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Statement of Government Policy

Victoria's *Tobacco Act 1987*

Enclosed workplaces: smoking offence (including licensed premises from 1 July 2007)
Section 5A as amended on 1 July 2007

This statement provides information on the objectives and context of the Victorian Government's policy in relation to the interpretation and implementation of the smoking offence in section 5A of the **Tobacco Act 1987**.

Background

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.

The Preamble to the **Tobacco Act 1987** (the Act) provides that the Parliament of Victoria recognises the following guiding principles in relation to the use, supply and promotion of tobacco:

- tobacco use is so injurious to the health of both smokers and non-smokers as to warrant restrictive legislation;
- tobacco use has adverse health effects even with infrequent use and there is no completely safe form of tobacco use;
- tobacco use is a widely accepted practice amongst adults which is inappropriate to ban completely;
- the extent of the health effects of smoking requires strong action to deter people from taking up smoking and to encourage existing smokers to give up smoking; and
- the association of smoking with social success, business advancement and sporting prowess through use of advertising and promotion has a particularly harmful effect by encouraging children and young people to take up smoking

The Parliament of Victoria resolved in the Act to discourage the use of tobacco in all its forms and to prohibit various types of promotion and advertising of tobacco products in order to reduce the incidence of tobacco-related illness and death. The Act has been amended several times in pursuit of these goals.

In 2005, the latest round of amendments to the Act provided for the following matters:

- a ban on smoking in enclosed workplaces and in some outdoor dining or drinking areas;
- increased controls on tobacco advertising and the supply of tobacco to young people; and
- amendments to the *Transport Act 1983* to ban smoking in covered public transport property.

The objectives of these tobacco reforms are to:

- contribute to continued reductions in smoking rates, particularly among young people;
- reduce exposure to passive smoke, particularly young people's exposure; and
- decrease the normalisation of smoking at social settings.

Smoking offences relating to enclosed workplaces and outdoor dining and drinking areas

Enclosed workplaces and licensed premises

Section 5A of the Act provides that it is an offence to smoke in an enclosed workplace. Licensed premises are initially exempt from the enclosed workplace offence to allow the industry and community sufficient time to understand and adjust to the new law.

From 1 July 2007 the exemption for licensed premises from the offence will be revoked and smoking in enclosed licensed premises will be an offence.

Outdoor dining and drinking areas

Until 1 July 2007, smoking in outdoor dining and drinking areas remains unregulated by the Act. On 1 July 2007, a new offence will commence for smoking in roofed outdoor dining or drinking areas that have more than 75% of wall coverage (section 23, **Tobacco (Amendment) Act 2005**).

Government policy in relation to the offences

The percentage of persons who smoke has fallen to between 10% and 30% of the population depending on age group. The new offences therefore restrict a significant minority of the community from smoking in certain circumstances. The offences are designed to reduce people's exposure to passive smoke, and encourage further reductions in smoking rates, consistent with the objects of the Act.

The offences are in line with increasing community acceptance and expectation that all forms of workplaces (including licensed premises) will be smoke-free and will not be required to cater for smokers.

Similar to smoking restrictions in other jurisdictions, **the Act does not require any workplace to provide an outdoor smoking area either on-site or off-site**. While the provision of outdoor smoking areas is a possible response to managing the amenity issues of smoking, a mandatory requirement for such an area without first considering the issues outlined below is inconsistent with the objectives of the Government's tobacco reforms.

Amenity issues

Smokers accept that they are no longer able to smoke in other enclosed workplaces and in public transport. With the introduction of smoke-free licensed premises, it is anticipated that a similar process of adjustment for patrons and venue owners will occur. Associated amenity issues are possible, particularly during the adjustment period.

Amenity issues may include increased cigarette litter, noise and footpath obstruction in the vicinity of licensed premises, in addition to that already occurring. However, anecdotal experience in Australia and international jurisdictions is that such amenity issues have not increased significantly in response to the introduction of workplace smoking restrictions. Formal measurement of these issues before and after the introduction of smoking restrictions has rarely been undertaken. It is anticipated that some areas or workplaces may be more affected by amenity issues than others, requiring a broader management response.

There is a broad range of mechanisms available to address and protect the amenity of the community, which are summarised in the attachment. These include venue management arrangements; noise, litter and public order laws; lease and licence requirements for use of public space; local laws; and conditions on planning permits and liquor licences. The appropriate measures for each workplace depend on their particular circumstances.

It is important that amenity issues are managed appropriately and effectively. Several Departments (Human Services, Sustainability and the Environment, Premier and Cabinet, and Justice), Sustainability Victoria, Environment Protection Authority Victoria, Liquor Licensing Victoria, Victoria Police, Victorian Litter Action Alliance and Local Government are working together to monitor any impacts on amenity associated with the new offences and how these are managed during the adjustment period.

To encourage community understanding and awareness of the new law and responsible behaviour, appropriate communication campaigns are also being implemented. Sustainability Victoria is providing targeted cigarette butt bin infrastructure support to industry and Local Government to reduce the impacts of butt litter in public space.

**This policy statement has been adopted
by the Minister responsible for the
Tobacco Act 1987:**

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

**Bronwyn Pike
Minister for Health**

Date: 27/06/2007

Attachment to Statement of Government Policy

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Existing mechanisms to manage amenity

Legislation	Responsible	Mechanisms in relation to amenity
<i>Environment Protection Act 1970</i>	Administration: Environment Protection Authority Enforcement: Victoria Police and Environment Protection Authority	The Act controls music venue noise and provides the benchmark standards for licenses and permits issued for live music events. In regard to litter (including cigarette butt litter), the Act provides for: offences relating to littering by individuals; Litter Abatement Notices to prevent litter entering the public domain; and orders to clean up litter.
<i>Planning & Environment Act 1987</i>	Administration & enforcement: Local Government	Through planning schemes in every municipality, the Act establishes a framework for land use and development. Under the Act, Planning permits may be issued for entertainment type uses. Conditions on a planning permit may address amenity concerns in including: hours of operation; patron numbers; car parking; and waste storage/removal.
<i>Liquor Control Reform Act 1998</i>	Administration: Director of Liquor Licensing Enforcement: Victoria Police	This Act provides for the conditions under which licensed premises must operate. All liquor licences have standard conditions that relate to noise. Non-standard conditions are endorsed on a case-by-case basis to address specific amenity issues such as opening times, the number of patrons permitted in the venue, etc. Liquor licence conditions are endorsed with the consent of the licensee as part of the licence agreement. However, conditions can be imposed on licensees as a result of disciplinary proceedings.
<i>Health Act 1958</i>	Administration & enforcement: Local Government	This Act provides for nuisances that are, or liable to be, dangerous to health or offensive. Where noise emanating from an entertainment venue is creating a nuisance, it is at the council's discretion as to what, if any, noise abatement action is required.
<i>Building Act 1993</i>	Administration: Private Building Surveyors & Local Government Enforcement: Building	This Act and associated regulations provide standards for the construction and maintenance of buildings. The standards are designed to enhance the amenity and

	Commission	protect the safety and health of people who use buildings. However, the emphasis is on building structural matters rather than general amenity.
<i>Local Government Act 1989</i>	Administration & enforcement: Local Government	<p>This Act provides for the responsibility of councils for their municipal districts. Councils are responsible for enforcing local laws which can ensure activities conducted in a public place, or on a residential or commercial property, are conducted with minimum disruption and risk to the local community.</p> <p>Some councils have local laws relating the protection of amenity which may include conditions on footpath trading permits and alcohol-free zones.</p>