

# QUEENSLAND'S OUTDOOR SMOKE-FREE LEGISLATION

The *Tobacco and Other Smoking Products Act 1998* (the Act) bans smoking at a number of outdoor places in Queensland:

Since 1 July 2006

**Outdoor eating or drinking places where persons may consume food or drink provided by an on-site food service**

Since 1 January 2005

**Major sports facilities**

**Patrolled beaches or at prescribed outdoor swimming areas (e.g. an artificial beach)**

**Within ten metres of children's playground equipment**

**Within four metres of non-residential building entrances**

*Hotels, clubs and casinos and a number of prescribed outdoor pedestrian malls in Queensland (including the Queen Street Mall, Brisbane) are exempt from the ban on smoking at non-residential building entrances.*

## MORE THAN JUST TOBACCO SMOKE

Outdoor smoking bans are not all about exposure to environmental tobacco smoke. The laws are also about **supporting social change, reducing the opportunity to smoke and creating a smoke-free environment** where non-smoking is the norm.

Social change is being encouraged in Queensland by separating the acts of eating and drinking from the act of smoking and having outdoor environments where smokers are required to move away to smoke.

Reducing the opportunity to smoke by creating more smoke-free areas is effective in decreasing cigarette consumption, reducing the prevalence of adult smoking, and reducing tobacco use in young people<sup>1</sup>.

## PRACTICAL APPLICATION

On-the-spot fines of up to four penalty units (\$150 - 300) can be issued for breaches of the tobacco legislation in Queensland. Below is a summary of on-the-spot fines (Prescribed Infringement Notices) issued for breaches of the Act during the period January 2005 to October 2008.

Offence type	Total fines issued
A person smoking within 4 metres of non-residential building entrance	309
A person smoking at a major sports facility	327
A person smoking in an enclosed place (licensed and non-licensed)	144
A person smoking at an outdoor eating or drinking place	168
A person smoking within 10 metres of outdoor children's playground equipment	25
A person smoking at a patrolled beach	14
Person smoking at a prescribed outdoor swimming area	1
Offence by an occupier, allowing a person to smoke in an enclosed place	2
<b>TOTAL</b>	<b>990</b>

## OUTDOOR EATING OR DRINKING PLACES

A place is an outdoor eating or drinking place if:

- a) the place is not an enclosed place or residential premises; and
- b) persons may consume food or drink provided by an on-site food service; and
- c) any of the following apply –
  - i. a person might reasonably expect the place has been provided for the purpose of consuming food or drink provided from an on-site food service
  - ii. the place is bounded by a fence
  - iii. the place is a licensed premises

Outdoor places which are fenced and where food or drink is provided by an onsite food service are captured by section 26W of the Act as an outdoor eating or drinking place. This includes temporary events (like shows) and permanent venues (like outdoor seating areas at cafes, golf clubs, many sporting clubs and race courses).

#### *Prosecutions*

There have been two prosecutions since the commencement of this provision:

- 2007 - An occupier offence for allowing a person to smoke at an outdoor eating or drinking place (s26Z), with a fine of \$3,000 (maximum penalty \$10,500)
- 2008 - An individual smoking at an outdoor eating or drinking place (s26X), who was also charged as an occupier (s26Z) and charged for failing to comply with an improvement notice (s44C), with a total fine of \$3,300.

#### **Positives**

A key advantage of the outdoor eating or drinking places provision is the broad range of venues that it captures. This means that, with the exception of hotels, clubs and casinos (described below), every alfresco eating area in Queensland is smoke-free. This has effectively eliminated any large-scale problems with smoking in areas that are seamlessly adjacent to indoor bar and eating areas, and has minimised issues of smoke-drift from outdoor to indoor areas.

#### *Restaurants and cafes with outdoor areas*

There appears to be a high level of public and industry acceptance of this provision. While restaurants and cafes have the option of establishing a 'smoking only' area outdoors, only very few have chosen to do so.

#### *Temporary events*

Queensland Health enforcement officers engage with relevant organising groups so that organisers can demonstrate that they did as much as possible to educate and inform patrons about the smoking laws prior to the event.

## **DESIGNATED OUTDOOR SMOKING AREAS**

Hotels, clubs and casinos in Queensland may choose to have a designated outdoor smoking area (DOSA) no larger than 50% of the total outdoor liquor licensed area, for drinking and smoking only.

Under the Act, in order to determine if a place is outdoors (or 'non-enclosed'), the definition of enclosed applies. An enclosed place is one that "has a ceiling or roof, and, except for doors and passageways, is completely or substantially enclosed, whether permanently or temporarily". This definition is broad in nature because of the infinite number of possible building configurations.

Prohibited activities in a DOSA include the consumption of food, food or drink service, offering any form of entertainment and gaming machines. A smoking management plan and dedicated signage is also required for premises choosing to have a DOSA.

The DOSA provision represents an allowance to some industry, based on the fact that the principal activity in these venues is the provision of alcohol rather than food. There are safety and public nuisance issues to consider.

#### *Prosecutions*

There has been one successful prosecution under this provision:

- 2007 – A licensee charged with a non-compliant DOSA (s26ZB(3)), and for allowing a person to smoke in a place other than the DOSA (s26ZB(5)), with a fine of \$6,000 (\$3,000 per breach).

## **CHILDREN'S PLAYGROUND EQUIPMENT**

Smoking is banned within 10 metres of outdoor children's playground equipment. There have been no evident problems with this provision and it attracts strong community support.

## **PATROLLED BEACHES / PRESCRIBED OUTDOOR SWIMMING AREAS / MAJOR SPORTS STADIA**

Very few breaches are reported by members of the public for patrolled beaches, outdoor swimming areas or major sporting stadia. Opportunistic inspections at major sports facilities have resulted in 327 on-the-spot fines since January 2005, suggesting that some breaches of smoking bans are occurring at these venues.

### *Prosecutions*

There have been two successful prosecutions under the major sports facilities provision in 2007 and 2008 against individuals for smoking at a major sports facility with fines of \$150 and \$250 respectively.

## **BUILDING ENTRANCES**

Smoking within four metres of an entrance to an enclosed place (ie a building) is banned in Queensland, with the exception of residential premises, hotels, clubs and casinos. The intent of the exemption for licensed premises is to keep smoking patrons, who are often under the influence of alcohol, in close proximity to the premises. This is particularly important for land-locked premises that do not have the option of establishing an on-premises outdoor area for smoking.

### *Prosecutions*

There has been one successful prosecution in 2007 against an individual for smoking near an entrance to an enclosed place and failing to comply with the requirement to provide their name and address, with a fine of \$600.

### **Positives**

In response to public and health group concerns, Queensland Health is focussing on improving compliance with the current building entrance provisions. Recent targeted enforcement at a well-known problem location in the CBD resulted in a number of on-the-spot fines, with follow-up inspections detecting no further breaches.

## **SITUATIONS OF INVOLUNTARY CROWDING**

An outcome of the recent review was the decision to transfer to local government the power to regulate smoking at pedestrian malls and public transport waiting points (such as outdoor bus stops, taxi ranks and ferry wharves).

The problem of smoke-drift and exposure at these settings is very specific to certain parts of the State and a local response is considered most appropriate.

## **OVERALL IMPRESSIONS**

There is strong and growing community support throughout Australia for extending outdoor smoking bans. In 2005 and 2006, two randomised, representative population surveys were conducted:

- 90% of people supported the new laws.

- 67% of smokers were smoking less in public spaces.

- 22% of smokers reported they had attempted to quit because of the new laws. This equates to an estimated 123,000 Queenslanders.

- 2% of smokers said that they had successfully quit as a result of the new laws. This equates to an estimated 14,000 new ex-smokers.

Queenslanders are enjoying the benefits of our many smoke-free places. Public feedback to the 2007 Review of Smoke-free Laws (N=588) confirmed a high level of support for outdoor smoke-free places in Queensland with 87% of respondents agreeing that further reforms are required.

Recent research conducted in Central Queensland with over 1,200 Queenslanders confirms that the gradual implementation of anti-smoking legislation in Queensland is changing social beliefs regarding acceptable smoking practices. The majority of respondents agreed that the smoke-free laws are likely to create a healthier environment and that they encourage smokers to consider their smoking behaviour. There was strong agreement that it is right to have smoke-free laws for public places<sup>ii</sup>.

### **Further information**

If you would like any additional information, please contact:

Katrin Hausdorf

Alcohol Tobacco and Other Drug Branch, Queensland Health

Ph: (07) 3234 1894

Email: [katrin\\_hausdorf.@health.qld.gov.au](mailto:katrin_hausdorf.@health.qld.gov.au)

---

<sup>i</sup> Pierce JP, Leon ME (2008). Special Report: Policy – effectiveness of smoke-free policies. *Lancet*, 9, 614-5.

<sup>ii</sup> Dwyer T, Bradshaw J, Mummery W, Searl K & Rossi D et al (2008). Public support for anti-smoking legislation varies with smoking status. *Australian Journal of Rural Health*. Vol 16, 231 – 36.