

New tobacco laws:

Licensed premises and outdoor dining and drinking areas

(commencing 1 July 2007)

Part A: Licensed premises

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Part A: Licensed premises

Background

Workers in the hospitality sector are regularly exposed to high levels of environmental tobacco smoke. An American study reported that one shift in a smoky bar is equivalent to smoking 16 cigarettes a day. It has long been established that exposure to environmental tobacco smoke causes harm to health and over the years, evidence of negative health effects has continued to mount with the number of diseases linked to exposure to environmental tobacco smoke growing. Exposure to environmental tobacco smoke can increase the risk of cardiovascular disease, lung cancer and other lung diseases in adults with a recent study indicating that exposure to high level of environmental tobacco smoke increases the risk of heart disease by 50 to 60 per cent. Short-term exposure can cause 'irritant' effects on the eyes, nose, throat and airways.

In addition to reducing the exposure of hospitality workers and patrons attending these venues to environmental tobacco smoke, studies have found that smoking bans in enclosed areas result in decreases in smoking prevalence and consumption.

What is the new law?

From 1 July 2007 all enclosed licensed premises must be smoke-free.

What does 'enclosed' mean?

The definition of enclosed has been amended to provide clarity and acknowledge the wide diversity of licensed venues. Enclosed will mean an area, room or premises that is or are substantially enclosed by a roof and walls, regardless of whether the roof or walls or any part of them are:

- a. permanent or temporary;
- b. open or closed.

What if all of the doors and concertina windows at a venue are open, will the smoking status of the venue change to allow smoking?

No, the smoking status of an enclosed licensed premises will not change at any time. However, if the licensed premises has a balcony, veranda, courtyard, rooftop, or street or footpath area, then smoking may be permitted as these areas are regarded as outdoor dining and drinking areas and therefore treated differently (see Part B of this fact sheet).

Will the person in charge of the enclosed licensed premises be required to display no smoking signage?

Yes. Acceptable no smoking signs must be displayed in a manner that ensures a person is reasonably likely to see one or more of them on entering the premises, or from within the premises.

What is the penalty?

If a person smokes in an enclosed licensed premises, the person who smokes may receive a fine or be prosecuted, as may the person in charge of the enclosed licensed premises at the time the smoking occurs. The table below shows the applicable penalties.

| | Fine | Maximum Penalty if Prosecuted |
|--|----------------|-------------------------------|
| Person smoking | 1 penalty unit | 5 penalty units |
| Person in charge of the enclosed licensed premises at the time the smoking occurs | 1 penalty unit | 5 penalty units |
| Person in charge of the enclosed licensed premises where acceptable no smoking signs are not displayed | 1 penalty unit | 5 penalty units |

**the value of a penalty unit for 2005/06 is \$104.81 (indexed annually).*

Are there any defences?

Yes. The person in charge of the enclosed licensed premises at the time the smoking occurs will not be guilty of an offence if he/she can prove that they did not provide an ashtray, matches, lighter or any other thing designed to facilitate smoking and that:

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

Will the smoking ban mean a loss of business?

A large number of studies have examined the effect of smoke-free policies in the hospitality industry. A review of 21 quality studies found no negative impact on businesses as a result of smoking bans, that is, the businesses did not lose money. Of the 21 quality studies, four reported a positive effect on sales. New York and Ireland have similarly reported that licensed premises have not lost business as a result of smoking bans.

Will less people attend licensed premises following the introduction of smoking bans in these venues?

A 2002 study found smoking bans in licensed premises would not affect patronage at these venues. The study found:

- 72 per cent of people said a ban would have no effect on their likelihood of going to a bar;
- 84 per cent said a ban would have no effect on their likelihood of going to a nightclub; and
- 10 per cent of those surveyed indicated that they would go to nightclubs more often and 20 per cent would go to bars more often.

Why is there such a long lead time before the law is introduced?

The implementation timelines are reflective of the Government's understanding of providing industry and the community sufficient time to understand and accommodate the new law.

What will the Government do to help licensees implement the new law?

The Government will work with industry to provide information to assist venue operators implement the new law.

Will cigar bars be exempt from the new law?

No. As an enclosed workplace/licensed premises, a cigar bar will be required to be smoke-free. As with other licensed premises, cigar bars will have a two-year lead time to implement the ban. In addition they may be able to allow smoking in an outdoor dining or drinking area (see Part B of this fact sheet).

Are there any other changes to the law that may affect licensed premises?

Yes. Licensed premises also need to be aware of the new laws regarding:

- a) Smoking at **underage 'music/dance' events**, effective on 1 March 2006. Further details are provided in the 'Underage music/dance events' fact sheet.
- b) The location of **cigarette vending machines**, effective on 1 March 2006. Further details are provided in the 'Cigarette sales to minors' fact sheet.

Part B: Outdoor dining and drinking areas

Will outdoor dining and drinking areas be required to be smoke free?

The new law, commencing 1 July 2007, will not require outdoor dining and drinking areas to be smoke-free, unless the area has a roof in place and the total actual area of the wall surfaces exceeds 75% of the total notional wall area.

'Total notional wall area' means what would be 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.

Outdoor dining and drinking areas will include the following places if predominantly used for the consumption of food and/or drinks:

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

What is the definition of a roof and wall?

Wall: A wall will include any structure or device (whether fixed or movable) that prevents or significantly impedes lateral airflow, including a window or door.

Roof: A roof will include any structure or device (whether fixed or movable) that prevents or significantly impedes upward airflow, including a ceiling.

What about when a balcony, courtyard, rooftop or other similar area has a roof and walls that cover more than 75 per cent of the wall space?

If a balcony, veranda, courtyard, rooftop, marquee or footpath area has a roof, as well as walls that cover more than 75 per cent of the total notional wall area then the area will be required to be smoke-free.

The pictures below (figures 1 & 2) show a balcony with a roof and retractable awnings. If the awnings are drawn (as represented by the shaded area in figure 2) and the wall area covered is more than 75 per cent, then the balcony area will be required to be smoke-free. When the awnings are retracted leaving the covered wall area to be 75 per cent or less (as per figure 1), then the balcony is not required to be smoke-free.



Figure 1. Smoking would be permitted on the balcony



Figure 2. Smoking would not be permitted on the balcony.
Note: the shaded area depicts a drawn awning.

Will a temporary wall such as a retractable awning be regarded as a wall?

Yes it will. A wall can mean anything that is fixed or moveable that significantly impedes air flowing through it. For example, it will include plastic, canvas and other similar materials.



Figure 3. Smoking would be permitted in the marquee when the walls are retracted.

Can the smoking status of a balcony, veranda, courtyard, rooftop, marquee or footpath change?

Yes. The smoking status of balconies, verandas, courtyards, rooftops, marquees or footpaths may change depending on the position of the walls and roof (see examples in figures 1 and 2).

A further example of this is shown in figure 3 (below) where the walls of a marquee are retracted. When all of the walls are retracted, smoking will be permitted in the area within the marquee. However, if the walls are drawn so that more than 75 per cent of the wall area is covered, the area within the marquee will be required to be smoke-free.

Will the person in charge of the outdoor drinking or dining area that is required to be smoke-free be expected to display no smoking signage?

Yes. Acceptable no smoking signs must be displayed in a manner that ensures a person is reasonably likely to see one or more of them on entering the outdoor dining or drinking area or from within the outdoor dining or drinking area.

What is the penalty?

If a person smokes in or on a balcony, veranda, courtyard, rooftop, marquee or footpath, which is required to be smoke-free, they may receive an infringement notice or be prosecuted. The person in charge of the area at the time may also receive an infringement notice or be prosecuted. The table below shows the applicable penalties.

| | Fine | Maximum Penalty if Prosecuted |
|--|----------------|-------------------------------|
| Person smoking | 1 penalty unit | 5 penalty units |
| Person in charge of the area at the time the smoking occurs | 1 penalty unit | 5 penalty units |
| Person in charge of the area where acceptable no smoking signs are not displayed | 1 penalty unit | 5 penalty units |

**the value of a penalty unit for 2005/06 is \$104.81 (indexed annually).*

Are there any defences?

Yes. The person in charge of the outdoor dining/drinking area at the time the smoking occurs will not be guilty of an offence if he/she can prove that they did not provide an ashtray, matches, lighter or any other thing designed to facilitate smoking and that:

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

Part C: Examples of how outdoor dining and drinking areas will be affected

The following pages show examples of outdoor dining and drinking areas and how the new law will affect them.



Figure 4.



Figure 5.

Figure 4:

The area shown in Figure 4 (above) would be considered to be an 'outdoor dining/drinking' area as it is situated on a street/footpath. Less than 75 per cent the wall area is covered therefore smoking would be permitted.

Figure 5

The area shown in Figure 5 (above) would be considered to be an 'outdoor dining/drinking' area as it is situated on a street/footpath. Less than 75 per cent of the wall area is covered therefore smoking would be permitted.



Figure 6.



Figure 7.

Figure 6

The area shown in Figure 6 (above) would be considered to be an ‘outdoor dining/drinking’ area as it is situated on a street/footpath. Less than 75 per cent of the wall area is covered therefore smoking would be permitted.

Figure 7

The area shown in Figure 7 (above) would be considered to be an ‘outdoor dining/drinking’ area as it is a balcony to a café. Less than 75 per cent of the wall area is covered therefore smoking would be permitted.

For further information:

Tobacco Information Line: 1300 136 775
www.health.vic.gov.au/tobaccoreforms/

Disclaimer: This fact sheet is intended only as a general guide and introduction to the relevant provisions of the *Tobacco (Amendment) Act 2005*. The Department of Human Services does not accept any liability for any expense, loss or damage suffered as a result of reliance upon this fact sheet.