



Discussion Paper

Smoke-Free Outdoor Eating and Drinking Areas

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SA Health

Smoke-Free Outdoor Eating and Drinking Areas

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1. Introduction

The South Australian Government is considering the introduction of smoke-free outdoor eating and drinking areas from 2016. Research shows that outdoor smoking is a potential hazard, particularly around larger numbers of active smokers and under certain wind conditions. Currently, hospitality workers and patrons are exposed to potentially harmful second-hand smoke in outdoor dining and drinking areas, particularly when there is a concentration of smokers in these areas.

Outdoor areas of restaurants, cafes, bars and clubs, are the last major locations where the community are regularly exposed to potentially harmful concentrations of tobacco smoke. Smoke-free areas are designed to protect the health of the community. They also increase the comfort and enjoyment for non-smokers using public spaces, especially spaces that may be crowded or where people congregate.

2. What is being considered?

2.1. Aims of the proposals

The aim is to reduce exposure of non-smokers and hospitality workers to potentially harmful levels of tobacco smoke. Other objectives are to:

- > Contribute to de-normalising smoking
- > Disassociate smoking activity from drinking activity in public areas
- > Reduce opportunities for uptake and relapse of smoking
- > Improve the amenity of hospitality venues and precincts.

The creation of smoke-free outdoor eating and drinking areas is an action of the *South Australian Tobacco Control Strategy 2011-2016* and a potential strategy to achieve South Australia's Strategic Plan Target: 80 *Smoking: Reduce the smoking rate to 10% of the population and halve the smoking rate of Aboriginal South Australians by 2018.*

2.2. Potential Regulation

One proposal is to make outdoor areas used for consuming food and drink available onsite smoke-free from 2016 by Regulation, under Section 52 of the *Tobacco Product Regulations Act 1997*.

An area is used for consuming food or drink available on site, if it is provided for or used for this purpose. An area used for consuming food or drink should include food or drink served in the area and brought to the area by the customer. Areas captured may include, but not be limited to, outdoor areas of restaurants, cafes, bars, clubs, and potentially festivals and sporting events.

Areas provided for consuming food or drink are not necessarily limited to areas with tables and chairs or table service, although these may be indicators. An area could be defined by the activities occurring or intended to occur in the area by the commercial entity.

It is proposed that, if part of an area is provided for consuming food and drink, then the whole area could be smoke-free. A smoke-free area could then potentially be separated from an adjoining smoking allowed area by either: a solid divider or wall at least 2 metres high; or the boundary of a liquor licensed area or property, whichever is greater.

It is proposed that outdoor smoking be permitted at venues in areas that are not provided for or used for eating or drinking. Venues will be able to determine the location and size of smoking only areas,

based on their business needs. It is proposed that, if a venue sells food or drink, then smoking could only be allowed in an area that:

- > Is in a discreet location (that is, not prominently on display or promoted)
- > Is not used for any purpose other than smoking
- > Has no food or drink served or brought in by customers
- > Does not permit children.

For this purpose, food and drink could include:

- > Hot and cold food and drink
- > Meals and snacks (including nuts and crisps)
- > Alcoholic and non-alcoholic drink
- > Food or drink intended to be consumed while sitting or while standing.

2.3. Impacts of the proposal

Smoke-free outdoor eating and drinking areas will largely eliminate the general community's exposure to harmful levels of second-hand tobacco smoke. Making outdoor areas used for consuming food and drink available from on site smoke-free by Regulation, could remove the potential harms caused by smoking in these areas. It could reduce exposure to potentially harmful concentrations of tobacco smoke, and may also reduce smoking prevalence by removing high-risk opportunities for uptake and making smoking less practical and enjoyable.

Impacts on the community and society could include improved health, improved productivity, improved amenity, reduced uptake of smoking and reduced relapse of smoking.

Only businesses that provide outdoor areas for consuming food and drink obtained on site will be impacted by any proposal. Costs to venues could include staff training and management costs, on-going monitoring by staff, construction costs for venues and signage. Benefits for venues could include improved productivity due to reduced employee exposure to smoke and improved amenity. The estimated net cost of a full ban to businesses over five years is approximately \$10.7 million or an average of \$1,305 per venue.

Some businesses may be concerned that the proposal will lead to a reduction in business. There is a large body of evidence demonstrating that this is highly unlikely. Evaluation of the introduction of smoke-free enclosed areas of pubs and clubs in South Australia showed that business revenue did not reduce.

Venues may choose to create an area designated only for smoking. This may include designating an existing area for smoking, or installing a wall or divider to create a new area. It is expected that some venues will choose to become completely smoke-free and many will designate an existing appropriate area. The only potential major cost to businesses is expected to occur when a venue chooses to create a new area. These costs would vary depending on the circumstances. Any costs are expected to be significantly lower than the construction work initiated after the introduction of smoke-free enclosed areas in November 2007.

2.4. Enforcement

SA Health's Tobacco Control Officers are authorised to enforce the *Tobacco Products Regulation Act 1997*. These officers will monitor and enforce the Regulation in the same way that they currently enforce smoking in enclosed areas at venues.

Emphasis will be placed on educating the public about the law and changing community attitudes. The aim is to initiate a cultural shift to ensure a high level of compliance, just as with existing smoke-free areas legislation, rather than relying on direct enforcement.

3. Background and Discussion

3.1. Harms caused by tobacco smoking

Tobacco smoking is the single most preventable cause of illness and death in Australia, and each year around 1,140 South Australians die of smoking-related causes.

Research shows that breathing other people's tobacco smoke (second-hand smoke or passive smoking) is harmful to non-smokers and is associated with an increased risk of cardiovascular disease.¹ About 90% of the deaths caused by second-hand smoke in adults in 2004-05 were due to heart disease.² Tobacco smoke can produce symptoms of ill health and can aggravate many health conditions, such as asthma, chronic obstructive airways diseases and cystic fibrosis.

The number of South Australians who smoke is reducing. The smoking rate in 2012 for people aged 15 years and older was 16.2%, down from 20.5% in 2010. Based on Australian Bureau of Statistics population figures, this is a reduction of approximately 58,000 smokers in two years.

3.2. Current Legislation

Smoking in enclosed areas of restaurants was banned in January 1999. Pubs and clubs became completely smoke-free in enclosed areas in November 2007. Smoke-free enclosed areas of pubs, clubs and restaurants have been very well received by the community and hospitality workers. The concerns of the hospitality industry raised before the introduction of the legislation did not eventuate. Evaluation of the introduction of smoke-free enclosed areas of pubs and clubs showed that revenue did not decrease.

Section 52 of the *Tobacco Products Regulation Act 1997*, which came into effect on 31 May, 2012, allows for smoking to be banned 'in the public areas specified in the regulations'.

3.3. Community demand for smoke-free areas

Research commissioned by the Cancer Council SA purports that community demand for smoke-free public areas is high. This research indicates that nearly three quarters of South Australians (71%) were concerned about being exposed to someone else's cigarette smoke in 2010³. The 2011 South Australian Health Monitor survey showed that smoke-free outdoor dining areas are supported by 91% of the community (56% support a total ban and another 35% support smoke-free areas). Smoke-free

¹ Australian Bureau of Statistics. 3303.0 Causes of death 2009. Australian Bureau of Statistics, 2011.

² Scollo M and Winstanley M [Editors]. Tobacco in Australia: Facts and issues. Third edition, Available from: <http://www.tobaccoinaustralia.org.au>. Melbourne: Cancer Council Victoria; 2008.

³ TCRC, *Key smoking statistics for SA – 2010*. Adelaide, Australia. Tobacco Control Research and Evaluation, Cancer Council SA, July 2011.

beer garden areas and outdoor seating areas at pubs is supported by 76% of the community (32% support a total ban and another 44% support smoke-free areas).

3.4. Impact of tobacco smoke in outdoor areas

Second-hand smoke can accumulate in outdoor locations at levels that can pose risks to health. As the amount of smoke in outdoor locations increases, particularly in areas where there are numerous active smokers and under certain wind conditions, so does the exposure and consequently the potential effects of second-hand smoke, particularly for people with pre-existing medical conditions.⁴

3.5. Smoking at outdoor eating and drinking areas

Outdoor areas of restaurants, cafes, bars and clubs are locations where the general community could be exposed to potentially harmful concentrations of tobacco smoke. The introduction of smoke-free enclosed areas of hospitality venues in 2007 significantly reduced the exposure of tobacco smoke in the general community. However, it has also had the consequence of increasing concentrations of tobacco smoke in outdoor areas. SA Health has received complaints from the community about smoke drifting from these areas into smoke-free areas.

There are strong behavioural links between smoking and drinking.⁵ The availability of tobacco at licensed venues (from sales and other smokers) is associated with both uptake and relapse of smoking.^{6 7} Smoke-free areas, particularly in entertainment venues, have the potential to de-normalise smoking, discourage uptake and encourage smokers to quit.

3.6. Similar legislation across Australia

South Australia and Victoria are the only Australian jurisdictions currently without smoke-free outdoor eating or drinking areas created by an Act of Parliament. However, in Victoria local councils can ban smoking in outdoor areas. New South Wales has passed legislation banning smoking in outdoor eating areas from 2015. Queensland, Western Australia, Northern Territory and the Australian Capital Territory have all banned smoking in eating areas and 50% of drinking areas. Tasmania has banned smoking only in eating areas.

4. Options

Other than banning smoking completely in all outdoor areas used for consuming food or drink available from on site, there are a variety of alternative policies that could be proposed for smoke-free outdoor drinking and eating areas. These include, but are not limited to:

- 4.1. 50% smoke-free areas
- 4.2. smoke-free for all outdoor dining areas
- 4.3. at least one smoke-free area.

⁴ Stafford J, Daube M, Franklin P. Second hand smoke in alfresco areas. *Health Promotion Journal of Australia*. 2010;21(2):99-105.

⁵ Room, Robin. 'Smoking and drinking as complementary behaviours'. *Biomedicine & Pharmacotherapy* 58 (2004) 111–115.

⁶ McKee, S. A., Krishnan-Sarin, S., Shi, J., Mase, T., & O'Malley, S. S. (2006). Modeling the effect of alcohol on smoking lapse behavior. *Psychopharmacology*, 189(2), 201-210.

⁷ Shiffman, S. (1986). A cluster-analytic classification of smoking relapse episodes. *Addictive Behaviors*, 11(3), 295-307.

5. Comments sought

The Government recognises the importance of widespread community consultation in the development of any proposal. This discussion paper has been produced to encourage industry, businesses and members of the public as well as other relevant government and non-government agencies to provide comments on this issue and the options presented.

Comments will be accepted until 1 November 2013.

Comments can be addressed to:

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If you have any questions about the submission process, please contact Matthew Craig, A/Manager, Tobacco Control Unit on (08) 8274 3450.

5.1. Confidentiality of submissions

Submissions may be quoted or published and available online for the purposes of evaluating the proposal. If you do not wish your submission to be quoted or published, please make this clear in your submission. However, please note that confidentiality of submissions cannot be guaranteed. This is because submissions may be accessed by the public under the *Freedom of Information Act 1991*.

Submitters may wish to disclose information in anonymous form, for example by removing reference to specific individuals, companies or situations.

5.2. Disclaimer

This discussion paper has been prepared for the purposes of informing decision-making for legislative change. Whilst every effort has been made to ensure the accuracy of the information contained in this discussion paper, no responsibility is taken for reliance on any aspect of it and it should not be used as a substitute for legal or other professional advice. Any action taken in anticipation of the outcomes of this discussion paper is solely at the risk of persons taking such action.