

# Bans on smoking at childcare centres, kindergartens, preschools and schools

## Factsheet for occupiers

**By law, smoking is banned within the grounds of, and within four metres of an entrance to, all childcare centres, kindergartens, preschools and schools.<sup>1</sup>**

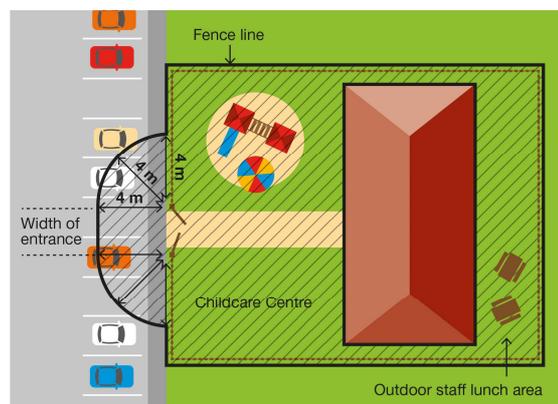
### Where does the ban apply?

Smoking is banned within the grounds of all Victorian childcare centres, kindergartens, preschools and primary and secondary schools in Victoria. This includes all Government, independent and Catholic schools.

Smoking is also banned within four metres of any part of a pedestrian access point (entrance) to the premises.

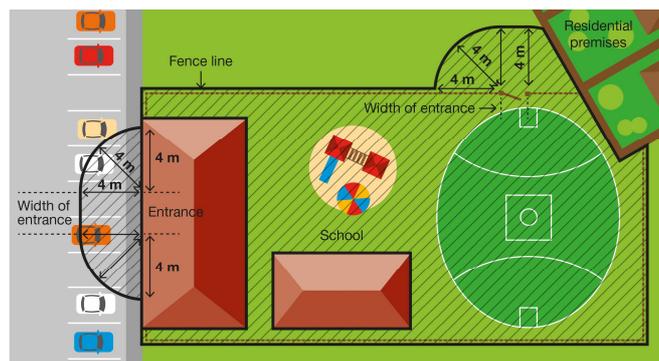
Childcare centres, kindergartens and preschools are defined broadly to refer to all children's service premises within the meaning of the *Children's Services Act 1996*, and all education and care service premises within the meaning of the Education and Care Services National Law (Victoria), with the exception of family day care service premises.

The diagram below shows an example of where the smoking ban applies at a childcare centre.



Shading indicates outdoor 'no smoking' area

The diagram below shows an example of where the smoking ban applies at a school.



Shading indicates outdoor 'no smoking' area

### When does the ban apply?

#### Childcare centres, kindergartens and preschools

The smoking ban applies to childcare, kindergartens and preschools only while they are being used to provide a children's service or an education and care service.

#### Schools

The smoking ban applies at primary and secondary schools at all times, no matter whether the building or school grounds are being used for education purposes or other purposes. The ban therefore applies when other activities are taking place on the school grounds, such as fetes or sporting events, as well as during school hours.

<sup>1</sup> Section 5RD of the *Tobacco Act 1987*.

## Why does the ban exist?

### To protect children and young people from the dangers of second-hand smoke

This ban ensures that children and young people can enter and leave these areas without being exposed to harmful second-hand smoke.

Second-hand tobacco smoke is particularly dangerous to children and young people because they have smaller airways and less developed immune systems compared to adults.

### To reduce the role modelling of smoking behaviours around children and young people

Children and young people are more likely to view smoking as socially acceptable when they regularly see people smoking.

Banning smoking in areas used by children and young people will help to denormalise smoking behaviour and discourage children and young people from taking up smoking.

## What is a pedestrian access point?

A pedestrian access point in relation to premises means a door or gate by which a person can enter or exit the premises.

It *does not* include an emergency exit that is locked to entry.

It *does* include shared doors or gates. For example, where a building is occupied by a childcare centre as well as other organisations, such as private businesses, any shared entrances that are used to access both areas of the building would be subject to the smoking ban.

Any entrances which lead only to premises not included in the smoking ban, such as the private offices, would not be subject to the smoking ban.

## Where does the ban not apply?

The ban does not apply:

- to private homes that provide family day care services
- to an emergency exit that is locked to entry
- to a person walking through the smoke-free area
- to a person in a motor vehicle that is being driven through the smoke-free area
- to a person in an area that is separated from the smoke-free area by a road
- to a person in an outdoor drinking area located within the smoke-free area
- to a person at a residential premises (at privately owned homes and land).

## What if we are already smoke-free?

Existing regulations require childcare centres, kindergartens, preschools and schools to ensure children are provided with an environment free from tobacco smoke.

Occupiers face penalties if they fail to protect children from second-hand smoke.

These new smoking bans under the *Tobacco Act 1987* will complement the existing regulations by introducing penalties applicable to individual smokers and extend the smoking ban to the area around the entrances of the premises.

## How will people know about the ban?

An education campaign, including newspaper, radio and online advertising, will inform the public of the new law. You are also required to display signs in the smoke-free area (see page 3).

## Will I or my staff be expected to enforce the ban?

No. Principals, staff, managers and other occupiers will not be expected to enforce the ban and are not empowered to do so.

Compliance with the ban is expected to occur through public education and changed community expectations.

Consultation undertaken by the Department of Health and Human Services shows strong community support for banning smoking at public places, particularly where children are present.

These factors are likely to result in high levels of voluntary compliance with the smoking ban.

## How will the ban be enforced?

There is strong community support for banning smoking at public places regularly attended by children. This means most people will voluntarily comply with the smoking ban and expect others to do so.

Inspectors authorised under the *Tobacco Act 1987* may provide information about and, when necessary, enforce the ban. The first priority of the inspector is to make sure smokers understand the ban.

Inspectors may not be available to respond to every complaint but, where circumstances allow, may attend in response.

Inspectors have been given the power to enter childcare, kindergarten, preschool and school premises to monitor and enforce the ban. However, this is subject to permission from the occupier (e.g. school principal) and, if permission is provided, the inspector must be accompanied by the occupier or a person acting on their behalf. It is anticipated that the focus for inspectors will be on those smoking within four metres of school entrances, and that the power to enter school premises will be used sparingly.

You and your staff can assist to raise awareness of the ban by providing staff and visitors access to promotional resources.

## What penalties might apply?

The maximum penalty for someone breaking this law is five penalty units, with an infringement penalty of one penalty unit.

As of 1 July 2017, a penalty unit is valued at \$158.57<sup>2</sup>

## What resources are available to promote the ban?

### Signage

Childcare centres, kindergartens, preschools and schools are required by law to install acceptable 'No smoking' signs at entrances (pedestrian access points) to their premises. Signs are available to order free-of-charge from the [tobacco reforms website](http://www.health.vic.gov.au/tobaccoreforms) <[www.health.vic.gov.au/tobaccoreforms](http://www.health.vic.gov.au/tobaccoreforms)>

Electronic versions of the signs can also be downloaded and printed from the website above.



<sup>2</sup> For current penalty unit values, visit the [Office of the Chief Parliamentary Council website](http://www.ocpc.vic.gov.au) <<http://www.ocpc.vic.gov.au>>

## Posters, brochures and palm cards

Occupiers are able to request posters, brochures and palm cards to help educate and inform staff, visitors and the general public of the new ban. These are available to order free-of-charge from the [tobacco reforms website](http://www.health.vic.gov.au/tobaccoreforms)

<[www.health.vic.gov.au/tobaccoreforms](http://www.health.vic.gov.au/tobaccoreforms)>



## Definitions of 'occupier'

Under the *Tobacco Act 1987*, an occupier in relation to an area or premises, means:

- a) a person who appears to be of or over the age of 16 years and who is or appears to be in control of the area or premises, whether or not the person is present in the area or on the premises; or
- b) a body corporate that is or appears to be in control of the area or premises.

## How can I find out more?

For more information:

- visit the [tobacco reforms website](http://www.health.vic.gov.au/tobaccoreforms)  
<[www.health.vic.gov.au/tobaccoreforms](http://www.health.vic.gov.au/tobaccoreforms)>
- call the Tobacco Information Line on 1300 136 775

To view the legislation visit the Victorian Government's [legislation website](http://www.legislation.vic.gov.au) <[www.legislation.vic.gov.au](http://www.legislation.vic.gov.au)> and search *Tobacco Act 1987*.

DISCLAIMER: Please note that any advice contained in this factsheet is for general guidance only. The Department of Health and Human Services does not accept any liability for any loss or damage suffered as a result of reliance on the advice contained in this factsheet. Nothing in this factsheet should replace seeking appropriate legal advice.

To receive this publication in an accessible format phone the Tobacco Information Line on 1300 136 775 or email [tobacco.policy@health.vic.gov.au](mailto:tobacco.policy@health.vic.gov.au), using the National Relay Service 13 36 77 if required, or email [tobacco.policy@dhhs.vic.gov.au](mailto:tobacco.policy@dhhs.vic.gov.au)

Authorised and published by the Victorian Government, 1 Treasury Place, Melbourne.

© State of Victoria, Department of Health and Human Services February, 2018.

Except where otherwise indicated, the images in this publication show models and illustrative settings only, and do not necessarily depict actual services, facilities or recipients of services.

ISBN 978-1-76069-271-1

Available from the [tobacco reforms website](http://www.health.vic.gov.au/tobaccoreforms)  
<[www.health.vic.gov.au/tobaccoreforms](http://www.health.vic.gov.au/tobaccoreforms)>