

South Australia

## **Tobacco Products (Smoking Bans in Public Areas—Longer Term) Variation Regulations 2015**

under the *Tobacco Products Regulation Act 1997*

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### **Part 1—Preliminary**

#### **1—Short title**

These regulations may be cited as the *Tobacco Products (Smoking Bans in Public Areas—Longer Term) Variation Regulations 2015*.

#### **2—Commencement**

These regulations will come into operation on 1 July 2016.

#### **3—Variation provisions**

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

## Part 2—Variation of Tobacco Products (Smoking Bans in Public Areas—Longer Term) Regulations 2012

### 4—Insertion of regulations 6 and 7

After regulation 5 insert:

#### 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.

**Made by the Governor**

with the advice and consent of the Executive Council  
on 27 August 2015

No 200 of 2015

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