



BY KENNETH YARDY

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Altered states

A LEGAL GUIDE TO THE NEW SMOKING LAWS ACROSS THE NATION

THE NEW SMOKING laws for licensed premises mean that a lot of licensees and owners need to look at their venues to see if they can deal with and comply with the radical changes (and opportunities) they represent. As health laws are in control of the State governments, each state will vary, so here's a general overview of each state...

NEW SOUTH WALES

The total ban of smoking inside licensed premises for 1 July, 2007. The only exemption is a public space, which by definition has less than 75 per cent of its ceiling and wall area enclosed. Up to 15 per cent of the area which is not enclosed can be locked open doors and windows (ie. a minimum of 10 per cent must be open to the elements at all times, and smoke cannot enter the no-smoking area. Fines of up to \$5,500 can apply).

VICTORIA

This is substantially similar to NSW; it has a 75 per cent enclosure limit applied to licensed premises on the same date as NSW.

AUSTRALIAN CAPITAL TERRITORY

This was the origin of the 75 per cent

Licensees and owners need to look at what areas of their venues can be used for smokers

enclosure rule if there isn't a ceiling.

SOUTH AUSTRALIA

The enclosure rule is 70 per cent of the walls and ceilings, unless there is no ceiling of any type. Comes into effect 31 October, 2007.

WESTERN AUSTRALIA

A 50 per cent enclosure limit was implemented in July 2006, but you can apply for "break-out" on footpaths for the control of smokers areas to assist your premises.

TASMANIA

A 50 per cent enclosure limit was implemented, but a "roof" generally only becomes a "roof" when it covers more than one third of the ceiling area.

QUEENSLAND

Here there is a 50 per cent enclosure maximum where there is no ceiling, and outdoor "smoking or drinking areas" can be designated for 50 per cent of the outdoor licensed area, however there can no serving of food or drink, no entertainment and no gaming machines in that area.

NORTHERN TERRITORY

There is no smoking in food service or dining areas, walkways, toilets, dance floors or enclosed entrances of licensed premises.

Operators need to look at what areas of their venues can be used for smokers and how to make sure they can be managed with all related signage, noise, litter, vending machine, security and local planning issues.

Verandahs, balconies, footpath dining, beer gardens and rooftop areas have come into their own as they assist in complying with areas that are capable of being smoking areas. Serious management problems can result if you don't plan ahead. You can run foul of neighbourhood or customer complaints because of poor day to day management of your premises. Butt litter, footpath congestion, 'Lock Out' rules and noisy beer gardens can cause additional problems. Above all, remember that you can't just start renovating the place without Council consent! Get good, clear, professional advice in order to deal with the new regime.

If you have any liquor licensing questions, contact Yardy Legal at 497 Elizabeth Street, Sydney, NSW 2010. T: 02 9318 2288 www.yardy.com.au Questions are published anonymously.

Disclaimer: All legal advice is provided by renowned Australian law firm, Yardy Legal. This page is not intended to provide definitive legal advice or analysis of the law, legislation, legislative or other changes. Professional advice should be taken before any course of action is pursued. Different laws will apply in different states and nationally and the advice given relates to that state in which the question is posed.

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