres high.

Figures 5–10 show different types of outdoor drinking areas along with explanations for how the law applies to each.

Partially covered outdoor drinking areas

In some cases, a 'partial roof' will not meet the definition of a 'roof'. That is, smoking will be permitted in a drinking area if the 'partial roof' **does not** prevent or significantly impede upward airflow as an effect on the whole area.

'Area' cannot be taken to mean 'any part of an area', so the effect of the partial roof must be calculated as an effect on the area as a whole, rather than just on the part of the area that is covered.

'Outdoor drinking areas' as defined in the Tobacco Act include balconies, verandas, courtyards, rooftops, marquees, footpaths, streets or any similar outdoor area.

The partial roof would generally have to cover less than half the total area in order not to significantly impede upward airflow in the area. However, this should be assessed on a case-by-case basis.

If the area has walls and the partial roof does prevent or significantly impede upward airflow in the area, the wall areas must be assessed to determine whether smoking is permitted.

In Figures 5 and 6 the coverings over the outdoor drinking area (courtyard) **do not** significantly impede upward airflow in the area as a whole. As the coverings in these examples are not considered to be 'roofs', smoking would be permitted.

In Figures 7 and 8 the coverings cover the majority of the outdoor drinking area and would significantly impede upward airflow in the area as a whole. The coverings in both of these examples would be considered a 'roof'.

Figure 5: A courtyard with four full-height walls with a canvas sail

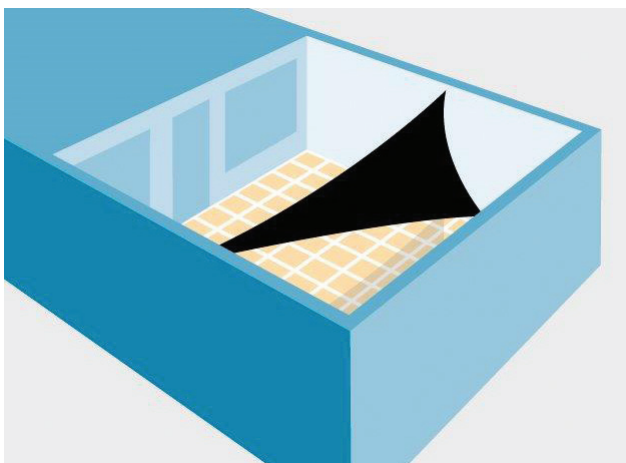
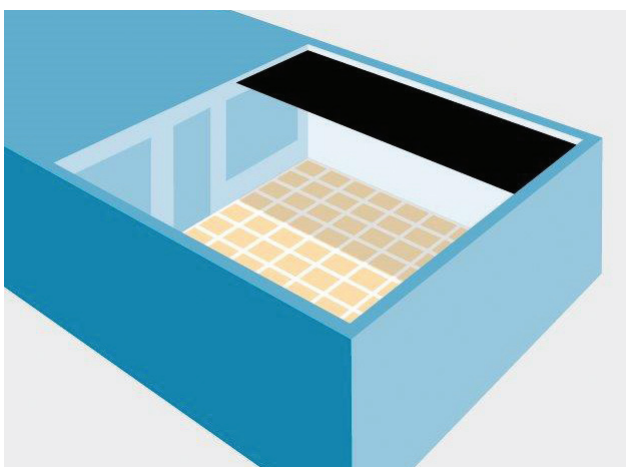


Figure 6: A courtyard with four full-height walls with a small covering



As the walls in these examples cover more than 75 per cent of the total notional wall area, smoking is banned. If the actual wall area covered 75 per cent or less of the total notional wall area, smoking is permitted.

Figure 7: A courtyard with four full-height walls with a larger covering

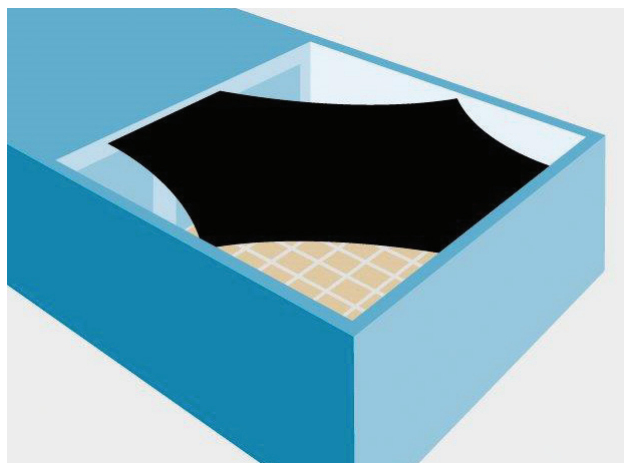
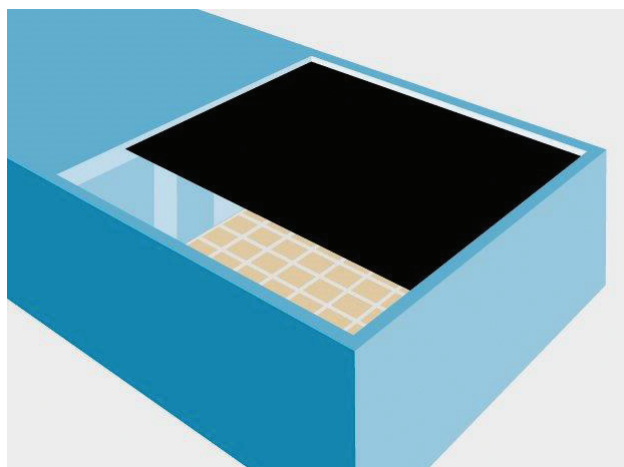


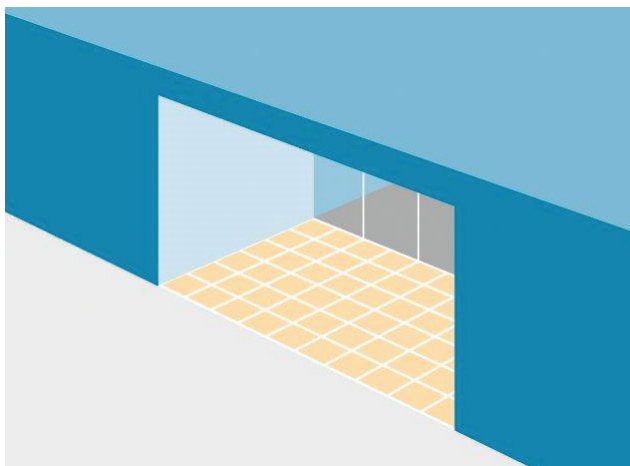
Figure 8: A courtyard with four full-height walls with an extensive covering



A 'roof' is any structure or device (whether fixed or movable) that prevents or significantly impedes upward airflow, as an effect on the whole area.

Insertion within the roofline of the building providing for an open front

Figure 9: An area that sits within roofline of the building



Smoking may be permitted in an outdoor drinking area as shown in Figure 9 if:

- it is clearly separated, and distinguishable, from the enclosed premises (for example, with a wall, lockable door and/or windows)
- the area and its furnishings are designed for exposure to the weather
- the external side opening to the outside air is at least 25 per cent of the total area of the four sides.

As an example:

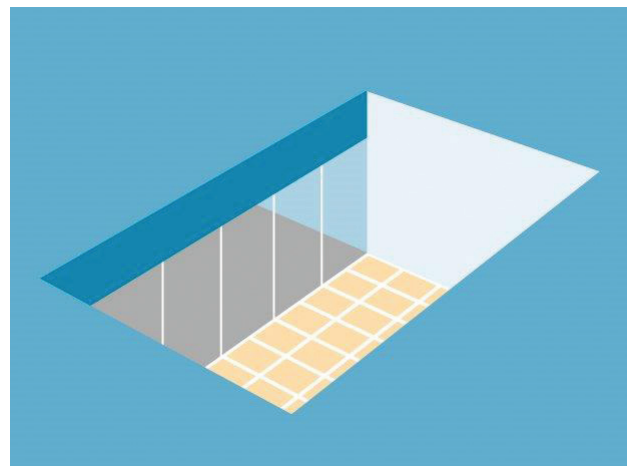
- if a large bi-fold door open between the two areas will no longer separate the areas, the insertion will not be considered an outdoor drinking area, and would be considered part of the enclosed premises
- if the area has carpet that is designed for indoor use, it is not considered to be an outdoor drinking area, and would be considered to be part of the enclosed premises.

In order for smoking to be permitted in this type of outdoor drinking area, there must be at least a 25 per cent opening in the wall area **to the outside air**.

Any openings in the internal walls (such as a serving window) will be taken as closed when assessing the actual wall area.

Internal courtyard

Figure 10: A courtyard within a building



As with the previous example, smoking may be permitted in an outdoor drinking area as shown in Figure 10 if it is clearly separated and distinguishable from the enclosed premises (for example, with a wall, lockable door and/or windows).

If the above criteria are met and there is no roof (any structure or device, whether fixed or movable, that prevents or significantly impedes upward airflow in the area), smoking would be permitted.

Additional restrictions for outdoor drinking areas within 4 metres of outdoor dining areas

From 1 August 2017, smoking is banned in an outdoor drinking area if any part of that area is within 4 metres of an outdoor dining area, unless separated by a wall at least 2.1 metres high.

This applies whether or not the outdoor drinking area and the outdoor dining area are operated by the same occupier.

This means that if any part of your outdoor drinking area is **within 4 metres** of an outdoor dining area at your venue **and/or** a neighbouring venue, you will need to either:

- ensure your entire outdoor drinking area is smoke-free, or
- separate the two areas with:
 - a 4-metre buffer zone, or
 - a wall at least 2.1 metres high.

The law will minimise diners' exposure to smoke-drift. In particular, it will facilitate smoke-free outdoor dining on footpaths, where there could be different venues conducting different activities next to each other.

A neighbouring venue is a different venue that is located immediately next to your venue.

How to comply

The following is a general guide about how you can comply with the law.

Go smoke-free

You can make your outdoor drinking area smoke-free.

This will reduce the risk of non-compliance with the law, and is the most effective way to protect customers and staff from smoke-drift.

Separate outdoor dining and outdoor drinking areas

Under certain conditions, smoking is permitted in outdoor drinking areas.³

You may be able to separate an outdoor drinking area (where smoking is permitted) from an outdoor dining area.

To minimise smoke-drift, the two areas must be separated by either:

- a 4-metre buffer zone, or
- a wall at least 2.1 metres high.

If you cannot meet the separation requirement, smoking is banned in your outdoor drinking area.

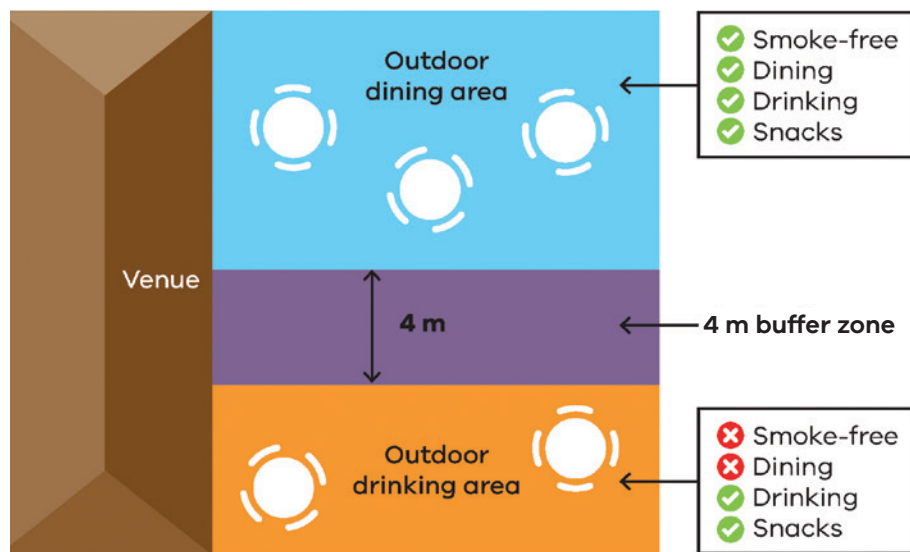
The following examples show how the separation requirement applies at the same and neighbouring venues.

³ Smoking is banned in outdoor drinking areas where there is a roof in place and the actual wall area is more than 75 per cent of the total notional wall area.

Same venue

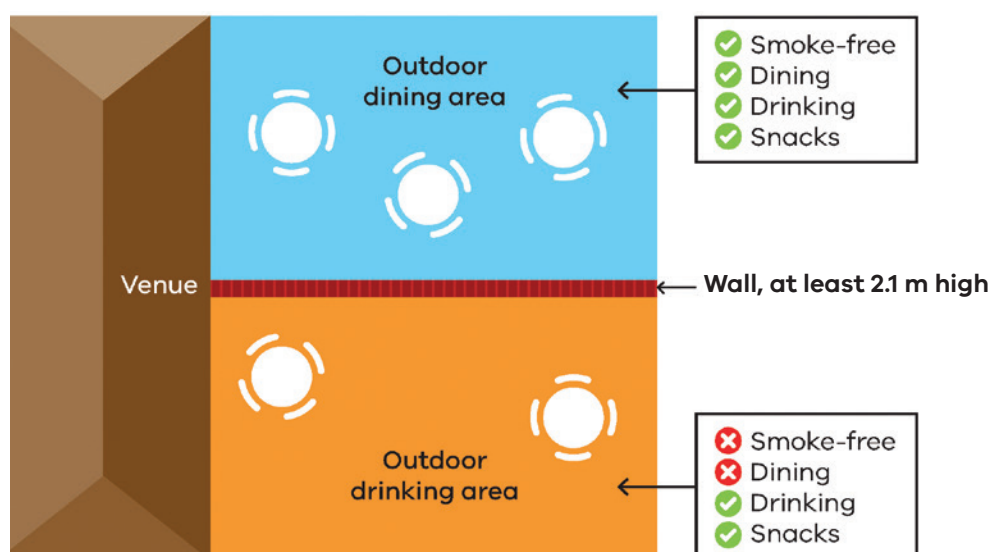
Figures 11 and 12 show how to divide one outdoor area into separate outdoor dining and outdoor drinking areas.

Figure 11: Separation by a 4-metre buffer zone



Acceptable 'No smoking' signs must be displayed whenever smoking is banned.

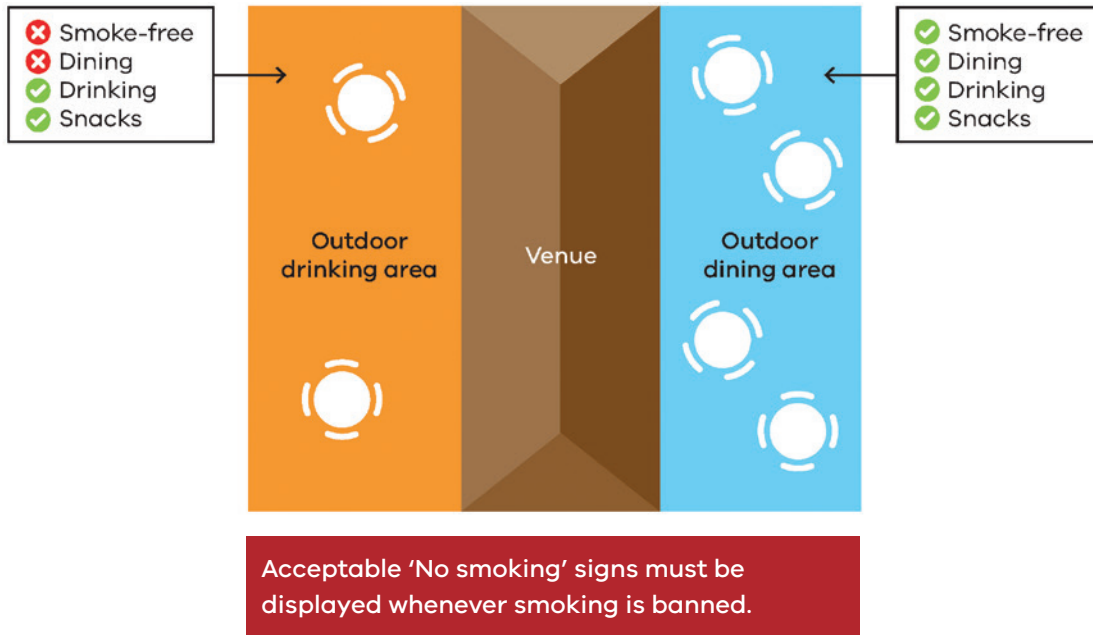
Figure 12: Separation by a wall at least 2.1 metres high



Acceptable 'No smoking' signs must be displayed whenever smoking is banned.

Figure 13 shows how the enclosed venue acts as an appropriate wall or buffer zone that completely separates the outdoor dining and outdoor drinking areas.

Figure 13: Completely separate outdoor dining and drinking areas



Neighbouring venues

If smoking is permitted in your outdoor drinking area, you will need to be mindful of whether there is an outdoor dining area at a neighbouring venue.

For example:

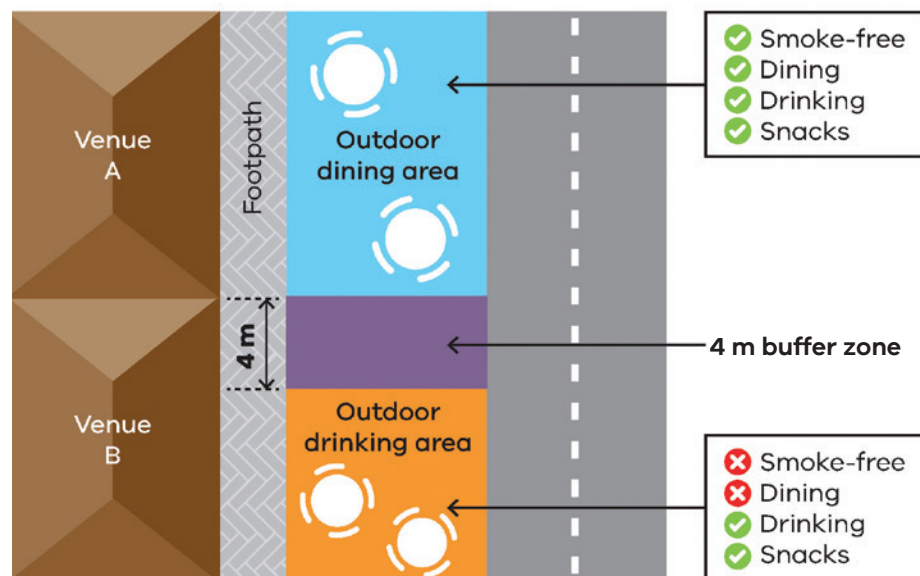
- neighbouring venues with footpath-trading areas located next to each other, or
- neighbouring venues with courtyards, beer gardens or similar types of areas next to each other.

In these cases, you must ensure your outdoor drinking area is separated from the neighbouring outdoor dining area by either:

- a 4-metre buffer zone, or
- a wall at least 2.1 metres high.

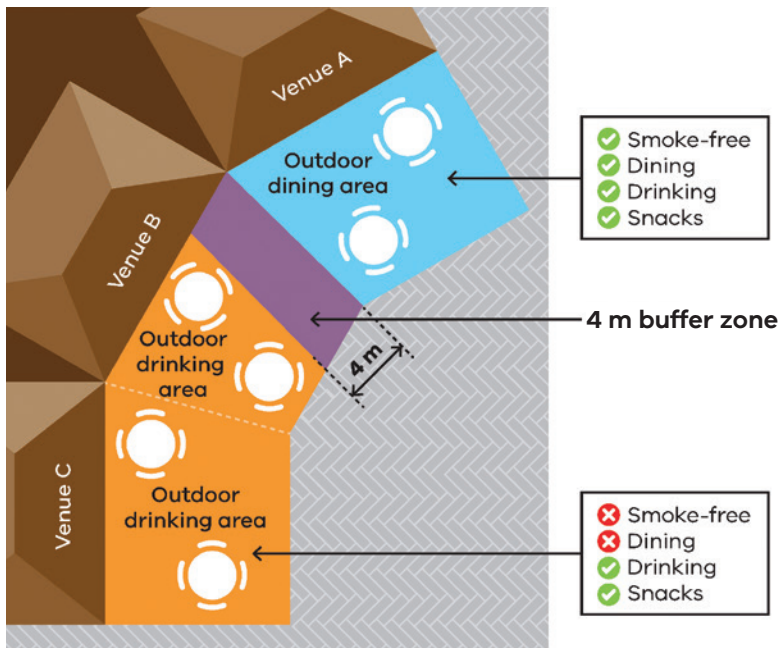
Figures 14–16 demonstrate how the two separation options could be applied between venues.

Figure 14: Separation by a 4-metre buffer zone (neighbouring venues on a footpath)



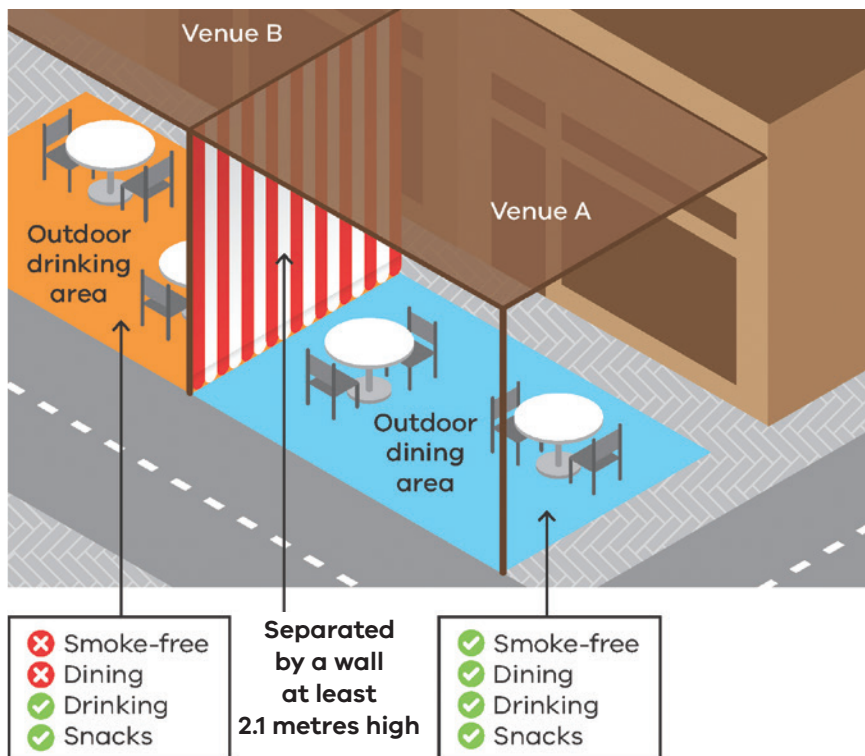
Acceptable 'No smoking' signs must be displayed whenever smoking is banned.

Figure 15: Separation by a 4-metre buffer zone
 (neighbouring venues in a hospitality venue precinct)



Acceptable 'No smoking' signs must be displayed whenever smoking is banned.

Figure 16: Separation by a wall at least 2.1 metres high
 (neighbouring venues on a footpath)



Acceptable 'No smoking' signs must be displayed whenever smoking is banned.

Other smoking restrictions may apply to outdoor drinking areas. Please see the previous section 'Existing smoking restrictions'.

How do I know if, and when, my neighbour is operating an outdoor dining area?

In many cases, it will be easy to find out if food is being eaten in outdoor areas at a neighbouring venue, particularly if visible footpath dining is occurring and food is available at all times the venue is open.

Talk to neighbouring venues about if, and when, food is available in their outdoor area. This will help with planning.

Who is responsible for creating the 4-metre buffer zone or installing a 2.1-metre high wall?

The occupier of the outdoor drinking area is responsible.

Installing a wall

A wall must be a structure or device (fixed or moveable) that prevents or significantly impedes lateral airflow, such as a water-resistant cafe blind.

Interaction with existing smoking restrictions

If you install a 2.1 metre wall, the structure of your outdoor drinking area will change and likely make it more enclosed.

If there is a roof in place, you may need to reassess whether the actual wall area is more than 75 per cent of the total notional wall area. In this case, smoking is banned in the outdoor drinking area.

Council and liquor licensing requirements

You will need to check with your council if you are planning to install a wall, such as a cafe blind on a footpath. This is to ensure you meet all planning, kerbside trading and building requirements.

Council kerbside trading policies and local laws may impose requirements and design principles regarding the appearance, structure, safety and height of a wall on a footpath.

If you hold a liquor licence, you should also contact the Victorian Commission for Gambling and Liquor Regulation to ensure you continue to meet those obligations.

It is important to note that building, planning and kerbside trading permits do not provide approval under the Tobacco Act. Being in receipt of a planning permit or liquor license does not necessarily mean that the proposed renovation or structure can allow smoking.

What if I cannot install a wall?

If your council does not approve the installation of a wall, or you are not able to install a wall, you must either:

- make your outdoor drinking area smoke-free, or
- create a 4-metre buffer zone between the outdoor dining area (at the same and/or neighbouring venue) and your outdoor drinking area.

Signage

You must always display acceptable 'No smoking' signs in your outdoor drinking area to clearly indicate the area is smoke-free when:

- there is a roof, and the walls cover more than 75 per cent of the total notional wall area, or
- any part of the area is within 4 metres of an outdoor dining area, unless separated by a wall at least 2.1 metres high.

How do I display 'No smoking' signs?

'No smoking' signs must be displayed so customers are reasonably likely to see one or more signs when entering, or from within, the area.

For example, you will comply with the signage requirements if you have signs on, or beside, the entrance doors to your outdoor drinking area.

Should 'No smoking' signs be displayed at all times?

In outdoor drinking areas where the smoking status may change, 'No smoking' signs only need to be displayed when that area must be smoke-free.

For example, if the wall awnings on a roofed balcony are retracted so that the wall area is 75 per cent or less than the total notional wall area, 'No smoking' signs may be removed while those awnings are retracted.

If you permit food to be eaten in an outdoor area – that is, your outdoor area changes from drinking to dining – smoking is banned and 'No smoking' signs must be displayed.

Can I make my own 'No smoking' signs?

Yes.

You can design your own sign to suit your premises' decor as long as your sign meets the requirements set out below.

What must the 'No smoking' signs look like?

'No smoking' signs must contain:

- a 'No smoking' symbol in the form of a circle and diagonal line printed in red over a depiction of a cigarette and smoke printed in black, or other symbol which clearly indicates that smoking is not permitted. The symbol must be at least 70 millimetres in height
- the phrase 'No smoking' or 'Smoking Prohibited' or other wording (such as 'Smoke-free area') to clearly indicate smoking is not permitted. The letters must be at least 20 millimetres in height.

'No smoking' signage can be ordered free of charge from the Department of Health and Human Services. See p. 25 for details.

Obligations and penalties: outdoor drinking areas

Can I face a penalty for breaches of the law?

Yes.

The occupier of an area or venue is responsible for breaches of the law.

An 'occupier' is a person who is, or appears to be, over 16 years of age and who is, or appears to be, in control of the area or premises.

To prevent customers from smoking in smoke-free areas, you should ensure that the appropriate 'No smoking' signage is displayed, and that items that may facilitate smoking, such as ashtrays or matches, are not provided.

Can customers who smoke also face a penalty?

Yes.

A person smoking in an area where smoking is banned can receive a fine of one penalty unit⁴ or a maximum court penalty of five penalty units.

What happens if a customer does not comply with the smoke-free law?

If a person smokes in an area where smoking is banned, you should:

- ask the person to stop smoking
- tell the person it is an offence to smoke in the venue or area
- ask the person to temporarily leave the smoke-free area if they wish to smoke.

What if a customer refuses to stop smoking in the smoke-free area?

We recommend that you develop a policy or procedure for dealing with people who smoke in a smoke-free area.

If you ask a customer to stop smoking and they refuse, you should follow the same policy you would generally follow if a person exhibited antisocial or illegal behaviour.

Is an occupier always liable when a customer smokes in smoke-free areas?

Outdoor drinking areas: roof and walls

Smoking is banned if there is a roof, and the walls cover more than 75 per cent of the total notional wall area.

In this case, an occupier is not liable for breaches of the law if they can demonstrate that they did not provide an ashtray, matches, lighter or any other assistance to facilitate smoking, and either:

- they were not aware, and could not reasonably be expected to have been aware, that smoking was occurring, or
- they asked the person to stop smoking and informed the person that they were committing an offence.

⁴ Penalty units are indexed annually. The value of one penalty unit for 2017–18 is \$158.57.

Outdoor drinking areas: within 4 metres of an outdoor dining area

Smoking is banned in an outdoor drinking area if any part of that area is within 4 metres of an outdoor dining area, unless separated by a wall at least 2.1 metres high.

In this case, an occupier is not liable for breaches of the law if:

- they were not aware, and could not reasonably be expected to have been aware, that smoking was occurring, or
- smoking occurred within three months of when the outdoor dining area was first used for smoke-free outdoor dining. (This gives an occupier three months to undertake the necessary tasks to separate the areas if a business with a new outdoor dining area starts trading at a neighbouring venue).

Can I face a penalty for not displaying a 'No smoking' sign at my venue?

Yes.

The occupier breaches the law if they fail to display acceptable 'No smoking' signs during times when that area is smoke-free.

Please see p. 25 for how to obtain appropriate 'No smoking' signs.

Who will enforce the smoking restrictions?

Inspectors, authorised under the Tobacco Act, may provide information about the smoking restrictions and enforce them when necessary. The first priority of the inspector is to make sure occupiers and smokers understand the restrictions.

Inspectors may not be able to respond to every complaint but, where circumstances allow, may attend in response.

What are the offences and penalties?

The following table shows the applicable offences and penalties for smokers and occupiers.

Smoking offences from 1 August 2017	Infringement penalty	Maximum court penalty
Smoker		
A person smoking in an outdoor drinking area that has a roof in place and walls that cover more than 75 per cent of the total notional wall area.	1 penalty unit	5 penalty units
A person smoking in an outdoor drinking area if any part of that area is within 4 metres of an outdoor dining area, unless separated by a wall at least 2.1 metres high.	1 penalty unit	5 penalty units
Occupier		
An individual occupier where smoking occurs in an outdoor drinking area that has a roof in place and walls that cover more than 75 per cent of the total notional wall area.	2 penalty units	10 penalty units
A body corporate occupier where smoking occurs in an outdoor drinking area that has a roof in place and walls that cover more than 75 per cent of the total notional wall area.	5 penalty units	50 penalty units
An individual occupier where smoking occurs in an outdoor drinking area if any part of that area is within 4 metres of an outdoor dining area, unless separated by a wall at least 2.1 metres high.		10 penalty units
A body corporate occupier where smoking occurs in an outdoor drinking area if any part of that area is within 4 metres of an outdoor dining area, unless separated by a wall at least 2.1 metres high.		50 penalty units

Signage offences	Infringement penalty	Maximum court penalty
An individual occupier of an outdoor drinking area in which smoking is banned who fails to display acceptable 'No smoking' signs.	2 penalty units	10 penalty units
A body corporate occupier of an area which smoking is banned who fails to display acceptable 'No smoking' signs.	5 penalty units	50 penalty units

Penalty units are indexed annually. The value of one penalty unit for 2017–18 is \$158.57.

Frequently asked questions

What are 'snacks'?

Snacks can be consumed in outdoor drinking areas. A snack is a pre-packaged shelf-stable food that:

- is sealed in the container or package in which the manufacturer intended it to be sold, and
- does not require any preparation prior to serving.

Shelf-stable food is generally taken to mean food that can be stored safely for long periods (months) at room temperature.

Snacks also include uncut and unpeeled fruit.

Examples include, but are not limited to:

- pre-packaged confectionery or savoury foods, such as lollies, biscuits, pretzels, chocolate, crisps and nuts
- pre-packaged popcorn
- pre-packaged muesli slices
- biscuits manufactured and packaged on site and served in a pre-packaged form.

What is 'food' for the purposes of the smoke-free outdoor dining law?

'Food' is anything you can consume that is not a snack or a drink. If food (other than snacks) is eaten in an outdoor area, it is considered an outdoor dining area.

The following list is designed to guide you on the difference between foods and snacks. Examples of foods include, but are not limited to:

- pre-packaged microwaveable pie (is not a snack because it is not shelf-stable)
- pre-packaged sandwiches and salads (are not snacks because they are not shelf stable)
- soups
- hot chips
- tapas and appetisers
- unpacked nuts or crisps served in a bowl.

Can I package my own snacks?

A business can choose to make and supply its own snacks. A snack does not have to be prepared and packaged by an off-site manufacturer.

The packaging could be undertaken as part of the manufacturing process.

For example, if a business makes and pre-packages biscotti in a kitchen before sale, it is considered a snack if it is provided to a customer in that form.

An item that is packaged at the point of sale is not considered a snack because it is not pre-packaged.

If a business only permits coffee and drinks to be consumed outdoors, is it an outdoor drinking area?

If a coffee shop or cafe permits only the consumption of coffee, other drinks and snacks outdoors, the area is considered an outdoor **drinking area**, and is not be required to be smoke-free under certain conditions explained in this guide.

If a coffee shop or cafe permits the consumption of coffee and food (other than snacks) outdoors, the area will be considered an outdoor dining area, and will be required to be smoke-free.

What if a business with a new outdoor dining area starts trading next to an existing outdoor drinking area?

There may be occasions where a business with a new outdoor dining area starts trading next door. This can result in a part of an existing outdoor drinking area being within 4 metres of the new outdoor dining area.

In this case, you will have three months to comply with the smoking ban in an outdoor drinking area if any part of the area is within 4 metres of an outdoor dining area, unless separated by a 2.1 metre high wall. This is to give time to undertake the steps to separate the two areas with a 4-metre buffer zone or a wall at least 2.1 metres high.

You will need to determine the date the new outdoor dining area started trading to determine the three month period.

How do the smoking restrictions apply at outdoor events?

Some organised events provide outdoor drinking areas such as a seated and cordoned-off outdoor area where customers can purchase and consume alcoholic drinks.

The same requirements that apply to businesses apply to outdoor events. That is, smoking is banned in an outdoor drinking area if:

- there is a roof, and the walls cover more than 75 per cent of the total notional wall area
- any part of the area is within 4 metres of an outdoor dining area, unless separated by a wall at least 2.1 metres high.

Are outdoor drinking areas at events required to be separated from food stalls and food vendors?

An outdoor dining area at an organised event is the outdoor area within 10 metres of a food stall or food vendor.

An outdoor drinking area (where smoking under certain conditions is permitted) at an organised event must be separated from an outdoor dining area with a 4-metre buffer zone or a wall at least 2.1 metres high.

For event organisers using a buffer zone, this means that the outdoor drinking area must be at least 14 metres (10 metres around the stall, plus the 4-metre buffer zone) away from a food stall or food vendor.

To ensure compliance, event organisers are encouraged to:

- clearly separate outdoor drinking areas from food stalls and food vendors
- consider the layout and positioning of food stalls in relation to outdoor drinking areas
- make the outdoor drinking area or event smoke-free.

Are e-cigarettes and shisha tobacco permitted to be used in outdoor drinking areas?

The use of e-cigarettes and shisha tobacco is permitted in areas where smoking is permitted.

From 1 August 2017, the use of e-cigarettes and the smoking of shisha tobacco is banned in areas where smoking is banned under the Tobacco Act, including:

- outdoor dining areas
- outdoor drinking areas where:
 - there is a roof, and the walls cover more than 75 per cent of the total notional wall area, or
 - any part of the area is within 4 metres of an outdoor dining area, unless separated by a wall at least 2.1 metres high.

Can I display a 'Smoking permitted' sign in an area not required to be smoke-free?

The display of a 'Smoking permitted' or similar sign to advise customers where smoking is allowed is considered a tobacco advertisement.

A sign of this nature breaches the Tobacco Act if there is a direct or indirect financial benefit associated with its display.

What do I need to do if I want to change my venue to provide an outdoor drinking area?

If you are planning to establish an outdoor drinking area in an outdoor space that has not previously been used for drinking, you will need to check with your council to ensure your planning permit allows this space to be used for this purpose. It is also to ensure you meet all building and kerbside trading (where necessary) requirements.

When considering whether to approve a possible expansion, the council may consider the possible amenity impacts on nearby and abutting properties.

In granting planning, building and kerbside trading permits, councils do not assess compliance under the Tobacco Act.

If you hold a liquor licence, you should also contact the Victorian Commission for Gambling and Liquor Regulation.

How can I find out whether my outdoor drinking area can allow smoking?

Occupiers who wish to allow smoking in outdoor drinking areas need to ensure that areas comply with the requirements outlined in the Tobacco Act (explained in this guide).

An Environmental Health Officer from your council can provide guidance as to whether planned structures or alterations are likely to comply with tobacco laws.

An inspection at the completion of work is usually required to assess compliance.

You may need to seek independent legal advice for specific circumstances, where necessary.

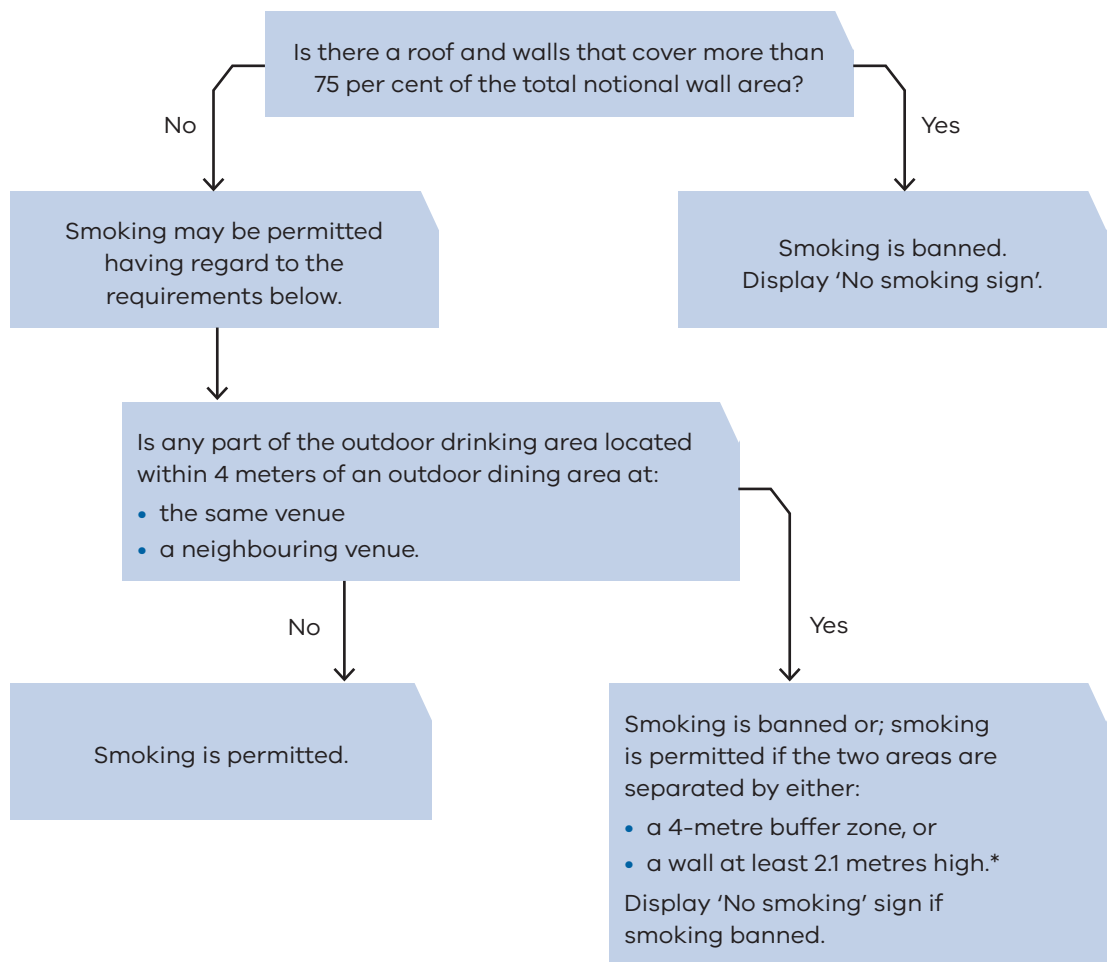
Checklists and planning

Business owners and managers should plan for the changes and communicate the new law to staff and customers through signs and information.

Planning and communication will help promote voluntary compliance and prevent customers unknowingly smoking in a smoke-free area.

You can use the following flow chart and checklists to prepare for the changes commencing 1 August 2017.

Figure 17: Determining if smoking is permitted in an outdoor drinking area



*If you install a wall at least 2.1 metres high, you may need to reassess whether the walls cover more than 75 per cent of the total notional wall area.

Checklist

Outdoor drinking areas

Activity	Tick for yes
Determine whether your outdoor drinking area/s will need to be smoke-free. Seek guidance from this guide, the Tobacco Information Line, your council or where necessary, independent legal advice.	<input type="checkbox"/>
Communicate the laws to management and staff. Provide information when an outdoor drinking area is required to be smoke-free.	<input type="checkbox"/>
Communicate to staff where customers can and cannot smoke and what to do when they encounter someone smoking in a smoke-free outdoor drinking area.	<input type="checkbox"/>
Ensure ashtrays and other objects that facilitate smoking are removed from smoke-free outdoor drinking areas.	<input type="checkbox"/>
Display 'No smoking' signs when the area is required to be smoke-free. The signs must be displayed so customers can see a sign when entering, or from within, the area.	<input type="checkbox"/>
Ensure that no food (other than snacks) is eaten in the outdoor drinking area.	<input type="checkbox"/>

Outdoor drinking areas within 4 metres of an outdoor dining area

Location of outdoor drinking area	Tick for yes
Is any part of your outdoor drinking area within 4 metres of an outdoor dining at the same and/or neighbouring venue?	<input type="checkbox"/>

If you answered yes, see below.

Requirements for an outdoor drinking area within 4 metres of an outdoor dining area	Tick for Completed
<ul style="list-style-type: none"> • Your outdoor drinking area must be smoke-free, or • Separate your outdoor drinking area from an outdoor dining area by: <ul style="list-style-type: none"> – a 4-metre buffer zone, or – a wall that is at least 2.1 metres high. 	<input type="checkbox"/>

Glossary

Term	Meaning
acceptable 'No smoking' sign	<p>A sign that contains:</p> <ul style="list-style-type: none"> • a 'No smoking' symbol in the form of a circle and diagonal line printed in red over a depiction of a cigarette and smoke printed in black, or other symbol that clearly indicates that smoking is not permitted, with the symbol being at least 70 millimetres in height • the phrase 'No smoking' or 'Smoking Prohibited' or other wording that clearly indicates that smoking is not permitted, in letters that are at least 20 millimetres in height.
food	Does not include drink or snack.
occupier	A person who is, or appears to be, over 16 years of age and who is, or appears to be, in control of the area or premises.
outdoor dining area	<ul style="list-style-type: none"> • An outdoor area in a public place that has an occupier; and that the occupier permits to be used for the consumption of food provided on a commercial basis, whether or not prepared by, or on behalf of, the occupier; or • An outdoor area in a public place at which a food fair is held; or • An area that: <ul style="list-style-type: none"> – is part of an outdoor area in a public place at which an organised event (other than a food fair) is held, and – is within 10 metres of a place at the outdoor area at which food is provided on a commercial basis by, or with the permission of, the occupier of the outdoor area.
outdoor drinking area	<p>Any of the following outdoor areas predominantly used for the consumption of drinks:</p> <ul style="list-style-type: none"> • a balcony or veranda • a courtyard • a rooftop • a marquee • a street or footpath • any similar outdoor area.
roof	Includes any structure or device (whether fixed or moveable) that prevents or significantly impedes upward airflow, including a ceiling.
snack	<p>A pre-packaged shelf-stable food that is sealed in the container or package in which the manufacturer intended the food to be sold by retail, and:</p> <ul style="list-style-type: none"> • does not require any intervention or attention by, or on behalf of, the provider before consumption, or • a piece of fruit that has not been cut for the purposes of consumption.
total notional wall area	<p>The total area of the wall surfaces if the walls were:</p> <ul style="list-style-type: none"> • at the perimeter of the roofed area, and • continuous, and • of a uniform height equal to the lowest height of the roof.
wall	Includes any structure or device (whether fixed or moveable) that prevents or significantly impedes lateral airflow, including a window or door.

Resources and information

Resources

'No smoking' signage can be ordered free of charge from the Department of Health and Human Services.

To order the signage or promotional materials about smoke-free outdoor dining, please visit the tobacco reforms website www.health.vic.gov.au/tobaccoreforms and select resources and fact sheets.

Resources are also provided in the following languages:

- Arabic
- Chinese (Simplified)
- Vietnamese.

Further information

For further information about the smoking restrictions in outdoor drinking areas, you may wish to:

- visit the tobacco reforms website www.health.vic.gov.au/tobaccoreforms
- call the Tobacco Information Line on **1300 136 775**.

To view the exact wording of the law from 1 August 2017, visit the Victorian Government legislation website www.legislation.vic.gov.au and search Tobacco Act.

