

New tobacco laws:

Workplaces

(commencing 1 March 2006)

Background

Around 30 per cent of Victorian workers continue to be exposed to environmental tobacco smoke in the workplace.

It has long been established that exposure to environmental tobacco smoke causes harm to health and over the years, evidence of negative health effects has continued to mount with the number of diseases linked to exposure to environmental tobacco smoke growing. Exposure to environmental tobacco smoke can increase the risk of cardiovascular disease, lung cancer and other lung diseases in adults with a recent study indicating that exposure to high levels of environmental 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.

Studies have found that restrictions on smoking in enclosed areas are effective. They not only protect workers from exposure to environmental tobacco smoke but they result in decreases in smoking prevalence and consumption.

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.

This fact sheet applies to enclosed workplaces that are not exempt from the new law. The fact sheet does not address the existing requirements for workplaces that are exempt from the new law (see below for a list of exemptions).

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 taken to be closed when considering if the area is substantially enclosed.

Are there any exemptions?

There will be exemptions and they will include the following:

- 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 (e.g. motel); 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
- prison cells as well as exercise yards of prisons
- a detention centre established for the purposes of the *Migration Act 1958* (Cth)
- high roller rooms at the Casino
- licensed premises (until 1 July 2007).

Note: The existing partial smoking restrictions on the casino, licensed premises and approved venues will continue to apply until 1 July 2007.

What about large workplaces with high roofs, will they 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 will not have an impact on determining whether an area is smoke-free.

What about a factory or garage with open roller doors?

An enclosed workplace is required to be smoke-free, regardless of whether the roof or walls are permanent, temporary, open or closed.

Are employers required to display no smoking signs in enclosed workplaces?

The occupier of a retail shopping centre, bingo area/centre, licensed premises, approved venues, the casino, dining areas or an enclosed restaurant/café, must display acceptable no smoking signs.

Other employers 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 where smoking bans 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 occupier of a retail shopping centre, bingo area/centre, casino 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.

	Fine	Maximum Penalty if Prosecuted
Person smoking	1 penalty unit	5 penalty units
Person in charge of the enclosed workplace at the time the smoking occurs	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).*

Are there any defences?

Yes. The person in charge 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.

What type of assistance will be provided to employers to assist them with this law?

An extensive communication campaign will be undertaken to inform employers and employees of the new law. Further information will be available to assist employers to implement the new law in their workplace.

What should employers do for employees who are smokers?

Employers will need to ensure that employees are aware that they will no longer be permitted to smoke in enclosed workplaces.

Employers may need to find alternative arrangements for employees who smoke such as providing a designated outdoor smoking area. Each workplace is different and the employer will need to determine what should be provided.

Will employees working in the hospitality industry be covered under this law?

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

Licensed premises which are currently required to have partial smoking restrictions will still have those partial restrictions, however, as of 1 July 2007 all enclosed licensed premises will be required to be smoke-free. Further details on licensed premises are provided in the 'Licensed premises & outdoor dining and drinking areas' fact sheet.

For further information:

Tobacco Information Line: 1300 136 775
www.health.vic.gov.au/tobaccoreforms/

Disclaimer: This fact sheet is intended only as a general guide and introduction to the relevant provisions of the *Tobacco (Amendment) Act 2005*. The Department of Human Services does not accept any liability for any expense, loss or damage suffered as a result of reliance upon this fact sheet.