

Smoke-free outdoor eating and drinking areas – FAQ's

The legislation that banned smoking in public outdoor eating and drinking areas came into effect on 9 December 2010 (*Smoke-Free Public Place Act 2003*). The following is a list of frequently asked questions (FAQs) about the smoke-free laws for individuals and businesses.

FAQs – Individuals

Why are these laws necessary?

Smoke-free outdoor eating and drinking areas laws have been made to protect the health of hospitality workers and the community in general from harmful tobacco smoke.

Where are smokers supposed to smoke?

The ACT's smoke-free legislation bans smoking at seated outdoor areas at food and drink premises. The current legislation does not ban smoking in all public places and smokers may currently still smoke in other public outdoor areas. However, as there is no safe level of tobacco smoke, smokers should remain mindful of others' health and avoid exposing others to harmful tobacco smoke.

Why can people still smoke outdoors at clubs/pubs, but not at restaurants and cafés?

The laws may allow licensed premises that sell mostly alcohol to have outdoor smoking areas. These areas are subject to strict rules and must be set up so as to avoid staff and non-smoking patrons being exposed to smoke.

Why are pubs/clubs allowed outdoor smoking areas?

The laws are based on those adopted by Queensland, where similar exemptions exist for licensed premises. These outdoor smoking areas are subject to many rules including that no food or drink service is allowed in the area, no food is consumed in the area, and service staff are not allowed to enter the area while it is being used. Licensed security officers are not restricted from entry, however there are occupational health and safety issues that will need to be managed. The licensee must also ensure that smoke does not travel from smoking areas into non-smoking areas.

Can people still smoke in public areas with seating e.g. parks, picnic areas and public benches?

There is no law banning smoking in these areas. Smoking is only banned at public outdoor areas where there are tables and chairs, and food and drink service is provided (this includes the clearing of tables).

Is smoking still allowed at children’s sporting events/playgrounds?

There is currently no law banning smoking in these areas. Smoking is only banned in outdoor areas where there are tables and chairs, and food and drink service is provided (this includes the clearing of tables). However, children are particularly vulnerable to the harms of tobacco smoke and for the sake of children’s health, people should not smoke in these areas.

Can people smoke at seating at sporting grounds?

Manuka Oval and Canberra Stadium are smoke-free venues. Other sports grounds may have their own smoke-free policies. Smoking is also banned at sports ground outdoor seating if it belongs to, or is provided by, a food service provider at the grounds.

What can I do if someone is smoking in an outdoor eating area at a café or restaurant?

In the first instance, speak to the person involved or the owner of the outdoor area. If you do not get a satisfactory response, contact the Office of Regulatory Services (Fair Trading) on 6207 3000. It would be helpful if you could provide the business’ full name and location.

How do I report an outdoor smoking area at a pub/club that is not following the rules (e.g. allowing people to eat in the area)?

Please contact the Office of Regulatory Services (Fair Trading) on 6207 3000 with the business’ details.

What are the penalties under the outdoor smoking laws for individuals?

Offence	Maximum Penalty
Smoking in an outdoor eating and drinking place.	\$550
Smoking in an outdoor eating and drinking place in contravention of a direction to stop.	\$2,200

FAQs – Businesses

What are the penalties under the outdoor smoking laws for businesses?

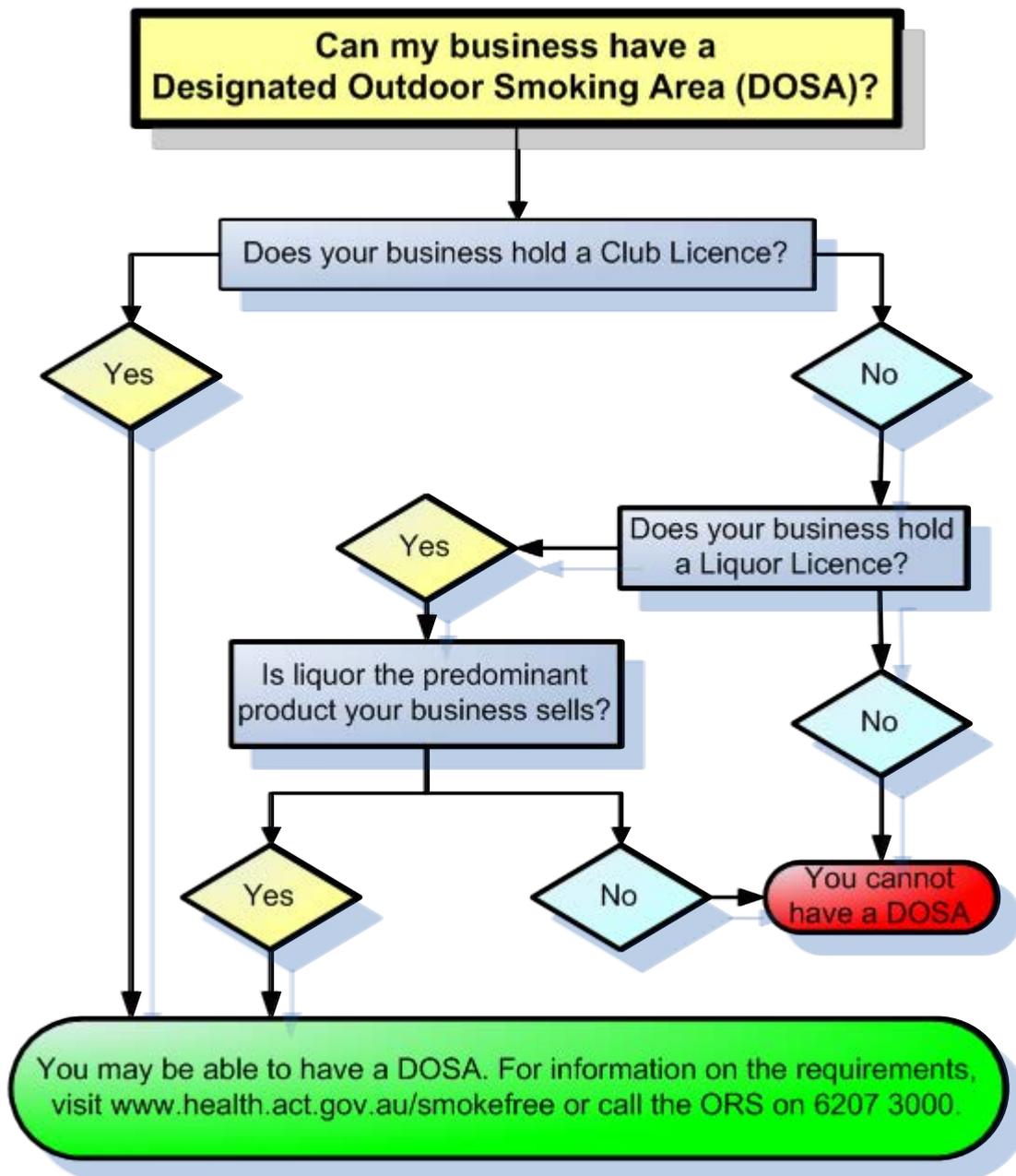
Offence	Maximum Penalty
Letting a person smoke in an outdoor eating and drinking area that is not a DOSA*.	\$1,100
Not displaying ‘No smoking’ signs	\$2,200
Not identifying tables and chairs which belong to the outdoor eating and drinking place.	\$2,200
Not meeting requirements of a DOSA.	\$5,500
Not notifying the Commissioner of Fair Trading about a DOSA within 14 days of its creation.	\$5,500
Permitting smoke from a DOSA to enter an outdoor eating or drinking place.	\$5,500
Not keeping an up-to-date Smoking Management Plan	\$5,500

*DOSAs: Designated Outdoor Smoking Area.

What signage is required for businesses?

Outdoor eating and drinking places must have ‘No Smoking’ signs prominently displayed. Tables and chairs that belong to the outdoor eating and drinking place must also be clearly identified by a plan displayed at the place, or markings on the tables and chairs.

If you are still confused about whether your business is eligible to have a DOSA, please use this flowchart as a guide.



FAQs – Businesses Designating an Outdoor Smoking Area (DOSA)

Where can I find out about how to establish a DOSA?

You can find information on establishing a DOSA in the *Guide to Outdoor Eating and Drinking Places in the ACT*, which can be found at www.health.act.gov.au/smokefree. You should contact the Office of Regulatory Services (Fair Trading) on 6207 3000 for more information.

Where can I find information on Smoking Management Plans?

Businesses with a DOSA must have a Smoking Management Plan. A template Smoking Management Plan is available at www.health.act.gov.au/smokefree. If you require more information, please contact the Office of Regulatory Services (Fair Trading) on 6207 3000.

How do I notify the Commissioner for Fair Trading that my business has created a DOSA?

To notify the Commissioner of the creation of a DOSA, or for more information, please contact the Office of Regulatory Services (Fair Trading) on 6207 3000. You must notify the Commissioner within 14 days after the day you create a DOSA.

Where can I find the smoke-free legislation?

The *Smoke-Free Public Places Act 2003* can be found at www.legislation.act.gov.au. A guide has been created to help businesses interpret the legislation. A *Guide to Outdoor Eating and Drinking Places in the ACT* is available online at www.health.act.gov.au/smokefree and www.ors.act.gov.au/publication.

Who can I seek further advice from regarding the smoke-free laws?

The Office of Regulatory Services (ORS) is enforcing the legislation. They are able to review plans and provide guidance and compliance advice regarding the laws. Please discuss with the ORS if they are available to visit individual premises. It should be noted that advice will be restricted to general matters and will not extend to legal issues. If you wish to contact the ORS, please call 6207 3000 (Fair Trading).

Businesses requiring building and planning advice may wish to contact the ACT Planning and Land Authority (ACTPLA) by calling 6207 1923. You will also need to contact relevant industry professionals that you would ordinarily consult on a building project if you are considering utilising the buffer wall/screen for a DOSA. You will need to consider how any alterations to your premises may impact upon other aspects of your business (e.g. emergency exit access, occupancy loading).

What if my premises' indoor area leads directly into a DOSA? How do I ensure smoke does not drift into indoor areas?

As some premises have more than one outdoor area, they may be able to designate an entire outdoor area as a DOSA while their other outdoor areas are smoke-free. As per the current law, you must ensure smoke does not drift from your premises' outdoor areas into indoor areas (an indoor area is one that is 75 percent or more enclosed).

Premises may wish to explore mechanical solutions to prevent smoke-drift. This could include the use of air curtains, double doors or positive air pressure systems. It is important that you consider your individual situation (such as the number of smokers likely to use your DOSA at any one time and the air flow within the DOSA) when deciding on what measures will best prevent smoke-drift into enclosed areas. It is the licensee's responsibility to put effective measures in place to stop smoke drifting from a DOSA into an enclosed area of the premises. Neither ACT Health nor the ORS can provide advice on which method for preventing smoke drift will be best for an individual premises.

What is an off-gaming area? Are these outdoor areas off gaming machine areas and/or TAB areas?

The existing law provides that any part of an off-gaming area and up to 50 per cent of other licensed outdoor areas of a premises may be DOSAs. An off-gaming area is an area that is adjacent to a gaming area. A 'gaming area' is defined by the *Gaming Machine Act 2004* as a room or other area within a licensed premises approved for the installation of gaming machines. The Gaming Machine Act's definition of gaming machines includes poker machines, but not TABs. The presence of a TAB in an area that also contains gaming machines does not prevent an adjacent licensed outdoor area from being classified as an off-gaming area. Premises are still able to include the area off a TAB as part of the 50 per cent of the licensed outdoor area that may be allocated as DOSA in addition to any off-gaming areas.

ENGLISH	If you need interpreting help, telephone:
ARABIC	إذا احتجت للمساعدة بالترجمة الشفوية، اتصل بالهاتف:
CHINESE	如果您需要口译员帮助，请拨电话:
CROATIAN	Ako trebate pomoć tumača telefonirajte:
DARI	اگر به کمک ترجمه شفاهی ضرورت دارید، به این شماره تلفون کنید:
GREEK	Αν χρειάζεστε διερμηνεία τηλεφωνήστε στο:
ITALIAN	Se avete bisogno di un interprete, telefonate al numero:
LAO	ຖ້າ ການຄວາມຊ່ວຍເຫລືອຖ່ວງການແປພາສາ. ໃບໂທ: 131 450
MALTESE	Jekk għandek bżonn l-ghajnuna t'interpretu, ċempel:
PERSIAN	اگر به ترجمه شفاهی احتیاج دارید به این شماره تلفن کنید:
RUSSIAN	Если вам нужна помощь переводчика, звоните по телефону:
SPANISH	Si necesita la asistencia de un intérprete, llame al:
VIETNAMESE	Nếu bạn cần một người thông ngôn hãy gọi điện thoại:

HEALTH CARE INTERPRETERS 6205 3333
TRANSLATING AND INTERPRETING SERVICE
131 450
Canberra and District – 24 hours a day, seven days a week

HPS-00-0580

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