

Council Enforcement of the Tobacco Act

Councils undertake education and enforcement activities to assist tobacco and e-cigarette retailers understand and comply with their obligations under the Tobacco Act 1987. Their approach will be guided by local needs and priorities. Where breaches do occur, councils will usually take an educative approach in the first instance, reserving fines and prosecutions for serious or repeated breaches of the Act.

Breaches of the Act

Below is a summary of breaches of the Tobacco Act that councils generally enforce.

Table 1: Breaches in the Tobacco Act that Councils Report Against for the Department of Health

Breaches	Section
Retail Breaches	Section of Act
Displays a tobacco advertisement at a retail outlet other than a specialist tobacconist or duty free shop	6(2AA)
Graphic warning not on price board	6(2AA)
Person carrying out a tobacco retailing business where there is a tobacco advertisement of a product line of a tobacco product at a point of sale that is not in accordance with Section 6A	6(2A)
Certified e-cigarette retailer displaying products not in accordance with 6B	6(2AB)
Specialist e-cigarette retailing premises displays a tobacco or e-cigarette advertisement of a product line of a tobacco product.	6(2AC)
Specialist e-cigarette retailing premises displays a tobacco product	6(2AD)
Person carrying out a tobacco retailing business who displays tobacco products in an area other than the point of sale	6(2B)
Person who sells a tobacco or e-cigarette product to a person under 18 years (includes a manager unless prevention measures are taken)	12.1
Person who sells cigarettes in a package containing less than 20 cigarettes	14
Occupier of a tobacco retailing business who does not display either a health warning sign or a smoking cessation sign in accordance with the regulations	15C(1)
Occupier of a tobacco retailing business who does not display a prescribed sign relating to the prohibition of the sale of tobacco to persons under the age of 18 years in accordance with the regulations	15C(3)
Certified Specialist Tobacconist that does not display certificate	15ZB
Sale of a banned product or class of products (restricted by or under law of the Commonwealth or another State or Territory and banned by the Victorian Health Minister)	15N

Eating and Drinking Area Breaches	Section
Person who smokes in an enclosed workplace	5A(1)
Occupier of an enclosed workplace where a breach of Section 5A(1) occurs	5B (1)
A person who smokes in an outdoor dining and drinking area where smoking is not permitted	5C(1)
A person smoking in an outdoor drinking area if within 4 metres of an outdoor dining area and not separated by a wall at least 2.1 metres high	5C(1A)
Occupier of an outdoor dining and drinking area where smoking is prohibited where a breach of Section 5C(1) occurs	5D(1)
Occupier of an outdoor drinking area where smoking is prohibited where a breach of Section 5C(1A) occurs	5D(3)
Occupier of an outdoor dining and drinking area where smoking is prohibited who fails to display acceptable no smoking signs	5E(1)
A person smoking in an outdoor dining area	5EA
Occupier of an outdoor dining area where smoking is occurring	5EB
Occupier of an outdoor dining area who fails to display acceptable no smoking signs	5EC
Occupier of a restaurant/cafe who fails to display acceptable no smoking signs	5F (1)
Occupier of a bingo area or centre who fails to display acceptable no smoking signs	5H(1)
Occupier of a gaming machine area who fails to display acceptable no smoking signs	5N(1)
Occupier of an enclosed licensed premises who fails to display acceptable no smoking signs	5R(1)
Person who places or causes or permits the placement of a vending machine in any premises by a member of the public	13(1)
Person selling e-cigarettes from a vending machine	13(1A)

Outdoor Area Breaches	Section
Patrolled beaches	
A person who smokes between the red and yellow flags or within a 50 metre radius of a red and yellow flag	5RA(1)
A person failing to comply with an inspector's direction to cease smoking between the red and yellow flags or within a 50 metre radius of a red and yellow flag	5RA(4)
Public swimming pools	
A person smokes within the outdoor area of a public swimming pool complex	5RC(1)
A person who fails to comply with an inspector's direction to cease smoking within the outdoor area of a public swimming pool complex	5RC(3)
Outdoor children's playground equipment	
A person smokes at or within 10 metres of outdoor children's playground equipment	5RE(1)
A person who fails to comply with an inspector's direction to cease smoking at or within 10 metres of outdoor children's playground equipment	5RE(4)
Outdoor skate park	
A person smokes at or within 10 metres of an outdoor skate park	5RG(1)
A person who fails to comply with an inspector's direction to cease smoking at or within 10 metres of an outdoor skate park	5RG(4)
Underage sporting events	
A person smokes at or within 10 metres of an outdoor sporting venue during an organised underage sporting event, interval or practice session	5R1(1)
A person who fails to comply with an inspector's direction to cease smoking at or within 10 metres of an outdoor sporting venue during an organised underage sporting event, interval or practice session	5RI(4)
Childcare ('education and care services' and 'children' services premises')	
Person smoking in an outdoor area of an education and care service premises or children's service premises	5RB(1)
Person smoking at or within 4 metres of any part of a pedestrian access point to education and care service premises or children's service premises	5RB(2)
Failure to comply with an inspector's direction to cease smoking in an outdoor area of, or at or within 4 metres of any part of, a pedestrian access point to education and care service premises or children's service premises	5RB(5)
Schools	
Person smoking in an outdoor area of school premises	5RD(1)
Person smoking at or within 4 metres of any part of a pedestrian access point to school premises	5RD(2)
Failure to comply with an inspector's direction to cease smoking in an outdoor area of, or at or within 4 metres of any part of a pedestrian access point to, school premises	5RD(5)
Children's indoor play centres	
Person smoking at or within 4 metres of any part of a pedestrian access point to a children's indoor play centre	5RF(1)
Failure to comply with an inspector's direction to cease smoking at or within 4 metres of any part of a pedestrian access point to a children's indoor play centre	5RF(4)
Public Hospital	
Person smoking at or within 4 metres of any part of a pedestrian access point to Victorian public premises	5RH(1)
Failure to comply with an inspector's direction to cease smoking at or within 4 metres of a pedestrian access point to Victorian public premises	5RH(4)
Community Health Centre	

Outdoor Area Breaches	Section
Person smoking at or within 4 metres of any part of a pedestrian access point to Victorian public premises	5RH(1)
Failure to comply with an inspector's direction to cease smoking at or within 4 metres of a pedestrian access point to Victorian public premises	5RH(4)
Public Premises	
Person smoking at or within 4 metres of any part of a pedestrian access point to Victorian public premises	5RH(1)
Failure to comply with an inspector's direction to cease smoking at or within 4 metres of a pedestrian access point to Victorian public premises	5RH(4)

Councils may also undertake enforcement actions for other breaches of the Tobacco Act, such as those for excisable goods.

Table 2: Other Breaches of the Tobacco Act

Other Retail Breaches	Section of the Act
A person who carries on a tobacco retailing business or a tobacco wholesaling business has in their possession or control any tobacco products that the person knows or ought reasonably to know are smuggled goods or prohibited or are excisable goods upon which duty has not been paid.	s11
A person must not sell by retail or wholesale a product in respect of which a ban order under section 15N is in force.	15S.1

Recent and Current Prosecutions

Two councils have initiated four prosecutions in 2023-24. These prosecutions have been in response to breaches of the Tobacco Act in retail settings. One of the prosecutions has been withdrawn due to evidence being tabled in court that was not provided during interviews. Another has been adjourned to later this year.

The costs to council have involved significant officer time in administration and preparation. Engagement of legal counsel and costs are also required. Where illicit tobacco is involved in the breach, secure storage and disposal costs are also incurred.

Summary of Prosecutions for 2023-24

Prosecution 1

Type	Cigarette Sales to Minor (s12.1)
Outcome	Withdrawn by council after proof of training documents were provided by the retailer prior to court. These documents had not been provided to council prior to the court date, even though they had been requested several times, nor had their existence been disclosed prior to the hearing.
Fines/costs awarded	n/a
Other details	This is an example of the need for an online based training platform to validate training is taking place every 6 months

Prosecution 2

Type	Offence to possess certain tobacco products (s11)
Outcome	Adjourned until mid-year
Fines/costs awarded	n/a
Other details	This was a collaborative multi-agency approach, with council assisted by four members from Victoria Police. The large quantity of illicit tobacco products removed from the community has an estimated street value of \$500,000.

Prosecution 3

Type	Various retail breaches including possession of illicit products (s11), display beaches (s6(2AA), breaching a Ministerial Ban Order (s15S.1), multi-purchase deals (s6(2AA))
Outcome	Fine issued, no conviction recorded
Estimated costs to council	Investigation/Seizure/Storage and Disposal - \$21,000 Prosecution - \$13,540
Fines/costs awarded	n/a
Other details	Owner fined \$4,000 and ordered to pay costs to council of \$136.70 to cover filing fees

Prosecution 4

Type	Food Act and Tobacco Act offences (display breaches (s6(2AA)), Ministerial Ban Order (s15N), possession of illicit products (s11)
Outcome	Fines issued, no conviction
Fines/costs awarded	Two owners fined \$2,000 each under the Tobacco Act
Other details	The breaches occurred in October 2022; Court Proceeding held August 2023.