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LawTalk Blog



What does the recent “smoking ban on all outdoor dining” actually mean?

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Between 1999 and 2007 a smoking ban on all enclosed spaces was rolled out in South Australia under the *Tobacco Products Regulation Act 1997* (“**the Act**”).

The initial ban on smoking in public places started with indoor dining areas and was followed to include work spaces, enclosed public areas and shared spaces, all pubs, clubs and casinos.

Since 31 May 2007 smoking whilst a child is present in the car has also been prohibited. In South Australia a child is defined as a person under the age of 18.

"This is a continuing government initiative to curtail the effect of exposure to cigarette smoke which is estimated to kill 21 people per week in South Australia."

Since 1 July 2016 the South Australian Government has banned smoking in all outdoor dining areas pursuant to section 52 of the Act.

Section 52 of the Act states that smoking is banned in the public areas specified in the regulations and provides for various penalties with an expiation fee of \$75.00 and a maximum penalty of \$200.00. The business could also be fined \$1,250.00.

Under the regulations, an outdoor dining area means an unenclosed public area in which tables, or tables and chairs, are permanently or temporarily provided for the purpose of public dining.

Public outdoor dining areas include:

- pubs and clubs;
- cafes and restaurants;
- fast food eateries; and
- temporary eateries at events and other venues

Under section 6 of the *Tobacco Products (Smoking Bans in Public Areas-Longer Term) Regulations 2012* (“**the Regulations**”) smoking is banned in the public area at any time that food is being offered for purchase or otherwise provided by the occupier. Therefore if the occupier offers meals between 12.00 pm and 2.00 pm in the outdoor dining area then smoking is banned in the outdoor dining area during that period, regardless of whether anyone is actually eating in the area.

Therefore it appears that smoking is banned from outdoor dining areas at any time that food is offered for purchase or otherwise provided, and if a hotel offers food between 12.00 pm and 2.00 pm then smoking would be allowed before 12.00 pm and after 2.00 pm.

The question then is what about if someone is eating after 2.00 pm? Will the person smoking in the outdoor dining area, or the venue itself be liable to penalties? It appears from the Act and the Regulations that if food is being offered or provided only between the hours of 12.00 and 2.00 pm and someone is eating outside of those hours, then smoking is allowed. However, given that this is new legislation and both the Act and regulations are not particularly clear on this point, this is still to be tested.

Whilst the Act does not define “snack food” it appears to apply to processed snack foods such as packaged potato chips or nuts that are designed to be portable and quick.

Signs that are visible must be placed in the outdoor dining area to advise people that it is a smoke free area. If it is only smoke free at certain times, those times must be displayed.

This is a continuing government initiative to curtail the effect of exposure to cigarette smoke which is estimated to kill 21 people per week in South Australia, whilst at the same time provide the public with a smoke free environment in which to enjoy food and drinks.

Having visited restaurants and outdoor dining areas in many parts of Europe where smoking is still allowed, the South Australian initiative offers a far better experience in which to enjoy food and company.

So if you are a smoker be careful where you light up as it may cost you more than the price of the meal.

Please note, this Blog is posted in Adelaide, South Australia by Andersons Solicitors. It relates to South Australian legislation. Andersons Solicitors is a medium sized law firm servicing metropolitan Adelaide and regional South Australia across all areas of law for individuals and businesses.