

Amendments to the
Smoke-free Environment Act 2000



What licensed venues need to know

An information kit for
hotels, registered clubs,
bars, nightclubs and
Star City Casino



A New South Wales Government initiative

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May 2005

Information kit for licensed venues

WHAT'S IN THIS INFORMATION KIT?

This information kit has been prepared by the New South Wales Government to assist the proprietors of licensed venues implement recent changes to the *Smoke-free Environment Act*.

It contains information on:

- the three transitional phases leading up to **2 July 2007**
- exemptions under the *Act*
- penalties under the *Act*
- educational strategies to use in educating patrons and staff about the various changes
- resources available
- frequently asked questions.

NEED TO KNOW MORE...

- For **information about amendments to the *Smoke-free Environment Act 2000*** and related issues contact the NSW Health Tobacco Information line, tel. (02) 9391 9111 or email. tobacco@doh.health.nsw.gov.au or your local Public Health Unit (contact details in the white pages).
- For **'no smoking' signage and other materials** please phone, fax, email or mail your order to: Tobacco Resources Officer, NSW Health Better Health Centre Publications Warehouse, Locked Mail Bag 5003, Gladesville NSW 2111 tel. (02) 9879 0443 fax. (02) 9879 0994 email. tobinfo@doh.health.nsw.gov.au
- For **using footpaths, alcohol free zones and other local issues** contact your local council or visit the Department of Local Government website www.dlg.nsw.gov.au
- For **redefining licensed venues, noise complaints, liquor accords or other liquor licensing matters** contact the Department of Gaming and Racing on tel. (02) 9995 0333 or visit the website www.dgr.nsw.gov.au
- Information can also be obtained from relevant industry associations
 - ClubsNSW, tel. (02) 9268 3000
 - Australian Hotels Association NSW, tel. (02) 9281 6922

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Introduction

The *Smoke-free Environment Act* requires most enclosed public places in NSW to be smoke-free. This includes:

- restaurants, cafes, cafeterias
 - schools, colleges and universities
 - community centres and halls
 - theatres, cinemas, libraries and galleries
 - sporting and recreational areas
 - shopping centres, malls and plazas.
-

In October 2004, the NSW Premier Bob Carr announced that smoking in indoor areas of licensed premises would be **phased out by July 2007**.

The reason for this decision was to protect workers and patrons in licensed venues from the adverse health effects of smoking caused by prolonged exposure to passive smoking. It was also to achieve a level playing field amongst licensed venues and the restaurant industry, and to ensure proprietors such as licensees and registered club secretaries / managers, patrons and staff had sufficient time to adjust to this transition.

Amendments to the *Smoke-free Environment Act* were made in **December 2004** and there are several transitional phases in the lead up to a total ban on smoking in indoor licensed venues by **2 July 2007**. Please note that changes from **3 January 2005** replace and formally legislate the voluntary Share the Air agreement.

KEY DATES

From 3 January 2005

If a venue has:

- more than one bar *then* one bar should be non-smoking.
- more than one gambling **area** *then* one of these should be non-smoking.
- more than one recreational room that offers the same game or activity as another *then* one of these should be non-smoking.

Smoking is also banned in all dining areas (where meals are ordered and consumed at tables) and at all counter and bar areas.

From 4 July 2005 – Phase 1

In a multi-room venue

- Smoking is allowed in a maximum of one room, whether it is a bar, gaming or recreation room. This smoking room must not exceed 50% of the total combined area of bar / gaming / recreational rooms.

In a single room venue

- If a venue consists of a single room (ie a single undivided enclosed space comprising bar / gaming / recreation area), then smoking is permitted in up to 50% of that bar / gaming / recreation area.

From this date smoking is also banned in toilets, foyers, lobbies, thoroughfares, dance floors and auditoria throughout all licensed venues.

From 3 July 2006 – Phase 2

In a multi-room venue

- Smoking is allowed in a maximum of one room, whether it is a bar, gaming or recreation room. This smoking room must not exceed 25% of the total combined area of bar / gaming / recreational areas.

In a single room venue

- If a venue consists of a single room (ie a single undivided enclosed space comprising bar / gaming / recreation area), then smoking is permitted in up to 25% of that bar / gaming / recreation area.

From 2 July 2007 – Phase 3

- All indoor areas of hotels, clubs and nightclubs that are open to the general public must be completely non-smoking.
- All areas of Star City Casino with the exception of private gaming rooms must also be non-smoking.*
- There will be no other exceptions.

This kit has been designed to provide comprehensive information on requirements under the different phases of the legislation, and to provide general details on matters relevant to licensed venues. Any comments, queries or suggestions should be directed to the **NSW Health Tobacco Information line**, tel. **(02) 9391 9111** or email. **tobacco@doh.health.nsw.gov.au**

For a copy of the *Smoke-free Environment Act 2000* (including the recent amendments) go to the **NSW legislation website** at **www.legislation.nsw.gov.au/maintop/scanact/inforce/NONE/0**

* Smoking will be permitted in the private gaming areas at Star City Casino, not including areas used substantially for gaming machines. This exception will be reviewed every 12 months to maintain parity with interstate casinos.

Definitions

SMOKE-FREE ENVIRONMENT ACT – DEFINITIONS AND EXPLANATIONS

BAR ROOM means a room in which drinks are ordered, served and consumed, but does not include a gaming machine room or a recreation room.

CASINO means premises, or part of premises, defined as a casino for the time being under section 19 of the *Casino Control Act 1992* and includes the whole or a specified part of any premises the subject of an order under section 89 (3) of that *Act*.

CASINO PRIVATE GAMING AREA means an area in a casino that is used substantially for gaming by international visitors to the casino other than an area used substantially for the purposes of gaming machines.

CLUB means the premises of a registered club within the meaning of the *Registered Clubs Act 1976*.

DINING AREA means an area where meals are served and are consumed at tables.

ENCLOSED, in relation to a public place, means having a ceiling or roof and, except for doors and passageways, completely or substantially enclosed, whether permanently or temporarily.

EXEMPT AREA, in relation to a club, hotel, nightclub or casino, means the area set aside in accordance with section 11A or 11B or a casino private gaming area, but does not include any area:

- a. required to be designated as a smoke-free area under regulations referred to in section 12, or
- b. that is the subject of a declaration in force under section 13.

GAMING MACHINE has the same meaning as in section 8 of the *Casino Control Act 1992*.

GAMING MACHINE ROOM means a room used substantially for the purposes of gaming machines.

HOTEL means any premises that are the subject of a hotelier's licence in force under the *Liquor Act 1982*.

NIGHTCLUB means any premises that are the subject of a nightclub licence in force under the *Liquor Act 1982*.

RECREATION ROOM means a room used substantially for the purposes of games or other recreational activities other than gaming machines.

THOROUGHFARE means an area set aside as a thoroughfare but does not include an entrance to an exempt area.

SEPARATION OF SMOKING AND NON-SMOKING AREAS:

A space of at least 1.5 metres is to be maintained between smoking and non-smoking areas.

Why ban smoking in enclosed public places?

There are clear health benefits and legal reasons for going smoke-free. In addition community support is strong and there is some evidence that bans are good for business.

HEALTH REASONS

Passive smoking is breathing in other people's smoke. It affects smokers and non-smokers. Passive smoking sometimes known as Environmental Tobacco Smoke (ETS) is a combination of exhaled mainstream smoke (smoke breathed out by the smoker) and sidestream smoke (smoke that drifts from the burning end of a cigarette).

ETS is made up of over 4,000 chemicals and more than 60 of these are known to cause cancer in humans. Research indicates that there is no safe level of exposure to environmental tobacco smoke in indoor areas.

Prolonged ETS exposure is known to increase the risks of lung cancer and heart disease, as well as the incidence of sore throats, nasal symptoms, asthma attacks and other chest illnesses.

The dangers of passive smoking have been extensively documented and since 1986 there have been at least 34 substantive research studies undertaken in Australia and overseas that confirm the impact of environmental tobacco smoke (ETS) on workers and the general public. Since that date the damage caused by ETS exposure in the workplace has been repeatedly affirmed by the major health organisations of Australia, the USA, the UK, and elsewhere.

In October 2001 the danger of prolonged exposure to ETS in the workplace was highlighted in the case of *Marlene Sharp v Port Kembla Hotel and Port Kembla RSL Club*. This litigation became the first case of cancer of the larynx proven in a court of law to be associated with passive smoking in the workplace.

LEGAL REASONS

There are also legal reasons for going smoke-free.

Occupational Health & Safety Act 2000 (NSW)

This *Act* places a duty on all employers to ensure the health, safety and welfare at work of their employees. The *Act* also places obligations on employers for the health, safety and welfare at work of the public while on the employer's premises. These extend to patrons, guests and contractors.

Food Act 1989 (NSW)

The Food Act 1989 is particularly relevant to hospitality establishments. Regulations under the *Act* prohibit smoking in a place used for the purpose of handling food for sale. *Handling means preparing, preserving, packing, storing, decorating, serving, conveying or delivering food.*

Workers Compensation Act 1987 (NSW)

Employees who receive an injury arising out of or in the course of employment (and in the case of the death of a worker, his or her dependents) may be entitled to compensation under this *Act*. Employees who have been made ill because of passive smoking in the workplace may have rights to compensation.

Other legislation

Other legislation such as that applying to lifts, escapes, stairwells, confined spaces and dangerous goods specifically ban smoking.

Common law action

Owners or licensees of establishments are at risk of being subject to legal action if smoke causes harm to employees or visitors. This is generally expressed as a duty of care owed to those who may suffer harm from a person's negligent acts or omissions. This is the same basis that people risk being sued if others suffer injury by being negligently exposed to slippery or dangerous floors.

COMMUNITY SUPPORT

Public opinion consistently supports smoke-free enclosed public places.

In June 2003 NSW Health commissioned a Newspoll study on attitudes to smoking bans.

Respondents were asked,

“Thinking about hotels, pubs, bars, registered clubs and outdoor areas – would you personally approve or disapprove of the government banning smoking in gaming areas / registered clubs / hotels, pubs, bars and nightclubs / outdoor dining areas?”

Results found:

- 67% support for a total ban in gaming areas
- 59% for a total ban in registered clubs
- 54% for a total ban in pubs, bars and nightclubs.

In May 2004, NSW Health repeated the survey. As indicated below there has been a significant increase in support for a total smoking ban in all licensed venues over the 11-month period.

VENUE	STRONGLY OR					
	SOMEWHAT APPROVE		STRONGLY APPROVE		STRONGLY DISAPPROVE	
	2003	2004	2003	2004	2003	2004
Gaming areas	66.8%	69.0%	53.8%	55.1%	15.9%	15.1%
Registered clubs	58.9%	61.7%	45.9%	51.1%	21.7%	20.9%
Pubs / hotels	54.3%	57.8%	42.4%	47.4%	23.3%	22.5%
Nightclubs and bars	-	60.9%	-	57.2%	-	20.4%

This support for smoke-free enclosed public places is common throughout Australia. The Australian Institute of Health and Welfare recently released its *2004 National Drug Strategy Household Survey*. Of the 30,000 Australians who participated in the study, 82% supported banning smoking in the workplace and 68% supported banning smoking in pubs and clubs. This is consistent with recent surveys undertaken by other agencies that have all consistently found majority support for smoking bans in enclosed public places.

ECONOMIC REASONS

There is little evidence to suggest smoking bans have a detrimental effect upon business. The most recent evidence regarding the effects of smoking bans in New York was reported in an article by Andrew Hyland et al, published in the *Cornell Hotel and Restaurant Administration Quarterly*, Cornell University (2003). This study found that one-year after the introduction of complete bans on smoking in New York bars, clubs and nightclubs, business tax receipts were up by 8.7%, employment was up by 10,600 and community support for the ban was overwhelmingly positive. Similarly a study conducted in Ireland in 2004 found strong support for the smoking bans, with 70% of respondents saying their experiences in pubs had improved since the ban (Lansdown 2004).

To assess what economic impact a smoking ban might have on licensed premises in NSW, the NSW Department of Health asked residents in 2003 *If there was a total ban on smoking in hotels and licensed bars, would they be likely to go there more often, less often or it would make no difference*. Of the 3,000 people surveyed 65% said it would make no difference, 23% said they would go more often while only 11% said they would go less often. In 2004 the NSW Department of Health commissioned Newspoll to repeat the survey and the result of this survey showed that 68% of respondents indicated it would make no difference, 20% of respondents said they would go more often, while 10% said less often.

Despite the positive effects that have been demonstrated overseas, the issue of the economic effect smoking bans would have on licensed venues was discussed at length in the Joint Working Group that was convened in 2003-04 to develop a timetable for phasing smoking out of hotels, registered clubs and nightclubs in NSW. This working group was made up of representatives from the hotel, registered club and casino industry, unions, health organisations and government agencies. It was agreed by this group that a phased approach to the introduction of smoking bans would help minimise any potential effect in this area.

OTHER REASONS

There are many other benefits to going smoke-free. Benefits include reduced cleaning and maintenance costs, reduced fire risk, less absenteeism due to related illnesses and improved public image.

What do the changes to the Smoke-free Environment Act mean for licensed venues

The following table is a quick reference guide to key dates, key changes required by that date and an action plan for venues to follow.

CHANGES	ACTION PLAN FOR VENUES
FROM 3 JANUARY 2005	
<p>Smoking is banned in dining areas and at all counter and bar areas.</p> <p>In addition, if a licensed venue has:</p> <ul style="list-style-type: none"> • more than one bar, then one should be non-smoking • more than one gambling area, then one should be non-smoking • more than one recreational room that offers the same game or activity as another, then one should be non-smoking. 	<ul style="list-style-type: none"> • Display no-smoking signs in prominent positions in all smoke-free areas. • Remove from non-smoking areas all ashtrays, matches, lighters and other items used for smoking. • Ensure staff are clear on what areas of your venue are now non-smoking. • Ensure that staff ask people who are smoking in non-smoking areas to move to smoking areas.
FROM 4 JULY 2005	
<p>In a multi-room venue</p> <ul style="list-style-type: none"> • Smoking is allowed in a maximum of one room, whether it is a bar, gaming or recreation room. The smoking room must not exceed 50% of the combined bar / gaming / recreational area. This applies until July 2006. <p>In a single room venue</p> <ul style="list-style-type: none"> • If a venue consists of a single room (ie a single undivided enclosed space comprising bar / gaming / recreational area) then smoking is permitted in up to 50% of that bar / gaming / recreational area. This applies until July 2006. <p>From this date smoking is also banned in toilets, foyers, lobbies, thoroughfares, dance floors and auditoria throughout all licensed venues.</p>	<p>BEFORE 4 JULY 2005</p> <ul style="list-style-type: none"> • Put up posters or notices in prominent positions to inform patrons of the pending change. • Place notices around the venue, on notice boards or in community newsletters. • Ensure staff are clear on what areas of your venue will be non-smoking. • Consider what changes might be required to your venue (such as access to an outdoor area), and ensure the relevant applications are lodged with council or the Liquor Administration Board as soon as possible.
ON 4 JULY 2005	
	<ul style="list-style-type: none"> • Display no-smoking signs in prominent positions in all smoke-free areas. • Remove from smoke-free areas all ashtrays, matches, lighters and other items used for smoking. • Ensure staff are clear on what areas of your venue are non-smoking. • Ensure that staff ask people who are smoking in non-smoking areas to move to smoking areas.

CHANGES	ACTION PLAN FOR VENUES
FROM 3 JULY 2006	
<p>In a multi-room venue</p> <p>Smoking is allowed in a maximum of one room, whether it is a bar, gaming or recreation room. The smoking room must not exceed 25% of the combined bar / gaming / recreational area. This applies until July 2007.</p> <p>In a single room venue</p> <p>If a venue consists of a single room (ie a single undivided enclosed space comprising bar / gaming / recreational area) then smoking is permitted in up to 25% of the combined bar / gaming / recreational area. This applies until July 2007.</p>	<ul style="list-style-type: none"> ● Display no-smoking signs in prominent positions in all smoke-free areas. ● Remove from smoke-free areas all ashtrays, matches, lighters and other items used for smoking. ● Ensure staff are clear on what areas of your venue are non-smoking. ● Ensure that staff ask people who are smoking in non-smoking areas to move to smoking areas. ● Consider what changes might be required to your venue (such as access to an outdoor area), and ensure the relevant applications are lodged with council or the Liquor Administration Board as soon as possible.
FROM 2 JULY 2007	
<p>A complete prohibition on smoking inside licensed venues takes effect.*</p>	<p style="text-align: center;">ON 2 JULY 2007</p> <ul style="list-style-type: none"> ● Display no-smoking signs in prominent positions in all smoke-free areas. ● Remove from indoor areas all ashtrays, matches, lighters and other items used for smoking. ● Ensure that staff ask people who are smoking in indoor areas to move to outdoor smoking areas.

* Smoking will be permitted in the private gaming areas at Star City Casino, not including areas used substantially for gaming machines. This exception will be reviewed every 12 months, to maintain parity with interstate casinos.

Specific questions related to each phase of the smoking bans

FROM 3 JANUARY 2005 - 3 JULY 2005

Does the legislation specify how far from the bar or counter area smoking is not allowed?

Yes. The Smoke-free Environment Regulation 2000 requires a space of at least 1.5 metres between smoking and non-smoking areas. A sign is available free-of-charge from NSW Health Better Health Centre to help you inform your staff and patrons about this requirement.

(See the Resources order form in Appendix 2)

In multi-bar room venues does my non-smoking bar room always need to be open?

A bar room that is not open to the public at certain times cannot be designated as the non-smoking bar room when it is closed. If you close your non-smoking bar room then you will need to designate one of your remaining bar rooms that is still open as non-smoking.

My venue has two bar rooms – one large main bar room and a smaller bar room. Does it matter which one I choose to be non-smoking?

No. It is your decision as the proprietor which bar is chosen to be non-smoking.

Is smoking allowed in dining areas?

No. Smoking is no longer allowed in the dining areas of your venue.

PHASE 1 – 4 JULY 2005 - 2 JULY 2006

Can I choose which room in my venue I designate for smoking?

Yes. During the transitional phases you can choose which room you designate to be smoking, but this room cannot be larger than 50% of your total combined bar, gaming and recreational area.

What parts of my venue do I include when measuring the total indoor gaming, drinking and recreational area of my licensed venue?

This should include:

- all drinking areas or rooms
- all gaming machine, TAB and Keno areas or rooms
- all pool rooms and other licensed recreational areas.

(Specific questions related to each phase of the smoking bans

What parts of my venue shouldn't be included when measuring the total indoor gaming, drinking and recreational area of my licensed venue?

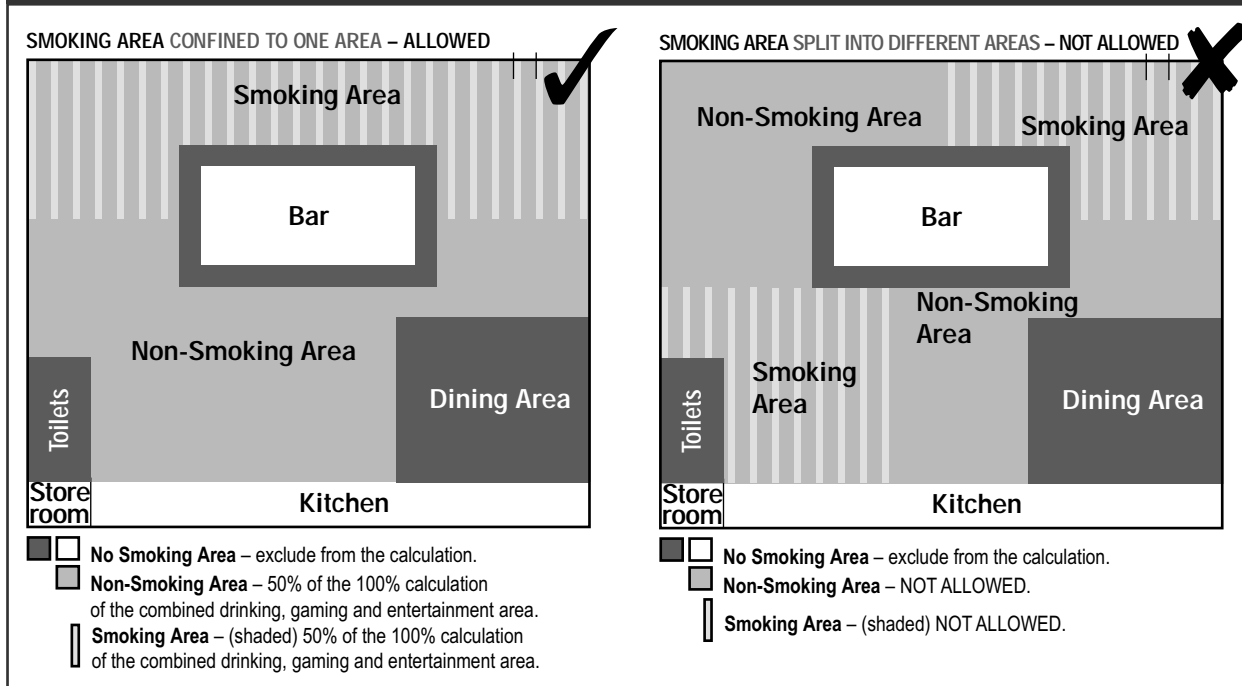
The following areas are not to be included in the measurement:

- dining areas
- toilet areas
- foyer / lobby areas
- thoroughfares and corridors
- dance floors
- auditoriums
- gymnasiums
- any area not accessible to the general public, such as kitchens, offices, staff areas (tea rooms, locker areas etc), licensee / manager accommodation etc.

In single room venues can the smoking area be split across several different areas?

No – The smoking area needs to be no more than 50% of the combined drinking, gaming and recreational area and this needs to be consolidated all in one place.

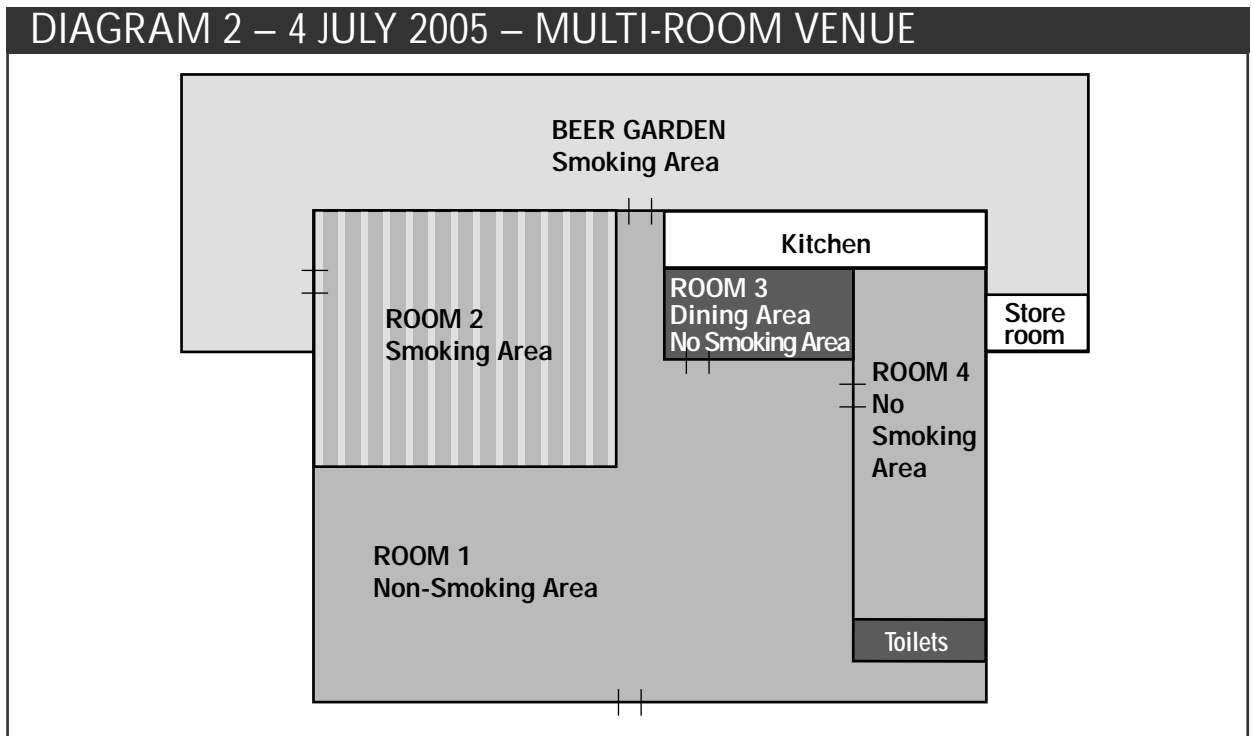
DIAGRAM 1 – 4 JULY 2005 – SINGLE ROOM VENUE



My drinking, gaming and recreational area covers three small rooms consisting of 35% of my combined area and one large room consisting of 65% of my combined area. I'll be disadvantaged if I confine smoking to only one of the smaller rooms.

Some venues will find this situation applies to them. It must be remembered that the purpose of these transitional phases is to gradually phase out smoking areas in licensed venues. A two-year period has been granted to help educate patrons and proprietors in this process.

Remember smokers can still smoke in outdoor areas.



I have no access to outdoor areas where I can direct my patrons to smoke?

If your venue has no licensed outdoor area that can be accessed by patrons such as a balcony, beer garden, courtyard or licensed outdoor area; and the nominated smoking room is a gaming room that is less than 15% of the combined bar, gaming and recreation area (this excludes dining areas, toilets, foyers, thoroughfares, dance floors and auditoria) then you may be eligible to apply for a second room or part of a room to use as a smoking area. The proposed second room or part of a room that will be used for smoking has to be as close as possible to, the gaming machine room; and the combined area of the gaming machine room and the smoking area in the second room should not exceed 25% of the combined bar, gaming and recreation areas. Approval to use a second room/area as a smoking area will only apply until 1 July 2007. For further information on **exemptions and the application process see page 13**.

PHASE 2 – 3 JULY 2006 - 1 JULY 2007

What is the maximum smoking area permitted in this phase?

Twenty-five per cent is the maximum smoking area permitted in a licensed venue. As the allowed smoking area becomes smaller, some venues may choose to completely ban smoking in their indoor areas from this date.

I have a small single room venue. If I reduce my smoking area to 25% of my combined drinking, gaming and recreational area there will only be enough space for two people to stand there.

Licensed venues with a total drinking, gaming and entertainment area that does not exceed 100 square metres will be exempt from the 2006 25% smoking area rule. This means that smoking will be permitted in up to 50% of their combined bar / gaming / recreation area until July 2007. **See page 13 for the section on exemptions** for further information.

PHASE 3 – FROM 2 JULY 2007

What if I have no access to an outdoor area for smoking?

If you currently do not have access to an outdoor area, you may need to consider what changes can be made to your venue before July 2007 to accommodate patrons who wish to smoke once the total ban commences on 2 July 2007.

For example, you may need to consider whether the footpath outside your venue needs to be part of the licensed premises. This particular issue is one that needs to be considered in terms of local amenity for the venue, their patrons and the broader community. Local Councils are autonomous bodies vested with discretionary powers under the *Local Government Act 1993* and other legislation to administer these areas in the best interests of their communities.

It is important that councils and licensed venues work together to address the changes to be made in their local area as a result of the new smoking legislation. Opportunities for councils and venues to work together include local planning processes and liquor accords.

Check the section on outdoor footpaths on page 27 for an overview of issues that venues need to consider, along with contact points for further information.

Will the Government issue guidelines on determining what is an enclosed public place and when a covered area is considered substantially enclosed for the purposes of the *Act*?

This issue is currently still under consideration. Given current timelines a separate notification to licensees will be sent when this matter is settled.

Exemptions under the Act

TEMPORARY EXEMPTIONS 2005-2007

Exemption to set aside a second room or part of a room for smoking

Provisions under the *Amendment Act* provide the Minister for Health with the ability to authorise, in special circumstances, a licensed premise to set aside a second room for smoking. This exemption only applies from **4 July 2005** to **1 July 2007** and will only be granted if a licensee or secretary / manager can demonstrate that:

- a. the venue has no licensed outdoor area that can be accessed by patrons such as a balcony, beer garden, courtyard or licensed outdoor area
- b. the nominated smoking room is a gaming machine room that is less than 15% of the combined bar, gaming and recreation area (this excludes dining areas, toilets, foyers, thoroughfares, dance floors and auditoria)
- c. the proposed second room or part of a room that will be used for smoking is as close as possible to the gaming machine room
- d. the combined area of the gaming machine room and the smoking area in the second room, does not exceed 25% of the combined bar, gaming and recreation areas.

PROCESS TO APPLY

To apply for this exemption the **Occupier** (defined as the person who has management or control or is otherwise in charge of the licensed venue) needs to:

- a. complete the application form for a second smoking room (**see Appendix 1**) or download the application form from the NSW Health website www.health.nsw.gov.au (click on the *Smoke-free Environment Amendment Act 2004* on the right hand side of the NSW homepage and then click on **Exemptions**)
- b. attach a floor plan of the **complete** premises which contains an accurate depiction of the location and dimensions of the gaming room nominated as a smoking room, plus the second room or part of a room that will be used for smoking
- c. attach a cheque for \$550.00 made out to the NSW Department of Health. Please note this fee covers administration costs for processing your application, and is non-refundable.
- d. mail the application form and cheque to:

The Director General
NSW Department of Health
Locked Bag 961
North Sydney
NSW 2059

THE APPROVAL PROCESS

NSW Health will review all applications and will formally notify applicants if their application has been successful or not. Successful applicants will receive a form stating NSW Health's approval of their application.

On receipt of an approval for this exemption, the **Occupier** (eg licensee, secretary / manager or the person otherwise in charge) will be required to:

- a. display or keep located on the premises the original copy of approval from the NSW Department of Health to be shown on request to an authorised officer
- b. display the following sign (provided by the NSW Department of Health) in the second room area that says:
- c. notify the NSW Department of Health within seven days of any change to the applicant details or the eligibility criteria.



COMPLIANCE

Authorised inspectors (for example Environmental Health Officers) are responsible for enforcing the *Smoke-free Environment Act* legislation. As part of normal surveillance, inspections will be made of licensed venues given an exemption to allow smoking in a second room or part of a room.

Under Section 307A of the *Crimes Act 1900* it is an offence to make a false or misleading application and proprietors found guilty will be prosecuted. This offence carries a maximum penalty of two years imprisonment or a fine of 200 penalty units (\$22,000) or both.

FOR FURTHER INFORMATION

For further information telephone the **NSW Department of Health Tobacco Information line**, tel. **(02) 9391 9111**.

Exemption from the 2006 25% smoking area rule

Licensed venues with a total drinking, gaming and entertainment area that does not exceed 100 square metres will be exempt from the 2006 25% smoking area rule. This means that for small bar, pub or club owners not more than 50% of their combined public area can continue to be used as a smoking area until 1 July 2007. Application to NSW Health for this exemption is not necessary, however authorised inspectors responsible for enforcing the *Smoke-free Environment Act* legislation will pay particular attention to small venues during this 2006-2007 period to ensure compliance.

EXEMPTIONS AFTER 2 JULY 2007

The international private gaming areas of Star City Casino will be exempt from a requirement to be non-smoking after July 2007.

This exemption has been granted to maintain parity with interstate exemptions. This exemption will be reviewed annually and abolished when interstate casinos ban smoking in equivalent areas.

This exemption does not absolve Star City Casino from its responsibilities under the *Occupational Health and Safety Act 2000*.

No other exemptions for licensed premises will exist.

Penalties and enforcement

WHAT ARE THE PENALTIES UNDER THE SMOKE-FREE ENVIRONMENT ACT?

Penalties for patrons

The maximum penalty for a person smoking in a smoke-free area is five penalty units. A penalty unit is currently \$110.

Penalties for venues

If a person smokes in a smoke-free area the proprietor is also guilty of an offence. The maximum penalty is 10 penalty units for a natural person or 50 penalty units for a body corporate.

Penalties also apply to proprietors / licensees / registered club secretaries / managers who fail to display no-smoking signs. The maximum penalty is 5 penalty units for an individual or 25 penalty units for a body corporate.

Failing to comply with the directions or instructions of an inspector can also result in a penalty (maximum penalty five penalty units).

A full list of penalties is provided in the table below.

SECTION OF THE ACT	OFFENCE DESCRIPTION	WHO CAN BE FINED	MAXIMUM PENALTY
7	A person who smokes in a smoke-free area.	Smoker	\$550
8	Allowing a person to smoke in a smoke-free area.	Occupier* – Natural person – Body corporate	\$1,100 \$5,500
9	Failure to display a no-smoking and other prescribed signs (if any) as required.	Occupier* – Natural person – Body corporate	\$550 \$2,750
18	(Without reasonable excuse) Failure to comply with a requirement of an inspector made under the <i>Act</i> . Failure to provide information or produce documents when requested.	Person Person	\$550 \$550
19	(Without reasonable excuse) Obstructing, resisting or attempting to obstruct, an inspector in the exercise of the inspector's functions under the <i>Act</i> . Impersonating an inspector.	Person Person	\$550 \$550

* Defined under *the Act* – **occupier** of premises or part of premises means a person having the management or control, or otherwise being in charge, of those premises or part.

HOW IS THE LAW ENFORCED?

Environmental Health Officers based in Public Health Units are authorised as inspectors to enforce the legislation. These officers monitor compliance, investigate complaints and make inspections.

Individuals have responsibilities not to smoke in smoke-free areas and proprietors also have a legal obligation to ensure that patrons do not smoke in non-smoking areas of their venues.

Both individuals and proprietors / licensees / registered club secretaries / managers are encouraged to contact their local Public Health Unit for advice or if they wish to make a complaint. **A list of Public Health Units can be found in the white pages.** Alternatively they can contact the **NSW Health Tobacco Information line**, tel. **(02) 9391 9111** or email. **tobacco@doh.health.nsw.gov.au**

As the proprietor / licensee / registered club secretary / or manager am I responsible if a patron smokes in a designated smoke-free area or room?

Yes it is your responsibility to ensure patrons do not smoke in a non-smoking area. Ask the patron to stop smoking as soon as you become aware that they are smoking, inform them that they are committing an offence and ask them to either move to a smoking area or step outside to smoke.

Situations where you may not be liable for an offence if smoking occurs in a non-smoking area are if you can demonstrate that you did not provide ashtrays, matches, lighters or any other thing designed to facilitate smoking and you were either:

- not aware and could not reasonably be expected to have been aware that smoking was occurring, or
- asked the patron to stop smoking as soon as you became aware that they were smoking and informed them that they were committing an offence.

Can I remove a person who is smoking from my venue?

Recent amendments to the *Liquor Act 1982* [section 103(1)(d1)], the *Registered Clubs Act 1976* [section 67A(1)(d1)], and the *Casino Control Regulation 2001* [Schedule 6, clause 103(d1) now give venues the power to exclude a patron from the venue if that person smokes in a smoke-free area.

Can a body corporate be fined for allowing smoking in an enclosed public space?

A body corporate or owners association is responsible for ensuring that common areas of enclosed public places are smoke-free. Common areas include thoroughfares and enclosed public car parks. This situation applies to shopping centres, hotels, resorts, large office blocks and large residential buildings.

Strategies to educate staff and patrons

What can a licensee, club secretary or manager do to educate venue staff and patrons about the new requirements?

Venue management can assist staff and patrons in understanding the smoke-free requirements by ensuring:

- staff are clear on where smoking is allowed and not allowed in venues
- staff are instructed to briefly explain to anyone who smokes in a non-smoking area that smoking is not permitted in that area and that if the person wishes to continue to smoke, they should move to a smoking area or to an outdoor area
- 'NO SMOKING' signs are prominently displayed in appropriate places
- information about the three phases of the *Act* are communicated in newsletters to members, on public notice boards within the venue or displayed in staff amenity rooms.

How will my patrons know the area or room is smoke free?

In addition to displaying the compulsory signs in the relevant areas of the venue, the removal of ashtrays, matches and lighters will help signify this is a non-smoking area.

What if a patron insists on smoking?

A patron may occasionally fail to notice that areas in the venue are non-smoking.

In such circumstances, a number of procedures should be adopted:

- Briefly explain that smoking in this area is no longer permitted.
- Suggest they step outside or move to a smoking area if they wish to continue to smoke.
- If a patron insists on continuing to smoke in the enclosed area, there is an obligation to ask the person to leave that area. Management staff should develop a policy for situations where a patron doesn't leave the area when requested. If the person continues to smoke and doesn't leave the area, the licensee, club secretary or manager should implement their policy for situations where a patron's behaviour is unacceptable.

Some smokers may be upset about the smoke-free requirement because of their nicotine dependence. However, experience shows that most smokers will be happy to comply.

What is the Government doing to educate patrons and the general community?

To inform the public of the government's decision to ban smoking in indoor areas of licensed venues, NSW Health and the Cancer Institute NSW will conduct a comprehensive social marketing campaign at the beginning of each new phase leading up to a total ban on smoking in indoor licensed premises (**2 July 2007**). This campaign will consist of:

- mass media communications utilising television, print and radio advertising
- a tracking study of community responses to the introduction of the bans
- development of accessible information and resources for proprietors of licensed venues
- public relations activities with industry representatives and proprietors.

The first phase of this comprehensive campaign consisting of television, radio and print advertising will be launched on **31 May 2005** in the lead up to **Phase 1** commencing **4 July 2005**. This campaign known as **Change is in the Air** will run for a **six-week** period. Prior to **July 2006** and **July 2007** similar mass media campaigns will be run to inform the public of further smoking restrictions.

The hospitality industry has been consulted in the development of these strategies.

WHAT SIGNAGE IS AVAILABLE TO DISPLAY IN LICENSED VENUES?

1. NO SMOKING AREA tent cards
(HP) 030069



2. NO SMOKING AREA sign
(150x200mm) (HP) 030070



3. NON SMOKING AREA sticker
(150x200mm) (HP) 030084



4. NO SMOKING sticker (1.5m separation)
(210x295mm) (HP) 050017
Smoking is not permitted at
or within 1.5 metres of this area



- 5. NO SMOKING sticker (1.5m separation)
(210x295mm) (HP) 020600
While persons are dining, smoking is not permitted at or within 1.5 metres of this area



- 6. Double sided NO SMOKING sticker (210x295mm) (HP) 00104
For glass doors and windows



7. NO SMOKING sticker
(210x295mm) (HP) 00103
On a white background suitable for walls



8. SMOKING AREA sticker
(230x75mm) (HP) 050073



9. NO SMOKING table card (120x110mm) (HP) 050061
Double-sided dining card



10. SECOND SMOKING ROOM EXEMPTION sign (HP) 050041

Only issued by NSW Health on approval of an application form



HOW DO I ORDER THIS SIGNAGE?

For 'No smoking' signage and other materials please **phone, fax, email** or **mail your order to:**

Tobacco Resources Officer
NSW Health Better Health Centre Publications Warehouse
Locked Mail Bag 5003
Gladesville NSW 2111

Tel. (02) 9879 0443
Fax. (02) 9879 099
Email. tobinfo@doh.health.nsw.gov.au

General Q&A about the Smoke-free Environment Act

How are indoor smoking and non-smoking areas to be separated during the transitional phases of the *Act*?

Separation of a smoke-free area from the smoking area can be achieved by use of either a partition or barrier (wall, half wall, bamboo screen, wrought iron railing and planter boxes) or by a space of 1.5 metres.

This requirement will become obsolete from **2 July 2007**.

Where can you smoke under the transitional phases of the *Smoke-free Environment Act*?

On or after **3 January 2005** and **before 4 July 2005**, the bar rooms, gaming machine rooms and recreation rooms in a club, hotel, nightclub or casino may be set aside as an exempt (smoking) area. However, the following areas are not to be set aside as an exempt area or as part of an exempt area:

- a. Any dining area.
- b. Any counter at which drinks or food are ordered or served.
- c. One bar room, but only in venues where there is more than one bar room.
- d. One area used substantially for the purposes of gambling (whether or not with gaming machines), but only in venues where there is more than one such area.
- e. One recreation room for each game or recreational activity offered at the premises, but only in venues where there is more than one recreation room offering that game or activity.

On or after **4 July 2005** and **before 2 July 2007**, one room, or one part of one room, in a club, hotel, nightclub or casino may be set aside as the exempt (smoking) area. For the purposes of this exemption, 'room' means bar room, gaming machine room or recreation room.

The exempt area, when expressed as a percentage of the total area of all the rooms in the club, hotel, nightclub or casino, must not exceed:

- a. 50% on or **after 4 July 2005** and **before 3 July 2006**, or
- b. 25% on or **after 3 July 2006** and **before 2 July 2007**.

If the total area of all the rooms in the club, hotel, nightclub or casino does not exceed 100 square metres, the exempt area under this section, when expressed as a percentage of the total area of all the rooms in the club, hotel, nightclub or casino, must not exceed 50% on or **after 4 July 2005** and **before 2 July 2007**.

What areas are to be excluded in calculating an exempt (smoking) area?

The following areas should not be set aside as an exempt area or as part of an exempt area:

- a. A dining area, toilet area, foyer, lobby, thoroughfare, dance floor or auditorium.
- b. A counter at which drinks or food are ordered or served.
- c. A casino private gaming area.

How do the new laws affect indoor areas of places like cafes, restaurants, community halls etc?

The new smoking restrictions do not affect any public premise or venue that is currently required to be smoke-free under the *Smoke-free Environment Act 2000*. For further information on how the *Smoke-free Environment Act* affects cafes, restaurants, shopping centres, sporting centres etc go to www.health.nsw.gov.au/health-public-affairs/smokefree/index2001.html

Do air conditioning systems work in removing ETS from indoor areas?

No.

The use of ventilation to remove ETS from hospitality venues has been promoted by some as a way to achieve safe levels of exposure for employees and patrons. However numerous studies have demonstrated that the efficiency of these systems diminishes over time and none have the capacity to remove many of the invisible gases found in ETS.

General air conditioning systems have also been found to be ineffective in removing ETS and threaten to undermine the value of having non-smoking areas in certain parts of a venue, by circulating ETS contaminated air to restricted areas. The World Health Organisation (2000) along with many other eminent bodies have concluded that there is no safe level of exposure to ETS and that a complete ban on smoking in indoor areas is by far the most effective and low cost strategy to remove ETS from enclosed places.

Are air treatment systems useful in managing ETS?

The NSW Department of Health does not recommend or endorse any air treatment systems for the purposes of controlling tobacco smoke. You should be aware that some air treatment systems, particularly those that use ozone to control odours, may be harmful to health, and should not be used in rooms while they are occupied.

Where should non-smoking signs be placed?

Signs that clearly show where smoking is not permitted should be displayed in prominent places within venues.

These signs must be clearly visible to patrons and displayed in a way that would reasonably allow a person entering a particular area of the premises to be quickly alerted to the fact that it is a non-smoking area.

Signs are available free of charge from the NSW Health Better Health Centre. As long as signs meet legal requirements, proprietors can make signs to suit the decor of their premises at their own cost.

To see the **range of resources available from the Better Health Centre go to page 18 in the strategies to educate patrons and staff section**. An **order form** for resources can be found at **Appendix 2**.

Are there places not affected by the Act?

Smoking is allowed in places such as private homes, residents' bedrooms in boarding houses or hostels, rented guestrooms in hotels, hostels and motels and public places that are not enclosed such as al fresco areas or open courtyards.

Please note this list is not exhaustive.

Separately enclosed places hired for private functions, such as weddings or private parties are not required to be smoke-free, but public places adjacent to these private functions need to remain smoke-free eg corridors, foyers and lobbies. Proprietors and licensees of private function venues need to be aware that they still have legal obligations under the *Occupational Health and Safety Act 2000* to their employees and patrons if smoking occurs in these areas.

Many private function proprietors have voluntarily chosen to adopt no-smoking bans, particularly in areas where food is served.

How does a member of the public make a complaint about smoking in non-smoking areas?

Individuals are encouraged, in the first instance, to take up complaints about non-compliance with the legislation directly with the venue licensee or secretary / manager.

Alternatively individuals **can contact their local Public Health Unit** or the **NSW Department of Health Tobacco Information line**, tel. **(02) 9391 9111** or email. **tobacco@doh.health.nsw.gov.au** to obtain more information or make a complaint. A list of Public Health Units can be found in the white pages.

Can I voluntarily make the indoor areas of my venue smoke free?

Yes some venues have decided to make the indoor public areas of their venue smoke-free. Often they include this information in their advertising material and as part of other venue promotional activities.

A sample policy might read:

It is the policy of (this business) to protect the health and well being of our guests and employees by adopting a smoke-free policy. The following areas are designated smoke-free for guests, visitors and employees: (state the various areas). Breaches of this policy by individuals will result firstly in a warning. Continued breaches will result in the individual being asked to leave the premises. This policy will be implemented from (insert the date).

Is smoking banned in alfresco dining areas under the *NSW Smoke-free Environment Act*?

No. The *Smoke-free Environment Act* does not ban smoking in outdoor dining areas. Smoking bans only apply to indoor public areas. However some venues may voluntarily choose to adopt a non-smoking policy in their outdoor areas. Other may choose to make half their outdoor dining area non-smoking.

Is smoking banned on beaches and in playgrounds under the *NSW Smoke-free Environment Act*?

No. The *Smoke-free Environment Act* does not ban smoking on beaches. Some local councils however have adopted non-smoking policies on their beaches, within 10 metres of their playgrounds and within their sporting grounds. Check your local council to see if it has a non-smoking policy for these areas.

Is smoking banned within certain distances of non-residential building entrances under the *NSW Smoke-free Environment Act*?

No. The *Smoke-free Environment Act* does not ban smoking within a prescribed distance from the entrance to non-residential buildings such as banks, shopping centres and offices. Some organisations have voluntarily adopted this policy, whilst others direct smokers to use designated outdoor smoking areas.

WHERE CAN I GET MORE INFORMATION?

- For information about amendments to the *Smoke-free Environment Act 2000* and related issues contact the **NSW Health Tobacco Information line**, tel. (02) 9391 9111 or email. tobacco@doh.health.nsw.gov.au or your local Public Health Unit.
- For **'no smoking' signage and other materials** please phone, fax, email or mail your order to:
 - Tobacco Resources Officer
NSW Health Better Health Centre Publications Warehouse
Locked Mail Bag 5003
Gladesville
NSW 2111
 - Tel. (02) 9879 0443
Fax. (02) 9879 0994
Email. tobinfo@doh.health.nsw.gov.au
- For **using footpaths, alcohol free zones and other local issues** contact your local council or visit the Department of Local Government website www.dlg.nsw.gov.au
- For **redefining licensed venues, noise complaints, liquor accords or other liquor licensing matters** contact the Department of Gaming and Racing, tel. (02) 9995 0333 or visit the website www.dgr.nsw.gov.au
- For information related to your industry please contact:
 - ClubsNSW, tel. (02) 9268 3000
 - Australian Hotels Association (NSW), tel. (02) 9281 6922

Patrons taking alcohol out of the venue

In the context of the smoking bans, an issue may arise with patrons taking alcohol out of the licensed area of the venue. This section provides information about the current liquor laws in this regard.

Packaged alcohol may be taken away from liquor stores and hotel bottle shops. Registered clubs may sell take-away packaged alcohol to their members or guests. Restaurant patrons may also take a partly consumed bottled wine that has been purchased at the restaurant with them, as long as the bottle is re-corked or otherwise resealed.

The liquor laws do not prevent hotel and club patrons from taking an opened container of alcohol – such as a glass of beer / wine or partly consumed drink – out of the premises in order to have a cigarette.

However, where the alcohol is taken off the licensed premises (as distinct from taking it into an outside beer garden or other licensed area), this may only occur during approved take-away trading hours. For hotels and clubs, these hours usually are:

- usually 5.00am to midnight Monday to Saturday, and
- 10.00am to 10.00pm on Sunday (take-away sales before 10.00am and / or up to midnight on Sundays have been approved for some hotels and clubs).

In no circumstances can alcohol be taken off licensed premises after midnight and before 5.00am.

Also, some hotels may have licence conditions that prevent drinks from being taken outside, and some liquor accords may have agreed to similarly restrict take-away alcohol. Individual registered clubs may have their own rules preventing patrons from taking opened containers of alcohol out of the club.

Alcohol free zones surrounding licensed venues may also impact on patrons leaving licensed venues with alcohol. **See Alcohol free zones section on page 29.**

Using footpaths

A footway as defined under the *Roads Act*, means that part of a road that is set aside as a path or way for pedestrian traffic. Where a local council is a road authority for a road, that council also has authority for the footway. A venue must apply to its local council for approval to use footpaths and/or outdoor seating as part of its licensed premises. Approvals and charges for use of footpaths under the *Roads Act 1993* are matters for local councils to determine. Any charges for use of footpaths are publicly exhibited as part of councils' draft management plans prior to their adoption.

If the application relates to a classified road (eg not under local council authority), local councils must first obtain the approval of the Roads and Traffic Authority before granting permission. Approval can be granted subject to conditions, including a condition as to payment of rent.

Section 125 of the *Roads Act 1993* allows a council to grant approval to conduct a footpath restaurant. A restaurant is defined in the *Act* as meaning a premise in which food is regularly supplied on sale to the public for consumption on the premises. Licensed hotels and registered clubs who wish to offer an outdoor dining area on a footpath must first seek permission from their council to do so.

Use of the footpath as part of the licensed premises (including partitioning or other works) may also require development consent under the *Environmental Planning and Assessment Act 1979*. If so, the local council will usually be the consent authority.

Applicants may contact their local council to obtain an estimate of the likely processing time(s). It should also be noted that processing may be delayed where submissions do not contain all relevant information. If in doubt, an applicant should liaise with their local council to ensure that each application lodged will comply with all information and supporting documentation requirements.

APPLICATION PROCESS FOR INCLUDING A FOOTPATH AS PART OF THE LICENSED PREMISES

If local council approval has been granted for a venue to use an area of the footpath, this area then needs to be included as part of a licensed premise. This requires an application to be lodged with the Liquor Administration Board to re-define the premises. Applications can take between six and eight weeks to determine, and are dealt with by the Board in the order they are received. There is no application fee involved.

If the application is granted, the venue is then responsible for the footpath that is included in the licensed premises, whether or not the premises is actually using the area. For instance, if a group of intoxicated minors are found sitting on the footpath, the venue will be responsible, and can be found guilty of allowing minors on licensed premises, or allowing intoxication of minors on licensed premises.

In addition, the venue must make it clear that the footpath area is part of the licensed premises. For instance, enclosing chairs and tables with a movable or immovable barrier of some type, or even painting lines on the pavement would all serve to indicate that part of the footpath is designated for the use of the licensed premises. The way in which this is done is subject to guidance from the local council.

CHARGES FOR FOOTPATH RENTALS

Charges for use of footpaths under the *Roads Act 1993* is a matter for local councils to determine. This information is publicly available from individual councils.

STEPS THAT A LICENSED VENUE SHOULD TAKE TO GET LOCAL GOVERNMENT APPROVAL TO USE A FOOTPATH

1. Identify the area of the footpath you want to utilise and for what purpose, eg drinking only or drinking and dining.
2. Contact your local council to see who has authority over the nominated footpath and to establish the information requirements for an application for a footpath restaurant, if one is proposed. Also ask the council whether a development consent is required for your intended use and any proposed partitioning or the like.
3. Enquire with the council how long the application process is likely to take.
4. Lodge the required application(s)* with the council.
5. Once you have local council approval, contact the Liquor Administration Board to lodge an application for this outdoor area to be included as part of your licensed premises.
6. Once the Board has approved the redefinition, partition off the outdoor area that you will utilise so that there is a clear thoroughfare for pedestrians to use.

The **Liquor Administration Board** can be contacted through the **Department of Gaming and Racing** – tel. **(02) 9995 0333**, or visit the website **www.dgr.nsw.gov.au** for information about the requirements for redefining licensed premises.

* If a development application is required and building work (as defined in section 4 of the *Environmental Planning and Assessment Act 1979*) is involved, a construction certificate will need to be issued by the council or an accredited certifier for that work.

Alcohol free zones

Consideration of alcohol free zones operating in the vicinity will need to be taken into account by venues seeking approval for use of footpaths. This will also be the case for any application to the Liquor Administration Board for a redefinition of premises to include footpath areas.

The process for the creation of alcohol free zones is summarised as follows.

In general, the local council determines the location of alcohol free zones. Anyone living or working within an area, the local police or a local community group may ask a local council to establish an alcohol free zone or the local council itself may decide to do so.

When a request is received, the local council must undertake a consultation process to decide if an alcohol free zone is appropriate. A proposal to establish an alcohol free zone must address:

- the reasons for supporting an alcohol free zone. The reasons must reflect the fact that irresponsible behaviour arising from the consumption of alcohol occurs in the area. It is not sufficient to state reasons that are unrelated to irresponsible behaviour of drinkers, for example, the congregation of drinkers in the area
- the location of an alcohol free zone. An alcohol free zone may only be established to include a public road or public place that is a car park. It should be as small as possible, and primarily be located adjacent to outlets supplying alcohol
- the duration of the alcohol free zone. An alcohol free zone may be established for a maximum of three years
- consultation with the local Police Patrol Commander.

Liquor licensees, club secretaries or venue managers of registered clubs who are located in the area must be provided with a copy of the proposal. They have 30 days in which to provide any submission or objection to the proposal. Other key stakeholders in the community should also be consulted and in certain areas, the NSW Anti-Discrimination Board must be notified. The *Ministerial Guidelines on Alcohol Free Zones* provide further information regarding the establishment and operation of alcohol free zones and are available from the **Department of Local Government's** website at www.dlg.nsw.gov.au

COUNCIL NOTICES

Consideration will need to be given to notices erected by council, under section 632 of the *Local Government Act 1993*, which gives councils authority to fine persons up to \$1,100 who act contrary to notices erected in public places, including 'the doing of any thing in the place'.

Noise complaints

If the noise from a licensed venue – or the behaviour of patrons leaving the venue – unduly disturbs the local neighborhood, residents, police, local consent authorities (eg local councils) and others can lodge a complaint with the Liquor Administration Board. If the person(s) making the complaint does not have access to legal advice, officers of the Department of Gaming and Racing, who provide administrative support to the Board, can assist by providing information on legislative measures and requirements of the Board.

Once a written complaint is lodged with the Board, copies are sent to the relevant licensee / club secretary, the local police and the local consent authority. Board officers make arrangements [in consultation with the person(s) making the complaint and the licensee / club secretary] for a conference to be held to deal with the complaint. This is an informal process, and legal representation is optional.

Full details about the complaint process are set out in *Fact Sheet 8 Complaints – Conduct of Licensed Premises and Registered Clubs*, available from the **Department of Gaming and Racing** website www.dgr.nsw.gov.au (publications)

Venues should consider the action they can take to reduce noise and the likelihood of complaints. For example, a sign could be displayed to remind patrons about the need to minimise noise when they are outside the venue.

NEED MORE INFORMATION ABOUT NOISE COMPLAINTS?

Contact the **Department of Gaming and Racing**, tel. (02) 9995 0333, or visit the website www.dgr.nsw.gov.au

Liquor accords and lock-outs or curfews

Some liquor accords include a 'lock-out' or 'curfew' requirement which means that at a certain time no patrons are allowed to enter the premises, and once a patron leaves the premises they are not allowed back in. This type of arrangement typically applies to late night venues and particularly where there are a number of venues within a CBD (for example). The purpose of a 'lock-out' or 'curfew' is to prevent movement between venues late at night and is a liquor harm minimisation measure.

For venues who are members of liquor accords with 'lock-outs' or 'curfew' rules, and who do not have a smoking area that complies with the law, patrons will be required to leave the premises if they wish to have a cigarette.

Some liquor accords may decide to continue their strict policy in this regard and not allow these patrons to re-enter the premises. Others may decide to provide passouts, but this would require careful consideration in order to ensure the passout system is not abused – for example, one option may be to stamp the patron's hand when they leave and enforce a time limit on their re-entry to the premises.

It will be up to individual licensed venues that are members of these liquor accords to determine how they wish to deal with this issue.

Outdoor eating areas

Good outdoor eating areas can add to the character and vitality of the street, and should not create any safety hazards or make the areas in which they are situated less attractive. Licensees, club secretaries or managers should check if their local council has a policy about which features are acceptable.

If a licensee, club secretary or manager is considering applying to use footpaths and / or outdoor seating as part of the licensed premises you will need to apply to your local council. Following are some of the issues that will need to be considered in consultation with your local council.¹

Location

Eg the site of the proposed outdoor eating area should be quite flat and have a relatively hard surface, which is suitable for furniture.

Site layout

Eg furniture and umbrellas should not be too close to the road or be placed where pedestrians walk; if the eatery is on a pavement by a road, a distance of at least 1.8 metres should normally be left between it and the kerb (based on guidelines issued by the RTA).

Heritage considerations

Eg the development should fit in with any important historical or heritage features in the area.

Design of furniture

Eg your council may have special standards for the style of tables, chairs, signs and means of enclosure.

Other considerations

Eg provision of litter bins, lighting, heating, and protection from the elements.

Approvals and charges for use of footpaths under the *Roads Act 1993* and / or *Environmental Planning and Assessment Act 1979* are matters for local councils to determine. Any charges for use of footpaths are publicly exhibited as part of councils' draft management plans prior to their adoption.

1. Source: *Encouraging Outdoor Eating – A guide for councils and applicants* (2000), NSW Department of Urban Affairs and Planning.

GETTING APPROVAL FOR AN OUTDOOR EATING AREA

In most cases you will have to apply for the different council approvals individually, although the Department of Infrastructure, Planning and Natural Resources encourages councils to issue multiple approvals as a complete package.

The three types of approval are:

1. Approval under the *Roads Act 1993*
2. Development consent under the *Environmental Planning and Assessment Act 1979*
3. Approvals under the *Local Government Act 1993*

The procedure for obtaining all types of approval is similar. A licensee, club secretary or manager will need to apply to the local council – except for when they are applying for approval under the *Roads Act*, when they may have to apply to the RTA.

The council or the RTA will give you application forms and a list of the details you have to attach to gain approval or development consent. These may include:

- a layout and location plan of the proposed eating area
- details of signs to be used
- diagrams or photos of the furniture you are going to use.

If the application relates to a classified road, local councils must first obtain the approval of the RTA before granting permission. Approval can be granted subject to conditions, including a condition as to payment of rent.

The *Roads Act 1993* does not necessarily provide for council approval to be granted for a hotel or club to use a footpath as the *Act* provides for approval of footway restaurants.

The council will usually grant an approval with conditions – ie the rules you must comply with when the outdoor eatery becomes operational. These conditions may include you paying the council rent. Individual councils set these fees relating to the use of footpaths.

There is no set time for the processing of such applications. Applicants may contact their local council to obtain an estimate of the likely processing time. It should also be noted that processing time will be delayed where submissions do not contain all relevant information. If in doubt, an applicant should liaise with council to ensure that their application complies with all requirements.

DEVELOPMENT CONSENT

The development consent enables the council to assess the design, amenity and environmental implications of the proposal in relation to other buildings and uses in the area. In areas where the council owns the land, they are given the opportunity to retain control over it and ensure it is being used in the best public interest.

The council will assess your proposal in line with any standards they have on land use in general and outdoor eating areas in particular. These will be discussed in their *Outdoor Cafe Policy* (if they have one), and in their local environmental plan, development control plan and local approvals policy. Standards will cover issues such as location, site layout and design. The council may confer with other organisations and neighbouring homes and businesses before deciding whether to give approval.

The development consent may be granted with conditions. Your local councils can advise how long the development consent is valid for.

Approvals or leases are authorised under the *Local Government Act 1993*.

The purpose of the approval is so that councils can ensure that land they own, or private land situated near to land they own, is being used in the best public interest.

As with development consents, the council will assess a proposal in line with any standards they have on land use in general and outdoor eating areas in particular.

For more information on these local council applications or other information about using outdoor areas licensees, club secretaries or managers are advised to contact your local council.

APPENDIX 1 –
Application form for a second smoking room



Smoke-free Environment Amendment Regulation 2005

**Tax invoice / Application for a second smoking room
from 4 July 2005 to 1 July 2007**

Smoke-free Environment Act 2000 Section 11B(6)

Smoke-free Environment Regulation 2000 Clause 7

Date of issue: / /

Applicant details

Name of premises	
Address of premise	
ABN	
Name of occupier	
Postal address of occupier	
Residential address of occupier	
Name of applicant (if same as above leave blank)	
Residential address of applicant	
Relationship of applicant to occupier (eg owner, licensee, manager)	

Statement in support of application

I am the occupier / applicant for the occupier (delete one) of the premises seeking authorisation from the Minister for Health to set aside a second room (or part of a second room) in a club, hotel, nightclub or casino as an exempt area pursuant to section 11B(6) of the *Smoke-free Environment Act 2000* between 4 July 2005 and 1 July 2007.

All public places forming part of the premises are enclosed. Patrons do not have access to any balconies, courtyards, beer gardens or outdoor areas.

The exempt area (where smoking is, or will be permitted) is a gaming machine room with a floor area that is less than 15% of the total area of all the bar, gaming and recreation rooms in the premises.

The second room (or part of the second room) is as close as possible to the exempt gaming machine room, and the total area of the exempt gaming machine room and the second room (or part of the second room) is less than 25% of the total area of all gaming, bar or recreation rooms in the premises.

I have attached a floor plan of the premises, which accurately depicts the location and dimensions of the exempt area, the second room, every other room in the premises, and all other areas where patrons are permitted to consume alcohol.

In making this application I understand that Section 307A of the *Crimes Act 1900* provides for a penalty of two years imprisonment or a fine of 200 penalty units (\$22,000) or both, for an offence of making a false or misleading application.

Signed

Date

Payment details

Applications should be lodged with the Director-General, NSW Department of Health, Locked Mail Bag 961, North Sydney NSW 2059
ABN: 92 697 899 630

Tax invoice The prescribed fee of \$500 plus \$50.00 GST, totalling \$550.00 should accompany this application in favour of NSW Department of Health (Ref: 4102-2033-11-5513)

For information telephone NSW Department of Health, Tobacco and Health Branch, Tel. (02) 9391 9111
or email tobacco@toh.health.nsw.gov.au

NSW Department of Health (office use only)		
Application and fee received	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Application and documents inspected	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Application approved	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Application refused	<input type="checkbox"/> Yes	<input type="checkbox"/> No
If refused state reason/s		
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Smoke-free Environment Act 2000

The *Smoke-free Environment Act 2000* is now in effect. Its purpose is to promote public health by reducing exposure to tobacco smoke in indoor areas of licensed venues.

Resource order form

Have you got the signs and resources you need?

Please phone, fax, email or mail your order to:

Tobacco Resources Officer
NSW Health Better Health Centre
Publications Warehouse
Locked Mail Bag 5003, Gladesville NSW 2111
Tel. (02) 9879 0443 Fax. (02) 9879 0994
Email. tobinfo@doh.health.nsw.gov.au

To receive your materials free of charge please provide the following:

Contact name	
Business name	
Postal address	
Postcode	Telephone

Resource	Quantity	Order number
NO SMOKING AREA tent cards		{HP} 030089
NO SMOKING AREA sign (150 x 200mm)		{HP} 030070
NON SMOKING AREA sticker (150 x 200mm)		{HP} 030084
NO SMOKING sticker (1.5m separation) Smoking is not permitted at or within 1.5 metres of this area (210 x 295mm)		{HP} 050017
NO SMOKING sticker (1.5m separation) While persons are dining, smoking is not permitted at or within 1.5 metres of this area (210 x 295mm)		{HP} 020600
Double sided NO SMOKING sticker – For glass doors and windows (210 x 295mm)		{HP} 00104
NO SMOKING sticker – On a white background suitable for walls (210 x 295mm)		{HP} 00103
NO SMOKING table card – Double-sided dining card (120x110mm)		{HP} 050061
SMOKING AREA sign (230x75mm)		{HP} 050073

summary of the legislation and supporting information can also be obtained from the NSW Health website: www.health.nsw.gov.au

