

# Clarification – Outdoor dining and drinking areas

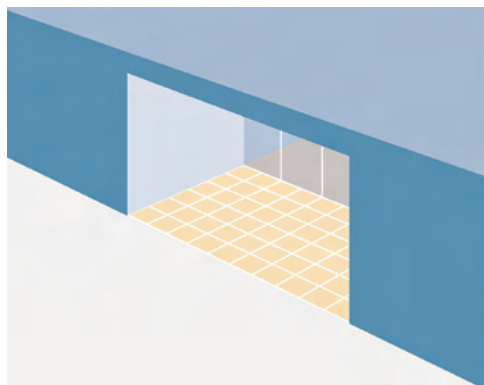
Issues relating to outdoor dining and drinking areas and enclosed workplaces (sections 5A and 5C of the Tobacco Act 1987 from 1 July 2007).

## General Principles

- The offence of smoking in an enclosed workplace (section 5A) does not apply to 'outdoor dining and drinking areas'. However, a new offence (section 5C) commences on 1 July 2007 in relation to smoking in outdoor dining and drinking areas, depending on the configuration of the 'roof' and 'walls' in the area.
- 'Outdoor dining or drinking area' means any of the following outdoor areas that is predominantly used for the consumption of food or drinks or both: a balcony or verandah; a courtyard; a rooftop; a marquee; a street or footpath; or any similar outdoor area.
- The roof/walls of an area can be any structure or device (whether fixed or movable) that prevent or significantly impede upward/lateral airflow. The roof/walls do not need to be continuous to meet this test: they may have gaps and openings. The roof/walls can also be made out of any material (including plastic, canvas, louvres). If the purpose of a structure or device is to protect patrons from wind and/or sun, it is likely that it will also significantly impede airflow.

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

Figure 1: Depicts an area that sits within the roofline of the building

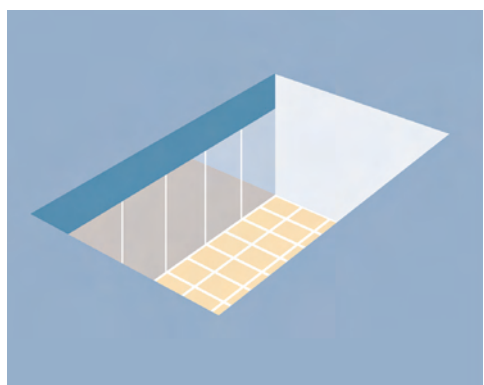


Smoking may be permitted in an outdoor dining and drinking area as depicted in figure 1 if:

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

## Internal courtyard with no roof

Figure 2: Depicts a courtyard within a building



Smoking may be permitted in an outdoor dining and drinking area as depicted in figure 2 if it is clearly separated from and distinguishable from the enclosed premises (eg. with a wall, lockable door and/or windows).

## Outdoor dining and drinking area with a partial roof

Figure 3:

Not a 'roof' under the Act, if it does not prevent or significantly impede upward airflow, as an effect on the whole area

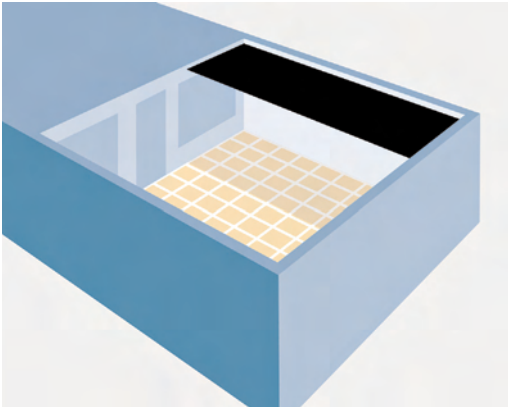
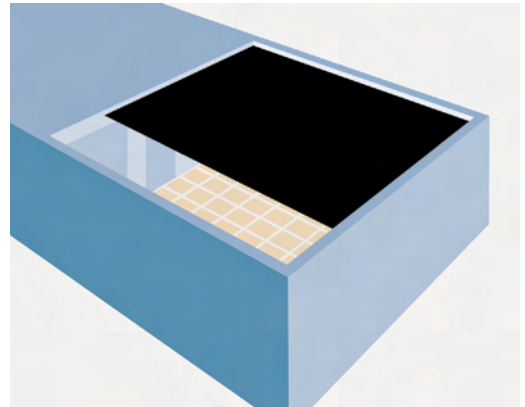


Figure 4:

Is a 'roof' under the Act, if it does prevent or significantly impede upward airflow, as an effect on the whole area



A partial roof will meet the definition of a 'roof' under the Act if it prevents or significantly impedes upward airflow as an effect on the whole area. The partial roof would generally have to cover at least half the total area in order to significantly impede upward airflow in the area. Smoking would therefore not be permitted in outdoor dining and drinking areas similar to that depicted in figure 4.

If the partial roof covers less than half the outdoor dining and drinking area (as depicted in figure 3) it is unlikely to be a 'roof' under the Act. If there is no 'roof', the configuration of the walls is not taken into consideration, and smoking is permitted. However, this should be considered on a case-by-case basis.