

Smoke-free workplaces guide



Disclaimer: This guide is intended only as a general guide and introduction to the relevant provisions of the *Tobacco Act 1987*. The Department of Human Services does not accept any liability for any expense, loss or damage suffered as a result of reliance upon the information contained in this guide. Nothing in this guide should replace the seeking of appropriate legal advice where this is considered appropriate.

Minister's message



From 1 March 2006 a new law will require enclosed workplaces to be smoke-free.

Reducing the harms of smoking is one of the Victorian Government's highest priorities in its program to improve the health status of all Victorians. In Victoria each year, smoking is accountable for more than 4000 deaths from direct tobacco smoking and almost 30 deaths from second hand tobacco smoking. Exposure to harmful tobacco smoke in the workplace significantly increases the risk of lung cancer and heart disease.

Many workplaces are already smoke-free. This has assisted many Victorians to quit smoking altogether. Healthier and more productive workplaces benefit everybody. The new law will not only protect more workers from the harms of tobacco smoke, but will reduce losses in productivity due to sickness and death of skilled employees.

This guide is designed to assist employers to understand and implement the new requirements for smoke-free workplaces. If you require further information regarding the new law in your workplace please call the Tobacco Information Line on 1300 136 775 or use the contacts in the back of this guide.

A handwritten signature in black ink that reads "Bronwyn Pike". The signature is written in a cursive, flowing style.

Hon Bronwyn Pike MP

Minister for Health

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About the new law

What is the new law?

Amendments to the *Tobacco Act 1987* make it an offence to smoke in an enclosed workplace from 1 March 2006.

The 'occupier' (person in control) of the enclosed workplace is also liable if smoking occurs, unless certain circumstances apply.

Note:

- Please refer to page 9 for the full definitions of terms including 'occupier' and 'enclosed' under the Tobacco Act.
- The information in this guide applies to all enclosed workplaces, except those that are exempt from the new law (see page 4 'Are there any workplaces that are exempt from this law?'). This guide does not address the existing requirements that will continue to apply to workplaces that are exempt from the new law.

Who is affected by the new law?

No one who works in or visits a workplace will be permitted to smoke in enclosed areas of the workplace. This includes:

- Employers
- Employees
- Voluntary workers
- Customers and members of the public

Do I need to plan for the change?

You should not provide ashtrays, matches, lighters or other things to facilitate smoking in enclosed workplaces from 1 March 2006. If you currently provide these items, you should remove them by that date.

Communicating to staff and visitors verbally, through signs, newsletters, meetings, emails and posters will help people to understand and comply with the new law. The back of this guide has a sample flier, which can be photocopied and distributed to your workers to inform them about the new law.

If your workplace has a smoke-free policy you may need to update this to reflect the new law. If your workplace does not have a smoke-free policy you may wish to develop one so that your employees are clear about their obligations. Quit Victoria can assist you to develop a smoke-free policy in your workplace. Quit's contact details are provided at the back of this guide.

Why is the law being introduced?

Workplace smoking bans are good for our health

The new law is being introduced to reduce exposure to the dangers of second hand tobacco smoke. Prior to the new workplace smoking ban being introduced, about 30 per cent of Victorian workers were exposed to second hand tobacco smoke in their workplace.

Exposure to second hand tobacco smoke can increase the risk of cardiovascular disease, lung cancer and other lung diseases in adults. A recent study indicates that exposure to high levels of second hand tobacco smoke increases the risk of heart disease by 50 to 60 per cent. Short-term exposure can cause 'irritant' effects on the eyes, nose, throat and airways.

Workplace smoking bans are effective

Studies have found that smoking restrictions in the workplace are effective. These restrictions not only protect workers from exposure to second hand tobacco smoke but can also reduce the amount people smoke each day, and increase their chances of successfully quitting.

The cost of smoking

The estimated cost of smoking to business in Australia in 1998-99 totalled \$1 billion through absenteeism and premature loss of skilled employees.

Community support

In 2004, 82 per cent of Victorians supported workplace smoking bans.

Where smoking is/is not permitted

Are there any workplaces that are exempt from this law?

Yes.

The exemptions are:

- residential premises not used for carrying on a business;
- a part of a residential premises used for carrying on a business while only persons who reside at the premises are in that part (that is, no non-resident employees or members of the public are present);
- a place of business occupied by the sole operator and which is not for the use of the public;
- outdoor dining and drinking areas;
- a vehicle;
- personal sleeping or living areas of:
 - a premises providing accommodation to members of the public for a fee (eg hotel); or
 - residential care facilities which include types of residential care services, supported residential services and aged care services;
- an area in an approved mental health service (within the meaning of the *Mental Health Act 1986*) declared by the Secretary of the Department of Human Services;
- prison cells as well as exercise yards of prisons;
- a detention centre established for the purposes of the *Migration Act 1958*;
- high roller rooms at the Casino;
- licensed premises (until 1 July 2007).

Note:

- Some of these workplaces may have individual smoke-free policies.
- Under other amendments to the *Tobacco Act*, some sheltered outdoor dining and drinking areas will need to be smoke-free from 1 July 2007.
- The existing partial smoking restrictions on the casino, licensed premises and approved venues will continue to apply until 1 July 2007, when these areas will be required to be smoke-free.

Will smoking be permitted outside?

Yes. As long as the outside area of the workplace is not enclosed (see definition on page 9) smoking will be permitted in these areas.

Some workplaces may have individual policies that prohibit smoking in outdoor areas.

Can staff smoke in staff rooms, lunchrooms, cafeterias or restrooms?

Smoking is not permitted in any enclosed area of the workplace. Therefore in most cases, smoking will not be permitted in these areas at any time.

What about workplaces with high roofs?

If a workplace is enclosed then it will be required to be smoke-free. The height of the roof alone will not determine whether an area is enclosed.



What about garages or factories where roller doors are open?

The smoke-free status of an enclosed workplace will not change even when opening a large area like a roller door or moveable roof or wall. An enclosed workplace is required to be smoke-free, regardless of whether the roof or walls are permanent, temporary, open or closed.



Are temporary structures included?

Yes. If temporary work structures enclose a workplace, the workplace will be required to be smoke-free.



Can people smoke outside at entrances to workplaces or near windows and ventilation ducts?

The *Tobacco Act 1987* does not prohibit smoking in these areas if they are not enclosed parts of the workplace. However, under Occupational Health and Safety legislation employers are obliged to provide a healthy and safe workplace. The National Occupational Health and Safety Commission* stated in its Guidance Note on the Elimination of Environmental Tobacco Smoking in the Workplace [NOHSC: 3019 (2003)] that the elimination of environmental tobacco smoke should be achieved by prohibiting smoking in the workplace, including areas where smoke can drift into workplaces.

*The work of the National Occupational Health and Safety Commission will now come under the Australian Safety and Compensation Council.

Can I smoke in my work vehicle?

The new law does not prohibit employees and employers from smoking in vehicles. However, individual workplaces may have policies that prohibit smoking in vehicles.

Is the hospitality industry covered by this law?

Restaurants and cafes that are currently required to be smoke-free will continue to be required to be smoke-free.

Licensed premises that are currently required to have partial smoking restrictions will still have those partial restrictions in place until 1 July 2007, after which all enclosed licensed premises will be required to be smoke-free.

Requirements to comply

Who is the 'occupier'?

The 'occupier' of a workplace is defined under the *Tobacco Act 1987* as a person who is over 16 years of age and who is, or appears to be, in control of the area or premises.

The 'occupier' can be the employer and/or the manager of a workplace or part of the workplace.

Are workplaces required to display No Smoking signs?

The occupier of a retail shopping centre, bingo area/centre, licensed premises, approved venue, the Casino, dining areas or an enclosed restaurant/café, must display acceptable No Smoking signs. (See 'Definitions' on page 9 for acceptable No Smoking signs).

Occupiers of other workplaces are not required by law to display No Smoking signs. However, it is recommended that No Smoking signs are displayed to ensure employees and visitors are aware of the areas where smoking is not permitted.

Where can I obtain No Smoking signs?

No Smoking signs can be obtained free of charge by calling the Tobacco Information Line on **1300 136775**. Workplaces can also develop their own No Smoking signs.

How do occupiers comply with the law and avoid liability for other people smoking in the workplace?

Occupiers of enclosed workplaces are liable to be penalised if smoking occurs in the workplace.

To avoid liability, people in control of a workplace should take reasonable measures to ensure that staff, customers and visitors are aware of the new law and that they do not smoke in these premises.

This includes:

- not providing any materials that facilitate smoking such as ashtrays and lighters; and
- informing anyone who does smoke that they are committing an offence and should stop smoking.

What are the responsibilities of employees?

Employees have a responsibility not to smoke in enclosed workplaces. Employees are liable to be penalised if they smoke in the workplace.

What are the penalties?

If a person smokes in an enclosed workplace, the person who smokes may receive a fine or be prosecuted, as may the person in control of the enclosed workplace at the time (the 'occupier'). The occupier of a retail shopping centre, bingo area/centre, licensed premises, approved venue, the casino, dining area or an enclosed restaurant/café who fails to display acceptable No Smoking signs may receive a fine or be prosecuted. The table below shows the applicable penalties.

Who should employers or employees contact if smoking continues in the workplace after 1 March 2006?

Contact the Department of Human Services via the Tobacco Information Line on **1300 136775**.

	Infringement	Maximum Penalty if Prosecuted
Person smoking in an enclosed workplace	1 penalty unit*	5 penalty units
Person in control of the enclosed workplace at the time the smoking occurs (the 'occupier')**	1 penalty unit	5 penalty units
Occupier of a retail shopping centre, bingo area/centre, casino or an enclosed restaurant/café, where acceptable No Smoking signs are not displayed	1 penalty unit	5 penalty units

* The value of a penalty unit in 2005/06 is \$104.81 (indexed annually).

** See 'How do occupiers comply with the law and avoid liability...' on page 6 for defences available to the occupier where smoking occurs in the workplace.

Cigarette litter and the law

The *Environment Protection Act 1970* provides for:

- Offences relating to littering by individuals
- Litter abatement notices to prevent litter entering the public domain
- Orders to clean up litter

The Act covers both public and private property. To protect yourself from a notice, fine or prosecution you may need to consider litter prevention in your workplace.

Local Council laws may also impose obligations on businesses to take steps to prevent or reduce litter (local laws vary).

Definitions under The Tobacco Act 1987

What is a 'workplace' under the new law?

A workplace is any premises or area where one or more employees or self employed persons (or both) work, whether or not they receive any payment for the work.

Licensed premises will not be covered under the law that bans smoking in enclosed workplaces until 1 July 2007, after which they will be required to be smoke-free.

What does 'enclosed' mean?

Enclosed means an area, room or premises that is or are substantially enclosed by a roof and walls, regardless of whether the roof or walls or any part of them are:

- a. permanent or temporary;
- b. open or closed.

That is, even if the roof or walls are temporary or open, they are considered to be closed for the purposes of determining if the area is substantially enclosed.

How are 'walls' and 'roof' defined?

A wall includes any structure or device (whether fixed or moveable) that prevents or significantly impedes lateral airflow, including a window or door.

A roof includes any structure or device (whether fixed or moveable) that prevents or significantly impedes upward airflow including a ceiling.

What is the definition of 'occupier' of an area or premises?

An occupier is a person who appears to be of or over 16 years of age and who is, or appears to be, in control of the area or premises.

The 'occupier' can be the employer and/or the manager of a workplace or part of the workplace.

What is an acceptable No Smoking sign?

An 'acceptable No Smoking sign' means a sign that contains:

- a. a No Smoking symbol in the form of a circle and diagonal line printed in red over a depiction of a cigarette and smoke printed in black, or other symbol that clearly indicates that smoking is not permitted, with the symbol being at least 70 mm in height; and
- b. the phrase 'No Smoking' or 'Smoking Prohibited', or other wording that clearly indicates that smoking is not permitted, in letters that are at least 20 mm in height.

Employees that smoke and designated smoking areas

Employers should ensure that employees are aware that they will no longer be permitted to smoke in enclosed workplaces from 1 March 2006.

Quit Victoria provides information and assistance to those who wish to quit smoking. Their contact details are provided in the back of this guide.

Employers may wish to find alternative arrangements for employees who smoke such as providing unenclosed designated outdoor smoking areas or assistance with smoking cessation. Each workplace is different and employers will need to determine what should be provided.

Examples of designated smoking areas in workplaces

This outdoor smoking area has one long glass wall and two short glass walls, with a long open area at the front. This area is not considered to be enclosed and smoking will be permitted here.



This outdoor smoking area has two closed walls and one open wall, with a covered roof. This area is not considered to be enclosed and smoking will be permitted here.



Were this area to be further enclosed, smoking would not be permitted here.

Workplace checklist

The following checklist provides a guide to employers to assist them to implement the new law. Each workplace is different and each employer will need to consider whether they wish to accommodate employees who smoke, any compulsory or optional signage requirements, and other changes which may need to be made.

Activity	Date	Completed
Communicate the new law to management and employees. Provide information and/or assistance to those staff who wish to quit smoking (Contact Quit Victoria).	February 2006	<input type="checkbox"/>
Communicate to staff where they can and cannot smoke.		<input type="checkbox"/>
Consider alternative arrangements to accommodate employees who smoke, such as providing a designated outdoor smoking area (which is not enclosed).		<input type="checkbox"/>
Display No Smoking signs that are clearly visible to all employees, customers and visitors at entrances, in toilet facilities and staff rooms.		<input type="checkbox"/>
Where appropriate, provide external stubbing bins at building entrances and designated smoking areas.		<input type="checkbox"/>
Remove ashtrays and other objects that facilitate smoking from enclosed areas.		<input type="checkbox"/>
New law comes into effect	1 March 2006	
Monitor smoking ban to ensure staff are continuing to comply.		

The next page contains a flier which can be photocopied and distributed to your employees.

Smoke-free Workplaces from 1 March 2006

Background

A new law which bans smoking in enclosed workplaces is being introduced to protect workers from exposure to second hand tobacco smoke in the workplace. Second hand tobacco smoke can increase the risk of cardiovascular disease, lung cancer and other lung diseases in adults. A recent study indicates that exposure to high levels of second hand tobacco smoke increases the risk of heart disease by 50 to 60 per cent. Short-term exposure can cause 'irritant' effects on the eyes, nose, throat and airways.

What is the new law?

Under the Tobacco Act 1987 from 1 March 2006 smoking will be prohibited in all enclosed workplaces whether or not the people working at the workplace are paid or are volunteers (some exemptions apply).

What is the penalty?

If a person smokes in an enclosed workplace, the person who smokes may receive a fine or be prosecuted, as may the person in charge of the enclosed workplace at the time. The table below shows the applicable penalties.

What does 'enclosed' mean?

An area, room or premises that is or are substantially enclosed by a roof and walls, regardless of whether the roof or walls or any part of them are:

- a. permanent or temporary;
- b. open or closed.

That is, even if the roof or walls are temporary or open, they are considered to be closed for the purpose of determining if the area is substantially enclosed.

Will large workplaces with high roofs be required to be smoke-free?

If the workplace is enclosed then it will be required to be smoke-free. The height of the roof alone will not determine whether an area is enclosed.

Will factories or garages with open roller doors be required to be smoke-free?

The smoke-free status of an enclosed workplace will not change even when opening a large area like a roller door or moveable roof or wall. They are considered to be closed when determining if the area is enclosed.

Are temporary structures included?

Yes. If temporary work structures enclose a workplace, they will be required to be smoke-free.

Are there any defences?

Yes. The person in control of the enclosed workplace at the time the smoking occurs will not be guilty of an offence if he/she can prove that they did not provide an ashtray, matches, lighter or any other thing designed to facilitate smoking and that:

- a. they were not aware, and could not reasonably be expected to have been aware, that smoking was occurring; or
- b. they requested the person to stop smoking and informed the person they were committing an offence.

For further information on the new law:

Call the Tobacco Information Line:
1300 136 775

Visit: www.health.vic.gov.au/tobaccoreforms/

For help to quit smoking:

Call **Quitline.13 7848**

Visit: www.quit.org.au

	Fine	Maximum Penalty if Prosecuted
Person smoking in an enclosed workplace	1 penalty unit*	5 penalty units
Person in control of the enclosed workplace at the time the smoking occurs (the 'occupier')	1 penalty unit	5 penalty units
Occupier of a retail shopping centre, bingo area/centre, casino or an enclosed restaurant/café, where acceptable No Smoking signs are not displayed	1 penalty unit	5 penalty units

*the value of a penalty unit for 2005/06 is \$104.81 (indexed annually).



Further information

Information on the new law

Call the Tobacco Information Line on 1300 136775.

Visit www.health.vic.gov.au/tobaccoreforms

Information on quitting smoking, Quit courses and developing a smoke-free policy.

Information on quitting smoking:

Call the Quitline 13 7848 for assistance and support or

Visit www.quit.org.au

Assistance in developing a smoke-free policy and information about Quit courses and seminars for staff:

Call 9663 7777 or

Visit www.smokefree.org.au

Information on cigarette butt litter

Butt litter and the law:

Environmental Protection Authority, Victoria

Visit www.epa.vic.gov.au/litter

Litter management and prevention:

Victorian Litter Action Alliance

Visit www.litter.vic.gov.au

or contact your local council.

Acknowledgements

Australian Institute of Health and Welfare, 2005. *The 2004 National Drug Strategy Household Survey, State and Territory Supplement*.

Centre for Behavioural Research in Cancer, 2005. *Smoking prevalence and consumption in Victoria: key findings from the 1998-2003 population surveys*.

Department of Health and Ageing, 2004. *The National Tobacco Strategy 2004-2009*.

Department of Human Services, Victoria, 1999. *Victorian Burden of Disease Study: Mortality*.

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National Occupational Health and Safety Commission, 2003. *Guidance Note on the Elimination of Environmental Tobacco Smoking in the Workplace [NOHSC: 3019 (2003)]*.

Victorian Litter Action Alliance

