

SMOKE-FREE

**OUTDOOR EATING AND DRINKING
AREAS IN THE ACT**

This guide provides general information on smoke-free outdoor eating and drinking places in the ACT. It is a summary of the law and is not intended as a substitute for independent legal advice concerning the *Smoke-Free Public Places Act 2003* or its application to particular premises.

Users of the guide are encouraged to obtain independent legal advice and to exercise their own skill and care in relation to any material contained in this guide. No liability or responsibility shall attach to the Health Protection Service, ACT Health, or the Office of Regulatory Services, Department of Justice and Community Safety, for a person's reliance on the material in the guide.

The law is as at 9 December 2010.

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An Overview of Smoke-free Public Places in the ACT

The ACT has a strong history of restrictions on smoking, with the first smoke-free laws passed in 1994. In December 2006, all enclosed public places in the ACT became smoke-free. 'Enclosed' is defined as an area that is covered (for instance by a roof or canvas awning) and is 75 percent or more enclosed.

From 9 December 2010 it will also be against the law to smoke in outdoor eating and drinking places in the ACT under the *Smoke-Free Public Places Act 2003*. This will be the first ban on smoking in outdoor areas in the ACT.

What is an Outdoor Eating or Drinking Place?

A place is an outdoor eating or drinking place if:

- (a) it is a public place that is open to the public and is outdoors;
- (b) people at the place may consume food or drink provided from an on-site service (such as a café, restaurant, food van/stall); and
- (c) either -
 - i. the place is a licensed premises; or
 - ii. tables and chairs are provided by the onsite service at which people may consume food or drink.

Note: A place is only an outdoor eating or drinking place while:

- food or drink is being provided from an on-site service;
- food or drink from an on-site service is being consumed at the place; or
- clearing or cleaning of the place is being carried out.

Examples:

- an area containing tables and chairs on a footpath outside a café or takeaway food shop;
- an outdoor area at a shopping centre, surrounded by food outlets, containing tables and chairs at which food or drink purchased at the outlets can be consumed; or
- an area containing tables and chairs, and bounded by planter boxes, that is around a food van at a sporting ground.

How do I comply with the new law?

1. An occupier or person in charge of the premises must ensure that patrons do not smoke in the premises' outdoor eating and drinking areas.
2. 'No smoking' signs must be prominently displayed in outdoor dining areas at the premises.
3. Tables and chairs in the outdoor area must be clearly identified as being part of the premises by either a plan displayed at the place or signs/markings on the tables and chairs.

Exceptions for certain licensed premises

Certain licensed premises may allocate up to 50 percent of their licensed outdoor area as a Designated Outdoor Smoking Area (DOSA) if they:

- hold a club licence under the *Liquor Act 1975*; or
- are licensed under the *Liquor Act 1975* for the sale and consumption of liquor on the premises and the premises is used principally for this purpose.

Note: The *Liquor Act 1975* will be replaced by the *Liquor Act 2010* from 1 December 2010.



For instance, a pub or tavern may have a DOSA if serving alcohol is the main purpose of the business. A premises whose principal purpose is not the sale of liquor, such as a licensed restaurant or café, is not permitted to establish a DOSA.

What is a Designated Outdoor Smoking Area (DOSA)?

A DOSA is an area where patrons are allowed to smoke and drink, provided the drinks are purchased in another area of the premises.

The following rules apply in all DOSAs:

- no food or drink service (this includes clearing of glasses while someone is smoking in the DOSA)
- no consumption of food
- no people under 18 years-of-age
- no gaming machines
- no entertainment is to be offered or directly accessible (including televised sporting events).

'Directly accessible' means within view of a DOSA. For instance, a television (or similar media) must not be positioned in such a manner that its content is visible from within a DOSA. Public announcements and recorded music are allowed in a DOSA.

If you choose to have a DOSA, it must comply with specific laws. You may need to start planning now to ensure your DOSA complies by 9 December 2010. See the following pages for the DOSA requirements.

Which outdoor areas can be DOSAs?

The following outdoor areas of licensed premises can be DOSAs:

- an off-gaming area, which is adjacent to and only accessible from a gaming area that was part of the licensed premises prior to 1 November 2009; and
- up to 50 percent of the total licensed outdoor area that is not an off-gaming area.

The following outdoor areas of licensed premises cannot be DOSAs:

- an area that is adjacent to an entrance to the premises (unless it is an off-gaming area); and
- an area that allows smoke to drift into a non-smoking area.

Requirements for all DOSAs

Premises that choose to have a DOSA must adhere to a number of requirements under the *Smoke-Free Public Places Act 2003*.

A public notice must be displayed near the DOSA that shows:

- that the area is a DOSA;
- that persons less than 18 years old are not allowed in the DOSA;
- that a smoking management plan is available for inspection; and
- a diagram that sets out the boundaries of the DOSA.



All DOSAs must have a buffer on each perimeter that is adjacent to other parts of the outdoor area which may be accessed by patrons.

A buffer must be:

- An area at least four metres wide where patrons cannot eat, drink or smoke. Two metres of this must be taken from the DOSA; or
- A screen or wall that is impervious to smoke which extends to a minimum height (set by regulation*) above the highest floor level in the DOSA. An exception to the minimum height is only allowed where the screen/wall meets the ceiling of the DOSA at a height less than the minimum height**.

***The minimum wall/screen buffer height is set at 1.8 metres until 9 December 2011, at which time the minimum height will increase to 2.1 metres.**

****The presence of the screen/wall must not cause the area to be considered enclosed.**

What is an 'Enclosed' public place?

A public place will be considered 'enclosed' if the public place or part of a public place has:

- (a) an overhead cover; and
- (b) is 75% or more 'enclosed'.

A public place is 75% or more 'enclosed' if the open area of the walls and overhead cover of the public place opens directly to the outside air and is calculated at 25% or less than the total notional area of the public place.

It is the responsibility of the licensee to ensure that smoke does not drift into any smoke-free areas, e.g. an enclosed public place or smoke-free outdoor areas.

Once a DOSA has been created, the licensee has 14 days to notify the Commissioner for Fair Trading of its existence. This is done by using the approved form available from the Office of Regulatory Services at www.ors.act.gov.au.

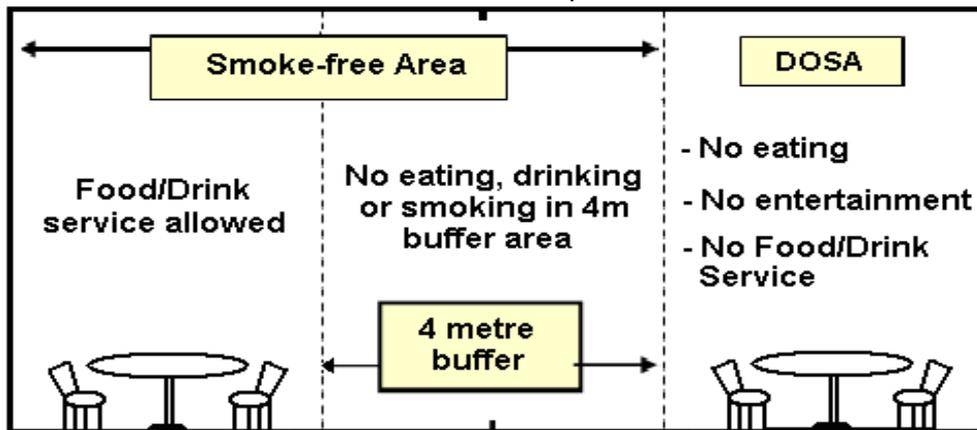
Note: This form requires you to attach a copy of your Licensed Premises Plan on which you have marked your DOSA/s. A copy of your Licensed Premises Plan can be obtained from the Office of Regulatory Services by calling (02) 6207 3000 (Fair Trading).

Failure to notify the Commissioner attracts a maximum fine of \$5500.



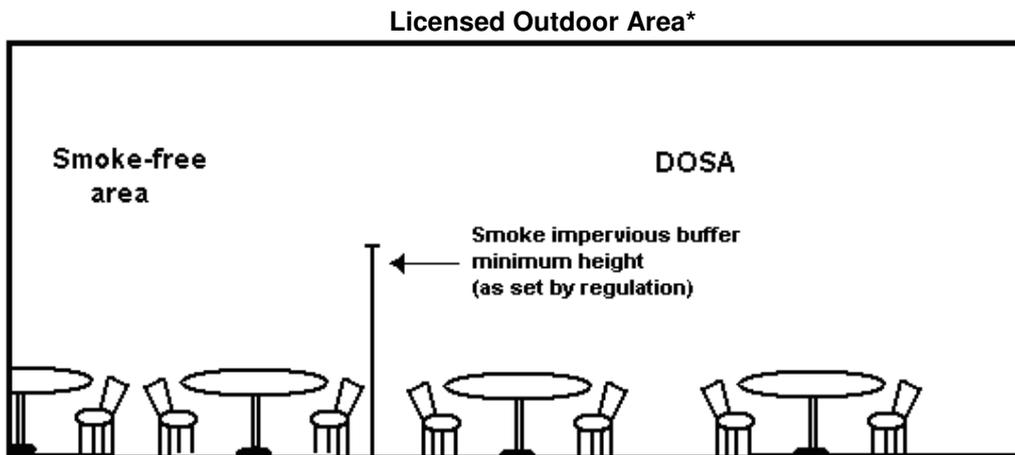
Examples of DOSA Buffer Options

Example: DOSA with the 4 metre smoke-free corridor option

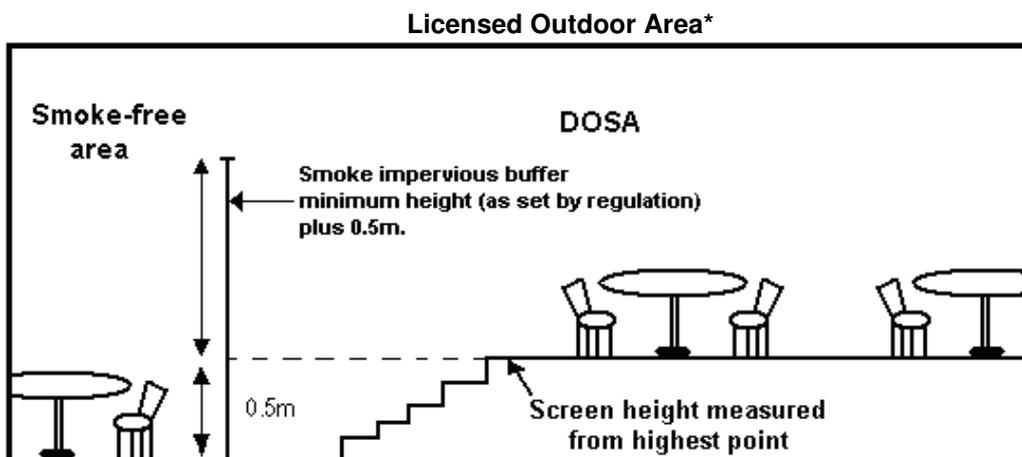


No tables or chairs are to be placed within the four metre buffer area. However, plants and other decorative features may be placed in this area provided they do not encourage loitering (e.g. planter boxes that patrons may use as seats).

Example: DOSA with screen/wall buffer option



Version 1 – minimum DOSA buffer screen/wall height.



Version 2 – there is an elevated area in the DOSA, so the buffer height is measured from the highest point in the DOSA.

*Note: DOSAs must not exceed 50 percent of a premises' licensed outdoor area (excluding off-gaming areas).

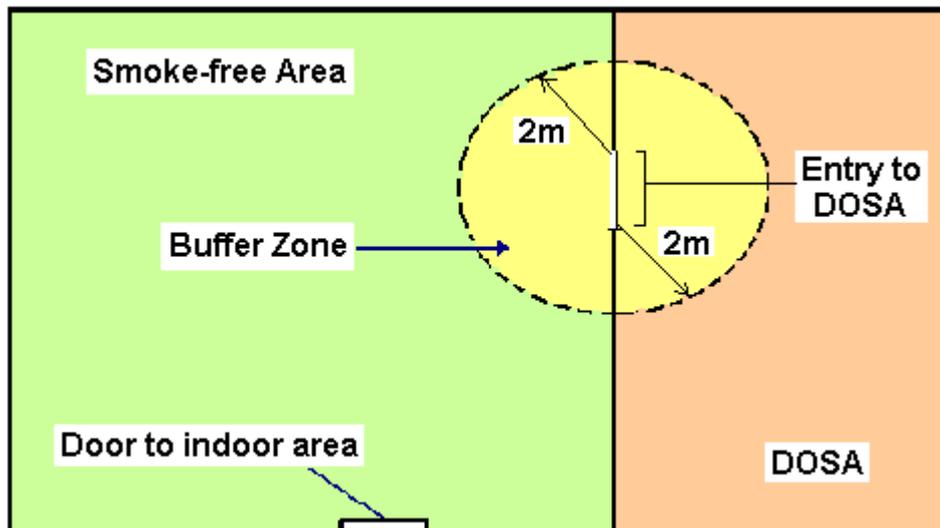
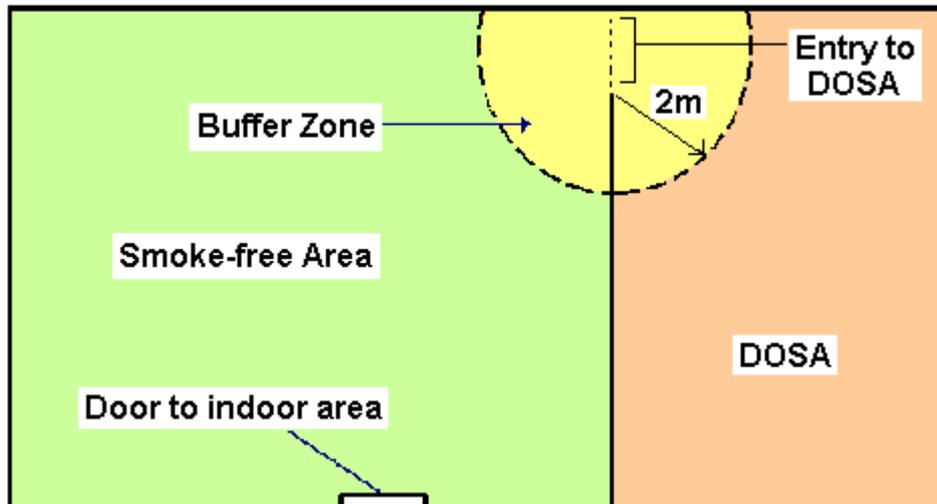


Entry points in DOSA buffer walls/screens

If an entry point is placed in the buffer wall/screen, then this part of the wall/screen is no longer 'smoke impervious'. A four metre buffer zone (with two metres taken from the DOSA) must be put in place at this break in the wall/screen.

Examples: Overhead views of two licensed outdoor areas with DOSAs are pictured below with entry points in the buffer screen/wall. The yellow circles show the two metre buffer zone required either side of the entry point (this buffer will not be a perfect circle and will vary in size depending on the size of the entryway).

The same rules apply to this buffer area as to the smoke-free corridor (i.e. no smoking, no tables or chairs, no eating or drinking). As the buffer area extends into the DOSA, the border of the buffer area will need to be clearly marked to prevent patrons from smoking in this area.



Creating a Smoking Management Plan

If you have a DOSA, then you must keep an up-to-date smoking management plan. This document will state how smoking is managed at the premises, with the aim of reducing harm from environmental tobacco smoke (ETS). This plan must be made available for inspection on request.

A smoking management plan must include:

1. a copy of the Licensee's Licensed Premises Plan which also identifies:
 - the DOSA
 - the buffer for the DOSA
 - the location of the public notice that states the conditions of the DOSA;
2. a statement of how exposure to ETS will be minimised at the premises (e.g. ensuring employees are not exposed to ETS);
3. a description of training given to employees about the requirements of the *Smoke-Free Public Places Act 2003*; and
4. a description of how the ban on food and drink service in the DOSA will be managed.

Licensed Premises Plans are created as part of the liquor licensing process. A copy of your Licensed Premises Plan can be obtained from the Office of Regulatory Services by calling (02) 6207 3000 (Fair Trading).

It is not a requirement to establish a DOSA. If you choose to have a DOSA, then you must have a suitable Smoking Management Plan and a smoke buffer. There are strict liability offences that apply to licensees failing to meet the legislated DOSA requirements.

Note: the *Smoke-Free Public Places Act 2003* does not override the *Work Safety Act 2008* or any other legislation that may apply.



Do you want to allow smoking on your licensed premises?

NO

Ensure patrons do not smoke anywhere on your premises & place 'No Smoking' signage in outdoor areas.

YES

WHAT DECISIONS DO YOU NEED TO MAKE?

Use this flow chart to help you decide what to do with your licensed outdoor area.

You must create a Designated Outdoor Smoking Area (DOSA) in your licensed outdoor area.

HOW

Identify your outdoor area. Off-gaming areas and up to 50 percent of the rest of your liquor-licensed outdoor area can be used as a DOSA.

What must you do to comply with the law?

- You can have more than one DOSA but the total outdoor area you allow for smoking must not be more than 50 percent of your entire licensed outdoor area, excluding off-gaming areas.
- You must ensure your patrons smoke only in the DOSA and not in any other licensed part of the premises.
- You must have a buffer (as defined on page 5) wherever the perimeter of the DOSA is next to other parts of the outdoor area that are ordinarily accessed by patrons.
- People less than 18 years old must not enter the DOSA.
- Drinking can occur in the DOSA but drinks must be taken in by patrons – no drink service is permitted.
- Food service or consumption is not permitted in the DOSA.
- You cannot provide any form of entertainment for or to the DOSA, except recorded music.
- You must put up a sign that states specific information about your DOSA (as defined on page 4).
- You must have a smoking management plan (as defined on page 8).



Licensees of premises that choose to have a DOSA must comply with the following:

1. The premises' licensee must ensure that patrons do not smoke in outdoor eating and drinking areas.
2. The premises' licensee must ensure that patrons only smoke in a DOSA.
3. All requirements for maintaining a DOSA outlined in the legislation must be met.
4. No smoking signs must be prominently displayed at the place (except in a DOSA).

What if I don't comply with the law?

The *Smoke-Free Public Places Act 2003* provides criminal and licensing penalties for non-compliance. Please refer to the Act for more information on penalties.



