

South Australia

Tobacco Products (Smoking Bans in Public Areas—Longer Term) Regulations 2012

under the *Tobacco Products Regulation Act 1997*

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Legislative history

1—Short title

These regulations may be cited as the *Tobacco Products (Smoking Bans in Public Areas—Longer Term) Regulations 2012*.

3—Interpretation

- (1) In these regulations—

Act means the *Tobacco Products Regulation Act 1997*;

road means an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving or riding of motor vehicles.

- (2) Unless the contrary intention appears, a reference in these regulations to a road is a reference to—

- (a) the carriageway of the road; and
- (b) the footpaths (if any) of the road; and
- (c) a median strip, traffic island or other land separating carriageways of the road; and
- (d) any other land adjoining or adjacent to the carriageway of the road that is land that has been reserved for the purposes of the road.

4—Smoking ban—Royal Adelaide Show

- (1) For the purposes of section 52 of the Act, smoking is banned in the following public areas for the period each year during which the annual Royal Adelaide Show is being held:
- (a) all public areas within the Adelaide show grounds, other than—

- (i) an area (not being an enclosed public place, workplace or shared area) in respect of which a licence is in force under the *Liquor Licensing Act 1997*; or

Note—

Smoking is banned in enclosed public places, workplaces or shared areas under section 46 of the Act.

- (ii) an area used as a car park by members of the public (other than an area designated under paragraph (b) as an area in which smoking is not permitted); or
 - (iii) any other area designated by the Society as an area in which smoking is permitted;
- (b) any public area in the vicinity of a public entrance to the Adelaide show grounds designated by the Society as an area in which smoking is not permitted.

- (2) In this regulation—

Adelaide show grounds has the same meaning as in the *Adelaide Show Grounds (Regulations and By-laws) Act 1929*;

Society means the Royal Agricultural and Horticultural Society of South Australia Incorporated.

5—Smoking ban—Moseley Square, Glenelg

- (1) For the purposes of section 52 of the Act, smoking is banned in all public areas in Moseley Square, Glenelg, other than an area (not being an enclosed public place, workplace or shared area) to which an Outdoor Dining Permit issued by the City of Holdfast Bay pursuant to section 200 of the *Local Government Act 1999* applies.

Note—

Smoking is banned in enclosed public places, workplaces or shared areas under section 46 of the Act.

- (2) In this regulation—

Moseley Square, Glenelg means the area in Glenelg bounded as follows: commencing at the point at which the southern boundary of Section 1510 Hundred of Noarlunga meets the eastern boundary of the Section (the western boundary of Colley Terrace), then southerly along the prolongation in a straight line of the eastern boundary of the Section to the point at which that prolongation intersects the prolongation in a straight line of the southern boundary of Lot 100 DP 76687, then westerly and southerly along that prolongation and boundary of Lot 100 to the point at which it meets the north-eastern boundary of Piece 102 DP 76687, then generally north-westerly, northerly and north-easterly along the western boundary of Lot 100 DP 76687 to the point at which it meets the southern boundary of Lot 107 DP 71400, then in a straight line by the shortest route to the south-western corner of Lot 106 DP 71400, then easterly along the southern boundary of Lot 106 and the adjoining Lots (the northern boundary of Lot 100 DP 76687) to the point of commencement.

5A—Smoking ban—Henley Square

- (1) For the purposes of section 52 of the Act, smoking is banned in all public areas in Henley Square.
- (2) In this regulation—

Henley Square means the following areas (being the area commonly referred to as Henley Square):

- (a) the whole of Allotment 101 Deposited Plan 45601 (excluding any area used as a car park by members of the public and any premises);
- (b) the area bounded as follows:
 - (i) on the north by Allotment 101 Deposited Plan 45601;
 - (ii) on the east by the western boundaries of the properties adjacent to the Esplanade, Henley Beach;
 - (iii) on the south by a line extending generally east from the south east corner of the Henley Surf Life Saving Club;
 - (iv) on the west by the sea wall.

6—Smoking ban—outdoor dining areas

- (1) For the purposes of section 52 of the Act, smoking is banned in public areas consisting of outdoor dining areas at any time that food is being offered for purchase, or otherwise provided, by or on behalf of the occupier of the outdoor dining area for the purpose of consumption in the area (whether or not a person is, in fact, dining in the area).

Note—

For example, if a hotel offers meals between 12 pm and 2 pm in an outdoor dining area, then smoking will be banned in the area during that period, regardless of whether anyone is actually eating in the area.

- (2) For the purposes of this regulation a person will be taken to be in an outdoor dining area if any part of the person is within the outdoor dining area.
- (3) In this regulation—

food does not include snack food;

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 in the area, but does not include a part of the unenclosed public area that is separated from the part in which dining occurs by a wall or other solid barrier of not less than 2 metres in height;

snack food means prepackaged food of a kind generally intended to be consumed between meals.

Example—

This would include foods such as potato crisps, nuts and chocolate bars, but would not include, for example, sandwiches or hot chips.

7—Further offence where smoking occurs in outdoor dining area

- (1) If smoking occurs in an outdoor dining area in contravention of section 52(2) of the Act, the occupier of the outdoor dining area is guilty of an offence.
Maximum penalty: \$1 250.
Expiation fee: \$160.
- (2) It is a defence to an offence against subregulation (1) if the defendant proves that—
 - (a) he or she was not aware, and could not reasonably be expected to have been aware, that the contravention was occurring; or
 - (b) he or she requested the person smoking to stop smoking and informed the person that the person was committing an offence.
- (3) In this section—
outdoor dining area has the same meaning as in regulation 6.

Legislative history

Notes

- Variations of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of these regulations (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2012	196	<i>Gazette 30.8.2012 p3960</i>	30.8.2012: r 2
2013	168	<i>Gazette 27.6.2013 p2787</i>	27.6.2013: r 2
2013	224	<i>Gazette 5.9.2013 p3770</i>	5.9.2013: r 2
2014	202	<i>Gazette 10.7.2014 p3220</i>	10.7.2014: r 2
2014	238	<i>Gazette 11.9.2014 p4340</i>	11.9.2014: r 2
2015	200	<i>Gazette 27.8.2015 p3948</i>	1.7.2016: r 2
2016	198	<i>Gazette 25.8.2016 p3424</i>	12.9.2016: r 2
2018	11	<i>Gazette 30.1.2018 p575</i>	5.2.2018: r 2

Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
<i>r 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>27.6.2013</i>
r 3		
r 3(1)	r 3 redesignated as r 3(1) by 224/2013 r 4(2)	5.9.2013
road	inserted by 224/2013 r 4(1)	5.9.2013
r 3(2)	inserted by 224/2013 r 4(2)	5.9.2013
r 4		
r 4(1)	varied by 168/2013 r 4(1), (2) varied by 202/2014 r 4(1), (2)	27.6.2013 10.7.2014
r 4(2)		
<i>prescribed period</i>	<i>substituted by 168/2013 r 4(3)</i> <i>deleted by 202/2014 r 4(3)</i>	<i>27.6.2013</i> <i>10.7.2014</i>
r 5	inserted by 224/2013 r 5	5.9.2013

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Legislative history

r 5(1)	varied by 238/2014 r 4(1)	11.9.2014
r 5(2)		
<i>prescribed period</i>	<i>deleted by 238/2014 r 4(2)</i>	<i>11.9.2014</i>
r 5A	inserted by 198/2016 r 4	12.9.2016
rr 6 and 7	inserted by 200/2015 r 4	1.7.2016

Historical versions

27.6.2013

5.9.2013

10.7.2014

11.9.2014

1.7.2016