

# Smoking Restrictions in Outdoor Eating Areas

*Tobacco Products Control Act 2006*

*Tobacco Products Control Regulations 2006*

## Factsheet for Businesses

Food and beverage businesses in the Shire of Serpentine Jarrahdale are required to comply with the provisions of the [Tobacco Products Control Regulations 2006](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_43189.pdf/$FILE/Tobacco%20Products%20Control%20Regulations%202006%20-%20%5B03-g0-01%5D.pdf?OpenElement) [https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc\\_43189.pdf/\\$FILE/Tobacco%20Products%20Control%20Regulations%202006%20-%20%5B03-g0-01%5D.pdf?OpenElement](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_43189.pdf/$FILE/Tobacco%20Products%20Control%20Regulations%202006%20-%20%5B03-g0-01%5D.pdf?OpenElement). These regulations prohibit smoking in an outdoor eating area (for example, restaurants, cafes, delis, lunch-bars and other food outlets) in Western Australia unless the area is designated as a smoking zone. Smoking is also not permitted within five metres of a public entrance to an enclosed public place, or within ten metres of air conditioning intakes.

This fact sheet will assist businesses to implement State tobacco legislation.

## Smoking in an outdoor eating area

Smoking in an outdoor eating area is not permitted in most circumstances. Some liquor licensed businesses (not restaurant liquor licenses) are however able to designate a smoking zone. Up to 50% of the outdoor eating area can be designated as a smoking zone. Please note, this area cannot have a ceiling/roof structure and must not have walls that enclose the space by more than 50%. For further information about what can and cannot be considered as a permitted space, please see the Department of Health's website [here](#) [Smoking restrictions in enclosed public places \(health.wa.gov.au\)](#).

Adequate measures, including signage, are to be taken to ensure that all customers can clearly see which areas are smoking zones and which are smoke free.

## Smoking within five metres of a public entrance

Smoking is not permitted within five metres of a public entrance to an enclosed public place, or within ten metres of air conditioning intakes. Premises with a small frontage or that have several public entrances may be unable to have a smoking area.

These restrictions reduce exposure of the public and employees to tobacco smoke, minimize the risk of smoke drift, and contribute to the de-normalisation of smoking in the community.

## Signage required

Business owners are to display 'No Smoking signs in sufficient numbers and in such positions to indicate smoke free zones. This can include signage which states 'No Smoking', 'Smoking Prohibited' or shows the no smoking symbol. Signage is to be clearly visible to a person

when entering, or when within the outdoor dining area. Other words or symbols may be used, so long as it is clearly indicated that smoking is prohibited.

Signs can be ordered by businesses free of charge from the Department of Health. See the different types of signage available – [No Smoking Signage \(PDF 1.23MB\)](#) [Smoke free signage \(health.wa.gov.au\)](#).

## Enforcement

The owner/occupier of a business is responsible for ensuring the patrons do not smoke in a smoke free area of an outdoor eating area. The owner/occupier of a business is however not responsible for ensuring passers-by do not smoke within five metres of a public entrance.

A business can take reasonable steps to prevent smoking in a non-smoking area. These can include:

1. Let the person know they are not able to smoke there, and tell them it is an offence and may be excluded from premises;
2. Ask them to stop smoking in the area, and to extinguish and dispose of the cigarette; and
3. Ask them to move to an area where smoking is allowed until they finish smoking.

Officers authorised under the [Tobacco Products Control Act 2006](#) [WALW - Tobacco Products Control Act 2006 - Home Page \(legislation.wa.gov.au\)](#) first priority is to make sure smokers and owner/occupier of a business understand the smoking restrictions. In some circumstances, enforcement action such as infringement notices may be required.

## Get total smoke free!

We encourage all businesses to consider ways you can reduce the level of smoking associated with your business.

An outdoor eating area that is totally smoke free is the best way to protect customers and staff from the harmful effects of a second-hand smoke. It will also help the risk of non-compliance with the law and can improve the customer's outdoor dining experience.

## Checklist for a smoking zone in an outdoor eating area

- Ensure your business holds a valid liquor license from the Department of Racing Gaming and Liquor;
- Any smoking zone must not exceed 50% of the total area of all outdoor eating areas (premises that hold a restaurant liquor license cannot have a 'smoking zone');
- Ensure that smoking is not permitted within five metres of a public entrance to an enclosed public place;
- Ensure the smoking is not permitted within ten metres of air conditioning intakes;
- Put smoke free signage in highly visible areas outside to indicate smoke free areas;

- Remove ashtrays from non-smoking areas;
- Brief your staff on complying with the law and how to approach customers who start smoking in your smoke free zone; and
- Be aware that the smoker can be fined along with the owner/occupier of a business, unless it is deemed reasonable for the owner/occupier to have not been aware of a person smoking.