

Smoke-free guide: Licensed premises and outdoor dining or drinking areas

From 1 July 2007



NO SMOKING



**Quitline®
137848**



PENALTIES APPLY Tobacco Act 1987

Note that this is a sample only and is not to scale.

Smoke-free guide:

Licensed premises and outdoor dining or drinking areas

From 1 July 2007

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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 the guide should replace the seeking of appropriate legal advice where this is considered appropriate.

Message from the Minister for Health

From 1 July 2007 a new law will require all enclosed licensed premises and some outdoor dining or drinking areas 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. Smoking is the single largest preventable cause of premature death and disease in Australia. Each year tobacco kills more than 4,000 Victorians and costs the State more than \$5 billion in social and economic costs.

Exposure to second hand tobacco smoke significantly increases the risk of lung cancer and coronary heart disease. Each year in Victoria, exposure to second hand tobacco smoke results in over 19,000 hospital bed days and costs the community over \$11 million in hospital costs.

Since 1 March 2006 other enclosed workplaces have been required to be smoke-free. Workplace smoking bans can assist many people to quit smoking altogether and protect workers and customers from the harms of second hand tobacco smoke. A reduction in smoking and exposure to second hand smoke will also reduce losses in productivity due to sickness and death of skilled employees.

This guide is designed to assist proprietors to understand and implement the 1 July 2007 requirements for smoke-free licensed premises and some outdoor dining or drinking areas. If you require further information regarding the new laws in your premises, please call the Tobacco Information Line on 1300 136775.



Hon Bronwyn Pike MP
Minister for Health



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Introduction

This guide contains information and resources to:

- assist you to understand how the 1 July 2007 tobacco laws apply to licensed premises and venues that have outdoor dining or drinking areas;
- how to communicate the changes to your staff and customers; and
- what steps you need to take to comply.

Tobacco Act

Amendments to the *Tobacco Act 1987* made it an offence from 1 March 2006 to smoke in an enclosed workplace. Licensed premises were initially exempt from this offence, to allow the industry and the community sufficient time to understand and accommodate the new law.

Further amendments to the Tobacco Act commence on 1 July 2007 that remove the exemption for licensed premises, and also provide for a new offence for smoking in certain types of outdoor dining or drinking areas.

From 1 July 2007 it is an offence to smoke in:

- enclosed licensed premises (under the enclosed workplaces offence in section 5A of the Act, as amended from 1 July 2007)
- outdoor dining or drinking areas where there is a roof in place and walls that cover more than 75% of the total notional wall area (under a new section 5C of the Act, inserted from 1 July 2007).

The ‘occupier’ of the enclosed licensed premises or outdoor dining or drinking area is also liable if smoking occurs (unless certain circumstances apply) and/or if they fail to display acceptable No Smoking signage. Please refer to page 18 for a glossary of terms including ‘occupier’ and ‘enclosed’.

Other amendments to the Tobacco Act that commenced from 1 March 2006 affect premises that sell tobacco, have cigarette vending machines or who hold underage ‘music/dance’ events. Please refer to page 11 in regard to these laws.

Who is affected?

No one will be permitted to smoke in enclosed licensed premises at any time, including outside trading hours.

This includes:

- owners or managers
- employees
- volunteers
- customers and members of the public.

Why is the law being introduced?

Workplace smoking bans are good for our health

Scientific evidence conclusively demonstrates that exposure to second hand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer (U.S Department of Health and Human Services, 2006). **There is no risk-free level of exposure to second hand smoke** (U.S Department of Health and Human Services, 2006).

The smoking bans explained in this guide aim to protect the Victorian community and those working in the hospitality sector from the negative health effects of exposure to second hand smoke.

Smoking bans are effective

The elimination of smoking in indoor spaces protects non-smokers from exposure to second hand tobacco smoke. Separating smokers from non-smokers, cleaning the air, and ventilating buildings cannot eliminate such exposure (U.S Department of Health and Human Services, 2006).

A study conducted by Harvard University measured air pollution levels in 128 Irish pubs in 15 countries, including Irish themed pubs in Australia compared with pubs in Ireland itself, where from March 2004 smoking was banned in licensed premises. The study found that the average level of air pollution inside Ireland’s smoke-free pubs was 91 per cent lower than inside Irish themed pubs located in cities that still permit smoking in licensed premises (Donnolly et al, 2006).

Smoking bans in licensed premises can also reduce the amount people smoke each day and increase their chances of successfully quitting. Among Irish smokers surveyed, who quit smoking following the introduction of smoking bans in pubs and clubs, 80 per cent reported that the bans had helped them to quit and 88 per cent reported that the bans helped them to not relapse (Fong et al, 2005).

The cost of smoking

The estimated cost of smoking to business in Victoria in 1998/99 totalled \$494 million through absenteeism and premature loss of skilled employees (Collins & Lapsley, 2005).

Community support

There is widespread community support for tobacco smoking bans. The 2004 National Drug Strategy Household Survey found that 82 per cent of Victorians support workplace smoking bans and 69 per cent support smoking bans in pubs and clubs (Australian Institute of Health and Welfare, 2005).

A Centre for Behavioural Research in Cancer survey (Germain, 2006) recorded 79 per cent Victorian public approval for smoking bans in licensed hotels and bars, with nearly half of the smokers surveyed expressing their approval.

Will smoking bans affect my business?

In New Zealand all indoor workplaces, including hospitality venues have been smoke-free since 10 December 2004. The available information suggests that there has been a neutral to positive impact on revenues for hospitality venues. Patronage trends have increased for non-smokers (up from 33 per cent to 49 per cent for bars) and smokers have continued to visit bars at levels similar to those before that law came into effect (Ministry of Health 2005).

This is consistent with an international review across over 100 studies of economic impact, which found either no negative impact or a positive impact (Scollo et al 2003).

Of those respondents to the Centre for Behavioural Research in Cancer survey who frequented bars at least once a month, over one quarter said they would visit hotel bars and licensed bars more often than they currently do if total smoking bans were introduced. An additional 59 per cent said the introduction of these bans would make no difference to the number of times they frequented bars.

Enclosed licensed premises—where smoking is or is not permitted

From 1 July 2007, smoking is prohibited in enclosed licensed premises.

‘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.

Exemptions

Exemptions apply only to an area in the Casino that, in the Minister for Health’s opinion, is a high roller room. No other exemptions apply for enclosed licensed premises.

Smoking is permitted in outdoor dining or drinking areas except when the area has a roof in place and walls that cover more than 75 per cent of the total notional wall area. Please refer to page 4 for more information on outdoor dining or drinking areas.

Can staff smoke in staff rooms, toilets and other areas not open to the public?

Smoking is not permitted in any enclosed area of the licensed premises. Therefore as most of these areas are likely to be enclosed, in most cases, smoking will not be permitted at any time.

Can people smoke in car parks?

As people still undertake work in car parks for example, cleaning or security staff, they are considered to be workplaces. Any car park that is substantially enclosed by a roof and walls (such as an underground car park) should be smoke-free.

Can people smoke in a licensed premises when windows or doors are opened?

The smoke-free status of an enclosed licensed premises will not change, even when large windows or doors are open. An enclosed licensed premises is required to be smoke-free at all times, regardless of whether the roof or walls are permanent, temporary, open or closed.

Can people smoke outside entrances to licensed premises or near windows and ventilation ducts?

The Tobacco Act does not prohibit smoking in these areas if they are not enclosed parts of the licensed premises. 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 that the elimination of environmental tobacco smoke should be achieved by prohibiting smoking in the workplace, including areas where smoke can drift into workplaces (National Occupational Health and Safety Commission).

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

Outdoor dining or drinking areas

From 1 July 2007 smoking will be prohibited in outdoor dining or drinking areas:

- where the area has a roof in place; *and*
- the total actual area of the wall surfaces exceeds 75 per cent of the total notional wall area.

Outdoor dining or drinking areas include the following places if predominantly used for the consumption of food and/or drinks:

- a balcony or veranda
- a courtyard
- a rooftop
- a marquee
- a street or footpath
- any similar outdoor area.

Outdoor dining or drinking areas are typically operated by restaurants, cafes, pubs and clubs. An area does not have to be part of a licensed premises to be considered an outdoor dining or drinking area. For example, a non-licensed café courtyard or hospital café balcony will be considered to be an 'outdoor dining or drinking area' if predominantly used for the consumption of food and/or drinks.

Total notional wall area means what would be the total area of the wall surface if the walls were: at the perimeter of the roofed area and continuous and of a uniform height equal to the lowest height of the roof.

Roofs and walls

A **wall** will include any structure or device (whether fixed or movable) that prevents or significantly impedes lateral airflow, including a window or door.

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

How can I determine what is a roof or wall?

The roof/walls do not need to be continuous—they may have gaps and openings, including doors and windows. The roof/walls can also be made out of any material (including plastic and canvas).

If the purpose of a structure or device is to protect patrons from the elements e.g. wind and/or sun, it is likely that it will also significantly impede airflow. For example, if louvers are fixed completely open, they will not be considered to significantly impede upward/lateral airflow and therefore not be considered to be a 'roof' or 'wall'. Once the louvers start to be angled, they may be seen to impede airflow and therefore may constitute a 'roof' or 'wall'.

Outdoor dining or drinking areas with no roof

If an outdoor dining or drinking area has no roof, smoking is permitted regardless of the wall coverage. Partial roofs are discussed on page 8.

Outdoor dining or drinking areas with angled roofs

If an outdoor dining or drinking area has an angled roof, the total notional wall area needs to be measured as if the walls were: at the perimeter of the roofed area; and continuous; and of a uniform height equal to the *lowest height of the roof*.

Determining whether smoking can be permitted in an outdoor dining or drinking area

To determine whether smoking can be permitted in an outdoor dining or drinking area from 1 July 2007, the actual wall area needs to be compared as a percentage of the total notional wall area. In many cases it will be possible to determine whether 75 per cent or less of the notional wall area is enclosed, just by looking at it. However, there may be occasions where this is difficult to determine on sight alone. When this is the case measurements need to be undertaken using the following steps:

1. Does the area have a roof?
If not, smoking is permitted. If yes, the wall dimensions need to be calculated.
2. Total notional wall area
Work out the total wall surface area that is required to enclose all walls up to the lowest point of the roof along the perimeter of the roofline—this is the ‘total notional wall area’.
3. Actual wall area
Work out the actual wall area that exists.
* if a wall prevents or significantly impedes lateral airflow in an area, despite any openings or gaps in the wall including doors and windows, those openings should be disregarded in assessing the total actual area of the wall surface.
4. Compare your actual wall area as a percentage of your total notional wall area. If the amount is 75 per cent or less, smoking is permitted. If the amount is more than 75%, smoking is not permitted.

Case study

A roofed beer garden is 7 metres long, 3 metres wide and 4 metres high. There are four walls surrounding the courtyard but the two 3-metre wide side walls are only 1.5 metres high.

1. There is a roof, so the walls need to be considered
2. Total notional wall area: back and front notional walls are 7m x 4m (56m²) and two notional side walls are 3m x 4m (24m²)
Total notional wall area is
 $56 + 24 = 80$ square metres
3. Actual wall area: the back and front walls are 7m x 4m (56m²) + two side walls are 3m x 1.5m (9m²)
Actual wall area is $56 + 9 = 65$ square meters
4. Total notional wall area = 80 square metres
Actual wall area = 65 square meters
65 as a percentage of 80 = **81%**

As more than 75% of the total notional wall area is enclosed, smoking is not permitted from 1 July 2007.

The smoking status of outdoor dining or drinking areas can change

Unlike enclosed premises, the smoking status of an outdoor dining or drinking area can change, depending on the position of roof and walls.

For example, the pictures below (figures 1 & 2) show a balcony with a roof and retractable wall awnings. When the awnings are retracted, leaving the walled area to be 75 per cent or less (as per figure 1), then the balcony is not required to be smoke-free. If the awnings are drawn (as represented by the shaded area in figure 2) and the wall area is enclosed more than 75 per cent, then the balcony area will be required to be smoke-free.

Figure 1: Awnings are retracted



Smoking permitted on balcony

Figure 2: Note the shaded area depicts a drawn awning



Smoking not permitted on balcony

Alfresco dining or drinking

A street or footpath where the consumption of food or drinks is the predominant activity is considered to be an outdoor dining or drinking area.

Figure 3: Alfresco footpath dining



In Figure 3 above, the outdoor dining or drinking area has a roof so the walls need to be considered. More than 75 per cent of the total notional wall area is enclosed by walls (plastic awning); therefore smoking would not be permitted in this area from 1 July 2007.

If the plastic awnings were retracted so that 75 per cent or less of the total notional wall area was enclosed, smoking would be permitted.

What do I need to do if I want to change my premises to provide an outdoor dining or drinking area?

If you are planning to establish an outdoor smoking area in an outdoor space which has not previously been used for dining and drinking, you will need to check with Local Council to ensure your planning permit allows this space to be used for this purpose. If you hold a liquor license you should also contact Consumer Affairs Liquor Licensing.

When considering whether to approve a possible expansion, the Local Council will consider the possible amenity impacts on nearby and abutting properties. In some instances, your preferred location for an outdoor smoking area may not be supported by the Local Council.

It is also important to note that planning permits and liquor licenses do not provide approval under the Tobacco Act. Being in receipt of a planning permit or liquor license does not necessarily mean that the proposed renovation or structure can allow smoking.

How can I find out whether my outdoor dining or drinking area can allow smoking?

The Department of Human Services (via the Tobacco Information Line: 1300 136775) and the Environmental Health area of your Local Council can provide guidance as to whether planned renovations or structures are likely to comply with tobacco laws.

Occupiers who wish to allow smoking in outdoor dining or drinking areas need to ensure that the area/s comply with the requirements outlined in the Tobacco Act (explained in this Guide). This may involve seeking independent legal advice, where necessary.

Examples of outdoor dining or drinking areas

There are some circumstances where it may be difficult to determine whether smoking can be permitted in an outdoor dining or drinking area. Below are some diagrams that depict some of the different types of outdoor dining or drinking areas that exist and explanations for how the law will be applied to each.

Partially covered outdoor dining or drinking areas

In some cases, a 'partial roof' will not meet the definition of a 'roof'. That is, smoking will be permitted in an outdoor dining or drinking area if the 'partial roof' **does not** prevent or significantly impede upward airflow as an effect on the whole area.

'Area' can not be taken to mean 'any part of an area' so the effect of the partial roof must be calculated as an effect on the area as a whole, rather than just on the part of the area

that is covered. 'Areas' as defined in the Tobacco Act include balconies, verandas, courtyards, rooftop, marquees, footpaths, street, or any similar outdoor area.

The partial roof would generally have to cover less than half the total area in order not to significantly impede upward airflow in the area. However, this should be assessed on a case-by-case basis.

If the area has walls and the partial roof does prevent or significantly impede upward airflow in the area, the wall areas must be assessed to determine whether smoking is permitted.

In the examples shown in figures 4 & 5, the coverings over the outdoor dining or drinking area (courtyard) do not significantly impede upward airflow in the area as a whole. As the coverings in these examples are not considered to be 'roofs', smoking would be permitted.

Figure 4: Depicts a courtyard with 4 full-height walls with a covering erected

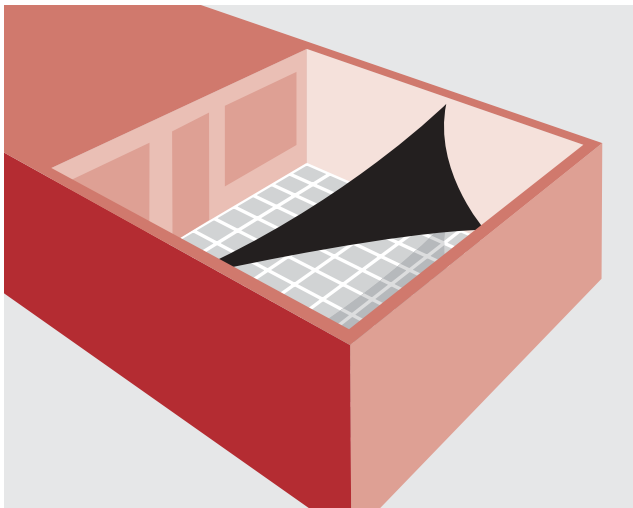
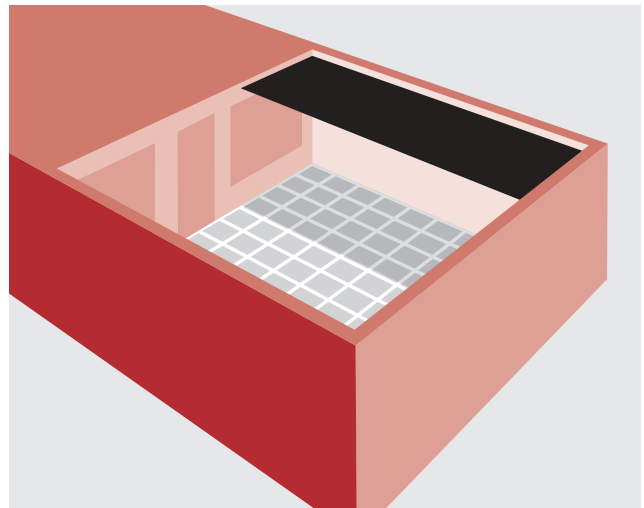


Figure 5: Depicts a courtyard with 4 full-height walls with a small covering erected



Not a 'roof' if it **does not** prevent or significantly impede upward airflow, as an effect on the whole area

Figure 6: Depicts a courtyard with 4 full-height walls with a large cover erected

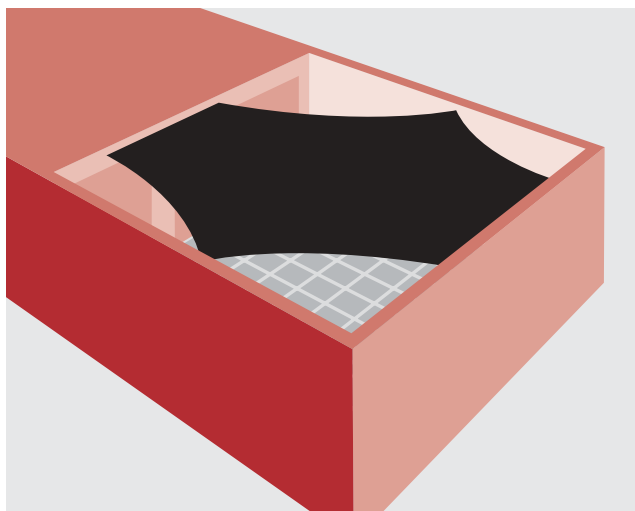
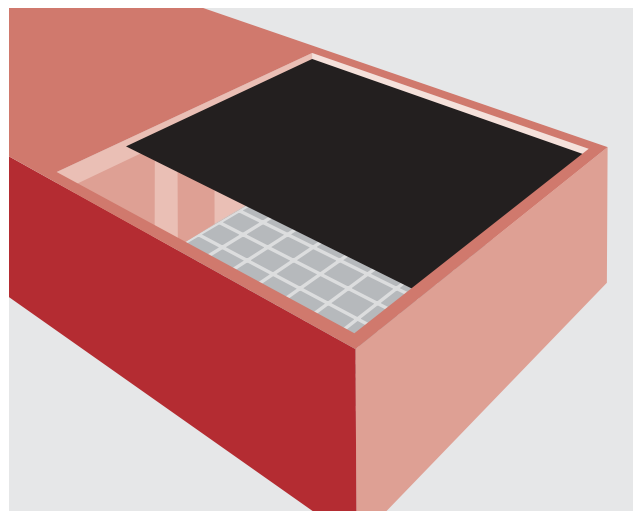


Figure 7: Depicts a courtyard with 4 full-height walls with an extensive covering erected



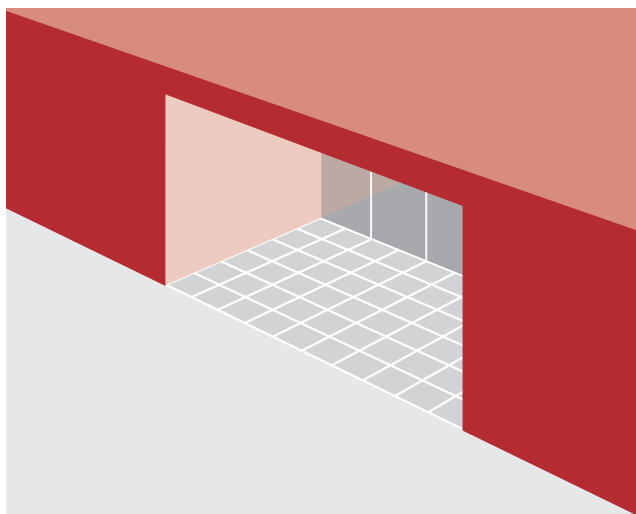
A 'roof' if it **does** prevent or significantly impede upward airflow, as an effect on the whole area

In the examples shown in figures 6 & 7, the coverings cover the majority of the outdoor dining or drinking area and would significantly impede upward airflow in the area as a whole. The coverings in these examples would be considered a 'roof'.

As the walls in these examples enclose more than 75 per cent of the total notional wall area, smoking would not be permitted. If the actual wall area covered 75 per cent or less of the total notional wall area, smoking would be permitted.

Insertion within the roofline of the building providing for an open front

Figure 8: Depicts an area that sits within the roofline of the building



Smoking may be permitted in an outdoor dining or drinking area as depicted in figure 8 if:

- (a) it is clearly separated from and distinguishable from the enclosed premises (eg. with a wall, lockable door and/or windows); and
- (b) the area and its furnishings are designed for exposure to the weather; and
- (c) the external side opening to the outside air is at least 25 per cent of the total area of the four sides.

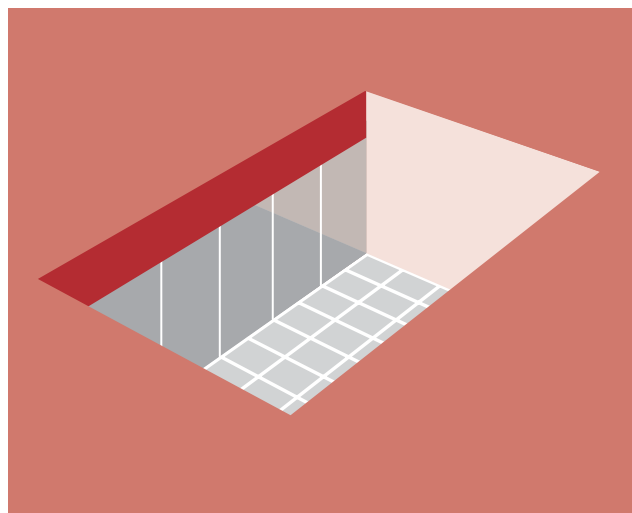
For example:

- If a large bi-fold door is fixed open between the two areas it will no longer separate the areas, therefore the insertion will not be considered to be an outdoor dining or drinking area and would be considered to be part of the enclosed premises.
- If the area is carpeted, it is not considered to be an outdoor dining or drinking area and would be considered to be part of the enclosed premises.

In order for smoking to be permitted in this type of outdoor dining or drinking area, there must be at least a 25 per cent opening in the wall area to the *outside air*. Any openings in the internal walls (such as a serving window) will be taken as closed when assessing the actual wall area.

Internal courtyard

Figure 9: Depicts a courtyard within a building



As with the previous example, smoking may be permitted in an outdoor dining or drinking area as depicted in figure 9 if it is clearly separated from and distinguishable from the enclosed premises (eg. with a wall, lockable door and/or windows).

If the above criteria are met and there is no 'roof' [any structure or device (whether fixed or movable) that prevents or significantly impedes upward airflow in the area], smoking would be permitted.

Premises that sell tobacco, have a cigarette vending machine or hold underage 'music/dance' events

Since 1 March 2006 the following laws have applied.

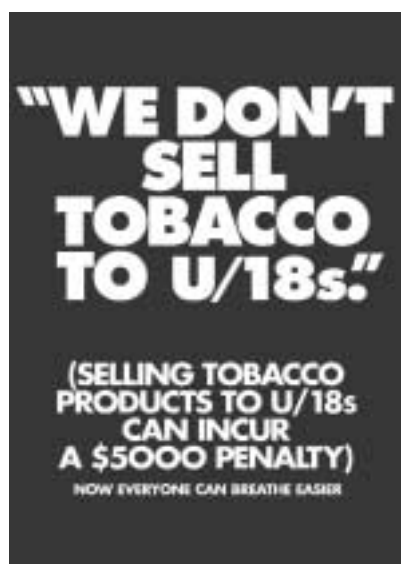
Premises that sell tobacco or have a cigarette vending machine

Cigarette vending machines can only be lawfully placed in the following areas:

- in a bar area of licensed premises in line or sight of a bar, not more than 5 metres from the outer edge of the bar counter; or
- in a gaming machine area in line of sight of a service counter; or
- in a bottle shop immediately adjacent to the service counter.

Two signs are required to be displayed where cigarettes are sold, either at the point of sale (in the case of a vending machine, on or adjacent to the machine) or at the entrance to the premises:

1. 'We don't sell tobacco to U/18s' sticker



2. QUIT health warning/smoking cessation sticker

There are seven acceptable black and white health warning/smoking cessation stickers—these are three examples. Only one of these signs needs to be displayed.



These stickers are available by calling 1300 136775.

Tobacco advertising in any form is prohibited. See page 20 for what constitutes a 'tobacco advertisement' including 'buzz marketing' and 'non-branded tobacco advertising'.

For premises that sell tobacco products behind the bar or counter, other legal requirements apply. For further information refer to the *Tobacco retailer guide* available at www.health.vic.gov.au/tobaccoreforms or by calling 1300 136775.

Premises that hold underage 'music/dance' events

The following applies during underage 'music/dance' events:

- Smoking is prohibited in all areas at underage 'music/dance' events. This includes any outdoor areas where the event is held.
- Acceptable No Smoking signage must be displayed.
- The sale and/or display of tobacco products is prohibited. Cigarette vending machines and tobacco product displays must be removed or completely covered in an opaque material during these events.

For further information on underage 'music/dance' events refer to the *Smoke-free underage 'music/dance' events guide* available at www.health.vic.gov.au/tobaccoreforms or by calling 1300 136775.

No Smoking signage

The occupier of an enclosed licensed premises or an outdoor dining or drinking area, where there is a roof in place and walls that cover more than 75 per cent of the total notional wall area, must display acceptable No Smoking signs to clearly indicate smoke-free premises or areas.

How do I display the No Smoking signs?

No Smoking signs must be displayed so that a person is reasonably likely to see one or more of the signs either on entering the premises or area or from within the premises or area. For example, you will comply with the signage requirements if you have signs on or beside the entrance doors of your premises or area.

Should No Smoking signs be displayed at all times?

No Smoking signs must be displayed in enclosed licensed premises at all times.

In outdoor dining or drinking areas where the smoking status may change, No Smoking signs are only required to be displayed while that area is required to be smoke-free. For example, if the awnings on a roofed balcony are retracted so that 75 per cent or less of the wall area is enclosed, the No Smoking signs may be removed while those awnings are retracted (see page 4 for further information on outdoor dining or drinking areas).

What must the No Smoking signs look like?

The No Smoking signs displayed must contain:

- 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 which clearly indicates that smoking is not permitted. The symbol must be at least 70mm in height; and
- The phrase 'no smoking' or 'smoking prohibited' or other wording that clearly indicates that smoking is not permitted (for example 'smoke-free area'). The lettering must be at least 20mm in height.

Standard double-sided No Smoking stickers that meet these requirements, have been produced by the Department of Human Services and are available by calling 1300 136775. The Department's No Smoking sticker is illustrated on the inside front cover.

Can I make my own No Smoking signs?

You can design your own sign to suit your premises' décor as long as your sign meets the requirements set out above.

Enforcement and penalties

Who enforces the tobacco laws?

The laws are enforced by Local Council Environmental Health Officers or any officer authorised by the Department of Human Services.

Are managers liable for breaches of the law?

The occupier of a premises or area is responsible for breaches of the smoke-free law at those premises. 'Occupier' is defined as '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 of the premises or area breaches the law if they allow smoking in a smoke-free premises or area and/or if they fail to display acceptable No Smoking signs.

Are customers who smoke also liable?

A person smoking in an enclosed premises or smoke-free area is also liable and may receive a fine.

What if a customer does not comply with the laws?

If a person smokes in an enclosed licensed premises or an outdoor dining or drinking area that is designated as smoke-free, the occupier should:

- ask the person to stop smoking;
- inform the person that it is an offence to smoke in the premises or area;
- ask the person to temporarily leave that enclosed premises or smoke-free area if they wish to smoke; and
- ensure that the appropriate No Smoking signage is displayed, and that the occupier and premises do not provide items that may facilitate smoking, such as ashtrays or matches.

What if a customer refuses to stop smoking?

If you request someone to stop smoking and they refuse, you should:

- follow the same policy you would generally follow if a person exhibited antisocial or illegal behaviour
- where appropriate consider calling your Local Council to request that they visit the premises to conduct an inspection.

Can I be fined if a customer continues to smoke, even after being asked to stop?

The occupier is not liable if smoking occurs in a smoke-free premises or area if they can demonstrate that they did not provide a ashtray, matches, lighter or any other assistance to facilitate smoking, and either:

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

Penalties

Prior to 1 July 2007, penalties apply for breaches of smoke-free dining requirements and the partial smoking restrictions for gaming venues and licensed premises. Smoking in these premises will be captured by the enclosed workplace offence from 1 July 2007.

From 1 July 2007 if a person smokes in an enclosed licensed premises, or an outdoor dining or drinking area that is required to be smoke-free, the person who smokes may receive a fine or be prosecuted, as may the person in control of the premises at the time (the 'occupier').

Since 1 March 2006 penalties have applied in regard to:

- breaches of underage 'music/dance' events smoking restrictions
- tobacco retail requirements including the placement of cigarette vending machines.

The table below shows the applicable penalties for enclosed licensed premises and outdoor dining or drinking offences

Offences & penalties (prior to 1 July 2007)	Maximum Penalty if Prosecuted*
Person smoking in a smoke-free area or room of a licensed premises	5 penalty units
Occupier of a licensed premises where gaming/partial smoking restrictions and/or smoke-free dining requirements are not met	5 penalty units
Occupier of a licensed premises where acceptable No Smoking signage is not displayed in smoke-free areas or rooms	5 penalty units
Offences & penalties (prior to AND from 1 July 2007)	
Person smoking at an underage 'music/dance' event (aged 18 years or over)	5 penalty units
Occupier of an underage 'music/dance' event where smoking occurs	5 penalty units
Occupier of an underage 'music/dance' event where acceptable No Smoking signs are not displayed	5 penalty units
Person at an underage 'music/dance' event that sells a tobacco product to anyone (including minors)	50 penalty units
Occupier of an underage 'music/dance' event who does not completely cover or remove a cigarette vending machine or tobacco display/advertisement	60 penalty units
Occupier of a venue that allows tobacco advertising (which includes buzz marketing and/or non-branded tobacco advertising)	60 penalty units
Person unlawfully placing or permitting the unlawful placement of a cigarette vending machine	10 penalty units
Person who sells tobacco to a minor or an occupier who permits a minor to obtain tobacco from a cigarette vending machine	50 penalty units
Manager/proprietor where their staff or agent sells tobacco to a minor	50 penalty units
Offences & penalties (from 1 July 2007)	
Person smoking in an enclosed licensed premises	5 penalty units
Occupier of an enclosed licensed premises where smoking occurs	5 penalty units
Person smoking in an outdoor dining or drinking area that has a roof in place and walls that cover more than 75% of the total notional wall area	5 penalty units
Occupier of an outdoor dining or drinking area that has a roof in place and walls that cover more than 75% of the total notional wall area where smoking occurs	5 penalty units
Occupier of the following where acceptable No Smoking signs are not displayed: <ul style="list-style-type: none"> • an enclosed licensed premises; or • an outdoor dining or drinking area that has a roof in place and walls that cover more than 75% of the total notional wall area 	5 penalty units

* the value of a penalty unit for 2006–07 is \$107.43 (indexed annually)

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.

Penalties range from an on-the-spot fine of 1 penalty unit to a maximum of 60 penalty units and 1 month's imprisonment.

The *Environment Protection Act* 1970 covers both private and public property, and can be enforced by a range of agencies including councils, EPA Victoria, and Victoria Police. To protect yourself from a fine, notice or prosecution you will need to consider litter prevention in and around your premises.

For further information regarding:

- Butt litter and the law, go to www.epa.vic.gov.au (EPA Victoria)
- Litter management and prevention, go to www.litter.vic.gov.au (Victorian Litter Action Alliance)

Councils may also impose obligations on businesses in relation to litter through local laws or permit conditions (these vary).

Checklists

The following checklists provide a guide to owners or managers to assist them to implement the new tobacco laws. Each premises is different and each owner or manager will need to consider whether they wish to accommodate staff and customers who smoke and any other changes which may need to be made.

Enclosed licensed premises

Activity	Date	Completed
Communicate to management and staff that smoking is prohibited in the premises from 1 July and what to do if they encounter someone smoking	May–June 2007	<input type="checkbox"/>
New law comes into effect	1 July 2007	
Remove ashtrays and other objects that facilitate smoking		<input type="checkbox"/>
Display No Smoking signs in a manner that a person is reasonably likely to see one or more of the signs on entering the premises or from within the premises		<input type="checkbox"/>
Monitor smoking ban to ensure staff and customers are complying		<input type="checkbox"/>

Outdoor dining or drinking areas

Activity	Date	Completed
Determine whether your outdoor dining or drinking area/s will need to be smoke-free. Seek guidance from this booklet, the Tobacco Information Line, your Local Council or, where necessary, seek independent legal advice	December 2006–April 2007	<input type="checkbox"/>
Communicate the new law to management and staff. Provide information when an outdoor dining or drinking area is required to be smoke-free from 1 July 2007	May–June 2007	<input type="checkbox"/>
Communicate to staff where customers can and cannot smoke and what to do when they encounter someone smoking in a smoke-free outdoor dining or drinking area	May–June 2007	<input type="checkbox"/>
Where appropriate, provide external stubbing bins in outdoor dining or drinking areas where smoking is permitted	June 2007	<input type="checkbox"/>
New law comes into effect	1 July 2007	
Remove ashtrays and other objects that facilitate smoking from any smoke-free outdoor dining or drinking areas		<input type="checkbox"/>
Display No Smoking signs in smoke-free outdoor dining or drinking areas in a manner that a person is reasonably likely to see one or more of the signs on entering the area or from within the area		<input type="checkbox"/>
Monitor smoking ban to ensure staff and customers are complying		<input type="checkbox"/>

Glossary

acceptable No Smoking sign	<p>means a sign that contains:</p> <ul style="list-style-type: none"> (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 70mm 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 20mm in height.
bar	<p>in a licensed premise means:</p> <ul style="list-style-type: none"> • is stocked with liquor of various types • is used solely or mainly for the supply of liquor to customers • has a counter which supplies: <ul style="list-style-type: none"> – directly to customers; or – in the immediate vicinity where customers may immediately consume liquor supplied
bar area	<p>an area:</p> <ul style="list-style-type: none"> • in the immediate vicinity of the bar; and • not more than 5 metres from the outer edge of the counter of the bar
bottle shop	<p>an area in licensed premises where liquor is supplied to customers solely for consumption off the licensed premises</p>
buzz marketing	<p>the use of colours, images and props to create an environment consistent with a brand’s identity or reminiscent of previous tobacco advertising</p>
enclosed (does not apply to outdoor dining or drinking areas)	<p>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:</p> <ul style="list-style-type: none"> (a) permanent or temporary; (b) open or closed
gaming machine area (from <i>Gambling Regulation Act 2003</i>)	<ul style="list-style-type: none"> (a) in relation to an approved venue, an area in the approved venue that is approved by the Commission under Part 3 of Chapter 3 as an area in which a gaming machine is permitted to be installed; or (b) in relation to a casino, an area in the casino that is determined by the Commission under section 3.1.5(3A) to be a gaming machine area only for the purposes referred to in that sub-section.

licensed premises	a premises in respect of which a general licence, an on-premises licence or a club licence is in force, other than premises that are a restaurant or café or a bingo centre
non-branded tobacco advertisement	the use of 'suggestive' methods to advertise tobacco products. For example, backlit posters directly above cigarette displays or on vending machines, depicting images of smoking paraphernalia such as matches and lighters
occupier	a person who is, or appears to be, over 16 years of age and who is, or appears to be, in control of the area or premises
outdoor dining or drinking area	any of the following outdoor areas that is predominantly used for the consumption of food or drinks or both: <ul style="list-style-type: none"> • a balcony or veranda • a courtyard • a rooftop • a marquee • a street or footpath • any similar outdoor area
restaurant/cafe	premises that are, or an area in premises that is, used by the public, predominantly for the consumption of food or non-alcoholic drinks purchased on the premises (whether or not food or non-alcoholic drinks are also sold on the premises for consumption off the premises). This does not include premises in respect of which a general or a club license is in force.
roof	any structure or device (whether fixed or movable) that prevents or significantly impedes upward airflow, including a ceiling
service counter	at a gaming venue or casino: a counter at which gaming tokens may be issued or redeemed

tobacco advertisement

Please note: the definition below is a summary of the full definition found in Section 3B of the Tobacco Act.

means (1) “any writing, still or moving picture, sign, symbol or other visual image, or any audible message, or any combination of 2 or more of those things, that give publicity to, or otherwise promotes or is intended to promote –

- (a) smoking; or
 - (b) the purchase or use of a tobacco product or a range of tobacco products; or
 - (c) the whole or a part of a trade mark that is registered under the Trade Marks Act 1955 of the Commonwealth in respect of goods that are or include tobacco products; or
 - (d) a whole or part of a design that is registered under the Designs Act 2003 of the Commonwealth in relation to products that are or include tobacco products; or
 - (e) the whole or a part of the name of a person–
 - (i) who is a manufacturer of tobacco products; and
 - (ii) whose name appears on, or on the packaging of, some or all of those products; or
 - (f) any other words (for example the whole or a part of a brand name) or design, or combination of words and designs, that are closely associated with a tobacco product or a range of tobacco products (whether also closely associated with other kinds or products).
- (2) A reference in sub-section (1) to a visual image or a design includes a reference to an image or a design consisting of a colour or a scheme of colours.
- (3) Without limiting sub-section (1), a tobacco advertisement includes –
- (a) the display of an immediate package of a tobacco product;
 - (b) the advertisement of cigarette papers.
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total notional wall area	what would be the total area of the wall surfaces if the walls were: at the perimeter of the roofed area and continuous and of a uniform height equal to the lowest height of the roof
underage 'music/dance' event	<p>an event that:</p> <ul style="list-style-type: none">• involves the provision of music (whether live or recorded and whether for listening to or dancing to or both); and• is predominantly organised or intended for, or predominantly attended by persons under the age of 18 years; and• is open to members of the public (whether with or without payment); and• takes place in any area or premises other than a private residence
vending machine	a machine, device or contrivance that is constructed to contain tobacco products that may be obtained from it by an operation that involves the insertion in the machine, device or contrivance of a coin, token or similar object
wall	any structure or device (whether fixed or movable) that prevents or significantly impedes lateral airflow, including a window or door

Further information

Tobacco laws

Tobacco Information Line 1300 136775

www.health.vic.gov.au/tobaccoreforms

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

Quitting smoking

Call the Quitline 13 7848 for assistance and support or visit www.quit.org.au

Cigarette butt litter and the law

Environment Protection Authority Victoria

www.epa.vic.gov.au

Litter management and prevention

Victorian Litter Action Alliance www.litter.vic.gov.au

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