

AHA|SA Submission to the Smoking in Outdoor Eating and Drinking Areas Discussion Paper



Rather than more legislation, regulation and red tape, we advocate continuing to actively support venues in making a transition to increased non-smoking facilities based on their customer's expectations and their business capacity. This approach has clearly delivered a range of community, business and investment dividends since 2007.



AHA|SA Submission to the Smoking in Outdoor Eating and Drinking Areas Discussion Paper

Introduction

Thank you for the opportunity to make a submission to the “Smoke-Free Outdoor Eating and Drinking Areas” Discussion Paper.¹

There are around 630 hotels in South Australia. They include a diverse range of hospitality businesses including traditional metropolitan and regional hotels, small bars and taverns, accommodation providers, late night entertainment venues, functions centres, dining specialists and tourism destinations.

These hotels are an intrinsic part of the State’s culture, society and economy. They employ around 24,000 people and each year generate \$1.5 billion in retail sales, support 21,000 live band performances, give \$9 million to charities, sport and community groups, and hold properties with a capital and commercial value of \$2.1 billion.²

Since its beginnings in 1873 the AHA|SA’s role has been to represent and promote the interests of these diverse hotel businesses and today the AHA|SA proudly represents around 85% of the State’s Hotel and Hospitality Industry.

Historically hotels, like all other businesses, work places, homes, cars and parks allowed smoking in all areas, inside and outside. Since 2007, when smoking ceased to be allowed indoors, hotels have made areas for smoking outdoors, often at considerable capital cost.

Smoking - Policy / Regulatory Framework

The accepted health impacts of smoking have resulted in national and state smoking strategies which set out jurisdictional policy responses aimed at reducing both the rate and uptake of smoking.

¹ “Smoke-Free Outdoor Eating and Drinking Areas”, Government of South Australia, August 2013.

² Research conducted for AHA|SA by McGregor Tan

Policy responses over time have included:

- Bans on smoking in workplaces and public transport (including aircraft) (late 1990's)
- Bans on smoking indoors in licensed areas, hotels, restaurants (2007)
- Requirement for staff intervention when using cigarette dispensing machines (2010)
- Tobacco excise (25% increase in 2010 plus a further 60% increase over four years planned from Dec 2013)
- Removal of tobacco products from sight in retail outlets (Jan 2012)
- Introduction of plain-packaging and graphic warning messages (Dec 2012)
- Bans on smoking around children, including in vehicles and schools/playgrounds (2012)
- Bans on smoking advertising (1992)
- Increasing smoke-free events and venues, such as football ovals, festivals
- Funded assistance such as Quitline and other anti-smoking advertising campaigns

Over (broadly) the same period Australian smoking rates have declined from around 37% of the adult population in 1977 to a little over 16% in 2012.³

While it is likely to be a combination of these policy responses which has led to the overall reduction in both smoking rates and society's acceptance of smoking, it is clear that some measures have been more instrumental in driving down rates of smoking uptake and increasing quit rates than others.

For example, when speaking of the 25% rise in excise in 2010, British American Tobacco Chief, David Crow said "*we understand that the price going up when the excise goes up reduces consumption. We saw that last year very effectively with the increase in excise. There was a 25% increase in the excise and we saw the volumes go down by about 10.2%.*"⁴

In South Australia the "*South Australian Tobacco Control Strategy 2011-2016*" has as its primary target to reduce the percentage of young smokers to 16% by 2016.⁵

A secondary target (somewhat unrelated to the primary aim one could argue) is to "Reduce the proportion of the population exposed to passive smoking in confined public spaces by 20%" by 2016". (*page 10*) with a number of actions including (Action 4.1) to:

"Work with key stakeholders to phase in smoking bans in any outdoor area provided for the consumption of food and/or drink purchased onsite by 2016." (page 18)

The AHA|SA can only assume that this Discussion Paper has been released in response to both the above Strategy Action 4.1 and the most recent campaign by the SA Cancer Council via its mailed postcards in August of this year.

3 <http://www.abs.gov.au/AUSSTATS/abs@.nsf/2f762f95845417aeca25706c00834efa/738d23457b86defbca2570ec000e2f5c>

4 "The Australian" 1 August 2013

5 Government of South Australia, "South Australian Tobacco Control Strategy 2011-2016"

Statement of the AHA|SA Position

The AHA|SA does not support a blanket ban on smoking in all outdoor eating and drinking areas.

Further regulations on the Hotel and Hospitality Industry are not warranted or justifiable and will disproportionately disadvantage the Hotel and Hospitality Industry both in terms of direct costs and revenue.

South Australia's hotels have more than risen to the challenge of the 2007 indoor smoking bans and have in many cases spent millions of dollars developing first class outdoor areas to accommodate both their smoking and non-smoking patrons.

These businesses are best placed, with their customers, to determine the appropriate mix of smoking/non-smoking in their individual outdoor areas within their individual businesses.

There is no justifiable need to further impose blanket bans or additional red tape and heavy-handed regulation upon an industry who are clearly demonstrating they are managing this issue in line with their own individual business needs.

The AHA|SA believes it is cynical at best for the State Government to on the one hand propose to impose additional regulatory bans upon licensed venues on the basis of reducing the health impacts of smoking, while at the same time cutting funding to the smoking related health budget in 2013 - including ceasing investment in tobacco mass media campaigns.⁶

The AHA|SA does not believe that individually run small and medium sized businesses should be forced to bear the community cost of smoking.

Comments on the Aims of the Discussion Paper

Exposure

The stated aim of the paper is to "reduce exposure of smokers and hospitality workers to potentially harmful levels of tobacco smoke."⁷

In an article published by the Tobacco Control group, Simon Chapman argues that 'the transitory and fleeting exposure to others' smoking in open outdoor settings is not remotely comparable to that experienced in confined indoor settings.'⁸

The AHA|SA does not argue against evidence that intensive and prolonged exposure to concentrated levels of smoke in enclosed areas is harmful to health. AHA|SA also does not argue against evidence that the concentrations of particulates rises in the presence of smokers, even in outdoor settings. However the AHA|SA does not believe that the appropriate response to this is to ban *all* smoking in outdoor eating and drinking areas.

⁶ <http://www.abc.net.au/news/2013-08-09/health-sector-cuts-jack-snelling-jobs-mental-health-report-/4875228>

⁷ "Smoke-Free Outdoor Eating and Drinking Areas", op. cit., page 3

⁸ Chapman, S., "Banning smoking outdoors is seldom ethically justifiable", www.tobaccocontrol.bmjjournals.com

Rather, AHA suggests that in implementing indoor smoking bans the majority of intensive and prolonged exposure has been eliminated and that individual hotels should be left to manage their smoking and non-smoking patrons in their own way.

While patrons who do not wish to be exposed to any smoke are able to enjoy all smoke-free indoor areas of venues we would argue that should they also desire outdoor areas of their 'local' to be smoke-free they should not hesitate to recommend to the owner that the venue establishes a smoke-free area, as many venues have done.

De-normalising and Disassociating

The Government states as its aim to contribute to the 'de-normalising' of smoking through this proposal together with disassociating smoking from drinking, and reducing opportunities for relapse.

With an average of 16.2% of the population smoking, and declining, the majority of people already do not smoke. While recognising that this rate may be higher amongst particular segments of the population the AHA|SA would argue that a greater influencer on 'normal' behaviour is not if you see a stranger smoking in a hotel but rather what your friends, peers and, critically, your parents do, in terms of actually smoking and also in terms of considerate smoking behaviours, such as smoking away from other people.

Some have argued that the inability to smoke in a public venue, when coupled with a ban on smoking on footpaths will result in smokers giving up smoking altogether. While we cannot rule this out in isolation it is simply unbelievable to suggest that all it takes for smokers to quit is to not be able to smoke while in outdoor public eating and drinking areas. Surely these people will simply smoke at home, down a side street, on the way home, or not go out at all.

The community cost of smoking should not be borne solely by the Hotel and Hospitality Industry especially as the Hotel and Hospitality Industry already provides 100% smoke-free indoor dining and drinking as well as, depending on venue, areas outdoors which are also smoke-free.

If the Government is genuine and serious about wanting to reduce smoking rates it would simply put its money where its mouth is, but it has done quite the opposite.

The SA Tobacco Control Strategy 2011-2016 has specific Actions to:

- 1.1 Continue to fund effective state-wide mass media campaigns and targeted public education messages to promote quitting
- 1.3 Ensure ongoing preventative tobacco education in government schools⁹

Yet, unbelievably, in August 2013 at the exact time that this Discussion Paper was released the Government announced it was **ceasing** investing in tobacco mass media campaigns and ceasing investing in indirect support to schools, workplaces and other groups!¹⁰

Whether desirable or not, smoking remains a legal activity. If prohibition is the end game by State Government then this should be declared. As it stands however, the government has on

⁹ SA Tobacco Control Strategy 2011-2016, page 12

¹⁰ <http://www.abc.net.au/news/2013-08-09/health-sector-cuts-jack-snelling-jobs-mental-health-report-/4875228>

the one hand withdrawn advertising and measures to encourage and support smokers in quitting and at the same time seeks to place the burden on the Hotel and Hospitality Industry.

Amenity

Finally, The Discussion Paper cites amenity as an aim of the proposal. The AHA|SA certainly recognises that some people do not want to be exposed to second-hand smoke. However we do not accept amenity as a strong enough argument to impose further regulatory controls over the Hotel and Hospitality Industry given that patrons are already able to enjoy all indoor areas of venues, as well as a number of outdoor areas.

A number of survey results would not support a proposition that consumers are overwhelmingly demanding smoke-free outdoor eating and drinking areas.

Results of a recent Health Omnibus survey of 3000 participants.¹¹

	Support Total Ban	Support Smoke-free areas	No Ban
Beer Gardens and outdoor seating at hotels	30%	50%	20%
Outdoor Dining	50%	40%	10%

These figures suggest that the majority of people would support *some* smoke-free areas in outdoor drinking areas rather than a total ban and that while half of respondents would like totally smoke-free dining areas, 40% advocate for smoke-free areas only and 10% do not want a ban at all.

A 2013 AHA survey of its members showed that of those venues which don't already provide a partially smoke-free outdoor area when asked how often hotel patrons complain about smoke in outdoor areas the most common responses were overwhelmingly 'never' or 'rarely'. Even when allowing for a proportion of bias in responding it is clear that generally the majority of customers have not been concerned enough about amenity to register a complaint

Comments on Specific Issues in the Discussion Paper.

1. Shifting the Problem

The Discussion Paper says that banning smoking in outdoor eating and drinking areas would largely eliminate general exposure of the general community to smoke.

The AHA|SA simply cannot support this premise.

Firstly, it appears that the model venues envisaged in making this statement are those with an outdoor eating/drinking area which has exposure to the 'general community'. While some venues indeed have alfresco dining on the 'footpath' the majority of venues only have outdoor areas within their premises (i.e. beer gardens).

¹¹ As presented to the "Clearing the Air Forum", Cancer Council 14 October 2013. Also at http://www.quitsa.org.au/cms_resources/201103%20Key%20Smoking%20Statistic%20for%20SA%202010%20FINAL.pdf

The ‘general community’ are not walking past these areas and customers inside have made a conscious decision to both enter the licensed premises and then enter the outdoor area. Should smokers be required to leave the premises altogether to smoke they would need to step outside the venue actually onto the public footpath area and potentially expose far more of the ‘general community’ to smoke than if the situation was left as it currently stands.

Secondly, in the cases where venues do have ‘footpath’ (alfresco eating and drinking) imposing a blanket smoking ban in these areas will simply move the problem several metres to one side as customers step outside the licensed area to smoke and then step back. This would potentially just mean a congregation of concentrated smokers to one or both ends of the outdoor area as well as associated safety issues of drinks left unattended (or rapidly consumed).

Currently many venues, such as The Lion in North Adelaide have designated outdoor smoking and non-smoking areas on the ‘footpath’. It is orderly and is self-managed with no need for additional regulation. It allows the licensee to manage smoking and non-smoking demand and allows customers to remain seated in smoking areas away from non-smokers.

AHA members advise that should smoking be banned in outdoor areas in the vast majority of cases this would mean that customers would have to resort to footpaths or the carpark to smoke. As stated above footpath areas risk exposure to smoke to greater numbers of the community as do car parks, together with safety concerns of pushing large numbers of people into a car park area.

Another potential outcome is that hoteliers would choose to de-lodge their current footpath outdoor areas. The result would be that customers would congregate in front of the premises to smoke and this would again create potential for both conflict and a large concentration of smokers exposing the general public to smoke.

A case was put to AHA that second story balconies could possibly become the designated smoking areas for venues. While it might be feasible in very small number of cases, in reality this proposition is not workable on a number of grounds:

- The majority of venues do not have balconies, it is typically only the older hotels.
- Some of these hotels use their upstairs areas as accommodation rooms with balconies often attached to individual rooms. It is clearly unworkable to have smokers going upstairs through accommodation areas to smoke even if balconies are in common areas.
- Other venues by nature of their age are unsafe upstairs, particularly on balconies.
- Many venues use their upstairs areas as their private residence or as office/admin space and these spaces are inaccessible to the public.

In those few cases of hotels with safe and usable balconies even *before* considering cigarette butts being tossed over or smoke drifting down, it simply cannot be assumed that customers will bother to walk upstairs and go onto a balcony to smoke. The more likely reality is that they will step onto the footpath and congregate in a public area with resultant smoke and litter issues and disruption to others using the footpath.

2. Costs to Business

The Discussion Paper makes some astonishingly incorrect statements about the cost of the full indoor smoking bans of November 2007. The Discussion Paper states (page 4) that:

“The estimated net cost of a full ban to business over five years was approximately \$10.7 million or an average of \$1,305 per venue.”

It then states (also page 4) that “while some businesses may be concerned that the proposal will lead to a reduction in business, there is a large body of evidence demonstrating that this is highly unlikely” and points to an evaluation of the introduction of smoke-free enclosed areas of pubs and clubs in South Australia which showed that the business revenue did not reduce as a result of the 2007 changes.

The AHA|SA rejects this proposition.

The evaluation appears to be exclusively the Tobacco Control Research + Evaluation Research Briefing entitled “The effect of smoke-free laws on business revenue in hotels and licensed clubs in South Australia.”¹²

Firstly this evaluation relies solely on the ABS Retail Business Survey and uses as its sampling frame the register of new businesses only, rather than established ones (the majority of hotels).

This evaluation fails to identify the clear and infallible statistics produced by the SA Government’s Consumer and Business Services in relation to net gaming revenue statistics.

These statistics form the basis for the application of State Government gaming taxes and are collected from every electronic gaming machine in the state on a daily basis via a central computerised monitoring system. They are indisputable.

Annual Net Gaming Revenue (NGR) Table¹³

Year	Total NGR	Smoking Arrangements	Loss Over 2006/2007	Cumulative Loss	Impact per EGM & per 40 EGM Venue (Cumulative)
2006/07	\$792.62m	Partial smoking ban in gaming rooms			
2007/08	\$758.46m	Total smoking bans from 1 November, i.e. 8 of 12 months	\$34.16m	\$34.16m	\$2,694 per machine p.a. \$107,743 per 40 machine venue
2008/09	\$750.65m	Total smoking ban 12 of 12 months	\$42.16m	\$76.32m	\$5,992 per machine p.a. \$239,679 per 40 EGM venue
2009/10	\$729.37m	Total smoking ban 12 of 12 months	\$63.25m	\$139.57m	\$10,951 per machine p.a. \$438,072 per 40 EGM venue

¹² “The effect of smoke-free laws on business revenue in hotels and licensed clubs in South Australia”, Tobacco Control Research and Evaluation, Research Briefing, 27 November 2009.

¹³ <http://www.cbs.sa.gov.au/wcm/licensing-and-registration/liquor-and-gambling/gaming/statistics/>

These State Government Net Gaming Revenue (NGR) records show a startlingly different result.

Using 2006/07 as a base year - when limited smoking was still allowed inside venues – revenue for the first partial year of total indoor smoking bans (2007/08 - 8 out of 12 months banned) show a drop in NGR of a whopping \$34.16 million or \$2,694 *per machine*. This equates to \$107,743 per venue for every 40 gaming machine venue.

Three years later, to 2009/10, the accumulated loss was \$139.57 million or approximately \$438,072 per 40 machines.

This impact of the indoor smoking bans on revenue is also acknowledged in the SA State Treasury Budget Papers of 2008/09(page 3.14).

"Gaming machine revenue has fallen in 2008-09 reflecting the full year effect of smoking bans in gaming venues (including the casino), which came fully into effect on 31 October 2007."

In the State Budget Papers of 2010/11 (Page 3.11) the commentary was similar:

"Gaming machine revenue is expected to be around \$11 million lower than estimated in the 2009-10 Budget as a result of lower expenditure in hotels and clubs."

Moore Stephens Analysis

This drop in revenue is acknowledged in a recently developed report on the state of the Hotel Industry in South Australia by Moore Stephens (October 2013)

Gaming revenue in South Australia has been in decline over recent years – Moore Stephens
Following their inception in 1994, revenue from gaming machines rose steadily until its peak in 2007. The introduction of indoor smoking bans in hotels from November 2007 immediately reversed this trend, with net gaming revenue having fallen in all but one year (2010/11) since 2007¹⁴.

\$40 Million Capital Investment

What is also excluded is the estimated \$40 million dollars spent on capital investment by the Hotel and Hospitality Industry in South Australia to gear up for the indoor smoking ban by building new outdoor areas.

Our member's hotels report a drop in revenue across their businesses at the time of the 2007 indoor smoking ban. On average these losses have been estimated to be in the vicinity of 10%-20% of bar trade and similar in gaming. Up to a 20% reduction in trade has been estimated in indoor dining. These decreases (which arguably may have since partially bounced back) nevertheless represent a real loss of earnings. It is expected that if a total ban was applied to outdoor smoking eating and drinking areas, a further loss of up to 50% could be expected and this would simply spell the end of many businesses.

It could not be clearer – smoking bans have had a severe impact on revenue. The flow on effect to employment is real as between 42 and 45 cents in *every* gross profit dollar is attributed to employment cost. (Gross profit = total revenue less the cost of goods but before expenses.)

¹⁴ Consumer Business Services statistics

AHA|SA Key Points - Discussion

Let business owners run their own businesses

Ultimately what is being considered in The Discussion Paper is what level of, if any additional regulations are required to manage smoking in licensed premises. The AHA strongly argues that there is simply no case for any additional regulations to manage the combination of smoking and non-smoking customers that hoteliers have. Simply put, hoteliers already manage their premises to meet the current and changing need of their customers and should be left to do so.

The Hotel and Hospitality Industry has proven itself to be responsible, trustworthy and innovative. As a result of the previous changes to smoking laws, only six years ago, the SA Hotel and Hospitality Industry invested an estimated \$40 million in capital expenditure to develop their outdoor areas.

Indeed, many hoteliers went beyond the minimum requirements and have provided award-winning outdoor areas for their customers. Many of these areas are already (voluntarily) designated as at least partially smoke-free, some or all of the time.

These hotels have adapted their own businesses to meet the needs of their customers. It is not a one-size fits all approach and should not be as different businesses have different needs. There is no need to apply additional regulations on this industry. Appendix A shows examples of these great innovative outdoor areas at SA hotels.

As well as these hotels in The Appendix there are many of other examples of hoteliers voluntarily adapting their venues to allow for the needs of their smoking and non-smoking customers.

- The Windmill at Prospect has a small smoking area with no food/drink service and has installed an air curtain.
- The iconic Alberton at Cheltenham has decided to make its outdoor area smoke free.
- The Vine Inn at Nuriootpa has 50% permanently smoke-free outdoors.
- Many venues have smoke-free beer gardens when blinds are down.

The AHA|SA argues that hotels are best placed to know the extent of the issue, how best to manage it and the repercussions of any additional regulations. When surveyed more than half responded that customers 'never' or 'rarely' complain about smoking in outdoor areas.

These respondents also overwhelmingly stated that the only place that their customers would be able to smoke if NOT allowed to smoke on the premises in existing outdoor areas is the footpath or the car park. Surely, it is against the spirit of the proposal if the result is increased smoking in public footpaths, together with litter management and safety issues in car parks?

By providing the flexibility for hoteliers to manage their businesses they can also manage their demand. They argue that even a 50:50 smoking and smoke-free zone does not suit all businesses as one area fills up while the other is empty and there is a loss of revenue. These venues argue they should be able to manage their own business needs and the AHA agrees.

Another great examples of businesses voluntarily managing this issue without the need for further regulation are the Adelaide Oval and the Royal Adelaide Show. Both have either fully

smoke-free or designated smoking areas and have been held up by authorities as prime examples of the way to manage smoke-free areas. The AHA|SA argues that these decisions have been made by those businesses about their businesses and we ask that the same is allowed of the Hotel and Hospitality Industry. They are already innovatively addressing this issue and will continue to do so, especially as the percentage of the smoking population decreases and demand for smoke-free areas increases. Another layer of red tape, regulation and cost is not justifiable.

Other States

Legislation varies across Australia, some jurisdictions have entirely smoke-free outdoor dining and drinking (ACT), others DOSA's (designated outdoor smoking areas) or smoking zones (WA). While we understand that a blanket ban may appear to be simple to understand and administer it is not workable. Not all licensed premises are the same and neither are all customer groups.

Conclusion

The 2007 ban on smoking in enclosed areas resulted in significant capital expenditure on venues together with a drop in revenue across bar and dining and a larger measurable drop in gaming revenue which has not recovered. This loss of revenue from the 'on-premise' component of a hotel business is of great concern as it is the 'on-premise' rather than 'off-premise' or packaged liquor that generates the majority of employment, profitability and economic capacity.

The health impacts of smoking and of second-hand smoke in enclosed areas is widely agreed and the Hotel and Hospitality Industry has proven through the capital investment in developing their premises and in applying differing smoking and smoke-free areas across their businesses that they are responsible and adaptable to the needs of their customers in this regard.

It is simply unreasonable to impose another layer of regulation to the Hotel and Hospitality Industry now or by 2016 after such significant changes in 2007 when there is little evidence to suggest customer demand or that a further ban will have a measurable effect on smoking rates. In some cases it can be seen it will simply shift the problem a few metres away.

The unreasonableness is particularly true in light of the cuts to the health budget in August of this year. If the Government is seriously interested in reducing smoking rates it would not have decided to cut its quitting smoking programs to save a small \$5m. It is unreasonable to force the Hotel and Hospitality Industry to bear the community cost of more changes to smoking regulations while at the same time the government is cutting its budget.

The AHA|SA does not support any additional legislative bans on smoking in outdoor eating and drinking areas and believes that the Hotel and Hospitality Industry is best placed to manage this issue based on its business needs and the needs of its customers.

Rather we would advocate continuing to actively assist and support venues in making a transition to increased non-smoking facilities based on their customer's expectations and their business capacity. This approach has clearly delivered a range of community, business and investment dividends.

Appendix A

The Lion, North Adelaide

The Lion was named Australian Hotel of the Year in 2013. It has truly spectacular outdoor areas which the licensee has deemed entirely smoke free until 9.30pm each day to cater for meal times.



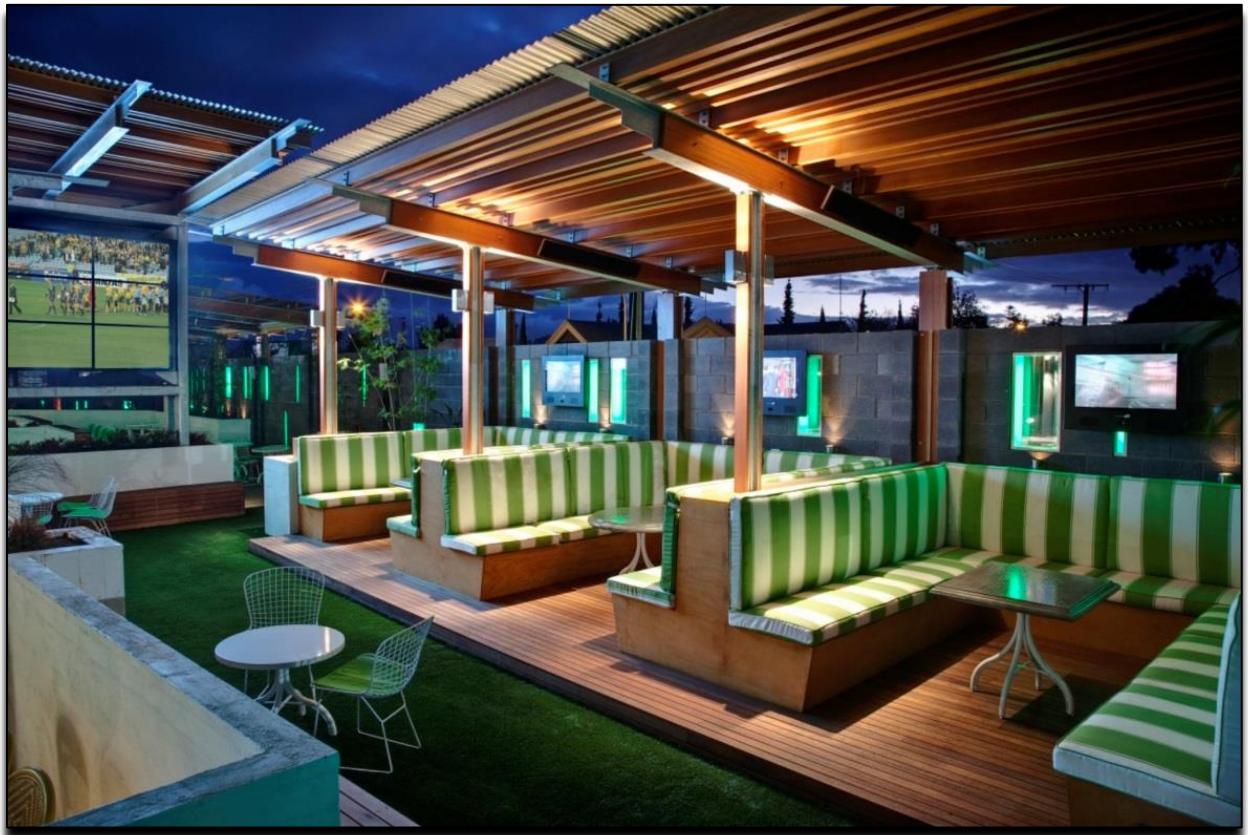
The Avoca, Clarence Gardens

At the Avoca, 50% of the outdoor area is permanently smoke-free



The Walkers Arms, Walkerville

The Walkers Arms has allocated 50% of its outdoor area to be permanently smoke-free



The Edinburgh Hotel, Mitcham

The Edinburgh has a permanently smoke-free outdoor veranda area and while the beer garden is not designated totally smoke-free the tables and settings are widely spaced and smoke free areas designated in line with bookings and customer requests.



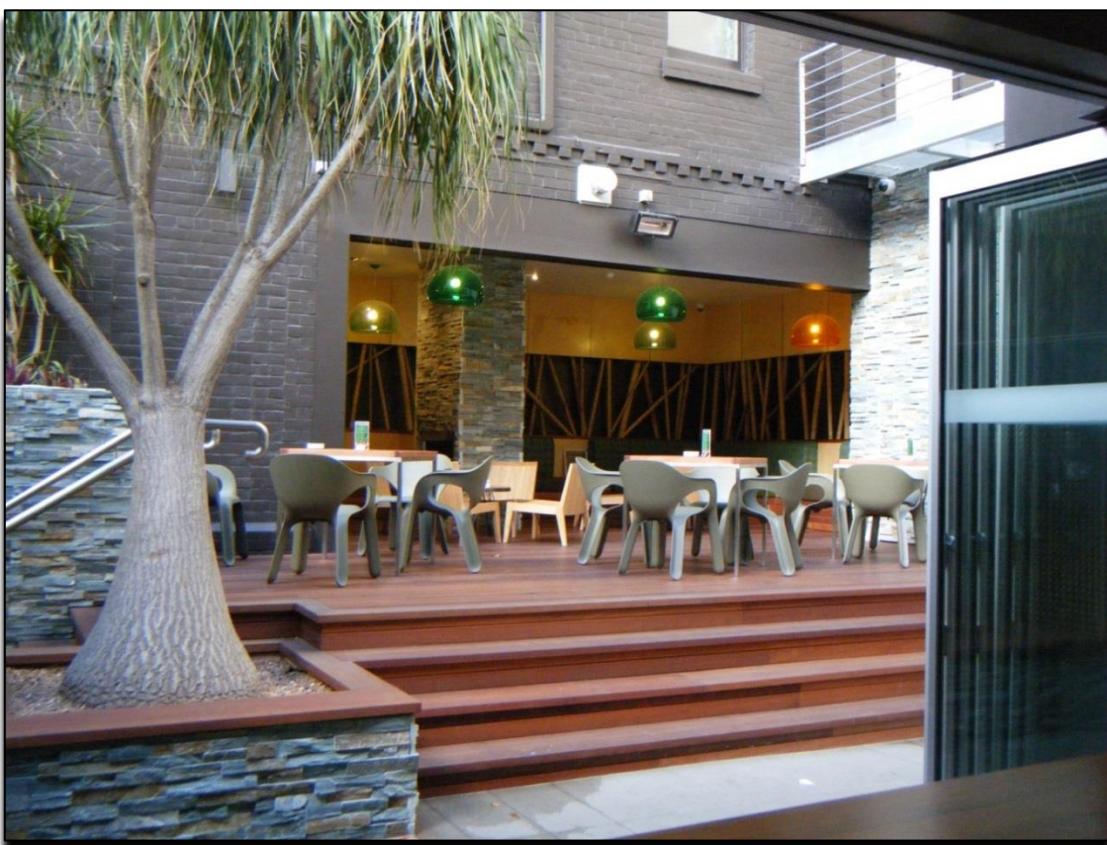
The Arkaba, Fullarton.

The Arkaba's new outdoor area, 'Sporty's Bar' has designated out door smoking and non-smoking areas.



The Strathmore, Adelaide

The Strathmore has a permanently smoke-free outdoor area.





The Highway, Plympton

