

Tobacco (Amendment) Act 2005
Act No. 45/2005

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Victoria

No. 45 of 2005

Tobacco (Amendment) Act 2005[†]

[Assented to 16 August 2005]

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purposes

The purposes of this Act are—

- (a) to amend the **Tobacco Act 1987**—
 - (i) to ban smoking in enclosed workplaces and other areas;
 - (ii) to increase controls over tobacco advertising;

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- (iii) to introduce further measures to prevent the supply of tobacco products to young people;
- (iv) generally to increase controls over tobacco;
- (b) to amend the **Transport Act 1983** to ban smoking in covered public transport property;
- (c) to make consequential amendments to other Acts.

2. Commencement

- (1) This Act, except Part 3 and section 28, comes into operation on 1 March 2006.
 - (2) Part 3 and section 28 come into operation on 1 July 2007.
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**PART 2—GENERAL AMENDMENTS TO TOBACCO
ACT 1987**

3. Definitions

In section 3 of the **Tobacco Act 1987**—

(a) **insert** the following definitions—

' **"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 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;

"approved issuer document" means a document issued—

- (a) by a person; or
- (b) on behalf of a government department or an agency—

approved by the Minister;

"exercise yard" means an area in a prison (within the meaning of the **Corrections Act 1986**) that is provided for the purpose of allowing prisoners to have access to the open air;

See:
Act No.
81/1987.
Reprint No. 5
as at
1 September
2002
and
amending
Act Nos
114/2003 and
108/2004.
LawToday:
[www.dms.
dpc.vic.
gov.au](http://www.dms.dpc.vic.gov.au)

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"interstate driver licence" means a licence issued in another State or a Territory that is the equivalent of a Victorian driver licence;

"interstate proof of age card" means a card issued in another State or a Territory that is the equivalent of a Victorian proof of age card;

"outdoor dining or drinking area" means any of the following outdoor areas that is predominantly used for the consumption of food or drinks or both—

- (a) a balcony or verandah;
- (b) a courtyard;
- (c) a rooftop;
- (d) a marquee;
- (e) a street or footpath;
- (f) any similar outdoor area;

"police member" means a member of the force within the meaning of the **Police Regulation Act 1958**;

"residential care facility" means—

- (a) a residential care service, State funded residential care service or supported residential service within the meaning of the **Health Services Act 1988**; or
- (b) an aged care service within the meaning of the Aged Care Act 1997 of the Commonwealth;

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

"substantially enclosed" includes completely enclosed;

"tobacco company" means—

(a) a public company (within the meaning of the Corporations Act) that is engaged in any one or more of—

(i) tobacco growing;

(ii) manufacturing tobacco products;

(iii) wholesaling tobacco products; or

(b) a proprietary company (within the meaning of the Corporations Act) that is a subsidiary or related body corporate (within the meaning of that Act) of a company referred to in paragraph (a);

"Victorian driver licence" means a driver licence issued under the **Road Safety Act 1986**;

"Victorian proof of age card" means a document issued by the Director of Liquor Licensing under section 176 of the **Liquor Control Reform Act 1998**;

"wall" includes any structure or device (whether fixed or movable) that prevents or significantly impedes lateral airflow, including a window or door;

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- "workplace"** means any premises or area where one or more employees or self-employed persons (or both) work, whether or not they receive any payment for that work.;
- (b) the definition of "driver licence" is **repealed**;
- (c) for the definition of "enclosed" **substitute**—
- ' **"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.;
- (d) for the definition of "evidence of age document" **substitute**—
- ' **"evidence of age document"** means a document that—
- (a) is—
- (i) a Victorian proof of age card or an interstate proof of age card; or
- (ii) a Victorian driver licence or an interstate driver licence; or
- (iii) an Australian or foreign passport; or
- (iv) an approved issuer document; and
- (b) contains a photograph of the bearer; and
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- (c) indicates, by reference to a date of birth or otherwise, that the bearer is of or over a particular age;';
- (e) the definitions of "proof of age card" and "room" are **repealed**;
- (f) for the definition of "tobacco advertisement" **substitute**—
' **"tobacco advertisement"** has the meaning given in section 3B;'

4. New section 3B inserted

After section 3A of the **Tobacco Act 1987**
insert—

'3B. Tobacco advertisements

- (1) Subject to this section, for the purposes of this Act, a **"tobacco advertisement"** is 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 gives 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

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- (d) the whole or a 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 designs, 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 of products).
- (2) A reference in sub-section (1) to a visual image or a design includes a reference to an image or 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.
- (4) Words, signs or symbols that appear as part of the standard wording of an invoice, statement, order form, letterhead, business card, cheque, manual, or other document, ordinarily used in the normal course of the business of a manufacturer, distributor or retailer of tobacco products (a "**business**
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- document")** do not, when so appearing, constitute a tobacco advertisement (but this does not prevent a still or moving picture, or other visual image, of a tobacco product, of the packaging of a tobacco product, or of a business document, from being a tobacco advertisement).
- (5) Words, signs or symbols that appear in or on land or buildings occupied by a manufacturer of tobacco products do not, when so appearing, constitute a tobacco advertisement (but this does not prevent a still or moving picture, or other visual image, of words, signs or symbols that so appear from being a tobacco advertisement).
- (6) For the avoidance of doubt, the taking of any action to prevent a product from causing injury to anyone, including action—
- (a) to recall a product; or
 - (b) to disclose a defect in, or a dangerous characteristic of, a product; or
 - (c) to disclose circumstances in which the use of a product is or may be dangerous; or
 - (d) to disclose procedures for disposing of a product—
- does not constitute a tobacco advertisement.

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(7) If—

- (a) apart from this sub-section, something ("**the advertisement**") would, technically, be a tobacco advertisement; and
- (b) it is clear from the advertisement that its sole or principal purpose is to discourage smoking or the use of tobacco products—

then, despite sub-section (1), the advertisement is not a tobacco advertisement for the purposes of this Act.

(8) In this section—

"**words**" includes abbreviations, initials and numbers.'

5. New sections 5A to 5H substituted

For sections 5A, 5B, 5BA, 5C, 5D, 5E, 5F, 5G and 5H of the **Tobacco Act 1987** substitute—

"5A. Enclosed workplaces: offence by smoker

(1) A person must not smoke in an enclosed workplace.

Penalty: 5 penalty units.

(2) Sub-section (1) does not apply to the following—

- (a) residential premises, other than a part of residential premises being used for carrying on a business while one or more persons who do not reside at the premises are present in that part;
- (b) licensed premises;
- (c) an outdoor dining or drinking area;
- (d) a casino;

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- (e) a vehicle;
 - (f) a place of business occupied by the sole operator of the business that is not for the use of members of the public;
 - (g) a personal sleeping or living area of—
 - (i) premises providing accommodation to members of the public for a fee; or
 - (ii) a residential care facility;
 - (h) an area in an approved mental health service (within the meaning of the **Mental Health Act 1986**) that is declared, or that is in a class of area that is declared, by the Secretary, by notice published in the Government Gazette, to be a smoking area;
 - (i) a personal sleeping or living area, or an exercise yard, of a prison within the meaning of the **Corrections Act 1986**;
 - (j) a detention centre established for the purposes of the Migration Act 1958 of the Commonwealth.
- (3) If an inspector believes on reasonable grounds that a person is contravening subsection (1), the inspector, on producing his or her identity card, may direct the person to cease the contravention.
- (4) A person who is contravening subsection (1) must not, without reasonable excuse, fail to comply with a direction by an inspector to cease the contravention.

Penalty: 5 penalty units.

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5B. Enclosed workplaces: offence by occupier

- (1) If smoking occurs in an enclosed workplace, in contravention of section 5A, the occupier of the enclosed workplace is guilty of an offence and liable to a penalty not exceeding 5 penalty units.
- (2) It is a defence to a prosecution under subsection (1) if the defendant proves that the defendant did not provide an ashtray, matches, a lighter or any other thing designed to facilitate smoking where the contravention occurred and that—
 - (a) the defendant was not aware, and could not reasonably be expected to have been aware, that the contravention was occurring; or
 - (b) the defendant—
 - (i) requested the person contravening to stop smoking; and
 - (ii) informed the person that the person was committing an offence.

5C. Dining areas: offence by smoker

- (1) A person must not smoke in a dining area.
Penalty: 5 penalty units.
- (2) If an inspector believes on reasonable grounds that a person is contravening subsection (1), the inspector, on producing his or her identity card, may direct the person to cease the contravention.

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- (3) A person who is contravening sub-section (1) must not, without reasonable excuse, fail to comply with a direction by an inspector to cease the contravention.

Penalty: 5 penalty units.

5D. Dining areas: offence by occupier

- (1) If smoking occurs in a dining area, in contravention of section 5C, the occupier of the dining area is guilty of an offence and liable to a penalty not exceeding 5 penalty units.

- (2) It is a defence to a prosecution under sub-section (1) if the defendant proves that the defendant did not provide an ashtray, matches, a lighter or any other thing designed to facilitate smoking where the contravention occurred and that—

(a) the defendant was not aware, and could not reasonably be expected to have been aware, that the contravention was occurring; or

(b) the defendant—

(i) requested the person contravening to stop smoking; and

(ii) informed the person that the person was committing an offence.

5E. Dining areas: no smoking signs

- (1) The occupier of a dining area is guilty of an offence, and liable to a penalty not exceeding 5 penalty units, if, without reasonable excuse, acceptable no smoking signs are not displayed in accordance with sub-section (2).

Note: Section 3 defines an acceptable no smoking sign.

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- (2) The signs must be displayed in a manner that ensures that a person is reasonably likely to see one or more of them either on entering the dining area or from within the dining area.

5F. Enclosed restaurants and cafes: no smoking signs

- (1) The occupier of an enclosed restaurant or cafe is guilty of an offence, and liable to a penalty not exceeding 5 penalty units, if, without reasonable excuse, acceptable no smoking signs are not displayed in accordance with sub-section (2).

Note: Section 3 defines an acceptable no smoking sign.

- (2) The signs must be displayed in a manner that ensures that a person is reasonably likely to see one or more of them either on entering the enclosed restaurant or cafe or from within the enclosed restaurant or cafe.

5G. Retail shopping centres: no smoking signs

- (1) The occupier of a retail shopping centre is guilty of an offence if, without reasonable excuse, acceptable no smoking signs are not displayed in accordance with sub-section (2).

Note: Section 3 defines an acceptable no smoking sign.

- (2) The signs must be displayed in such prominent positions at entrances to any enclosed areas of the centre as would reasonably identify those areas of the centre as no smoking areas for persons entering them.

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- (3) The maximum penalty for an offence against sub-section (1) is 5 penalty units in the case of a natural person and 10 penalty units in any other case.

5H. Bingo areas and centres: no smoking signs

- (1) The occupier of a bingo area or bingo centre is guilty of an offence, and liable to a penalty not exceeding 5 penalty units, if, without reasonable excuse, acceptable no smoking signs are not displayed in accordance with sub-section (2).

Note: Section 3 defines an acceptable no smoking sign.

- (2) The signs must be displayed in a manner that ensures that a person is reasonably likely to see one or more of them either on entering the bingo area or bingo centre or from within the bingo area or bingo centre."

6. New section 5K substituted

For section 5K of the **Tobacco Act 1987** substitute—

"5K. Casinos: no smoking signs

- (1) The occupier of an area of a casino, other than a declared smoking area, is guilty of an offence, and liable to a penalty not exceeding 5 penalty units, if, without reasonable excuse, acceptable no smoking signs are not displayed in accordance with sub-section (2).

Note: Section 3 defines an acceptable no smoking sign.

- (2) The signs must be displayed in a manner that ensures that a person is reasonably likely to see one or more of them either on entering the area or from within the area."

7. Approved venues

In the **Tobacco Act 1987**—

- (a) in section 5L(1), for "room" (where first occurring) **substitute** "enclosed room";
- (b) in section 5L(2)—
 - (i) for "a gaming room" **substitute** "an enclosed gaming room";
 - (ii) for "rooms" **substitute** "enclosed rooms";
- (c) in section 5L(3), **omit** "or has committed";
- (d) in section 5M(1), for "gaming room" **substitute** "an enclosed gaming room".

8. New section 5N substituted

For section 5N of the **Tobacco Act 1987** **substitute**—

"5N. Approved venues: no smoking signs

- (1) The occupier of a gaming machine area or an enclosed gaming room in which smoking is prohibited by section 5L is guilty of an offence, and liable to a penalty not exceeding 5 penalty units, if, without reasonable excuse, acceptable no smoking signs are not displayed in accordance with sub-section (2).

Note: Section 3 defines an acceptable no smoking sign.

- (2) The signs must be displayed in a manner that ensures that a person is reasonably likely to see one or more of them either on entering the gaming machine area or enclosed gaming room or from within the area or room."

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9. Licensed premises: non-smoking rooms

In the **Tobacco Act 1987**—

(a) in section 5O—

- (i) in sub-section (1), for "rooms" (where first occurring) **substitute** "enclosed rooms";
- (ii) for sub-section (2)(a)(i) **substitute**—
" (i) an enclosed gaming room; or";
- (iii) in sub-section (3), for "section 5A, 5B or 5BA" **substitute** "section 5C, 5D or 5E";

(b) in section 5P(2), **omit** "or has committed".

10. New section 5R substituted

For section 5R of the **Tobacco Act 1987**
substitute—

"5R. Licensed premises: no smoking signs

- (1) The occupier of a designated non-smoking room is guilty of an offence, and liable to a penalty not exceeding 5 penalty units, if, without reasonable excuse, acceptable no smoking signs are not displayed in accordance with sub-section (2).

Note: Section 3 defines an acceptable no smoking sign.

- (2) The signs must be displayed in a manner that ensures that a person is reasonably likely to see one or more of them either on entering the designated non-smoking room or from within the room."

11. Certain advertising prohibited

- (1) In section 6 of the **Tobacco Act 1987**, for the penalty at the foot of each of sub-sections (1), (2), (2A) and (2B) **substitute—**

"Penalty: 60 penalty units."

- (2) After section 6(2C) of the **Tobacco Act 1987** **insert—**

"(2D) A tobacco company is guilty of an offence against this sub-section, and liable to a penalty not exceeding 5000 penalty units, if the tobacco company intentionally or recklessly—

(a) contravenes sub-section (1), (2), (2A) or (2B); or

(b) causes another person to contravene sub-section (1), (2), (2A) or (2B).

(2E) An offence against sub-section (2D) is an indictable offence."

- (3) Section 6(3)(d) of the **Tobacco Act 1987** is **repealed**.

12. Competitions

- (1) For the penalty at the foot of section 7(1) of the **Tobacco Act 1987** **substitute—**

"Penalty: 60 penalty units."

- (2) After section 7(3) of the **Tobacco Act 1987** **insert—**

"(4) For the avoidance of doubt, sub-section (1) applies to a tobacco company that, or a person carrying on a tobacco wholesaling business who, does anything referred to in paragraph (a) or (b) of that sub-section in connection with the sale of a tobacco product

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or for the purposes of promoting the sale of a tobacco product.

- (5) A tobacco company is guilty of an offence against this sub-section, and liable to a penalty not exceeding 5000 penalty units, if the tobacco company intentionally or recklessly—
- (a) contravenes sub-section (1); or
 - (b) causes another person to contravene sub-section (1).
- (6) An offence against sub-section (5) is an indictable offence."

13. Free samples

- (1) For the penalty at the foot of section 8(1) of the **Tobacco Act 1987 substitute**—
"Penalty: 60 penalty units."
- (2) After section 8(2) of the **Tobacco Act 1987 insert**—
- "(3) A tobacco company is guilty of an offence against this sub-section, and liable to a penalty not exceeding 5000 penalty units, if the tobacco company intentionally or recklessly—
- (a) contravenes sub-section (1); or
 - (b) causes another person to contravene sub-section (1).
- (4) An offence against sub-section (3) is an indictable offence."

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14. Prohibition on certain sponsorships

- (1) In section 9 of the **Tobacco Act 1987**, for the penalty at the foot of each of sub-sections (1) and (2) **substitute**—

"Penalty: 60 penalty units."

- (2) After section 9(4) of the **Tobacco Act 1987** **insert**—

"(5) A tobacco company is guilty of an offence against this sub-section, and liable to a penalty not exceeding 5000 penalty units, if the tobacco company intentionally or recklessly—

- (a) contravenes sub-section (1) or (2); or
- (b) causes another person to contravene sub-section (1) or (2).

- (6) An offence against sub-section (5) is an indictable offence."

15. Supplying tobacco to minors

- (1) For the penalty at the foot of section 12(2) of the **Tobacco Act 1987** **substitute**—

"Penalty: 20 penalty units."

- (2) For section 12(3A) and (3B) of the **Tobacco Act 1987** **substitute**—

'(3A) If a person (the "**primary offender**") commits an offence against sub-section (1), each manager of the primary offender (if any) also commits an offence against that sub-section.

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- (3B) Proceedings for an offence committed by a manager because of sub-section (3A) may be brought whether or not proceedings have been brought against the primary offender and whether or not the primary offender has been convicted.'
- (3) Section 12(3D) of the **Tobacco Act 1987** is **repealed**.
- (4) In section 12(4) of the **Tobacco Act 1987**—
- (a) paragraphs (a) and (b) are **repealed**;
 - (b) for paragraph (d) **substitute**—
 - "(d) in the case of a prosecution against a manager for an offence against sub-section (1)—
 - (i) had no knowledge of the primary offence; and
 - (ii) had taken prevention measures in relation to the primary offender."
- (5) After section 12(4) of the **Tobacco Act 1987** **insert**—
- '(5) In this section—
- "manager"** of a primary offender, means—
- (a) an employer of the primary offender; or
 - (b) a person who authorised the primary offender to sell tobacco products as the person's agent; or
 - (c) if the primary offence was committed in the course of carrying on a business—a person who owns, manages, controls, conducts or operates that business;
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"prevention measures" by a manager in relation to a primary offender, means doing the following things at intervals not exceeding 6 months—

- (a) instructing the primary offender—
 - (i) not to sell tobacco products to a person under the age of 18 years in any circumstances, even if the tobacco products are for, or claimed to be for, a person over that age; and
 - (ii) to sight an evidence of age document for a person before selling a tobacco product to the person; and
- (b) warning the primary offender that if the primary offender sells tobacco products to a person under the age of 18 years in disregard of the instructions mentioned in paragraph (a), the primary offender commits an offence against this Act; and
- (c) obtaining written acknowledgement by the primary offender that the primary offender received the instructions and warning mentioned in paragraphs (a) and (b);

"primary offence" means the offence committed by the primary offender;

"primary offender" has the meaning given in sub-section (3A).'

16. New section 13 substituted

For section 13 of the **Tobacco Act 1987**
substitute—

'13. Vending machines

- (1) A person must not place or cause or permit to be placed in any premises a vending machine for operation by members of the public.

Penalty: 10 penalty units.

- (2) Sub-section (1) does not apply to a vending machine that is placed—
- (a) in the bar area of licensed premises in line of sight of a bar; or
 - (b) in an approved venue or in a casino in line of sight of a service counter of the approved venue or casino; or
 - (c) in a bottle shop immediately adjacent to the service counter of the bottle shop.
- (3) In this section—

"bar" means a place in licensed premises that—

- (a) is stocked with liquor of various types; and
- (b) is used solely or mainly for the supply of liquor to customers; and
- (c) has a counter—
 - (i) across which liquor is supplied directly to customers; and

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- (ii) at which, or in the immediate vicinity of which, customers may immediately consume the liquor supplied;

"bar area" means the area—

- (a) in the immediate vicinity of a bar;
and
(b) not more than 5 metres from the outer edge of the counter of the bar;

"bottle shop" means an area in licensed premises where liquor is supplied to customers solely for consumption off the licensed premises;

"service counter"—

- (a) of an approved venue or a casino, means a counter at which gaming tokens (within the meaning of the **Gambling Regulation Act 2003**) may be issued or redeemed;
(b) of a bottle shop, means a counter in the bottle shop across which liquor is supplied directly to customers.!

17. Further alteration of penalties

For the penalty at the foot of each of sections 13A(1), 13A(2) and 14 of the **Tobacco Act 1987** substitute—

"Penalty: 100 penalty units."

18. New Division 3 inserted in Part 2

After Division 2 of Part 2 of the **Tobacco Act 1987** insert—

'Division 3—Underage Music/Dance Events

15E. What is an underage music/dance event?

For the purposes of this Division, an **"underage music/dance event"** is an event that—

- (a) involves the provision of music (whether live or recorded and whether for listening to or dancing to or both); and
- (b) is predominantly organised or intended for, or predominantly attended by, persons under the age of 18 years; and
- (c) is open to members of the public (whether with or without payment); and
- (d) takes place in any area or premises other than a private residence.

15F. No smoking at underage music/dance events

- (1) A person must not smoke in any area or premises while an underage music/dance event is taking place there.

Penalty: 5 penalty units.

- (2) If an inspector believes on reasonable grounds that a person is contravening subsection (1), the inspector, on producing his or her identity card, may direct the person to cease the contravention.

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s. 18

- (3) A person who is contravening subsection (1) must not, without reasonable excuse, fail to comply with a direction by an inspector to cease the contravention.

Penalty: 5 penalty units.

15G. Offence by occupier

- (1) If smoking occurs in an area or premises while an underage music/dance event is taking place there, in contravention of section 15F, the occupier of the area or premises is guilty of an offence and liable to a penalty not exceeding 5 penalty units.
- (2) It is a defence to a prosecution under subsection (1) if the defendant proves that the defendant did not provide an ashtray, matches, a lighter or any other thing designed to facilitate smoking where the contravention occurred and that—
- (a) the defendant was not aware, and could not reasonably be expected to have been aware, that the contravention was occurring; or
 - (b) the defendant—
 - (i) requested the person contravening to stop smoking; and
 - (ii) informed the person that the person was committing an offence.
-

15H. No smoking signs

- (1) The occupier of an area or premises where an underage music/dance event is taking place is guilty of an offence, and liable to a penalty not exceeding 5 penalty units, if, without reasonable excuse, acceptable no smoking signs are not displayed in accordance with sub-section (2).

Note: Section 3 defines an acceptable no smoking sign.

- (2) The signs must be displayed in a manner that ensures that a person is reasonably likely to see one or more of them either on entering the area or premises or from within the area or premises.

15I. Covering vending machines, tobacco advertisements etc.

- (1) The occupier of an area or premises where an underage music/dance event is taking place must ensure that each of the following is removed or covered at all times while the event is taking place—
 - (a) a vending machine in the area or premises;
 - (b) a tobacco advertisement in the area or premises;
 - (c) a display of tobacco products in the area or premises.

Penalty: 60 penalty units.

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(2) In this section—

"covered" means—

- (a) in relation to a vending machine—
covered by an opaque material or some other means in such a way that none of the top, front, back and sides of the machine or its contents are visible;
- (b) in relation to a tobacco advertisement or display of tobacco products—covered by an opaque material or some other means in such a way that the advertisement or products are not visible.

15J. Prohibition on supplying tobacco at underage music/dance events

A person must not sell a tobacco product to another person in any area or premises while an underage music/dance event is taking place there.

Penalty: 50 penalty units.

15K. No offence by minors

Despite anything to the contrary in this Division or the **Sentencing Act 1991**, a person under the age of 18 years does not commit an offence if he or she contravenes a provision of this Division.!

19. Infringements and offences

(1) For section 38(1) and (2) of the **Tobacco Act 1987 substitute—**

"(1) An inspector or a police member may serve an infringement notice on a person whom the inspector or police member believes has committed an infringement referred to in the Schedule requiring the person to pay the penalty for that infringement specified in the Schedule.

(1A) An infringement notice must contain the prescribed information.

(2) An inspector or a police member may withdraw an infringement notice within 28 days after serving it by sending a notice containing the prescribed information to the person on whom the infringement notice was served."

(2) In the **Tobacco Act 1987—**

(a) in section 38—

(i) in sub-section (4), after "the inspector" **insert** "or police member who served the notice";

(ii) in sub-section (5), after "the inspector" **insert** "or police member who served the infringement notice";

(b) in section 39—

(i) in sub-section (1), for "member of the police force" **substitute** "police member";

(ii) sub-section (3) is **repealed**.

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(3) At the end of section 41 of the **Tobacco Act 1987** insert—

"(2) Sub-section (1) does not apply to an offence against section 6(2D), 7(5), 8(3) or 9(5)."

20. New Schedule substituted

For the Schedule to the **Tobacco Act 1987** substitute—

"SCHEDULE

Section 38

INFRINGEMENTS

<i>Infringement</i>	<i>Penalty</i>
1. An offence against section 5A(1)	1 penalty unit
2. An offence against section 5B(1)	1 penalty unit
3. An offence against section 5C(1)	1 penalty unit
4. An offence against section 5D(1)	1 penalty unit
5. An offence against section 5E(1)	1 penalty unit
6. An offence against section 5F(1)	1 penalty unit
7. An offence against section 5G(1)	1 penalty unit
8. An offence against section 5H(1)	1 penalty unit
9. An offence against section 5I(1)	1 penalty unit
9A. An offence against section 5J(1)	1 penalty unit
9B. An offence against section 5K(1)	1 penalty unit
10. An offence against section 5L(1) or (2)	1 penalty unit
11. An offence against section 5M(1)	1 penalty unit
12. An offence against section 5N(1)	1 penalty unit
13. An offence against section 5O(1)	1 penalty unit
14. An offence against section 5P(1)	1 penalty unit
15. An offence against section 5Q(1)	1 penalty unit
16. An offence against section 5R(1)	1 penalty unit
17. An offence against section 6(2A)	1 penalty unit
18. An offence against section 6(2B)	1 penalty unit
19. An offence against section 12(1)	2 penalty units
20. An offence against section 12(2)	1 penalty unit
21. An offence against section 12(3)	2 penalty units

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<i>Infringement</i>	<i>Penalty</i>
22. An offence against section 13	1 penalty unit
23. An offence against section 13A	1 penalty unit
24. An offence against section 14	1 penalty unit
25. An offence against section 15C	1 penalty unit
26. An offence against section 15F(1)	1 penalty unit
27. An offence against section 15G(1)	1 penalty unit
28. An offence against section 15H(1)	1 penalty unit
29. An offence against section 15I(1)	1 penalty unit
30. An offence against section 15J(1)	1 penalty unit
31. An offence against section 36C(3)	1 penalty unit

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Part 3—Licensed Premises, Casinos and Outdoor Dining or Drinking Areas

**PART 3—LICENSED PREMISES, CASINOS AND OUTDOOR
DINING OR DRINKING AREAS**

21. Definitions

In the **Tobacco Act 1987**—

- (a) in section 3—
 - (i) the definition of "bar area" is **repealed**;
 - (ii) in the definition of "declared smoking area", for "section 5I(4)" **substitute** "section 3E";
- (b) in section 3, the definitions of "designated non-smoking room", "dining area" and "TAB area" are **repealed**;
- (c) section 3D is **repealed**.

22. New section 3E inserted

Before section 4 of the **Tobacco Act 1987**
insert—

"3E. Declared smoking areas in casinos

- (1) For the purposes of this Act, the Minister, by notice published in the Government Gazette, may declare an area in a casino that, in the Minister's opinion, is a high roller room, to be a declared smoking area.
 - (2) The Minister, by notice published in the Government Gazette, may revoke or vary a declaration under sub-section (1).
 - (3) The Minister must consult the Minister administering Part 2 of the **Casino Control Act 1991** before making, revoking or varying a declaration under this section."
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Part 3—Licensed Premises, Casinos and Outdoor Dining or Drinking Areas

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23. Removal of licensed premises and casino exemptions

- (1) Section 5A(2)(b) of the **Tobacco Act 1987** is **repealed**.
- (2) For section 5A(2)(d) of the **Tobacco Act 1987** **substitute—**
"(d) a declared smoking area of a casino;"

24. New sections 5C, 5D and 5E substituted

For sections 5C, 5D and 5E of the **Tobacco Act 1987** **substitute—**

'5C. Outdoor dining or drinking areas: offence by smoker

- (1) A person must not smoke in an outdoor dining or drinking area if—
 - (a) the area has a roof and walls in place; and
 - (b) the total actual area of the wall surfaces exceeds 75% of the total notional wall area.

Penalty: 5 penalty units.

- (2) If an inspector believes on reasonable grounds that a person is contravening subsection (1), the inspector, on producing his or her identity card, may direct the person to cease the contravention.
- (3) A person who is contravening subsection (1) must not, without reasonable excuse, fail to comply with a direction by an inspector to cease the contravention.

Penalty: 5 penalty units.

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(4) In this section—

"total notional wall area" means what would be the total area of the wall surfaces if the walls were—

- (a) at the perimeter of the roofed area; and
- (b) continuous; and
- (c) of a uniform height equal to the lowest height of the roof.

5D. Outdoor dining or drinking areas: offence by occupier

- (1) If smoking occurs in an outdoor dining or drinking area, in contravention of section 5C, the occupier of the area is guilty of an offence and liable to a penalty not exceeding 5 penalty units.
- (2) It is a defence to a prosecution under subsection (1) if the defendant proves that the defendant did not provide an ashtray, matches, a lighter or any other thing designed to facilitate smoking where the contravention occurred and that—
 - (a) the defendant was not aware, and could not reasonably be expected to have been aware, that the contravention was occurring; or
 - (b) the defendant—
 - (i) requested the person contravening to stop smoking; and
 - (ii) informed the person that the person was committing an offence.

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5E. Outdoor dining or drinking areas: no smoking signs

- (1) The occupier of an outdoor dining or drinking area in which smoking is prohibited by section 5C is guilty of an offence, and liable to a penalty not exceeding 5 penalty units, if, without reasonable excuse, acceptable no smoking signs are not displayed in accordance with sub-section (2).

Note: Section 3 defines an acceptable no smoking sign.

- (2) The signs must be displayed in a manner that ensures that a person is reasonably likely to see one or more of them either on entering the outdoor dining or drinking area or from within the outdoor dining or drinking area.'

25. Consequential amendments regarding casinos and licensed premises (including approved venues)

In the **Tobacco Act 1987**—

- (a) sections 5I, 5J, 5L and 5M are **repealed**;
- (b) in section 5N(1), **omit** "in which smoking is prohibited by section 5L";
- (c) sections 5O, 5P and 5Q are **repealed**;
- (d) in section 5R—
 - (i) in sub-section (1), for "a designated non-smoking room" **substitute** "enclosed licensed premises";
 - (ii) in sub-section (2), for "designated non-smoking room or from within the room" **substitute** "enclosed licensed premises or from within those premises";

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Part 3—Licensed Premises, Casinos and Outdoor Dining or Drinking Areas

- (e) section 42AA is **repealed**;
 - (f) in the table in the Schedule, items 9, 9A, 10, 11, 13, 14 and 15 are **repealed**.
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Part 4—Amendments to Transport Act 1983

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PART 4—AMENDMENTS TO TRANSPORT ACT 1983

26. Removal of current smoking offences from section 222

Section 222(1) of the **Transport Act 1983** is repealed.

27. New section 222A inserted

After section 222 of the **Transport Act 1983** insert—

'222A. Smoking offences

- (1) A person must not smoke tobacco or any other substance in or on—
 - (a) a carriage or part of a carriage (not being a carriage or part of a carriage set apart for that purpose); or
 - (b) any public transport property that is a covered train platform, tram stop or bus stop; or
 - (c) any other public transport property or part of public transport property where a notice is displayed that smoking on that property or part is prohibited.

Penalty: 5 penalty units.

- (2) The occupier of public transport property that is a covered train platform, tram stop or bus stop is guilty of an offence, and liable to a penalty not exceeding 5 penalty units, if, without reasonable excuse, acceptable no smoking signs are not displayed in accordance with sub-section (3).

See:
Act No.
9921.
Reprint No. 10
as at
1 July 2004
and
amending
Act Nos
54/2002,
69/2003,
94/2003,
101/2003,
108/2004 and
110/2004.
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dpc.vic.
gov.au

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Act No. 45/2005

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Part 4—Amendments to Transport Act 1983

(3) The signs must be displayed in a manner that ensures that a person is reasonably likely to see one or more of them either on entering the covered train platform, tram stop or bus stop or from within the covered train platform, tram stop or bus stop.

(4) In this section—

"acceptable no smoking sign" has the same meaning as in the **Tobacco Act 1987**;

"bus stop" means a place where passengers wait for the purpose of catching a bus, and includes a shelter or other structure at that place;

"carriage" means any passenger vehicle operated by, on behalf of or under contract to the Secretary or under a contract entered into by the Crown or the Director on behalf of the Crown;

"covered train platform, tram stop or bus stop" means any part of a train platform, tram stop or bus stop that is covered;

"occupier" of public transport property means—

(a) the passenger transport company that uses the property in the provision of a passenger service;
or

(b) the bus company that uses the property in the provision of a transport service;

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"train platform" means a platform on which passengers wait for the purpose of catching a train and includes a shelter or other structure on that platform;

"tram stop" means a place where passengers wait for the purpose of catching a tram, and includes a shelter or other structure at that place.!

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Part 5—Consequential Amendment of Other Acts

s. 28

**PART 5—CONSEQUENTIAL AMENDMENT OF OTHER
ACTS**

28 Gambling Regulation Act 2003

Section 10.1.36 of the **Gambling Regulation Act 2003** is repealed.

See:
Act No.
114/2003
and
amending
Act Nos
10/2004,
16/2004,
33/2004,
45/2004,
54/2004,
70/2004,
104/2004 and
108/2004.
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dpc.vic.
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29 Magistrates' Court Act 1989

In Schedule 4 to the **Magistrates' Court Act 1989**, after clause 66 insert—

"67. Tobacco Act 1987

Offences against sections 6(2D), 7(5), 8(3) and 9(5) of the **Tobacco Act 1987**."

See:
Act No.
51/1989.
Reprint No. 10
as at
13 October
2004
and
amending
Act Nos
27/2002,
80/2003,
94/2003,
68/2004,
77/2004,
107/2004,
108/2004,
2/2005 and
3/2005.
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Act No. 45/2005

Endnotes

ENDNOTES

† *Minister's second reading speech—*

Legislative Assembly: 5 May 2005

Legislative Council: 9 August 2005

The long title for the Bill for this Act was "to amend the **Tobacco Act 1987** to ban smoking in enclosed workplaces and other areas, to increase controls on tobacco advertising and the supply of tobacco to young people and generally to increase controls on tobacco, to amend the **Transport Act 1983** to ban smoking in covered public transport property, to make consequential amendments to other Acts and for other purposes."