

A guide to the new smoke-free and vape-free laws

From 1 March 2024



SA Health

A copy of this publication is available at clearingtheair.sa.gov.au

Disclaimer

This information is provided for guidance only and is not to be taken as an expression of the law. It should be read in conjunction with the *Tobacco and E-Cigarette Products Act 1997* and *Tobacco and E-Cigarette Products (Smoking Bans) Amendment Regulations 2023*. The State of South Australia, its agents, instrumentalities, officers and employees will not be responsible for any loss, however arising, from the use of, or reliance on this information.

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1. Overview

On 1 March 2024, new laws called the *Tobacco and E-Cigarette Products (Smoking Bans) Amendment Regulations 2023* (under section 52(2) of the *Tobacco and E-Cigarette Products Act 1997*) ban smoking and vaping in a variety of public outdoor areas in South Australia.

The Government of South Australia has introduced these new regulations to protect the community from passive exposure to tobacco smoke and e-cigarette aerosol, and to increase the comfort and enjoyment for users visiting these public spaces. The new laws reflect the high level of public support for smoke-free and vape-free areas in South Australia and align with the community's expectations to safeguard people from second-hand smoke and e-cigarette aerosol, with a particular focus on those areas frequented by children and vulnerable people.

The new laws created smoke-free and vape-free outdoor areas in all public areas:

- within early childhood services premises, and education and children's services facilities (including schools), and within 10 metres of their boundaries
- at and within 10 metres of non-residential building entrances, such as entrances to shopping centres, government and commercial buildings
- within public hospitals, public health facilities, private hospitals, and within 10 metres of their boundaries
- within 5 metres of any part of a building comprising a residential aged care facility, from 7 December 2026.
- at outdoor swimming facilities
- within major event venues declared under the *Major Events Act 2013*
- at and within 10 metres of a sporting venue during an organised underage sporting event or training or practice session in preparation for an organised underage sporting event
- on beaches between, and within 50 metres of, red and yellow patrol flags, and within five metres of any part of jetties (including under jetties).

A 'public area' means an area or place that the public, or a section of the public, is entitled to use or that is open to, or used by, the public or a section of the public (whether access is unrestricted or subject to payment of money, membership of a body or otherwise).

These new laws are in addition to existing smoke-free and vape-free laws in:

- outdoor dining areas
- enclosed public places, workplaces and shared areas
- a motor vehicle if a child is present
- certain public transport areas
- near playground equipment in a public area
- certain public areas - short term bans
- certain public areas - longer term bans
(for example, Henley Square, Moseley Square, Glenelg, Royal Adelaide Show, near The Parade Norwood)

This guide is provided to assist organisations to understand, comply with and communicate new smoke-free and vape-free public outdoor area laws.

2. Do the new laws apply to you?

If you answer 'yes' to any of the following questions, the new law is likely to apply to you or your organisation.

Question - Are you an occupier (owner/proprietor) of a premises or area and/or are you responsible for administration of any of the following listed facilities, services, buildings, events, or public spaces?

- | | |
|---|----------|
| 1. Early childhood services or education and children's services facilities, including schools. | Yes / No |
| 2. Non-residential building/s, government buildings or commercial buildings. | Yes / No |
| 3. Public or private hospitals, public health services. | Yes / No |
| 4. Residential aged care facilities. | Yes / No |
| 5. Outdoor swimming facility
(premises where an outdoor swimming pool is available for use). | Yes / No |
| 6. An event declared under the <i>Major Events Act 2013</i> . | Yes / No |
| 7. Organised under-18 years sporting events. | Yes / No |
| 8. Beaches with patrol flags and/or jetties. | Yes / No |

If you answered 'yes' to any of the above, continue reading for more information on how the new laws apply to you and how you can comply with the new laws.

3. How do the new laws apply to you?

The new laws come into operation on 1 March 2024.

The following information provides further detail to assist an occupier of the above listed facilities, services, buildings, events, or public spaces to understand and apply the new law.

3.1 Where do the new laws apply at early childhood services, education and children's services facilities?

Smoking and vaping are banned in all public areas of 'early childhood services' and 'education and children's services' facilities, and within 10 metres of the boundary of these premises

'Education and children's services facility' means:

- (a) premises where services of a kind to which the *Education and Care Services National Law (South Australia)* applies are provided; or
- (b) premises occupied by a children's services centre, a Government preschool, a Government school or a non-Government school, all within the meaning of the *Education and Children's Services Act 2019*.

'Early childhood services' has the same meaning as in section 4 of the *Education and Early Childhood Services (Registration and Standards) Act 2011*.

According to the *Education and Early Childhood Services (Registration and Standards) Act 2011*, early 'childhood services' means services of the following kinds:

- a) in home care services;
- b) occasional care services;
- c) rural and mobile care services;
- d) family day care services that are not education and care services within the meaning of the *Education and Care Services National Law (South Australia)*;
- e) any other service declared by the regulations to be included in the ambit of this definition.

'Public area' has the same meaning as set out above in the page 4 Overview.

10-metre zone beyond the boundary

The new laws require the establishment of a 10-metre smoke-free and vape-free area in all public areas from the boundary of early childhood services and education and children's services facilities. This area does not extend into areas that are not open to, or used by the public, or a section of the public. For example, residential premises that share a boundary with, or are within 10 metres of the boundary of, children's education centres, child-care centres and school land.

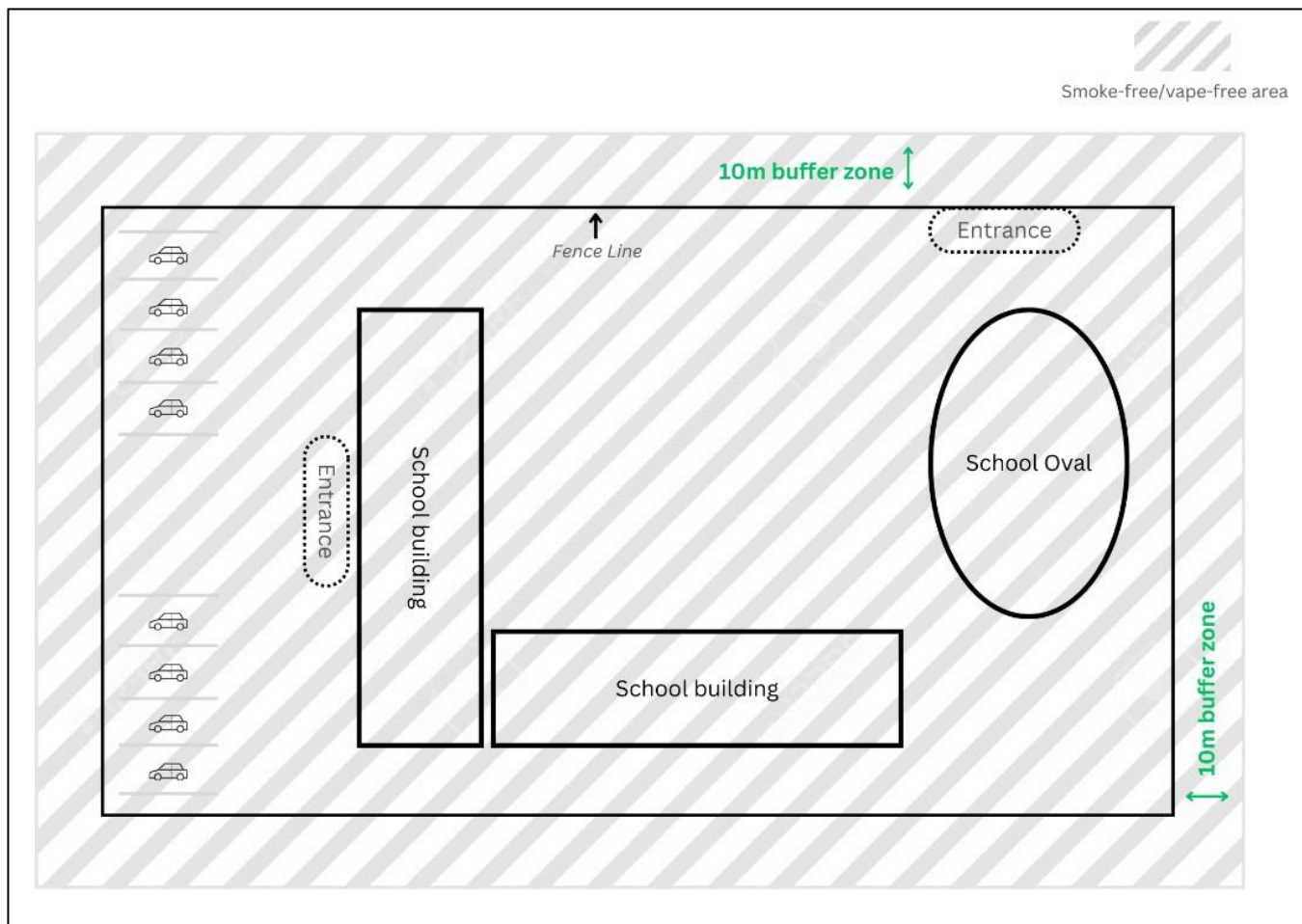


Diagram 3.1 - An example of where the new smoking and vaping laws apply at a school.

3.2 Where do the new laws apply near entrances?

Smoking and vaping are banned in all public areas at and within 10 metres of any part of an entry point to an enclosed public place, workplace or shared area.

‘Entry point’ means an entrance to or exit from a place.

‘Public area’ has the same meaning as set out above in the page 4 Overview.

The new smoke-free and vape-free area laws do not apply to an area -

- (a) in respect of which a licence is in force under the *Liquor Licensing Act 1997*; or
- (b) that is at or within 10 metres of any part of an entry point for an area referred to in paragraph (a) if the entry point leads directly to such a licensed area and not to an unlicensed area within the same premises; or
- (c) that is at or within 10 metres of any part of an entry point to a place that -
 - (i) is used solely for residential purposes; or
 - (ii) is used partly for residential purposes and partly for other purposes if the entry point is used solely for entry to or exit from that part of the place that is used for residential purposes.

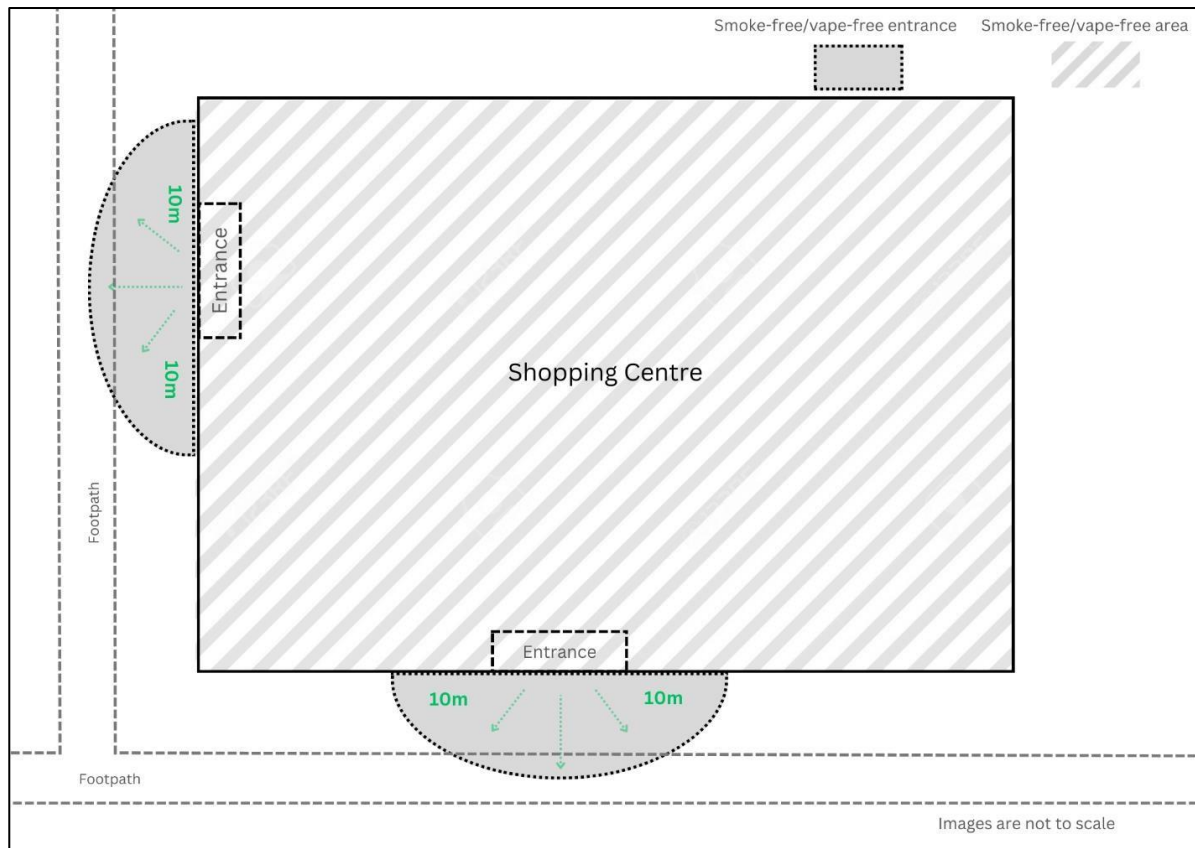


Diagram 3.2A - An example of new smoke-free and vape-free areas at entry points to a non-residential building, such as a shopping centre.

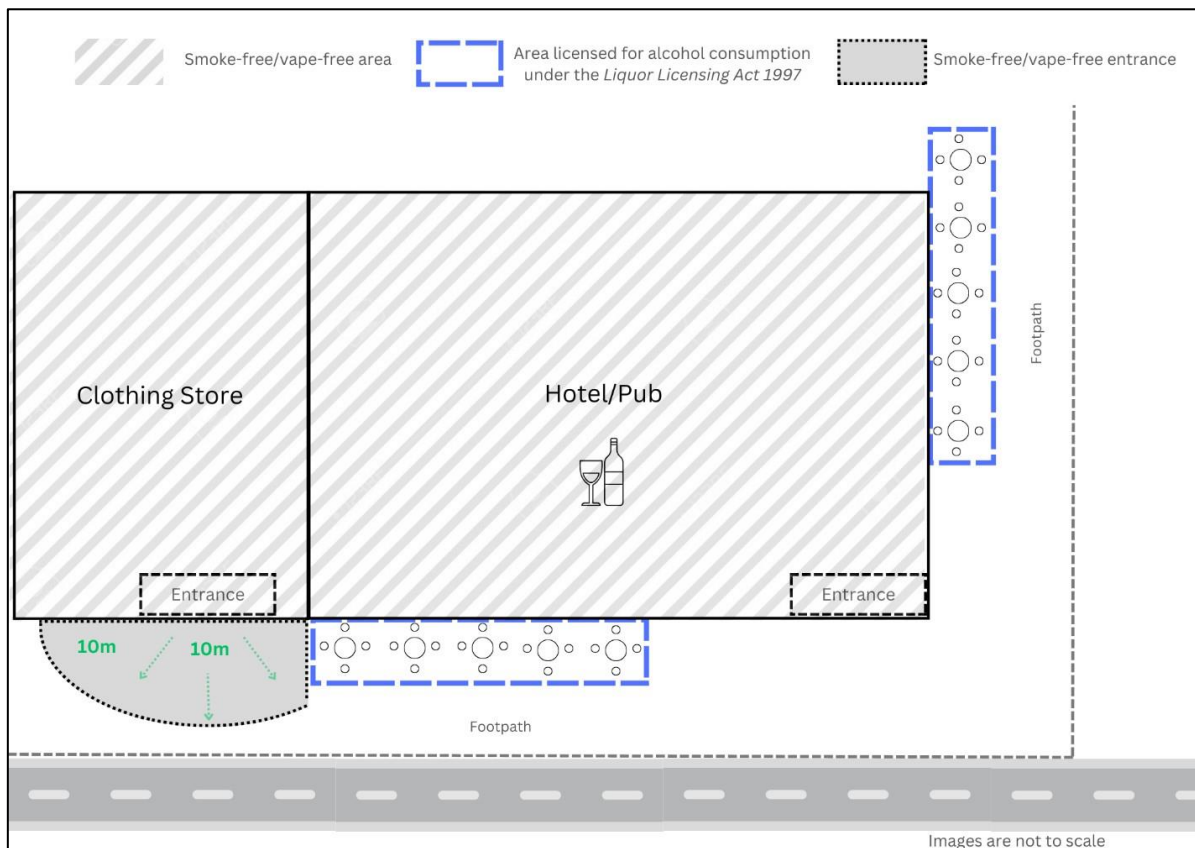


Diagram 3.2B - An example of new smoke-free and vape-free areas at or adjacent to a liquor licensed venue, such as a hotel. (Please note that smoke-free outdoor dining laws still apply)

3.3 Where do the new laws apply at hospitals?

Smoking and vaping are banned in all public areas within a hospital, and within 10 metres of the boundary of a 'hospital'.

Hospital and health care services

'Hospital' means a site at which the activities of an incorporated hospital or a private hospital (both within the meaning of the *Health Care Act 2008*) are undertaken.

An 'incorporated hospital' means a hospital incorporated under the *Health Care Act 2008*.

There are ten incorporated hospitals under the *Health Care Act 2008*:

- Central Adelaide Local Health Network (LHN)
- Northern Adelaide LHN
- Barossa Hills Fleurieu LHN
- Yorke & Northern LHN
- Eyre & Far North LHN
- Southern Adelaide LHN,
- Women's and Children's Health Network
- Limestone Coast LHN
- Riverland Coorong Mallee LHN
- Flinders & Upper North LHN

The activities of incorporated hospitals are wide ranging and include the provision of health services at metropolitan, regional and rural public hospitals as well as, for example, the provision of health services by Child and Family Health Services (CAFHS), Drug and Alcohol Services South Australia (DASSA), Watto Purrunga Aboriginal Primary Health Care Services, GP Plus Health Care Services and Centres and collection centres operated by SA Pathology.

Private hospitals are non-incorporated hospitals under the *Health Care Act 2008*.

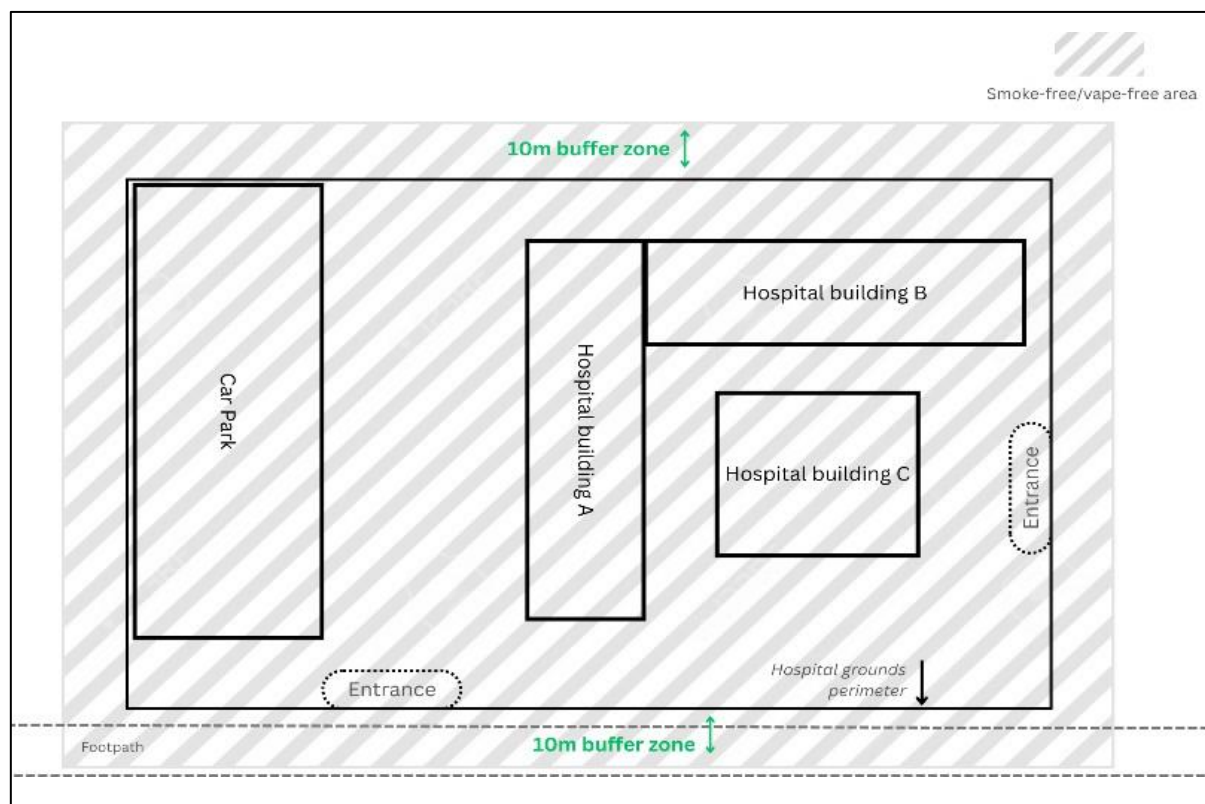


Diagram 3.3 - An example of where new smoke-free and vape-free laws apply for a hospital.

3.4 Where do the new laws apply at residential aged care facilities?

'Residential aged care facility' means a premises at which residential care is provided by an approved provider under the Commonwealth *Aged Care Act 2024*.

This smoke-free law applies to all 'public areas' within 5 metres of any part of a building comprising a residential aged care facility.

Residential aged care facilities operated by the South Australian Government located on hospital grounds are also bound by 'Regulation 19 - No smoking at or in vicinity of 'hospital'. Refer to Section 3.3 above.

Residential aged care facilities must also adhere to Regulation 21 'No smoking near entrance to enclosed public place, workplace or shared area'. Refer Section 3.3 above.

The new laws for residential aged care facilities in South Australia will commence from 7 December 2026. Go to the 'Public outdoor area tobacco laws for residential aged care facilities' webpage on the SA Health website for more information.

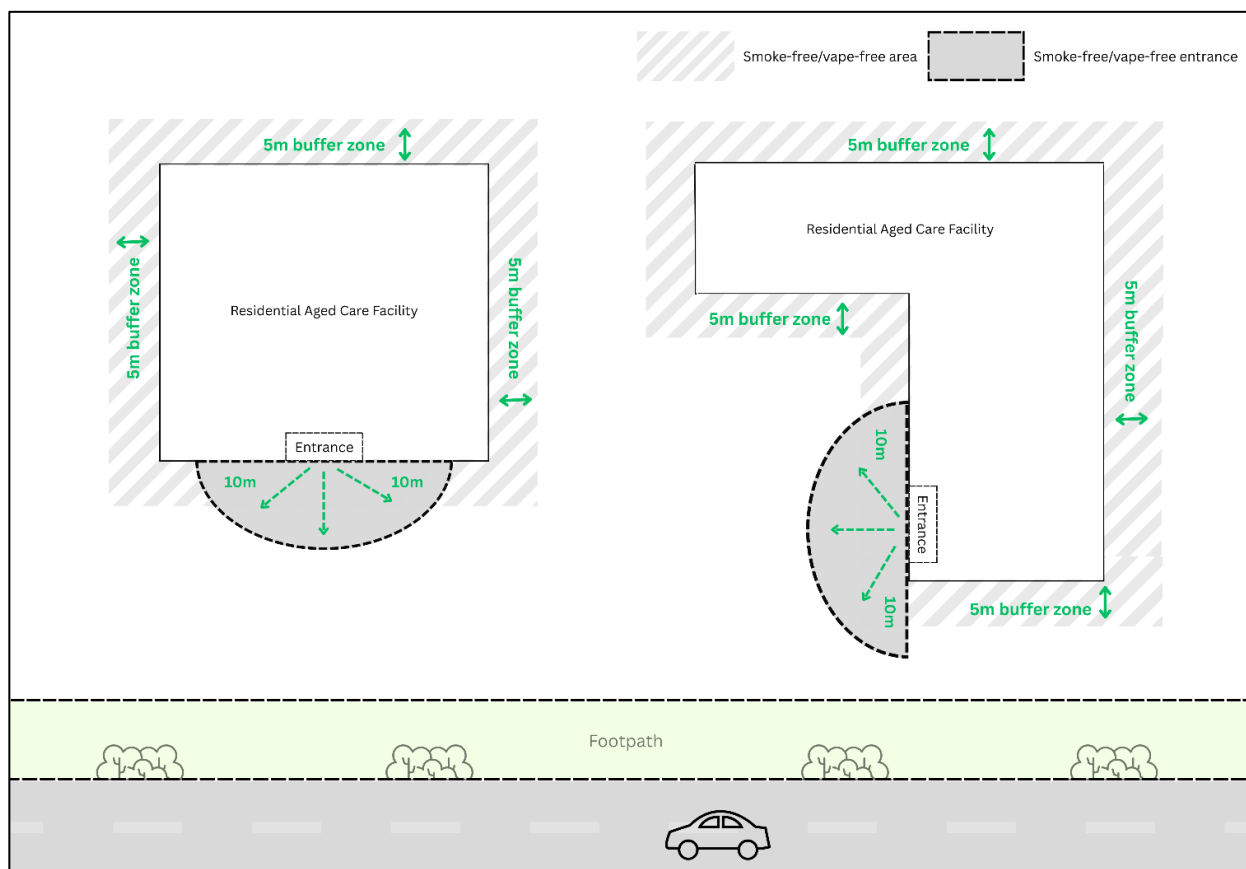


Diagram 3.4 - An example of where new smoke-free and vape-free laws apply for a residential aged care facility (that is not operated by the South Australian Government located on hospital grounds)

3.5 Where do the new laws apply at organised under-18 years sporting events?

Smoking and vaping are banned in all public areas at or within 10 metres of a sporting venue at all times during which:

- a) an organised underage sporting event is being conducted; or
- b) a training or practice session to prepare for participation in an organised underage sporting event is being conducted.

‘Organised underage sporting event’ means a sporting event that:

- a) is planned in advance; and
- b) is organised or intended for, or predominantly participated in by, persons under the age of 18 years; and
- c) is conducted according to established rules by a professional or amateur sporting body or by an educational institution; and
- d) may be a one-off event or part of a series of events.

‘Sporting event’ means a match, game, tournament or other event that involves the playing of, or participation in, sport.

‘Sporting venue’ includes any part of a public place at which a sporting event occurs, and includes:

- a) a playing field;
- b) a track;
- c) an arena;
- d) a court or rink;
- e) any permanent or temporarily erected seating at the venue;
- f) any seating, marshalling area, warm-up area, podium or other part of the venue reserved for the use of participants in the sporting event.

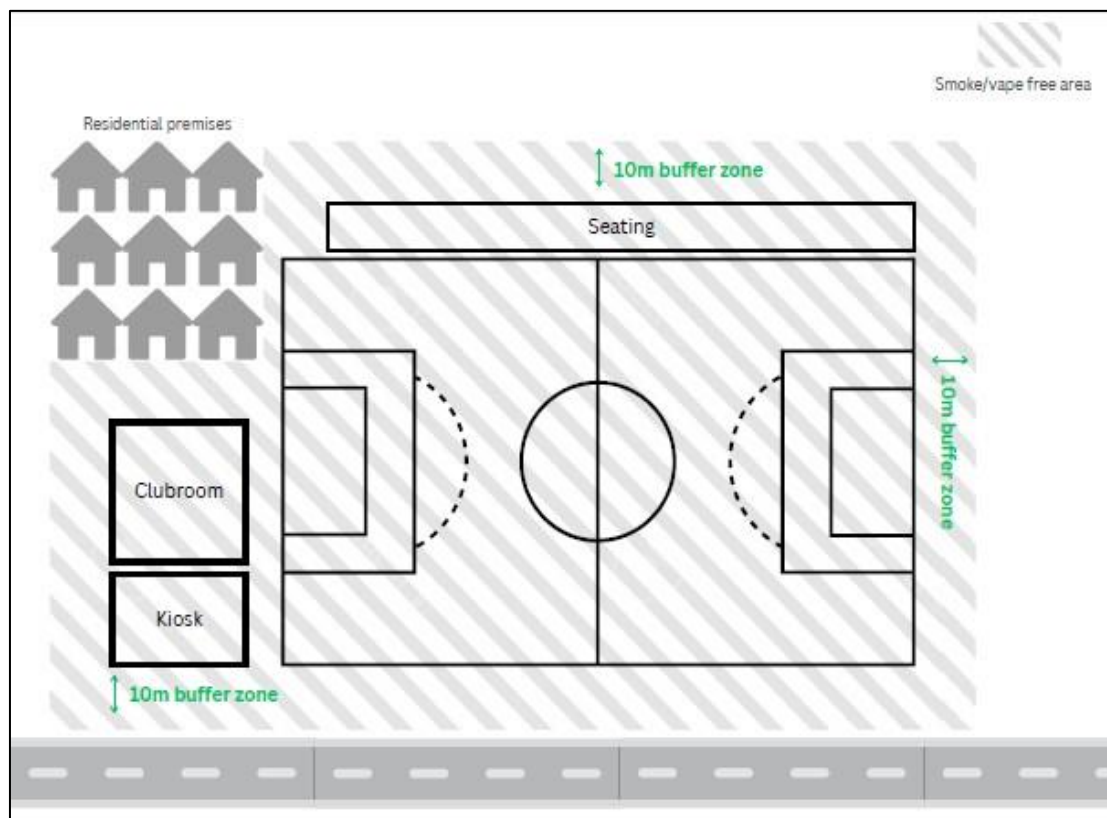


Diagram 3.4A - An example of where the new smoke-free and vape-free laws apply during an underage sporting event.

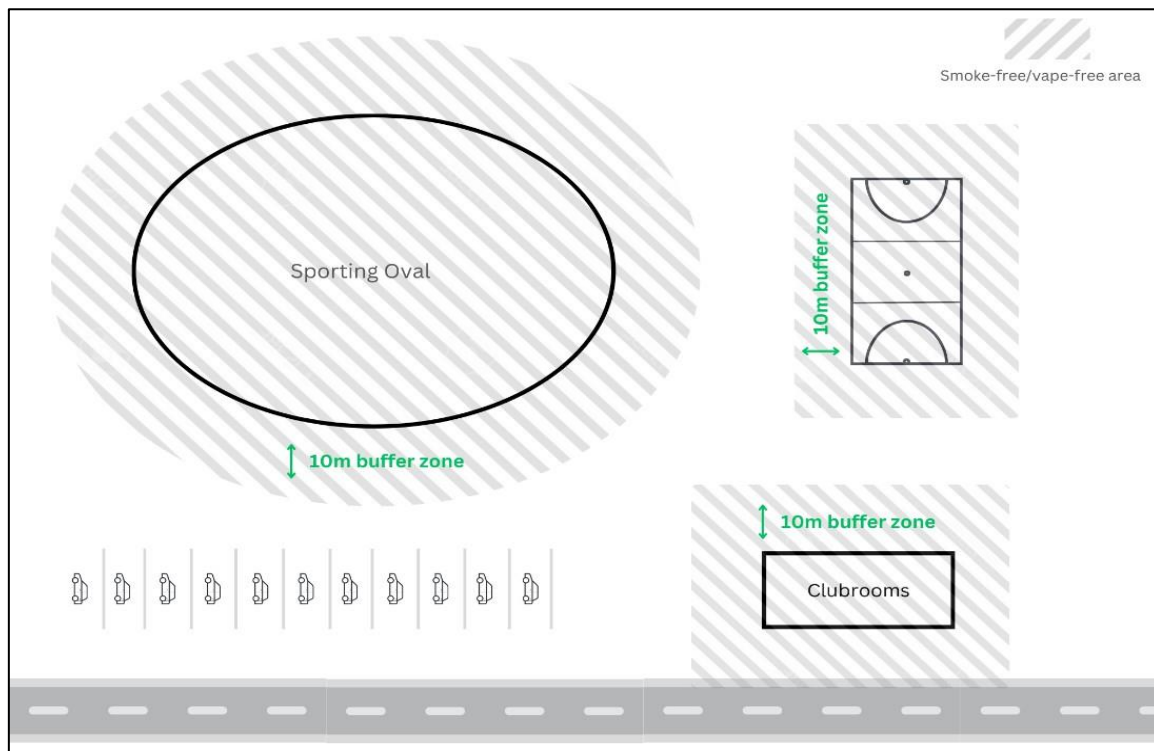


Diagram 3.4B - An example of where new smoke-free and vape-free laws apply during an underage sporting event

3.6 Where do the new laws apply at major events?

Smoking and vaping are banned in all public areas within a major event venue within the meaning of the *Major Events Act 2013*.

'Major event' means an event declared by a declaration under Part 2 *Major Events Act 2013*, to be a major event.

3.7 Where do the new laws apply at outdoor swimming facilities?

Smoking and vaping are banned in all public areas at an outdoor swimming facility.

'Outdoor swimming facility' means premises where an outdoor swimming pool is available for public use.

'Public area' has the same meaning as set out above in the page 4 Overview.

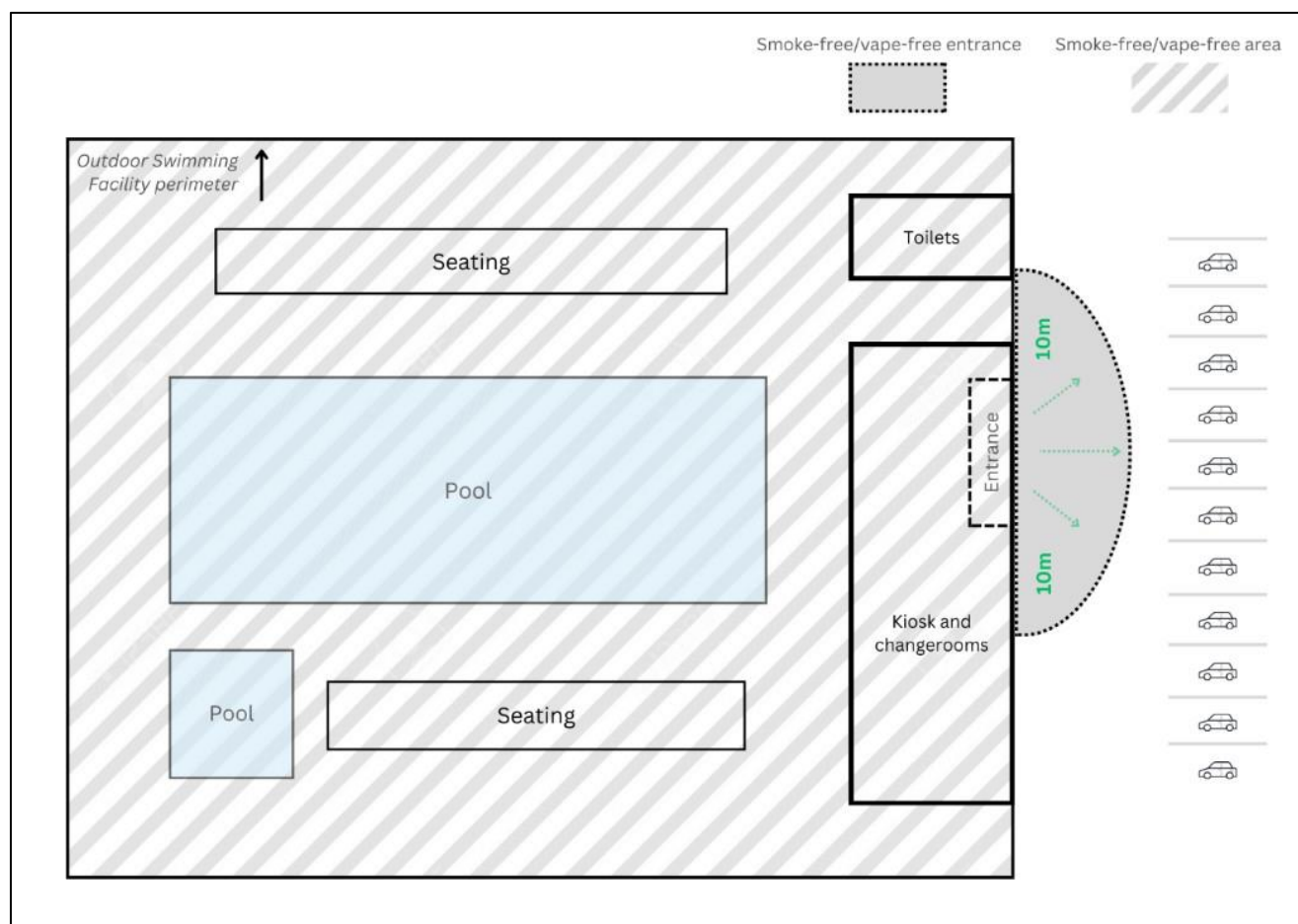


Diagram 3.6 - An example of where new smoke-free and vape-free laws apply in all public areas at an outdoor swimming facility.

3.8 Where do the new laws apply at jetties and beaches?

Smoking and vaping are banned in all public areas at or within five metres of any part of, a jetty.

Smoking and vaping are also banned in all public areas within a sanded area of beach that is:

- between red and yellow flags temporarily erected on behalf of Surf Life Saving South Australia Inc. or its affiliated surf life saving clubs marking the boundaries for safe swimming; or
- within a 50-metre radius of a red and yellow flag referred to in the above paragraph a).

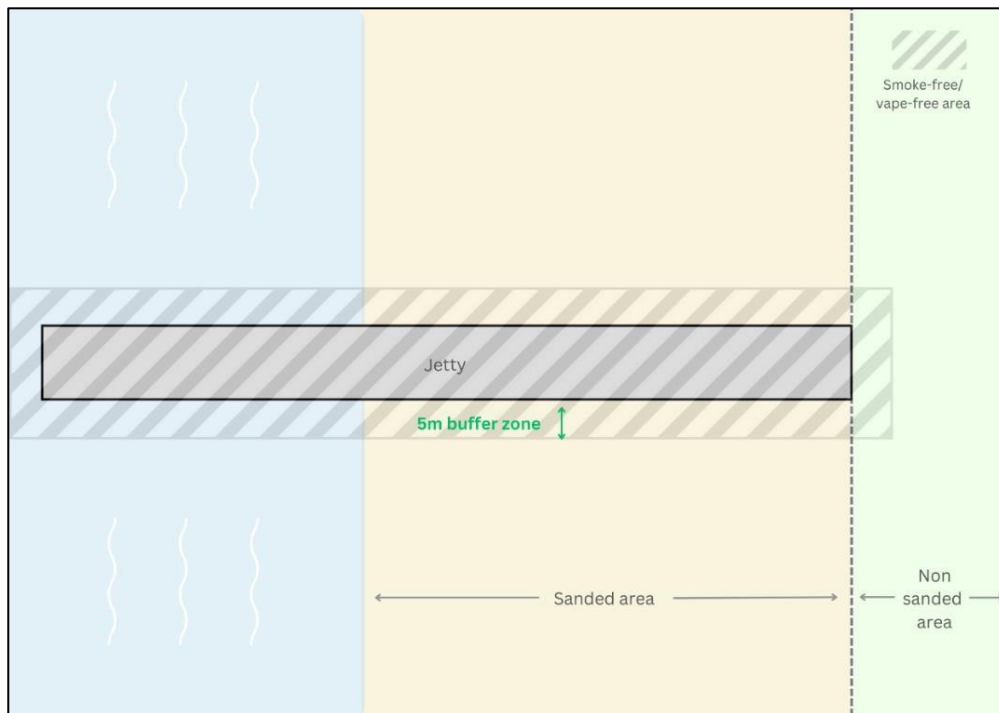


Diagram 3.7A - An example of where new smoke-free and vape-free laws apply under and within five metres of a jetty.

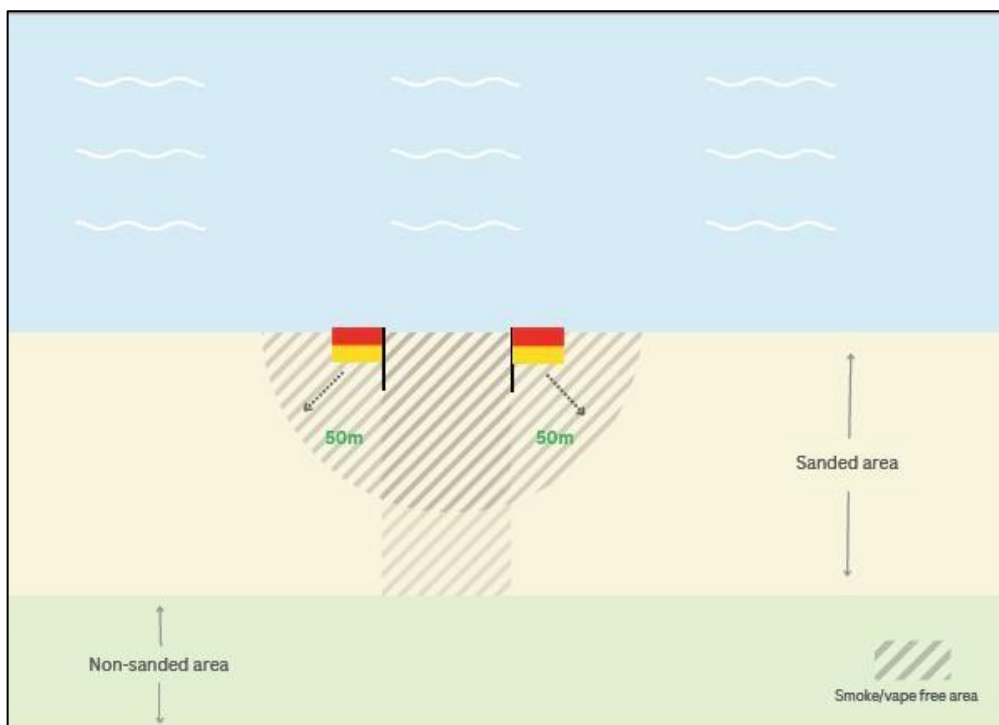


Diagram 3.7B - An example of where new smoke-free and vape-free laws apply on beaches between and within 50 metres of red and yellow patrol flags.

4 Enforcement of the law

There are penalties for breaches of the smoke-free and vape-free outdoor areas laws. These penalties can apply to (a) a person who smokes or vapes in a no smoking and no vaping outdoor public area prescribed by regulations and (b) to an occupier (e.g. owner/proprietor) that does not display sufficient signage (in such numbers and positions likely to be seen by persons within the area) declaring a prescribed public area to be smoke-free and vape-free.

Individual person/s

A person who smokes or uses e-cigarettes in a public area declared by the regulations to be a public area in which smoking is banned is guilty of an offence.

Maximum penalty: \$5,000

Expiation fee: \$315

Occupier and/or organisation

If signs are not placed in the smoke-free and vape-free area in sufficient numbers and positions likely to be seen by persons within the area, the occupier (e.g. owner/ proprietor) and/or organisation responsible for administration of the outdoor public area is guilty of an offence.

Maximum penalty:

4.6.1 in the case of a body corporate—\$10000.

4.6.2 in the case of an individual—\$5000.

Expiation fee: \$630.

5 How to comply with the new smoke-free and vape-free public outdoor areas law

Some key requirements and considerations are:

Display 'smoke-free and vape-free' signage

Signs must be displayed to show that there is no smoking or e-cigarette use allowed in your outdoor area. There must be a sufficient number of signs in positions of prominence so that they are likely to be seen by people within the area. A lack of signage increases the chance of people unintentionally smoking or vaping in the smoke-free and vape-free public outdoor area.

Tip – organise your signage early so that you are ready for 1 March 2024.

A selection of downloadable, printer-ready 'smoke-free and vape-free' signs are available from the SA Health website at clearingtheair.sa.gov.au. Examples are available on pages 21-23 of this guide.

Staff training

Make sure all staff and tenants are aware of and understand the new law. Have procedures in place so your public outdoor area is compliant with the law, including procedures to manage situations where people smoke or vape in the prescribed outdoor public area. Procedures should include staff informing anyone who is smoking or vaping in the prescribed outdoor public area that this is an offence and requesting that they stop smoking or vaping or move to an area where smoking and vaping is permitted.

Staff need to be familiar with your organisation's procedure for managing the situation if a person refuses to stop smoking or vaping, or refuses to leave the area when requested. This is best managed in the same way you would manage any other unacceptable behaviour in your facility or on your property.

The change to prescribed smoke-free and vape-free public outdoor areas is likely to go more smoothly if your staff are prepared, have a good understanding of the requirements of the new law and of where smoking and vaping cannot occur.

6 Frequently Asked Questions

Q. Is there public support for more smoking and vaping bans in outdoor public areas?

- A. Yes. There is strong community support in South Australia for smoke-free and vape-free public outdoor areas. These new smoke-free and vape-free areas align with public expectations to safeguard our community from second-hand smoke – particularly those areas frequented by children and vulnerable people.

Q. How do I know if I am responsible for a smoke-free public area?

- A. You will need to determine if you are the occupier (e.g. owner/proprietor) in relation to a prescribed facility, service, building, event, or public space. Read the information directly below and section '3. Does the law apply to you?' on page 4, to help you determine if you are the occupier responsible for a prescribed smoke-free and vape-free public area.

Examples of an 'occupier' may include an owner, landlord or proprietor, a person in occupation or control of a place or area.

Q. How can I inform people of the smoke-free and vape-free public outdoor area for which I am responsible?

- A. Display sufficient signage indicating that smoking and vaping are not permitted in the area. Do not provide ashtrays or other smoking paraphernalia. Train staff to tell people that they cannot smoke or vape in the prescribed area and have an organisational procedure in place for situations where people refuse to stop smoking.

Q. Will people comply with smoke-free and vape-free public outdoor area laws?

- A. Most people are prepared to voluntarily comply with smoke-free and vape-free requirements if they are aware of them, such as through reading signage displayed in prominent locations of the smoke-free and vape-free outdoor area.

Q. What should I do if a person smokes in a smoke-free and vape-free public outdoor area for which I'm responsible?

- A. Politely inform the person that they are not allowed to smoke or vape in the area and request that they put out their cigarette, stop vaping or move to an area where smoking and vaping is allowed. If the person refuses to comply, the usual procedures for dealing with unacceptable behaviour by your organisation should be followed.

Q. What penalties might apply?

- A. Penalties can apply to both a person who smokes in a prescribed public outdoor area, and to an occupier (e.g. owner/proprietor). Someone who smokes in a prescribed public outdoor smoke-free area can be prosecuted with a maximum penalty of \$750. Alternatively, a lesser expiation fee of \$105 may be issued. The occupier (e.g. owner/proprietor) of a prescribed public outdoor smoke-free vape-free area can be prosecuted to a maximum penalty of \$750 if signs are not placed in the smoke-free and vape-free area in sufficient numbers and positions likely to be seen by persons within the area.

Q. When the smoke-free law commences for aged care facilities, will it apply at all times and in all areas?

A. The smoke-free laws only apply to public areas. If a place is only a public area for part of the day, the smoking ban will only apply for that part of the day.

Q. What resources are available to promote the smoke-free and vape-free outdoor public area laws?

A. A range of downloadable printer-ready 'smoke-free and vape-free area' signs are available to organisations and 'occupiers' from the SA Health website at clearingtheair.sa.gov.au A5 'smoke-free and vape-free area' stickers are available to order by completing the order form at clearingtheair.sa.gov.au

Q. When do the smoke-free and vape-free bans apply?

A. The bans apply at:

- all times (24 hours a day) for hospitals, jetties, outdoor swimming facilities, education and children's services facilities, within a major event venue, between the red and yellow patrol flags and within a 50-metre radius of a red and yellow patrol flags, when red and yellow patrol flags are temporarily erected on a sanded area of beach,
- early childhood services at all times during which those services are being provided at the premises (refer 3.1),
- at all times for residential aged care facilities when the area within 5 metres of any part of a building comprising a residential aged care facility is considered to be a 'public area',
- times when an organised underage sporting event is being conducted, or times that a training or practice session is being conducted to prepare for participation in an organised underage sporting event,
- entry points to an enclosed public place, workplace or shared area at all times during which the enclosed public place, workplace or shared area is open for use by persons who work at or otherwise use the enclosed public place, workplace or shared area. This includes entrances to non-residential buildings, such as entrances to shopping centres, government buildings and commercial buildings.

'Entry point' means an entrance to or exit from a place.

'Shared area' means an area in multi-unit premises the use of which is shared by persons from various parts of the premises that are in separate ownership or occupation.

'Workplace' has the same meaning as in the *Work Health and Safety Act 2012*, but does not include:

- a) a place occupied as residential premises; or a place (other than a vehicle) where only a single self-employed person is working; or
- b) a vehicle that is used for work purposes by only one person; or
- c) any other place of a kind prescribed by regulation.

Q. What is meant by a 'public outdoor area'?

- A. A 'public outdoor area' is an outdoor area or place that the public, or a section of the public, is entitled to use or that is open to, or used by, the public or a section of the public (whether access is unrestricted or subject to payment of money, membership of a body or otherwise) under the *Tobacco and E-Cigarette Products Act 1997*.

Q. Does a 'sporting venue' include only the playing area?

- A. No. 'Sporting venue' includes any part of a public place at which a sporting event occurs, and includes:.
- a) a playing field;
 - b) a track
 - c) an arena;
 - d) a court or rink;
 - e) any permanent or temporarily erected seating at the venue;
 - f) any seating, marshalling area, warm-up area, podium or other part of the venue reserved for the use of participants in the sporting event.

7 Signage

For occupiers to meet the signage requirements listed under section 52(4) of the *Tobacco and E-Cigarette Products Act 1997*, a limited number of A5 signs are available at clearingtheair.sa.gov.au

Additionally, downloadable printer-ready signage options below are available clearingtheair.sa.gov.au. To use these signs, select the relevant signage option/s for your organisation, download the signage artwork, provide it to a professional printer or print it in-house, and display a sufficient number of signs in positions of prominence so they are likely to be seen by people within the outdoor smoke-free and vape-free public areas for which you are responsible.

Below are examples of the downloadable, printer-ready signs available at clearingtheair.sa.gov.au

General messaging



Children's sport and swimming facilities



Smoke-free and vape-free schools and child-care settings



Hospitals, health services



Residential aged care facilities



This building entrance is smoke-free and vape-free



Beaches and jetties



8 Further information

For more information on the new laws and a range of downloadable signs, go to clearingtheair.sa.gov.au

To report a tobacco and/or vape/e-cigarette issue, such as smoking or vaping in a designated smoke-free and vape-free area, complete the online 'Tobacco and vape reporting form' to provide feedback or make a complaint.

- [Tobacco and vape reporting form](#)

For support to quit smoking and/or vaping:

- Call the Quitline on 13 78 48
- Visit besmokefree.com.au or bevapefree.sa.gov.au