

Smoke-free outdoor dining

A guide for businesses and event organisers
From 1 August 2017



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Disclaimer

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Overview

This guide provides general guidance for businesses and event organisers to understand how to comply with smoke-free outdoor dining laws.

Businesses and event organisers that provide an outdoor drinking area, should read the *Smoking restrictions in outdoor drinking areas guide* in conjunction with this guide.

Smoke-free outdoor dining

From 1 August 2017, changes to the *Tobacco Act 1987* (Tobacco Act) mean that smoking is banned in outdoor dining areas in Victoria. This includes outdoor dining areas:

- at hospitality venues
- at food fairs
- within 10 metres of food stalls and food vendors at organised events (other than a food fair).

The introduction of smoke-free outdoor dining now means there are two types of outdoor areas for dining and drinking activities. An outdoor area is either:

- an outdoor dining area, or
- an outdoor drinking area.

Snacks

The smoking ban does not apply to outdoor areas where only snacks are eaten or provided. A snack is a pre-packaged shelf-stable food that:

- is sealed in the container or package in which the manufacturer intended it to be sold, and
- does not require any preparation prior to serving.

Shelf-stable food is generally taken to mean food that can be stored safely for long periods (months) at room temperature.

Snacks also include uncut and unpeeled fruit.

Examples of snacks include pre-packaged potato crisps, nuts and chocolate bars. Pre-packaged sandwiches and hot chips are not snacks.

See p. 17 for more examples of snacks.

Separating outdoor drinking and outdoor dining areas

To minimise smoke-drift, outdoor drinking areas (where smoking is permitted under certain conditions) must be separated from outdoor dining areas by either:

- a 4-metre buffer zone, or
- a wall at least 2.1 metres high (such as a plastic cafe blind).

If the separation requirement is not met, smoking is banned in an outdoor drinking area.

How to use this guide

This guide helps hospitality business owners, managers and event organisers understand and comply with the law, and to communicate the changes to staff and customers. It provides general guidance only. Please refer to the Tobacco Act for the exact wording of the law. A link is provided on page 25.

The term 'smoke-free' is used in this guide to describe an area where smoking is banned.

The term 'hospitality venue' is used throughout this guide to describe restaurants, cafes, take-away outlets, pubs, licensed premises and other similar businesses providing food. The smoking ban applies to three types of outdoor dining areas, which are explained in separate sections:

- **hospitality venues (see p. 2)**
- **food fairs (see p. 9)**
- **organised events (other than a food fair) (see p. 10).**

Other information in the guide

This guide also includes information on signage, resources, obligations and penalties, as well as frequently asked questions, a checklist to help you prepare for smoke-free outdoor dining, and a glossary of terms.

Hospitality venues

Smoke-free outdoor dining

Smoking is banned:

- in commercial outdoor dining areas
- in outdoor drinking areas, if any part of that area is within 4 metres of an outdoor dining area, unless separated by a wall at least 2.1 metres high (this applies to areas at the same venue as well as to neighbouring venues).

What is an outdoor dining area?

An **outdoor dining area** is an outdoor public area that has an occupier¹, and in which the occupier permits the consumption of food provided on a commercial basis. This is whether or not the food is prepared by, or on behalf of, the occupier.

This means during times food that is provided on a commercial basis:

- is actually being eaten, or
- is available to be purchased and eaten (regardless of whether anyone is eating).

Typical examples of outdoor dining areas include footpath dining, courtyards, balconies, and beer gardens that form part of, or are attached to, cafes, restaurants, take-away outlets, pubs and licensed premises.

It also includes outdoor food courts provided for customers of multiple take-away outlets.

Differences between outdoor dining areas and outdoor drinking areas

Outdoor areas associated with drinking and dining activities can be either:

- an outdoor dining area, or
- an outdoor drinking area.

An area cannot be classified as both at the same time. Table 1 summarises the characteristics and differences of the two areas.

Table 1: Characteristics of outdoor dining areas and outdoor drinking areas

Outdoor area status	Characteristics	Smoking status
Outdoor dining	<ul style="list-style-type: none">• Food is eaten, or is available to be eaten, in the area• Drinks (alcoholic and non-alcoholic) are consumed	Smoke-free
Outdoor drinking	<ul style="list-style-type: none">• No food (other than snacks) is eaten, or is available to be eaten, in the area• Drinks (alcoholic and non-alcoholic) are consumed e.g. coffee and hot drinks	Smoking restrictions apply under certain conditions

¹ See glossary for the definition of occupier.

How to comply

The law provides flexibility regarding the use of your outdoor area.

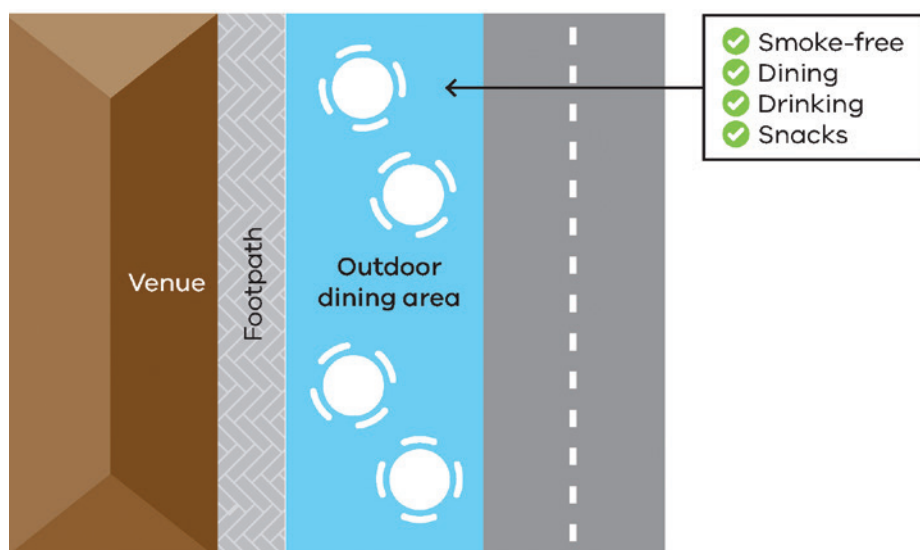
The following is a general guide about how you could comply with the law.

Permanent outdoor dining

You can have a permanent outdoor dining area, in which food is permitted to be eaten at all times.

In this case, the outdoor area must be smoke-free at all times, as shown in Figure 1.

Figure 1: Permanent outdoor dining



Acceptable 'No smoking' signs must be displayed whenever smoking is banned.

Time-limited outdoor dining

The smoking status of the same outdoor area can change, depending on the activities permitted at a particular time.

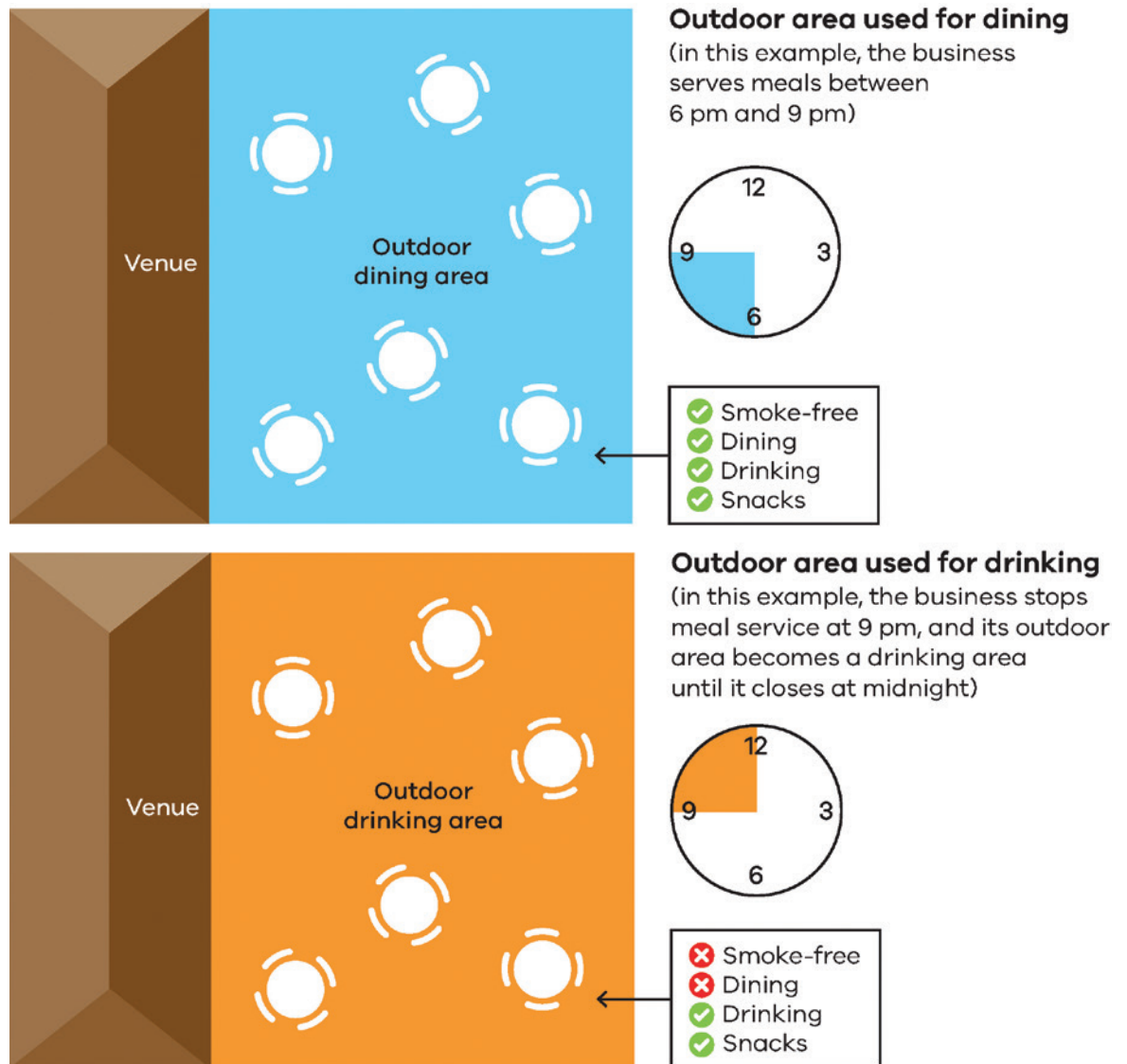
You can permit food to be eaten in an outdoor area during certain times of the day, such as at set lunch and dinner times, and not allow food to be eaten at other times.

In this case, when food is permitted to be eaten there, the outdoor area must be smoke-free.

Figure 2 shows how the same venue may choose to use its outdoor area during different times of the day.

Ashtrays and other items designed to facilitate smoking must be removed when the area is smoke-free.

Figure 2: Time-limited outdoor dining



Acceptable 'No smoking' signs must be displayed whenever smoking is banned.
Not all outdoor drinking areas permit smoking.

Separating outdoor dining and outdoor drinking areas

Under certain conditions, smoking is permitted in outdoor drinking areas.²

You may be able to separate an outdoor drinking area (where smoking is permitted) from an outdoor dining area. To minimise smoke-drift, the two areas must be separated by either:

- a 4-metre buffer zone, or
- a wall at least 2.1 metres high.

It is the responsibility of the occupier of the outdoor drinking area to separate the two areas.

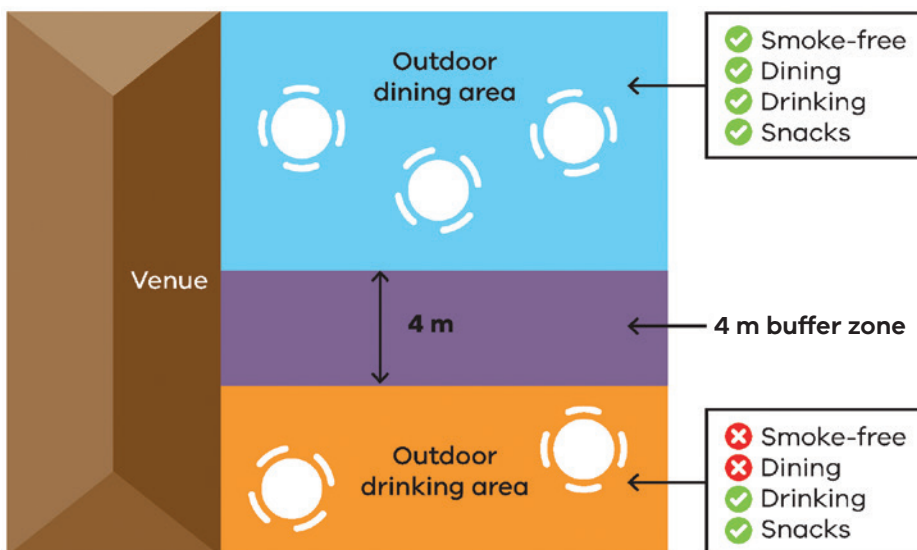
If the separation requirement is not met, smoking is banned in an outdoor drinking area.

The following examples show how the separation requirement applies at the same and neighbouring venues.

Same venue

Figures 3 and 4 show how to divide one outdoor area into separate outdoor dining and outdoor drinking areas.

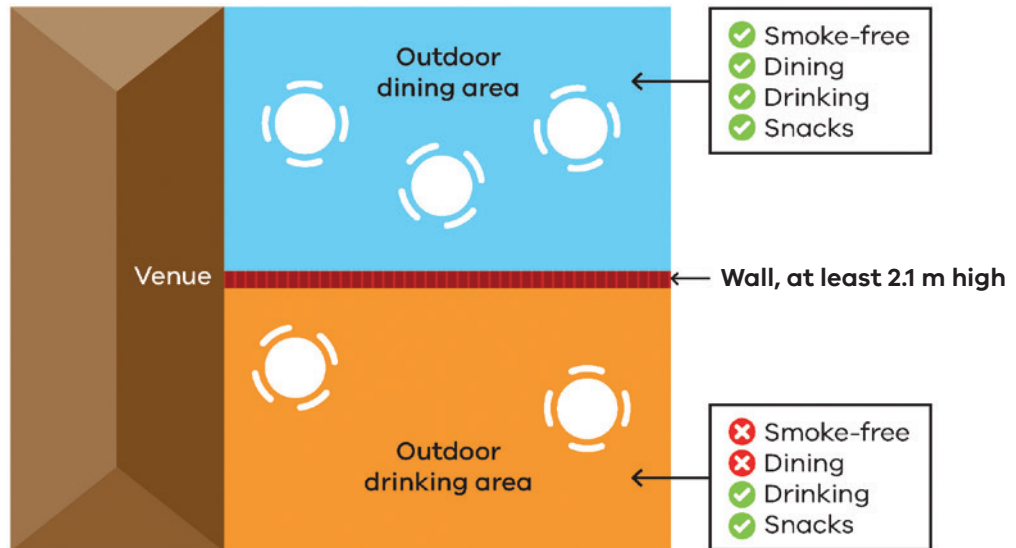
Figure 3: Separation by a 4-metre buffer zone



Acceptable 'No smoking' signs must be displayed whenever smoking is banned.

² Smoking is banned in outdoor drinking areas where there is a roof in place and the actual wall area is more than 75 per cent of the total notional wall area. (See the glossary for a definition of total notional wall area.)

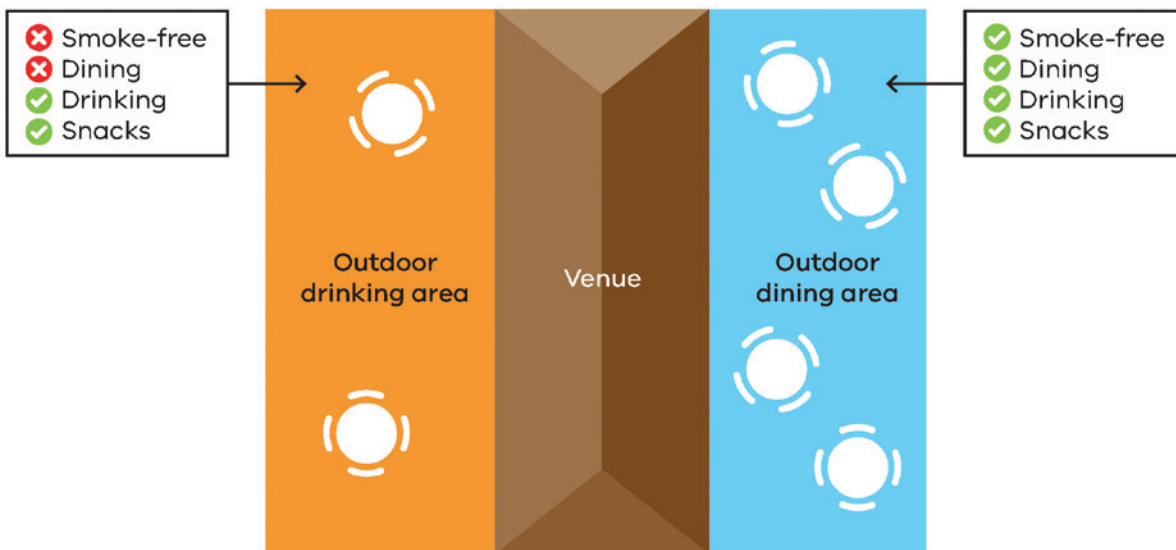
Figure 4: Separation by a wall at least 2.1 metres high



Acceptable 'No smoking' signs must be displayed whenever smoking is banned.

Figure 5 shows how the enclosed venue acts as an appropriate wall or buffer zone that completely separates the outdoor dining and outdoor drinking areas.

Figure 5: Completely separate outdoor dining and drinking areas



Acceptable 'No smoking' signs must be displayed whenever smoking is banned.

Neighbouring venues

A neighbouring venue is a different venue that is located immediately next to your venue.

If you provide an outdoor drinking area, you will need to be mindful of whether there is an outdoor dining area at a neighbouring venue.

This situation may occur when there are venues with footpath trading areas located next to each other.

To a lesser extent, this situation may occur when there are neighbouring venues with courtyards or beer gardens located next to each other.

Figures 6 and 7 show how to separate an outdoor drinking area from an outdoor dining area at a neighbouring venue.

Figure 6: Separation by a 4-metre buffer zone (neighbouring venues on a footpath)

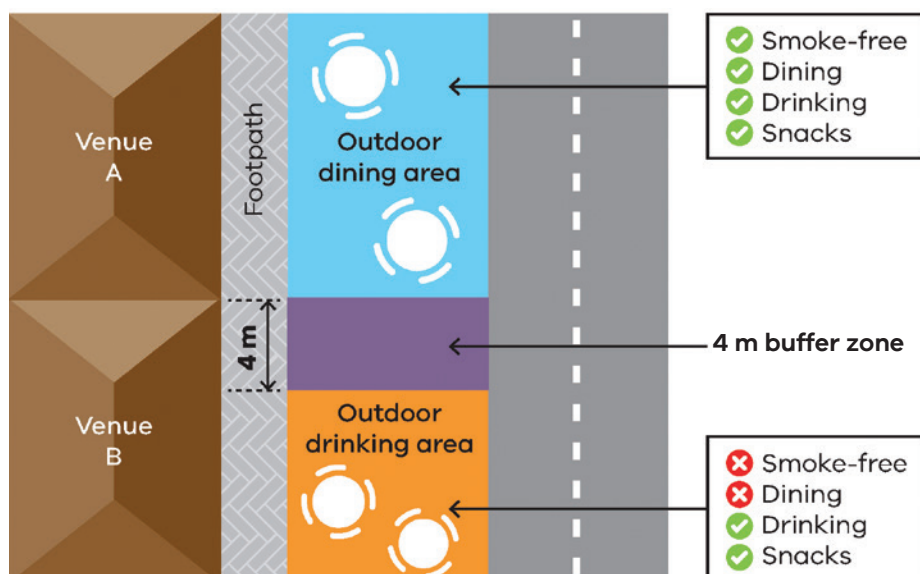
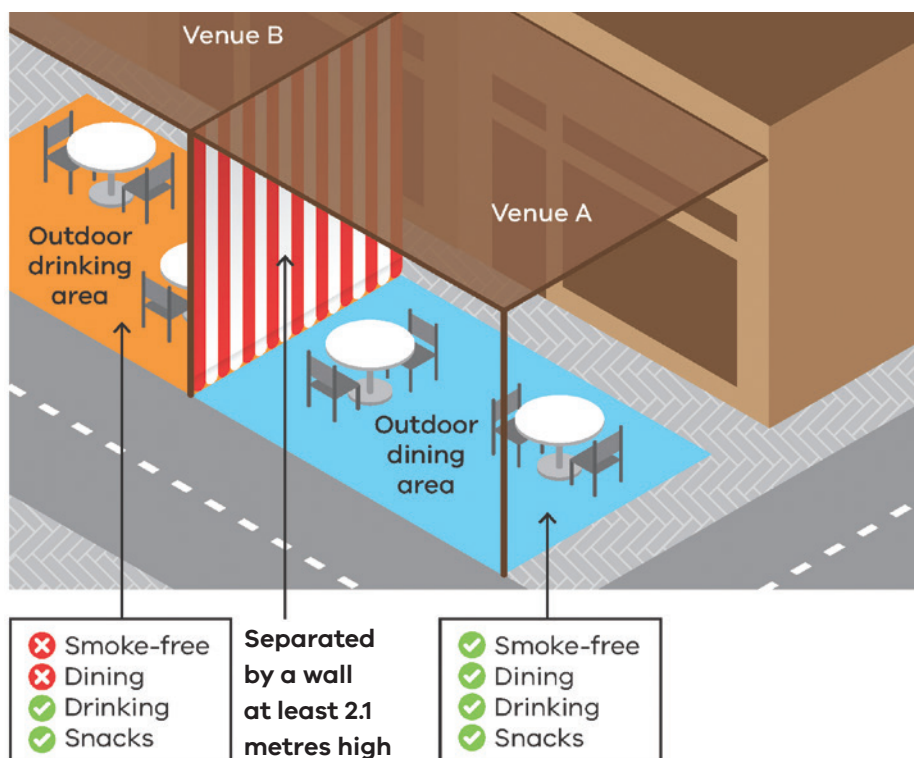


Figure 7: Separation by a wall at least 2.1 metres high
(neighbouring venues on a footpath)



Walls

A wall must be a structure or device (fixed or moveable) that prevents or significantly impedes lateral airflow, such as a water-resistant cafe blind.

Go totally smoke-free

You could choose to make your venue totally smoke-free. This will reduce the risk of non-compliance with the new law and is the most effective way to protect customers and staff from smoke-drift.

Smoking restrictions in outdoor drinking areas

Please refer to the *Smoking restrictions in outdoor drinking areas guide*, which describes in further detail the smoking restrictions in these areas, including considerations for installing a wall.

Food fairs

Smoke-free outdoor dining at food fairs

Smoking is banned in all outdoor public areas at a food fair.

What is an outdoor dining area in relation to a food fair?

An **outdoor dining area** is the entire outdoor area in a public place at which a food fair is held.

What is a food fair?

A food fair is an organised event at which the principal activity is the sale or supply of food for consumption at the event and the consumption of that food.

How do I determine what the 'principal activity' is?

The following elements can assist you to determine if your event is a food fair:

- the name and primary purpose of an event
- the type and number of food stalls and food vendors in comparison to other stalls and activities.

An example could include an international food festival at a park.

How does the ban apply to food fairs?

The smoking ban applies to all public outdoor areas at a food fair. That is, the **entire** food fair is required to be smoke-free. This means that a designated smoking area is not allowed at a food fair.

In many cases, a food fair will have a clearly marked boundary such as a fence indicating the perimeter of the food fair.

Where there is not a clearly marked boundary, food fair organisers are encouraged to take a common-sense approach in determining where a food fair exists by:

- checking the allocated area permitted by a council or other entity
- considering where it is reasonably expected food purchased at the event will be consumed.

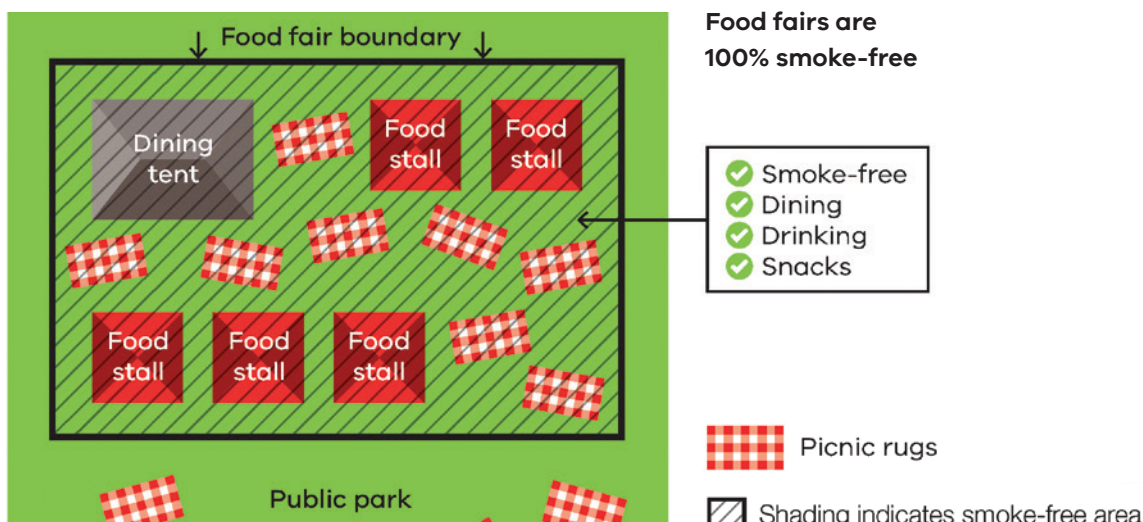
Figure 8 shows how the ban applies at a food fair.

Who is responsible for compliance?

Both the occupier of an outdoor dining area and individuals are responsible for compliance with the smoking ban.

The occupier of an outdoor dining area is the food fair organiser or manager.

Figure 8: Smoking ban at a food fair



Acceptable 'No smoking' signs must be displayed whenever smoking is banned.

Organised events

Smoke-free outdoor dining at organised events

Smoking is banned in outdoor public areas that are within 10 metres of a food stall or food vendor at an organised event (other than a food fair).

What is an outdoor dining area in relation to organised events?

An outdoor dining area means an area that is:

- part of an outdoor area in a public place at which an organised event (other than a food fair) is held, and
- within 10 metres of a place at the outdoor area at which food is provided on a commercial basis by, or with the permission of, the occupier of the outdoor area.

In short, the 10-metre outdoor radius around a food stall or food vendor is an outdoor dining area at an organised event.

What is an organised event (other than a food fair)?

While a definition of 'organised event' is not provided for in the Tobacco Act, it is considered to be any public event that is planned and organised in advance, and has a community, sporting, arts, cultural or volunteer focus. It may be a one-off event or part of a series of events.

Organised events will generally have an event organiser or manager who permits and organises a range of activities, stalls and vendors.

Organised events include:

- street and cultural festivals
- music festivals
- small, medium and large-scale community events such as church fetes, sausage sizzles and multicultural festivals
- small, medium and large-scale sporting events.

How does the ban apply to organised events (other than a food fair)?

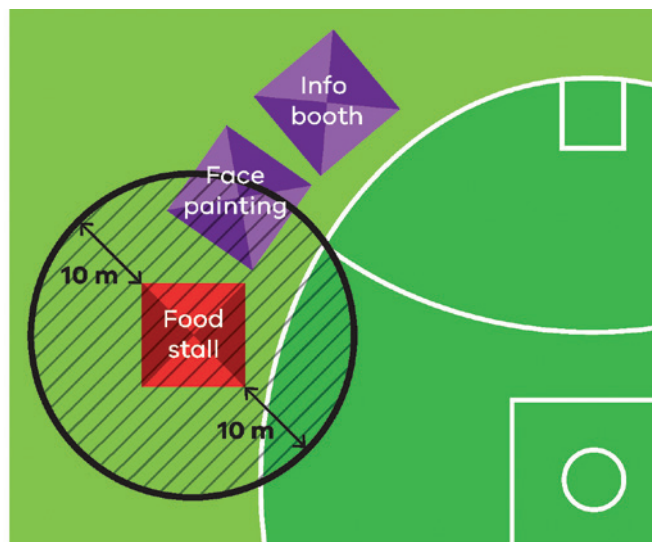
At organised events (other than food fairs), smoking is banned in outdoor areas within **10 metres** of a food stall or food vendor such as a food van. Figures 9 and 10 show how the ban may apply.

The ban does not apply to a stall or vendor selling only drinks and/or snacks. For example, coffee or sealed jars of jam.

The ban does not apply to the entire event. However, at under-age sporting events and events at schools, a further overarching smoking ban is applicable.

Please see the information in this section about these events.

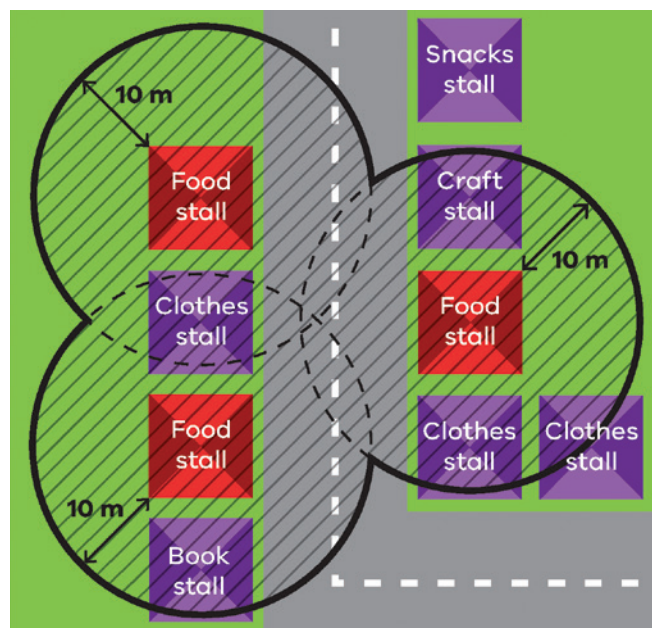
Figure 9: Example of how the smoking ban will apply to a food stall at an open-aged sporting carnival



☐ Shading indicates smoke-free area

Acceptable 'No smoking' signs must be displayed whenever smoking is banned.

Figure 10: Example of how the smoking ban will apply at a street festival



☐ Shading indicates smoke-free area

Acceptable 'No smoking' signs must be displayed whenever smoking is banned.

Layout of food stalls and food vendors

Event organisers or managers could cluster food stalls and food vendors in groups to make it easier to comply with the smoking ban.

What if the event has a designated outdoor drinking area?

Some organised events provide designated outdoor areas for the consumption of alcoholic drinks (outdoor drinking areas). For example, a seated and cordoned-off outdoor area where customers can purchase and consume alcoholic drinks.

An outdoor drinking area (where smoking under certain conditions is permitted) at an organised event must be separated from an outdoor dining area by a 4-metre buffer zone or a wall at least 2.1 metres high.

If the separation requirement is not met, smoking is banned in an outdoor drinking area.

For event organisers/managers choosing a buffer zone, this will mean that an outdoor drinking area must be at least 14 metres (10 metres around the stall, plus the 4 metre buffer zone) away from a food stall or food vendor.

To comply, event organisers can:

- clearly separate designated outdoor drinking areas from food stalls and food vendors, or
- make the outdoor drinking area or event smoke-free.

Who is responsible for compliance at an organised event (other than a food fair)?

Both the occupier of an outdoor dining area and individuals are responsible for compliance with the smoking ban.

Generally, the occupier of the outdoor dining area at an organised event is the event organiser or venue manager. This is because the event organiser or venue manager **has control** over the outdoor area within 10 metres of the food stall or food vendor (outdoor dining area).

For example:

- a grassed public area
- tables and chairs for customers to eat food purchased from a range of stalls.

However, there may be some situations where a food stallholder is the occupier of the outdoor dining area. This is because they have control over the outdoor area within 10 metres of their stall.

For example, a food stallholder that provides their own tables and chairs for customers to eat food purchased from the stall.

Table 2: Examples of occupiers of outdoor dining areas at organised events

Event example	Occupier
Food stalls at a street festival (stallholders do not provide tables and chairs for customers to eat food)	Festival organiser or manager
Food trucks at a music festival (organiser provides seated area within 10 metres of food trucks)	Festival organiser or manager
Sausage sizzle (e.g. part of church fete, or fundraising activity) with no seated area*	Venue manager
Food stall at a community festival that provides its own tables and chairs for customers to eat food purchased from the stall	Food stallholder

*Note: In a sausage sizzle at a location such as a hardware store, the venue manager is the store manager.

How do smoke-free policies at events apply?

Smoke-free policies at events are becoming increasingly popular and reflect changed community attitudes towards smoking. They are usually initiated by the event organiser or venue manager.

Smoke-free policies at outdoor events may further restrict smoking in outdoor areas and would apply in addition to the legislative ban.

While the purpose of the new law is to create smoke-free areas where food is commercially sold and eaten, event organisers or venue managers are encouraged to make their event entirely smoke-free.

Under-age sporting events

Smoking is already banned at, and within 10 metres of, an outdoor sporting venue during an organised under-age sporting event.

This means that the entire venue must be smoke-free during the event, whether or not there are food stalls and food vendors.

For further information about this specific ban, please visit the tobacco reforms website <www.health.vic.gov.au/tobaccoreforms>.

Events at schools

Smoking is banned within the grounds of, and within 4 metres of an entrance to, all primary and secondary schools.

This means that the entire premises and areas near entrances must be smoke-free, whether or not there are food stalls and food vendors.

For further information about this specific ban, please visit the tobacco reforms website <www.health.vic.gov.au/tobaccoreforms>.

Signage

Occupiers must display acceptable 'No smoking' signage to indicate smoke-free areas at a hospitality venue, food fair or organised outdoor event.

The prominent display of 'No smoking' signage is a key aspect of smoke-free outdoor dining. It will help make customers aware of the ban, promote voluntary compliance and prevent unintentional smoking in smoke-free areas.

Hospitality venues

Outdoor dining areas

'No smoking' signs must be displayed so customers are reasonably likely to see one or more signs when entering, or from within, the outdoor dining area. For example, signs can be displayed at, or beside the entrance to, an outdoor dining area.

Outdoor drinking areas within 4 metres of outdoor dining areas

'No smoking' signs must be displayed in an outdoor drinking area if any part of that area is within 4 metres of an outdoor dining area and is not separated by a wall at least 2.1 metres high.

In this case, the occupier of the **outdoor drinking area** is responsible for displaying the 'No smoking' signage. The signs must be displayed so customers are reasonably likely to see one or more signs when entering, or from within, the outdoor drinking area.

Food fairs and organised events

'No smoking' signs must be displayed so that customers are reasonably likely to see one or more signs when entering, or from within, the outdoor dining area at the food fair or organised event.

Event organisers and managers should evaluate the layout of the food fair or organised event and decide where signs are to be displayed to ensure they are likely to be seen by customers.

Multiple signs in different locations may be necessary depending on the size and layout of the food fair or organised event.

For example, signs can be placed at the main entrance and at any designated eating areas such as tables and chairs.

At organised events (other than food fairs), organisers and managers could distribute signs to food stalls and food vendors and request that they be displayed.

Can I make my own 'No smoking' signs?

Yes. You can design your own sign to suit your venue's decor as long as your sign meets the requirements detailed below.

The 'No smoking' sign must contain:

- a 'No smoking' symbol in the form of a circle and diagonal line printed in red over a depiction of a cigarette and smoke printed in black, or other symbol which clearly indicates that smoking is not permitted. The symbol must be at least 70 millimetres in height
- the phrase 'No smoking' or 'Smoking Prohibited', or other wording (such as smoke-free area) that clearly indicates that smoking is not permitted. The letters must be at least 20 millimetres in height.

Ordering signage

You can order 'No smoking' signage produced by the Department of Health and Human Services free of charge by:

- visiting the tobacco reforms website www.health.vic.gov.au/tobaccoreforms
- calling the Tobacco Information Line on **1300 136 775**.

Obligations and responsibilities: smoke-free outdoor dining

Can I face a penalty if a customer smokes in an outdoor dining area?

Yes.

The occupier of a venue or area is responsible for breaches of the smoking ban in outdoor dining areas and can receive a fine of two penalty units³ or a maximum court penalty of 10 penalty units for individuals or 50 penalty units for companies.

An 'occupier' is a person who is, or appears to be, over 16 years of age and who is, or appears to be, in control of the area or premises. An occupier is usually a:

- a business owner or manager in relation to a hospitality venue
- an event organiser or manager in relation to a food fair or other organised event.

To prevent customers from smoking in smoke-free areas, you must ensure that the appropriate 'No smoking' signage is displayed, and that items that may facilitate smoking, such as ashtrays or matches, are not provided.

Can customers who smoke also face a penalty?

Yes.

A person smoking in an area where smoking is banned can receive a fine of one penalty unit or a maximum court penalty of five penalty units.

What happens if a customer does not comply with the law?

If a person smokes in an area where smoking is banned, you should:

- ask the person to stop smoking
- inform the person that it is an offence to smoke in the venue or area
- ask the person to temporarily leave the smoke-free area if they wish to smoke.

What if a customer refuses to stop smoking?

We recommend you develop a policy or procedure for dealing with people who smoke in a smoke-free area.

If you ask a customer to stop smoking and they refuse, you should follow the same policy you would generally follow if a person exhibited antisocial or illegal behaviour.

Is an occupier always liable when a customer smokes in an outdoor dining area?

The occupier of an outdoor dining area is not liable if smoking occurs in an outdoor dining area and they can demonstrate that they did not provide an ashtray, matches, lighter or any other assistance to facilitate smoking, and either:

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

³ Penalty units are indexed annually. The value of one penalty unit for 2017–18 is \$158.57.

Can I face a penalty for not displaying a 'No smoking' sign at my venue or event?

Yes.

The occupier breaches the law if they fail to display acceptable 'No smoking' signs and can receive a fine of two penalty units or a maximum fine of 10 penalty units for individuals or 50 penalty units for companies.

Who will enforce the smoking ban?

There is strong community support for banning smoking in outdoor dining areas. This means most people will voluntarily comply with the smoking ban and expect others to do so.

Inspectors, authorised under the *Tobacco Act 1987*, may provide information about the ban, and enforce it when necessary. The first priority of the inspector is to make sure smokers understand the ban.

Inspectors may not be able to respond to every complaint but, where circumstances allow, may attend in response.

You and your staff can assist to raise awareness of the ban by displaying 'No smoking' signs, training staff and informing customers.

Please refer to the *Smoking restrictions in outdoor drinking areas guide*, for obligations and responsibilities in relation to outdoor drinking areas.

Offences and penalties

Table 3: Summary of offences and penalties

Smoke-free outdoor dining offences under the Tobacco Act from 1 August 2017	Infringement penalty	Maximum court penalty
Smoker		
Smoking in an outdoor dining area.	1 penalty unit	5 penalty units
Occupier		
An individual occupier where smoking occurs in an outdoor dining area.	2 penalty units	10 penalty units
A body corporate occupier where smoking occurs in an outdoor dining area.	5 penalty units	50 penalty units

Signage offences	Infringement penalty	Maximum court penalty
An individual occupier of an outdoor dining area who fails to display acceptable 'No smoking' signs.	2 penalty units	10 penalty units
A body corporate occupier of an outdoor dining area who fails to display acceptable 'No smoking' signs.	5 penalty units	50 penalty units

Penalty units are indexed annually. The value of one penalty unit for 2017–18 is \$158.57.

Please refer to the *Smoking restrictions in outdoor drinking areas guide* for applicable offences and penalties in relation to outdoor drinking areas.

Frequently asked questions

What is the reason for the introduction of smoke-free dining?

There is a compelling rationale and strong support for smoke-free outdoor dining. Smoke-free outdoor dining will:

- protect the community from the harmful effects of second-hand smoke
- de-normalise smoking behaviours, which is particularly important for discouraging children from taking up smoking
- support those who have recently quit smoking or who are trying to quit by removing smoking visual cues and triggers
- improve Victorians' outdoor dining experience.

The three different types of outdoor dining areas allow people to purchase and eat food in smoke-free environments at a broad range of events and venues.

Do 'No smoking' signs have to be displayed at all times?

'No smoking' signs are only required to be displayed while an outdoor area is required to be smoke-free.

For example, if the status of an outdoor area changes from an outdoor dining area to an outdoor drinking area 'No smoking' signs may be removed if smoking is permitted in the area.

Can I display a 'smoking permitted' sign in an area not required to be smoke-free?

The display of a 'Smoking permitted' or similar sign to advise customers where smoking is allowed is considered a tobacco advertisement.

A sign of this nature breaches the Tobacco Act if there is a direct or indirect financial benefit associated with its display.

What are 'snacks'?

A snack is a pre-packaged shelf-stable food that:

- is sealed in the container or package in which the manufacturer intended it to be sold, and
- does not require any preparation prior to serving.

Shelf-stable food is generally taken to mean food that can be stored safely for long periods (months) at room temperature.

Snacks also include uncut and unpeeled fruit.

Examples of snacks include, but are not limited to:

- pre-packaged confectionery or savoury foods, such as lollies, biscuits, pretzels, chocolate, chewing gum, crisps and nuts
- pre-packaged popcorn
- pre-packaged muesli slices
- biscuits manufactured and packaged on-site and served in a pre-packaged form.

What is 'food' for the purposes of the smoking ban?

'Food' is anything you can consume that is not a snack or a drink. Please note that the following list is designed to guide you on the difference between foods and snacks for the purposes of the law.

Examples of foods include, but are not limited to:

- pre-packaged microwaveable pie (is not a snack because it is not shelf stable)
- pre-packaged sandwiches and salads (are not snacks because they are not shelf stable)
- cut or peeled fruit
- hot chips
- soups
- tapas and appetisers
- pre-packaged ice cream (is not a snack because it is not shelf stable)
- unpacked nuts or crisps served in a bowl.

Can I package my own snacks?

Yes.

A business can choose to make and supply its own snacks. A snack does not have to be prepared and packaged by an off-site manufacturer.

The packaging could be undertaken as part of the manufacturing process.

For example, if a business makes and pre-packages biscotti in a kitchen before sale, it is considered a snack if it is provided to a customer in that form.

An item that is packaged at the point of sale is not considered a snack because it is not pre-packaged.

If meals are prepared off site and eaten in an outdoor area, is it still required to be smoke-free?

Yes.

If you allow meals served on a commercial basis to be eaten in an outdoor area, this makes it an 'outdoor dining area', irrespective of whether the meals are prepared on site or not.

For example, if a customer orders a pizza from a nearby take-away shop, and the occupier permits it to be eaten in an outdoor area at the venue, the smoking ban applies.

Can smokers eat in smoking only sections?

If food is permitted to be eaten in an outdoor area of a venue, it is considered an outdoor dining area and smoking is banned.

Customers can eat snacks in outdoor drinking areas.

For more information, please refer to the *Smoking restrictions in outdoor drinking areas guide* which explains the smoking restrictions in outdoor drinking areas.

How will the ban apply to a business only selling coffee and drinks?

If a business permits only the consumption of coffee, other drinks and snacks outdoors, the area is considered an outdoor drinking area.

For more information, please refer to the *Smoke restrictions in outdoor drinking areas guide* which explains the smoking restrictions in outdoor drinking areas.

However, if a business permits the consumption of coffee and food (other than snacks) outdoors, the area is considered an outdoor dining area, and is required to be smoke-free.

Do I need to separate my outdoor dining area from an outdoor drinking area at my neighbour's premises?

No.

It is the responsibility of the **occupier of an outdoor drinking area** to separate their outdoor drinking area (if smoking is permitted) from your outdoor dining area by either:

- a 4-metre buffer zone, or
- a wall at least 2.1 metres high, such as a water resistant cafe blind.

What do I need to do if I want to install a wall such as a cafe blind or change the structure of my outdoor dining or outdoor drinking area?

You will need to check with your local council if you are planning to install a wall such as a cafe blind on a footpath or change the structure of your outdoor area. This is to ensure you meet all planning, building and kerbside trading requirements.

If you hold a liquor licence, you should also contact the Victorian Commission for Gambling and Liquor Regulations.

In granting planning, building, and kerbside trading permits, councils do not assess compliance under the Tobacco Act.

Is smoking still banned if there are no tables and/or chairs in my outdoor dining area?

Yes.

Smoking is banned in an outdoor dining area, irrespective of what furniture may or may not be in the space.

Does the smoking ban apply to the use of e-cigarettes and shisha tobacco?

Yes.

From 1 August 2017, the use of e-cigarettes and the smoking of shisha tobacco is banned in areas where smoking is banned under the Tobacco Act, including:

- outdoor dining areas
- outdoor drinking areas where:
 - there is a roof and walls that cover more than 75 per cent of the total notional wall area, or
 - any part of the area is within 4 metres of an outdoor dining area, unless separated by a wall of at least 2.1 metres high.

Checklists and planning

Business owners, managers and event organisers should plan for the changes and communicate the new law to staff and customers through signs, information and other promotional materials.

Planning and communication will help promote voluntary compliance and prevent customers unknowingly smoking in a smoke-free area.

You can use the following checklists to prepare for the changes commencing 1 August 2017.

Hospitality venues

Is your area an 'outdoor dining area'?

Check by answering the follow questions.

Criteria	Tick for yes
Do you control or manage an outdoor area as part of your business or venue?	<input type="checkbox"/>
Are there times when you permit food (other than snacks) to be eaten in the outdoor area?	<input type="checkbox"/>

If you answered 'yes' to both of the questions above, your area is an outdoor dining area. Smoking is banned in these areas when food (other than snacks) is permitted to be eaten in the outdoor area.

Signage

Outdoor dining areas	Tick for Completed
Display acceptable 'No smoking' signs in outdoor dining areas so customers can see a sign when entering, or from within, the outdoor dining area.	<input type="checkbox"/>

Food fairs

Is your event a food fair?

Criteria	Tick for yes
Do you control or manage an organised event in which there is an outdoor area?	<input type="checkbox"/>
Is the main activity at your event the sale and consumption of food (other than snacks)?	<input type="checkbox"/>

If you answered 'yes' to both of the questions above, your event is a food fair and smoking is banned in outdoor areas at the food fair.

Signage requirements

Food fairs	Tick for Completed
Display acceptable 'No smoking' signs so customers can see a sign when entering, or from within, the food fair.	<input type="checkbox"/>

Other organised events

Organised events	Tick for yes
Do you control or manage an outdoor area at an organised event (such as a community, sporting, arts, cultural or volunteer event) where there are food stalls or food vendors?	<input type="checkbox"/>
Do you have control of an outdoor area within 10 metres where food (other than snacks) is sold by food stalls or food vendors? For example, food vans.	<input type="checkbox"/>

If you answered 'yes' to both of the questions above, your area is an outdoor dining area and smoking is banned within 10 metres of food stalls or food vendors.

Signage requirements

Organised events	Tick for Completed
Display acceptable 'No smoking' signs so customers can see a sign when entering, or from within, the 10 metre area around a food stall or food vendor. Note, you could provide food stallholders and food vendors with acceptable 'No smoking' signs to assist with displaying signage.	<input type="checkbox"/>

Preparing for smoke-free outdoor dining

Activity	Tick Yes/no	Who	Timeframes and action
Has a person been nominated to coordinate the transition to smoke-free outdoor dining?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Hospitality venues – have you decided about how you will use your outdoor area?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Hospitality venues – have you clearly established your outdoor dining area?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Have you ordered and displayed 'No smoking' signs?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Are staff aware of the smoking ban?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Are staff aware of their role on informing customers about the change?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Do you and your staff know what to do if a customer is smoking in an outdoor dining area?	<input type="checkbox"/> Yes <input type="checkbox"/> No		

Glossary

Term	Meaning
acceptable 'No smoking' sign	<p>A sign that contains:</p> <ul style="list-style-type: none"> • a 'No smoking' symbol in the form of a circle and diagonal line printed in red over a depiction of a cigarette and smoke printed in black, or other symbol that clearly indicates that smoking is not permitted, with the symbol being at least 70 millimetres in height • the phrase 'No smoking' or 'Smoking Prohibited' or other wording that clearly indicates that smoking is not permitted, in letters that are at least 20 millimetres in height.
food	Does not include drink or snack.
food fair	An organised event at which the principal activities are the sale or supply of food for consumption at the event and the consumption of that food.
occupier	A person who is, or appears to be, over 16 years of age and who is, or appears to be, in control of the area or premises.
outdoor dining area	<ul style="list-style-type: none"> • An outdoor area in a public place that has an occupier; and that the occupier permits to be used for the consumption of food provided on a commercial basis, whether or not prepared by, or on behalf of, the occupier, or • An outdoor area in a public place at which a food fair is held, or • An area that: <ul style="list-style-type: none"> – is part of an outdoor area in a public place at which an organised event (other than a food fair) is held; and – is within 10 metres of a place at the outdoor area at which food is provided on a commercial basis by, or with the permission of, the occupier of the outdoor area.
outdoor drinking area	<p>Any of the following outdoor areas predominantly used for the consumption of drinks:</p> <ul style="list-style-type: none"> • a balcony or veranda • a courtyard • a rooftop • a marquee (if unenclosed) • a street or footpath • any similar outdoor area.

Term	Meaning
snack	<ul style="list-style-type: none"> • A pre-packaged shelf-stable food that: <ul style="list-style-type: none"> – is sealed in the container or package in which the manufacturer intended the food to be sold by retail, and – does not require any intervention or attention by, or on behalf of, the provider before consumption • A piece of fruit which has not been cut for the purposes of consumption.
total notional wall area	<p>The total area of the wall surface if the walls were:</p> <ul style="list-style-type: none"> • at the perimeter of the roofed area, and • continuous, and • of a uniform height equal to the lowest height of the roof.
wall	<p>Includes any structure or device (whether fixed or movable) that prevents or significantly impedes lateral airflow, including a window or door.</p>

Resources and information

Resources

'No smoking' signage and promotional materials can be ordered free of charge from the Department of Health and Human Services.

To order the signage or promotional materials, please visit the tobacco reforms website <www.health.vic.gov.au/tobaccoreforms>, and select resources and fact sheets.

Resources are also provided in the following languages:

- Arabic
- Chinese (Simplified)
- Vietnamese.

Further information

For further information on smoke-free outdoor dining, you may wish to:

- visit the tobacco reforms website <www.health.vic.gov.au/tobaccoreforms>
- call the Tobacco Information Line on **1300 136 775**.

To view the exact wording of the law from 1 August 2017, visit the Victorian Government legislation website <www.legislation.vic.gov.au> and search Tobacco Act.

