

# Fresh Air Solutions

## Guide to Licensed Premises for Outdoor Smoking Areas



This guide contains information regarding the Northern Territory of Australia's Tobacco Control Legislation Amendment Act 2010, Part 2 of the Tobacco Control Regulations 2010 and the Enclosed Area Guidelines, and specifically relating to requirements for smoke free areas within liquor licensed premises.

The amendments to Regulation 15B of the Tobacco Control Regulations, allowing food to be consumed in both buffer and smoking areas providing it is brought into these areas by patrons and not served by licensed premises staff.

Changes to Tobacco Control Regulations of the Tobacco Control Act by the Northern Territory Government as in force January 2010, ban smoking in most areas of liquor licensed premises in the Northern Territory.

Although smoking is banned throughout liquor licensed premises in the Northern Territory, certain areas of a liquor licensed premises that satisfy the conditions outlined in the Tobacco Control Regulations can be designated as an exempt area allowing patrons to smoke within those exempt areas.

The onus to comply with *Tobacco Control Act*, Part 2 of the Tobacco Control Regulations 2010 and the Enclosed Area Guidelines is the responsibility of the owner or licensee of the premises.

In liquor licensed premises, an exempt area will generally be an outdoor smoking area, also known as an OSA.

An outdoor area where smoking is not permitted is known as an outdoor smoke-free area, also known as an OS-FA.

The aim of this guide is to assist the operators of licensed premises in understanding the conditions for exempt areas, under the Tobacco Control Regulations of the *Tobacco Control Act* and the Enclosed Area Guidelines issued by the NT Chief Health Officer.

It is recommended that this guide is read in conjunction with the current Tobacco Control Regulations, *Tobacco Control Act* and Enclosed Area Guidelines available from [www.health.nt.gov.au](http://www.health.nt.gov.au).

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### Disclaimer

The information contained in this document is intended only as a general guide and introduction to the relevant provisions of the Tobacco Control Act and regulations regarding smoking in enclosed Public spaces. No warranty as to the completeness of the information contained in this document without first having obtained appropriate professional legal advice about obligations in specific circumstances. The Northern Territory Government, Australian Hotels Association (NT) and Innersphere Pty Limited do not accept any liability for any expense, loss or damages suffered as a result of reliance on this guide.

## Smoke Free Areas

All enclosed public areas, workplaces, outdoor public venues, food service areas, public transport vehicles and transport areas, shared accommodation, education facilities, entrance areas and areas within 3 meters of air conditioning inlets are required to be smoke free areas.

In liquor licensed venues, the only areas that are not required to be smoke free are known as exempt areas.

The aim of this guide is to help you in planning for and ensuring compliance of exempt areas (OSAs) within your venue where achievable.

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## Overview of requirements for exempt / outdoor smoking areas ( OSAs )

A liquor licensed premises may designate one or more areas of the premises to be an exempt or outdoor smoking area, providing that area fully satisfies the following conditions.

Each of the following eight conditions is explained in detail in this guide.

### 1) ENCLOSURE

### 2) TOTAL FLOOR SPACE

### 3) DELINEATION / SIGNAGE

### 4) FOOD

### 5) BUFFERS

### 6) ENTERTAINMENT

### 7) EQUAL AMENITY

### 8) MANAGEMENT PLAN

If these conditions have or will be met, certification can be obtained from Director of Licensing, Regulation & Alcohol Strategy, Department of Justice. Please refer to the end of this guide for information on how.

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## 1) ENCLOSURE

For information on what is an enclosed area refer to the 'Enclosed Area Guidelines' available from [http://www.health.nt.gov.au/Alcohol\\_and\\_Other\\_Drugs/Tobacco/SmokeFree\\_NT/](http://www.health.nt.gov.au/Alcohol_and_Other_Drugs/Tobacco/SmokeFree_NT/).

A designated exempt / outdoor smoking area must be less than 75% enclosed.

'Enclosed' refers to a place or part of a place, that is used or intended to be used by members of the public and has a ceiling or roof and (except for doorways and passageways) is completely or substantially enclosed by walls, windows, blinds, curtains or other objects, materials or things.

Under the *Tobacco Control Act* and the Enclosed Area Guidelines, outdoor smoking areas ( OSAs ) are required to be less than 75% enclosed.

This requirement allows outdoor smoking areas ( OSAs ) to be under cover of a ceiling or shade structure providing they can be surveyed and shown to be less than 75% enclosed.

The enclosed percentage of an outdoor smoking area can be established by measuring the surface areas of the outdoor smoking space. Two surface areas need to be calculated:

### Actual Enclosed Area

The TOTAL ACTUAL ENCLOSED AREA is the sum of the surface areas of all solid building elements of an outdoor smoking area, including all walls, closing doors and windows, ceilings, columns, beams and surfaces that prevent or impede the airflow directly from a genuine outdoor area. ( figure 1 )

## Notional Surface Area

The notional surface area is the total area of the walls, columns, ceilings, and all other openings such windows and doors as well as the implied surface area of all unobstructed openings direct to the outdoors such as a completely open wall on the side of a building.

With exception to working out the area of curved ceilings the surface area does not include the floor area.

The example ( figure 1 ) shows an outdoor smoking area with a **TOTAL NOTIONAL AREA** consisting of a ceiling, a wall of fixed glazing separating it from the interior of the venue, a solid wall, a wall with a permanently open window and a full height opening to the outside.

The example ( figure 2 ) shows the **TOTAL ACTUAL ENCLOSED AREA** consisting of a ceiling, a wall of fixed glazing separating it from the interior of the venue, a solid wall on the right and the solid surface of the wall with a permanently open window on the left.



Figure 1: OSA.



Figure 2: TOTAL ACTUAL ENCLOSED AREA



Figure 3: Surface area of openings that contribute to TOTAL NOTIONAL AREA.

## Calculating the Enclosed Percentage

Once you have the **TOTAL NOTIONAL AREA** and the **TOTAL ACTUAL ENCLOSED AREA**, the enclosed percentage of your outdoor smoking area can be determined.

The enclosed ratio is determined by dividing the **TOTAL ACTUAL ENCLOSED AREA** by the **TOTAL NOTIONAL AREA**. The enclosed percentage of your outdoor smoking area is achieved by multiplying that figure by 100

$$\left( \frac{\text{Total Actual Enclosed Area as square metres}}{\text{Total Notional Area as square metres}} \right) \times 100 = \text{ratio \%}$$

## Example Calculation

The following calculation relates to figures 1, 2, 3 and 4.

### Total Actual Enclosed Area

wall A	= 4 x 3m (minus opening)	= 7.92 square metres
wall B	= 8 x 3m	= 24 square metres
wall C	= 4 x 3m	= 12 square metres
ceiling	= 8 x 4m	= 32 square metres
<b>Total Actual Enclosed Area</b>		<b>= 75.92 square metres</b>

### Total Notional Area

total actual enclosed area (from table above)	= 75.92 square metres
opening 1 = 8 x 3m	= 24 square metres
opening 2 = 3.4 x 1.2 m	= 4.08 square metres
<b>Total Notional Area</b>	<b>= 104 square metres</b>

$$\left( \frac{\text{Total Actual Enclosed Area 75.92 square metres}}{\text{Total Notional Area 104 square metres}} \right) \times 100 = 73 \%$$

This outdoor smoking area would comply as it is less than 75% enclosed

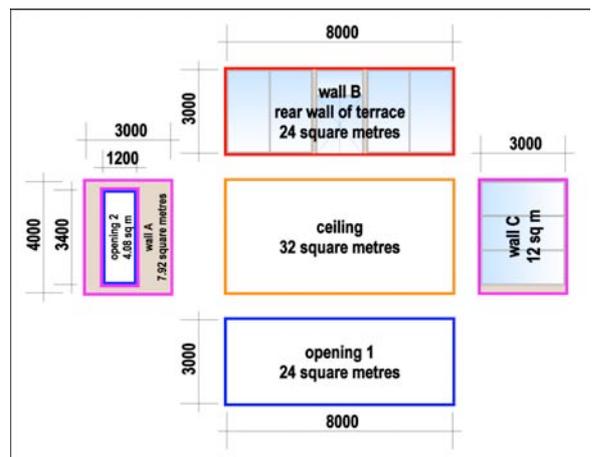


Figure 4: Individual surface areas of walls, ceiling and openings.

## Points for ensuring your exempt / covered outdoor smoking area is not enclosed

No two exempt / outdoor smoking areas ( OSAs ) are the same. There are many variants of wall, ceiling and opening forms that must be surveyed to determine if an outdoor smoking area ( OSA ) satisfies the Tobacco Control Regulation.

Pre-existing areas within licensed premises that do not meet this ratio, but have evidence from a structural engineer that certifies the premises cannot reasonably undertake structural modifications, will be assessed on a case by case basis and may be deemed to be compliant.

### The Outside

Where the guidelines use the term 'opens directly to the outside' this means the opening, window, door or penetration opens to a genuine outside area that is uncovered and exposed to weather elements including sun, wind & rain.

### Walls and Obstructions

In outdoor smoking areas ( OSA ) a wall is defined as any structure or device, whether fixed or movable, that prevents, impedes or obstructs lateral airflow from a genuine outside area.

### Operable doors, windows and penetrations.

For any door, window, or closable penetration to be considered as an opening it needs to be key locked fully open during the liquor licensed premises hours of operation or any time that the outdoor smoking area ( OSA ) is occupied.

It must be locked open in such a way to prevent staff and patrons from closing the doors or windows during the hours of operation. This applies to door panels, roller grilles, bi-fold doors, sliding windows, tilt panels, blinds, plastic sheeting or any other kind of operable systems.

Only the portion of the opening, which is completely unobstructive to air flow into the outdoor smoking areas ( OSA ) directly from the outside can be considered as an opening in the total notional calculation. Fixed panels and the sum of the surface area of the door system in its locked open position must be included in the total actual enclosed area.

### Fixed and Operable Louvres

Fixed louvres in an opening must be completely non obstructive of the airflow into a exempt / outdoor smoking area. Louvres may be angled, but all louvres and slats need to be in a fixed and permanently open state. The openings between the louvres have to be wide enough to be perceived as capable of allowing the uninterrupted flow of air.

Operable louvres in an opening they must be locked open during the liquor licensed premises hours of operation, or any time that exempt / outdoor area is occupied.

Mostly open security meshes and grilles that are non impedant to lateral airflow are also acceptable methods of securing openings.

### Operable Ceilings

A roof with fixed or movable slats that is closed at some point during a liquor licensed premises hours of operation does not comply with the definition of a locked open door or window. A roof with fixed movable slats that incorporates a rain sensor and closes automatically in the event of rain does not qualify as a fixed opening.

### Curved and Pitched Ceilings.

The surface area of curved and pitched ceiling forms can be measured as a regular horizontal flat ceiling to the extent of the floor area the curved or pitched ceiling form covers.

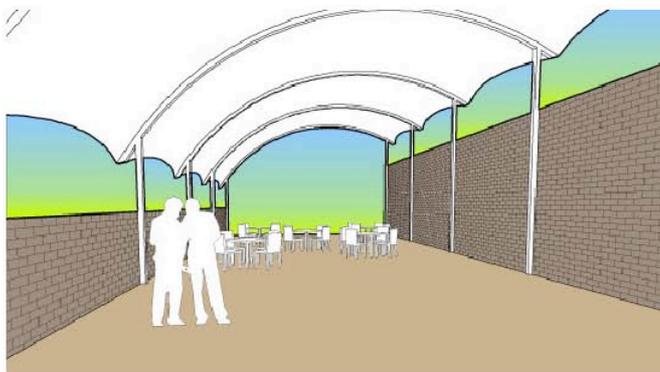


Figure 5: OSA with curved stretched membrane

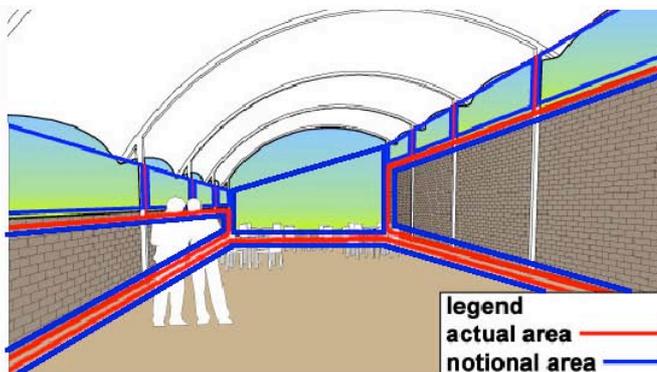


Figure 6: OSA with surfaces highlighted

Tobacco Control Act – Enclosed Area Guidelines and advice from Warwick Kneebone, Senior Policy Advisor / Coordinator Tobacco Policy Enforcement and Education, Alcohol and Other Drugs Program

## 2) TOTAL FLOOR SPACE

Outdoor smoking areas ( OSAs ) must not exceed 50% of the dedicated eating and drinking areas of liquor licensed premises.

Areas that are not classified as 'outdoor eating and drinking areas' including car parks, drive through bottle shops, foot paths or other spaces that are not 'outdoor eating and drinking areas' for the purposes of section 5B of the Act and therefore are not to be taken into account for the purposes of calculating the allowable size of an outdoor smoking area ( OSA ).

An outdoor eating and drinking area is an area that is not an enclosed public area, where patrons may consume food or drink provided from an on-site food service. See section 5B of the Act.

In the example ( figure 7 ) the total floor space of the outdoor smoke-free area ( OS-FA ) is 180 square metres. The total floor space of the two outdoor smoking areas ( OSAs ), #1 and #2, is 106 square metres. This complies as the outdoor smoking area is less than 50% of the total outdoor eating and drinking area.

TOBACCO CONTROL REGULATIONS Part 2 Division 2 (r12.2)



Figure 7: Example of a typical liquor licensed premises.

### 3) DELINEATION / SIGNAGE

Outdoor smoking areas ( OSAs ) must be clearly delineated from other areas of the premises and marked by signage indicating it is an outdoor smoking area.

You are allowed to provide way finding signage to direct patrons to the location of a venue's OSA.

TOBACCO CONTROL REGULATIONS Part 2 Division 2 (r12.3a)

Smoke-free area signage must comply with the following requirements.

- a) The size of the sign must be at least A5 size (210 x 148mm), with a white background.
- b) The sign is to contain the phrase 'NO SMOKING' marked in a bold sans serif font in black capital letters at least 13 millimetres high so the whole phrase is at least 13 centimetres wide.
- c) The sign is to contain the international no smoking symbol of minimum 98mm diameter.



Figure 8: Example of NO SMOKING signage – not to scale.

d) The sign is to contain the phrase 'Tobacco Control Act 2002' marked in an italicised, sans serif font in black capital and lower case letters that are minimum 10mm and 7mm tall respectively so that the whole phrase is at least 13 centimetres wide.

e) The sign is to contain the phrase 'Penalties Apply' in a sans serif font in black capital and lower case letters at least 7.5mm and 6mm high respectively.

TOBACCO CONTROL REGULATIONS Part 2 Division 1 (r6)

#### 4) FOOD

Only food that has been carried into the OSA or buffer by patrons can be consumed in these areas.

Staff are not permitted to take orders from or deliver food or drink to patrons in an O.S.A. Staff are permitted to clear plates, cutlery, glasses rubbish and hazards as well as provide security to patrons in an O.S.A.

TOBACCO CONTROL REGULATIONS Part 2 Division 2 (r12.3b)

#### 5) BUFFERS

A buffer is a physical separation or barrier that is required to separate outdoor smoking areas ( OSAs ) from adjacent outdoor eating and drinking areas in order to diminish the effect of smokers on patrons in OS-FAs.

Each outdoor smoking area must have buffers along its perimeter that are adjacent to the other parts of the outdoor eating and drinking areas of the premises as well as entries into the venue.

This buffer can be either a minimum 2.1 metre high physical barrier, that is impervious to smoke, or an area that is at least 2 metres wide between smoking and smoke-free outdoor areas.

The minimum 2.1 metre high physical barrier can be in the form of a screen, wall, or thick screening hedge as shown in figure 2.

If a buffer area of at least 2 metres wide is used, at least half of the area must be taken from the outdoor smoking area. As shown in figure 3, circulation space (eg, finished floor, walkway), a garden bed or an area of pot plants, could form a 2 metre wide buffer zone.

Drinking is permitted in buffers however if furnishings are placed in the buffer then clear signage is required to identify the extent of the buffer and what is not permitted in the buffer for example 'Smoking and service is not permitted in this area'.

If no furnishings are placed within the buffer area then the additional signage described above is not required.

The Act and Regulations do not require a buffer where the OSA is adjacent to the perimeter / boundary.

Entrance areas are required to be smoke free. Under the Tobacco Control Act, an entrance area is the space within 2 meters of a door, window or other opening that opens into or onto an enclosed public or workplace area.

Additionally, air-conditioning inlet areas, meaning areas within 3 meters of an air-conditioning inlet through which air is directed into a smoke-free area, are required to be smoke free.

TOBACCO CONTROL REGULATIONS Part 2 Division 2 (r12.3c) TOBACCO CONTROL ACT Part 2

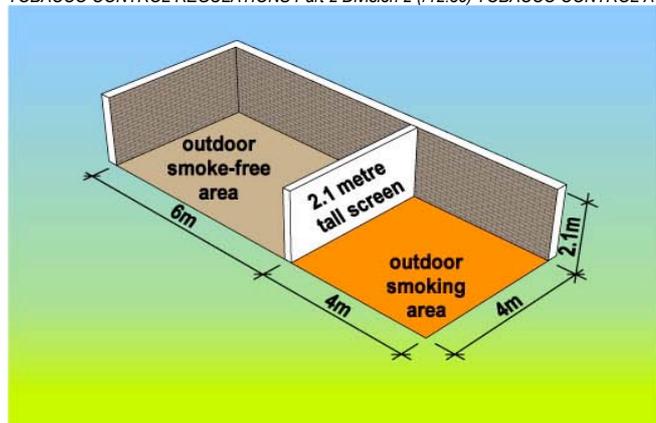


Figure 9: Example of 2.1 metre high screen.

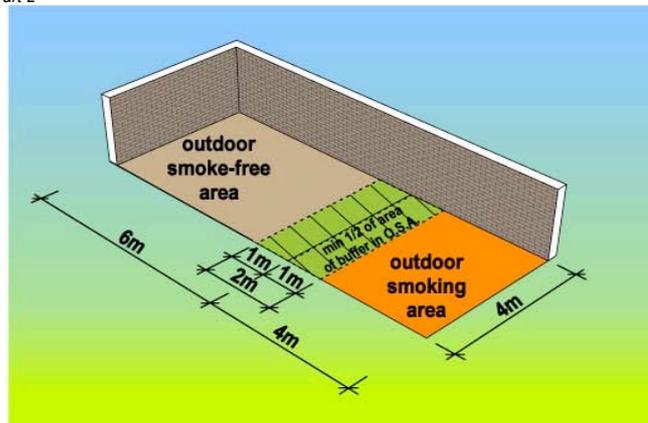


Figure 10: Example of 2 metre wide buffer area.

## 6) ENTERTAINMENT

Entertainment including live performance, disc jockeys, pool tables and gaming machines are not to be provided in outdoor smoking areas ( OSAs ).

The Regulations does not prevent the provision of entertainment in outdoor smoking areas ( OSAs ) such as audio and visual equipment.

All other forms of entertainment including visual equipment, televisions and projectors, audio equipment, speakers and jukeboxes are permitted in outdoor smoking areas ( OSAs ).

Entertainment that is prohibited from being provided directly to OSAs may be viewed from the OSA provided it is from elsewhere in the venue

TOBACCO CONTROL REGULATIONS Part 2 Division 2 (r12.3d)

## 7) EQUAL AMENITY

Patrons in outdoor smoke-free areas ( OS-FAs ) must have at least equal amenity to venue facilities as those patrons in outdoor smoking areas ( OSAs ).

The concept of 'equal amenity' refers to the characteristics and features of a smoke-free area being of similar standard in terms of pleasantness, accessibility and services available to those of an outdoor smoking area.

Patrons in OS-FAs should be provided with a similar standard of comfort, seating, entertainment as those in OSAs

TOBACCO CONTROL REGULATIONS Part 2 Division 2 (r12.3e)

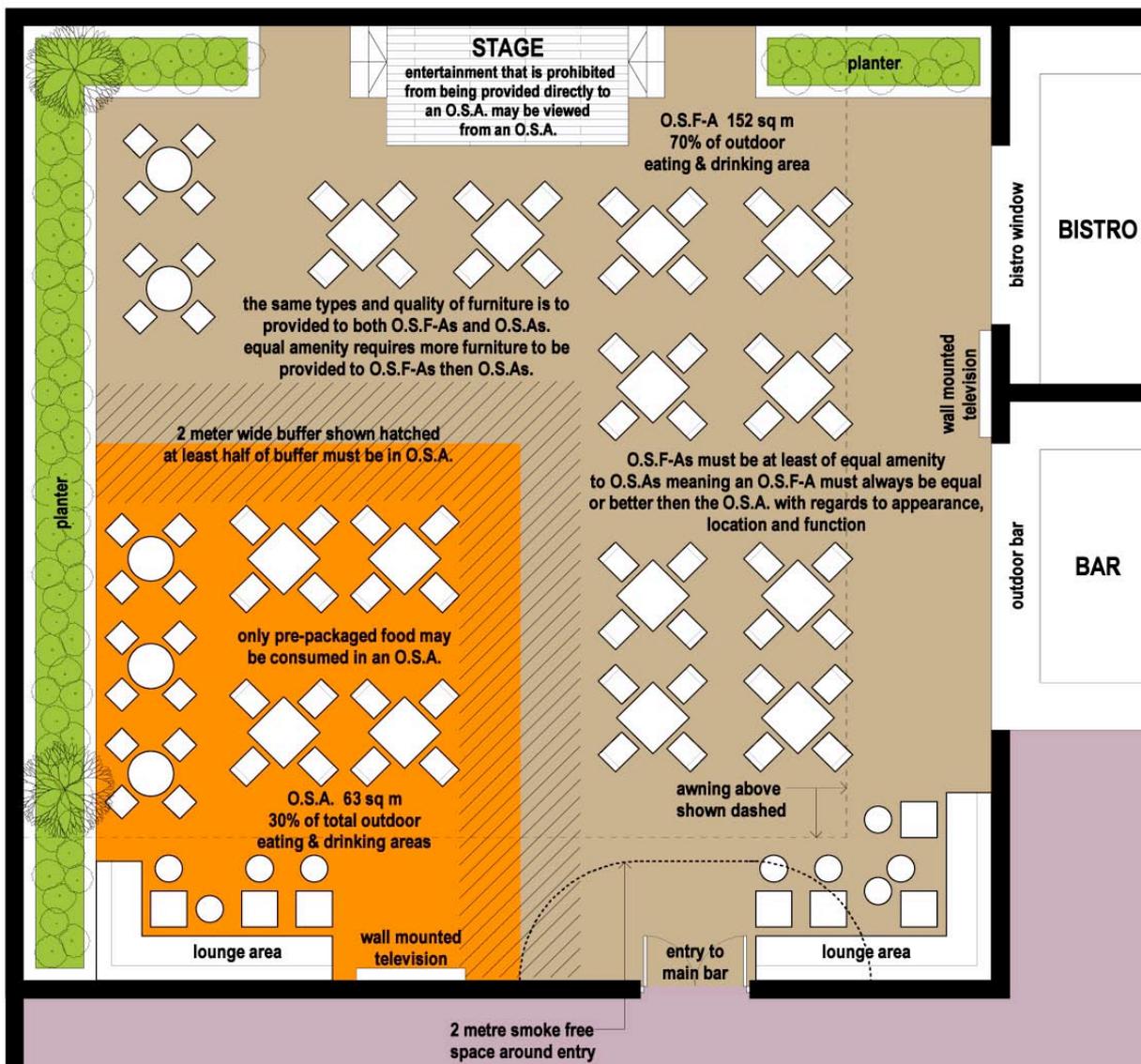


Figure 11: Example of the concept of equal amenity in an O.S.A / O.S.F.-A.

## **8) MANAGEMENT PLAN**

A Smoking Management Plan must be maintained and kept up to date for outdoor smoking areas ( OSAs ). It must be available for inspection by authorised officers and patrons.

A Smoking Management Plan is a document prepared by the licensee stating how smoking is managed at the premises with the aim of reducing the harm from smoking on the premises.

The smoking management plan must:

- a) Identify the outdoor eating and drinking area as
- b) Identify the smoking or smoke-free areas
- c) Identify the buffers for the outdoor smoking areas ( OSAs )
- d) State how the occupier will minimise the exposure of staff and patrons to environmental tobacco smoke
- e) Describe the staff training or instruction given to ensure the Act and smoking management plan are complied with
- f) Explain the provision of signage that identifies smoking and non-smoking areas.

Under a smoking management plan, a venue can make provision for the change of usage of the outdoor eating and drinking areas within the venue providing that each configuration has been assessed individually for compliance.

*TOBACCO CONTROL REGULATIONS Part 2 Division 2 (r12.3f)*

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## **CERTIFICATION**

A licensee who has designated or proposes to designate an area to an outdoor smoking area ( OSA ) may apply to the Director of Licensing, Department of Justice, for the issue of a regulation 15C certificate.

The Director can issue the certificate for proposed or completed Outdoor Smoking Area's that can demonstrate that all provisions of the regulations have been met and fully comply. This would cover the following areas:

- a) enclosure
- b) signage
- c) food service
- d) entertainment
- e) buffers
- f) management plan

A report prepared by an Architect, Building Certifier or other approved person may be required to be provided by the licensee to establish that all relevant requirements have been met. This will include suitably qualified persons such as draftspersons.

*TOBACCO CONTROL REGULATIONS Part 2 Division 2 (r15c)*

END

## **REFERENCES AND CONTACTS**

*Tobacco Control Act – Enclosed Area Guidelines and advice from Warwick Kneebone, Senior Policy Advisor / Coordinator Tobacco Policy Enforcement and Education, Alcohol and Other Drugs Program*

*Useful Web Sites:*

[http://www.health.nt.gov.au/Alcohol\\_and\\_Other\\_Drugs/Tobacco/SmokeFree\\_NT/](http://www.health.nt.gov.au/Alcohol_and_Other_Drugs/Tobacco/SmokeFree_NT/)

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