



**Local Government Tobacco Control
Activities
1 July 2021 to 30 June 2022**

Final report

December 2022

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This document has been prepared by the MAV as a requirement of the service agreement with the Department of Health for local government tobacco control activities.

The MAV is the statutory peak body for local government in Victoria. While this paper aims to broadly reflect the views of local government in Victoria, it does not purport to reflect the exact views of individual councils.

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1. Executive summary

This report has been prepared for the Department of Health as a requirement of the service agreement with the MAV for it to administer funding to councils to provide specific tobacco education and enforcement activities across the state.

This report covers the activities undertaken by councils for the financial year 1 July 2021 to 30 June 2022 which were made possible with the funding provided by the Department of Health. Many councils also undertook tobacco education and enforcement activities, based on local priorities.

The partnership between the Department of Health and local government on tobacco control continues to be strong, with 78 of the 79 councils participating in the local government tobacco activity program to deliver education and enforcement activities aimed at reducing the incidence of smoking in the community. A total of **\$1,454,616** (ex GST) was expended, comprising disbursements to councils based on the reports of the activities they undertook, and a fee to the MAV to administer the program.

During the period 1 July 2021 to 30 June 2022, councils undertook **12,784** visits to a variety of business premises, enclosed workplaces and outdoor locations to meet their targets for 2021/22. Additionally, councils participating in the Cigarette Sales to Minors (CSTM) program undertook 55 days of test purchasing, with 881 test purchases undertaken. Thirty-eight councils nominated to participate in the Prescribed Hospital Education Visits program.

Overall local government performance for 2021/22 was higher than the requirements set out in the service agreements for all areas including tobacco retailers, eating and drinking areas, outdoor locations, CSTM and prescribed hospital inspections (see Table 3.1.2). *Please note this is an aggregate of activities across the state and does not reflect the performance of individual councils.*

The CSTM program has been significantly impacted by the COVID-19 pandemic for a second year. In addition to restrictions on workplace attendance, the lack of test purchase assistants presented challenges to the delivery of traditional test purchasing activities. As a result, councils involved in the program were approved to undertake alternative education visits¹ to meet CSTM targets if they were not able to undertake test purchasing. Twenty-three councils (45 per cent of participating councils) undertook at least one day of test purchasing in this financial year.

The COVID-19 pandemic continued to impact councils' delivery of tobacco education and enforcement activities. Despite this, the majority of councils were able to meet all 2021/22 targets. This was a significant effort by the sector considering Victoria spent 78 days in lockdown in the last half of 2021, with additional work from home recommendations at various points during the 2021/22 financial year. Environmental health officer shortages and redeployments also impacted the program, particularly in rural areas. The continued commitment to achieve the program deliverables demonstrates the value councils place on seeking to reduce the incidence of smoking in the community.

¹ Alternative education activities included additional education visits to tobacco retailers and other priority locations, including settings where children and young people spend time (such as skate parks, playgrounds, school entrances and swimming pools etc).

2. Introduction

The partnership between the Department of Health and local government on tobacco education and enforcement activities has been integral to the implementation of tobacco control measures across the state.

Since smoking bans were introduced for eating areas in 2000, the MAV has partnered with the Department to administer funding for councils to undertake specific education and enforcement activities. The involvement of the MAV in administering the disbursement of the funds has enabled a local government perspective to be considered in the development of the activities required to be undertaken in the service agreements.

As a result, the activities have been able to be targeted to where they are most required and where councils are best placed to assist.

The specific laws targeted in the service agreements were those which related to tobacco and e-cigarette retailers, eating and drinking areas, prescribed public hospitals and outdoor locations.

2.1 Role of councils in tobacco control

For many years, councils in Victoria have been involved in promoting public health and enforcing associated legislation in their local communities. While there are no specific actions required by councils under the Tobacco Act 1987, council environmental health officers are automatically authorised to enforce its provisions, and additional council officers can also be authorised where this is agreed by the Department.

Tobacco control activities are also usually included in the Municipal Public Health and Wellbeing Plans that each council is required to develop as a requirement of the Public Health and Wellbeing Act 2008.

2.2 Service agreement arrangements

The Department provides funding to the MAV to disburse to councils and for its administration of the program. The amount of funding provided to councils is determined by a funding formula developed by the Department and agreed with the MAV. It is an activity-based formula, using an hourly labour rate of a mid-level environmental health officer. The formula is informed by consultations with councils through a working group convened by the MAV comprising a cross-section of metropolitan, regional and rural councils.

A service agreement between the MAV and councils participating in the program outlines the deliverables councils commit to undertaking, and the funding that will be provided once reports of activities have been provided.

This report is the first year of the three-year service agreement period from 1 July 2021 to 30 June 2024.

2.3 Council requirements

Under the current service agreement, councils are required to:

- undertake a designated number of education visits to tobacco and e-cigarette retailers (including certified specialist tobacconists), eating and drinking areas and outdoor locations where smoking bans apply, including public hospitals
- respond to complaints about smoking from members of the public
- report twice a year outlining the activities they have undertaken.

Councils can also elect to participate in the Cigarette Sales to Minors program and the Prescribed Hospital Education Visits program which provide additional funding for test purchasing and education activities. Only councils which have a DH prescribed hospital can participate in the Prescribed Hospital Education Visits program.

The number of visits required to be undertaken by each council varies, depending on the numbers of premises in the municipality and their remoteness (such as whether they are metropolitan, regional or rural). The funding is paid in installments, with 40% provided on commencement, 40% following receipt of the report required for the July to December period, and 20% following receipt of the final report for the remaining January to June period of the financial year.

3. Report information

This report provides the results of the activities councils were required to undertake under their service agreement with the MAV. Please note that this report does not include the other activities councils may have undertaken at their own discretion.

3.1 Education and enforcement visits

Councils were required to visit a target number of tobacco retailers, eating and drinking areas and outdoor locations. Councils were also required to respond to complaints about smoking from the public. Where these generated a need for a visit, these are included in this report. Those councils which elected to participate in the Cigarette Sales to Minors Program needed to undertake a set number of test purchase days (or alternative education visits where the pandemic has impacted council ability to undertake test purchasing). Councils participating in the Prescribed Hospital Education Visits program were required to undertake a set number of visits to nominated hospitals.

3.1.1 Total visits reported by councils

Setting	Initiated by councils	In response to complaints	Total
Tobacco retailers and specialist tobacconists	2,344	162	2,506
Eating and drinking establishments	4,427	133	4,560
Outdoor locations	2,014	16	2,030
Enclosed workplaces	n/a	16	16
Cigarette sales to minors program (education visits)	3,196	75	3,217
Prescribed Hospitals ¹	346	n/a	346
Total visits	12,382	402	12,784
Cigarette sales to minors program (actual test purchase days)²	55	n/a	55

1. Number of 20-minute block visits to hospitals

2. Test Purchase days – not inspections

3.1.2 Council performance against agreed targets (visits initiated by councils)

	Total Visits	Target¹	% completed
Tobacco retailers and specialist tobacconists	2,344	1450	162%
Eating and drinking establishments	4,427	1934	229%
Outdoor locations	2,014	1113	181%
Cigarette sales to minors program ²	268	197	136%
Prescribed Hospitals ³	346	337	103%

1. Prescribed in each council's service agreement I
2. Number of test purchase days - 55 actual and 3,196 alternative visits in lieu of test purchasing converted to 213 test purchase day equivalents
3. Number of 20-minute block visits

3.2 Compliance

This section reports the details of the substantiated breaches of the Tobacco Act found by councils, and the subsequent enforcement actions taken in respect of tobacco retailers, eating and drinking areas and outdoor locations.

3.2.1 Tobacco, e-cigarette and specialist tobacconist retailer visits and compliance

Locations inspected	Total	% of total
Tobacco only retailers	1,735	73%
E-cigarette only retailers	21	1%
Tobacco and e-cigarette retailers	566	24%
Certified Specialist tobacconists	41	2%
Certified Specialist e-cigarette retailer	4	<1%
TOTAL	2,367	100%

Note: This total is higher than the figure quoted in table 3.1 for tobacco retailers as some councils noted CSTM education activities in the breakdown of settings. The table does provide an understanding of the breakdown of settings inspected.

3.2.2 Substantiated breaches for tobacco retailers, e-cigarette retailers and specialist tobacconists

Substantiated breaches	Section of Act	Tobacco product	E-cigarette product	Total
Displays a tobacco advertisement at a retail outlet other than a specialist tobacconist or duty free shop	6(2AA)	40	48	88
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)	63	14	77
Certified e-cigarette retailer displaying products not in accordance with 6B	6(2AB)	n/a	0	0
Specialist e-cigarette retailing premises displays a tobacco or e-cigarette advertisement of a product line of a tobacco product.	6(2AC)	1	n/a	1
Specialist e-cigarette retailing premises displays a tobacco product	6(2AD)	0	n/a	0
Person carrying out a tobacco retailing business who displays tobacco products in an area other than the point of sale	6(2B)	22	24	46
Person who sells cigarettes in a package containing less than 20 cigarettes	14	2	n/a	2
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)	74	4	78
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)	57	48	105
Certified Specialist Tobacconist that does not display certificate	15ZB	2	0	2
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	7	11	18
Graphic warning not on price board	6(2AA)	41	2	43
TOTAL		309	151	460

3.2.3 Enforcement actions for tobacco retailers, e-cigarette retailers and specialist tobacconists

Enforcement actions	Number total	% of total
Verbal warnings (including pending)	234	75%
Written warnings (including pending)	67	23%
Fines issued (including pending)	4	2%
Prosecutions (including pending)	0	0
TOTAL	305	100%

3.2.4 Eating and drinking areas visits and compliance

Locations inspected	Total
Indoor dining and drinking areas	2,377
Outdoor dining and drinking areas	2,329
Food fairs	30
Organised events other than food fairs	26
Other	105
TOTAL	4,867

Note: This total is higher than the 4,427 figure quoted in Table 3.1 for eating and drinking areas as councils often note both outdoor and indoor areas when recording the breakdown of an inspection by settings. The above table does provide an understanding of the breakdown of settings inspected. The figures also include inspections of vending machines.

3.2.5 Compliance with eating and drinking area laws

Substantiated breaches	Section of the Act	Number total	% of total
Person who smokes in an enclosed workplace	5A(1)	1	0%
Occupier of an enclosed workplace where a breach of Section 5A(1) occurs	5B (1)	10	3%
A person who smokes in an outdoor dining and drinking area where smoking is not permitted	5C(1)	18	5%
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)	13	3%
Occupier of an outdoor dining and drinking area where smoking is prohibited where a breach of Section 5C(1) occurs	5D(1)	0	0%
Occupier of an outdoor drinking area where smoking is prohibited where a breach of Section 5C(1A) occurs	5D(3)	2	1%
Occupier of an outdoor dining and drinking area where smoking is prohibited who fails to display acceptable no smoking signs	5E(1)	152	41%
A person smoking in an outdoor dining area	5EA	13	3%
Occupier of an outdoor dining area where smoking is occurring	5EB	4	1%
Occupier of an outdoor dining area who fails to display acceptable no smoking signs	5EC	72	19%
Occupier of a restaurant/cafe who fails to display acceptable no smoking signs	5F (1)	82	22%

Substantiated breaches	Section of the Act	Number total	% of total
Occupier of a bingo area or centre who fails to display acceptable no smoking signs	5H(1)	4	1%
Occupier of a gaming machine area who fails to display acceptable no smoking signs	5N(1)	0	0%
Occupier of an enclosed licensed premises who fails to display acceptable no smoking signs	5R(1)	0	0%
Person who places or causes or permits the placement of a vending machine in any premises by a member of the public	13(1)	1	0%
Person selling e-cigarettes from a vending machine	13(1A)	0	0%
TOTAL		372	100%

3.2.6 Enforcement actions for eating and drinking areas

Enforcement actions	Number total	% of total
Verbal warnings (including pending)	269	87%
Written warnings (including pending)	39	13%
Fines issued (including pending)	2	1%
Prosecutions (including pending)	0	0%
TOTAL	310	100%

3.2.7 Outdoor locations visits and compliance

Smoking bans are in place for a number of designated outdoor locations. Due to their nature, council visits and inspections of outdoor locations will often not include a face-to-face meeting but may involve checking particular locations that have been the subject of complaints from the public, or for officers just to make general observance of whether smoking is occurring in particular locations. Councils are also able to consolidate the time spent dealing with individual locations where there are complexities involved, such as meetings they undertake with organisations such as hospitals and other public buildings which have outdoor areas where smoking bans apply.

Determining the sorts of locations that they will initiate visits to is up to each council to determine, based on their local priorities.

3.2.8 Council visits to outdoor locations by type

Location	Number total	% of total
Patrolled beaches	153	8%
Public swimming pools	118	6%
Outdoor children's playground equipment	643	32%
Outdoor skate park	87	4%
Underage sporting events	130	6%
Early Years services	271	13%
Schools	437	22%
Children's indoor play centres	34	2%
Public Hospitals	72	4%
Community Health Centres	20	1%
Victorian public premises (eg, courts, public hospitals, certain Victorian Government buildings)	60	3%
Total	2,025	100%

Note: This total is slightly higher than the 2014 figure quoted in table 3.1 for outdoor areas as some councils recorded the outdoor setting inspected as part of CSTM activities in the breakdown of outdoor settings in their reports. This table provides an understanding of the breakdown of settings inspected.

3.2.9 Compliance with outdoor smoking laws

Substantiated breaches	Section of the Act	Number Total	% of total
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)	0	0%
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)	0	0%
Public swimming pools			
A person smokes within the outdoor area of a public swimming pool complex	5RC(1)	4	44%
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)	0	0%
Outdoor children's playground equipment			
A person smokes at or within 10 metres of outdoor children's playground equipment	5RE(1)	0	0%
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)	0	0%
Outdoor skate park			
A person smokes at or within 10 metres of an outdoor skate park	5RG(1)	0	0%
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)	2	22%
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)	1	11%
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)	1	11%
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)	0	0%
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)	0	0%
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)	0	0%
Schools			

Substantiated breaches	Section of the Act	Number Total	% of total
Person smoking in an outdoor area of school premises	5RD(1)	0	0%
Person smoking at or within 4 metres of any part of a pedestrian access point to school premises	5RD(2)	0	0%
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)	0	0%
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)	0	0%
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)	0	0%
Public Hospital			
Person smoking at or within 4 metres of any part of a pedestrian access point to Victorian public premises	5RH(1)	0	0%
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)	0	0%
Community Health Centre			
Person smoking at or within 4 metres of any part of a pedestrian access point to Victorian public premises	5RH(1)	0	0%
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)	0	0%
Public Premises			
Person smoking at or within 4 metres of any part of a pedestrian access point to Victorian public premises	5RH(1)	1	11%
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)	0	0%
TOTAL		9	100%

3.2.10 Enforcement actions for outdoor locations

Enforcement actions	Number total	% of total
Verbal warnings (including pending)	7	88%
Written warnings (including pending)	0	0%
Fines issued (including pending)	1	13%
Prosecutions (including pending)	0	0%
TOTAL	8	100%

3.3 Complaints received by councils

Under their service agreements, councils are funded a set amount to respond to complaints they receive from the public. The number of complaints varies, depending on the level of complaints made. As many breaches of smoking laws cannot be substantiated in the absence of authorised officers being present to witness the breach, not all complaints will generate an immediate response visit to the particular location by a council officer. For example, in certain outdoor locations where there are no premises, council officers may visit to check adequate signage is in place at a later date. For those locations where the complaint relates to a premises with a business owner, they may follow up with an education visit. The nature of councils' responses to complaints will be guided by their local policies and priorities.

3.3.1 Number of complaints received by councils

Complaints received	Number total	% of total
Tobacco/E-cigarette retailers and specialist tobacconists/e-cigarette retailers ¹	154	38%
Cigarette sales to minors ²	86	21%
Eating and drinking areas	128	32%
Outdoor locations	19	5%
Enclosed workplaces	21	5%
TOTAL	406	100%

Note:

1. 60% of complaints to councils about retailers were e-cigarette related (92 of 154)
2. 84% of complaints to councils regarding sales to minors were e-cigarette related (72 of 86)

3.3.2 Visits in response to complaints

Visits in response to complaints	Total	% of total
Tobacco retailers, e-cigarette retailers and specialist tobacconists	162	40%
Tobacco retailers, e-cigarette retailers and specialists in response to sales to minors *	75	19%
Eating and drinking areas	133	33%
Outdoor locations	16	4%
Enclosed Workplaces	16	4%
TOTAL	402	100%

3.3.3 Breaches as a result of complaints to council

Substantiated breaches as a result of complaints	Section of the Act	# total	% of total
Setting: Retail Sales			
Displays a tobacco/e-cigarette advertisement at a retail outlet other than a specialist tobacconist or duty free shop	6(2AA)	37	18%
Certified specialist tobacconists only Person carrying out a business at a certified specialist tobacconists where there is a display of a product line of tobacco or e-cigarette products that is not in accordance with Section 6A	6(2A)	12	6%
Certified specialist e-cigarette retailing premises only Person carrying on a business at a certified specialist e-cigarette retailing premises who displays e-cigarette products that are not in accordance with Section 6B	6(2AB)	1	0%
Specialist e-cigarette retailing premises displays a tobacco or e-cigarette advertisement of a product line of a tobacco product.	6(2AC)	2	1%
Specialist e-cigarette retailing premises displays a tobacco product	6(2AD)	0	0%
Certified specialist tobacconists and certified specialist e-cigarette retailing premises only Person carrying out a business at a certified specialist tobacconist or specialist e-cigarette retailing premises who displays tobacco or e-cigarette products in an area other than the point of sale	6(2B)	12	6%
Person who sells cigarettes in a package containing less than 20 cigarettes (single cigarettes)	14	3	1%

Substantiated breaches as a result of complaints	Section of the Act	# total	% of total
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)	15	7%
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)	15	7%
Certified Specialist Tobacconist or Certified specialist e-cigarette retailing premises that does not display certificate	15ZB	1	0%
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	53	25%
Graphic warning not on price board	6(2AA)	2	1%
Setting: Eating and Drinking Areas			
Person smoking in an enclosed workplace	5A(1)	8	4%
Occupier of an enclosed workplace where a breach of Section 5A(1) occurs	5B(1)	2	1%
A person smoking in an outdoor drinking area where smoking is not permitted (roof and walls covering more than 75% of total notional wall area)	5C(1)	16	8%
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)	4	2%
Occupier of an outdoor drinking area where smoking is prohibited where a breach of Section 5C(1) occurs	5D(1)	3	1%
Occupier of an outdoor drinking area where smoking is prohibited where a breach of Section 5C(1A) occurs	5D(3)	1	0%
Occupier of an outdoor drinking area where smoking is prohibited who fails to display acceptable no smoking signs	5E(1)	11	5%
A person smoking in an outdoor dining area	5EA	6	3%
Occupier of an outdoor dining area where smoking is occurring	5EB	0	0%
Occupier of an outdoor dining area who fails to display acceptable no smoking signs	5EC	2	1%
Occupier of an enclosed restaurant/cafe who fails to display acceptable no smoking signs	5F(1)	3	1%
Occupier of a bingo area or centre who fails to display acceptable no smoking signs	5H(1)	0	0%
Occupier of a gaming machine area who fails to display acceptable no smoking signs	5N(1)	0	0%

Substantiated breaches as a result of complaints	Section of the Act	# total	% of total
Occupier of an enclosed licensed premises who fails to display acceptable no smoking signs	5R(1)	0	0%
Person who places or causes or permits the placement of a vending machine in any premises by a member of the public (other than locations specified in s.13(2).	13(1)	0	0%
Sale of an e-cigarette product from a vending machine	13(1A)	0	0%
Setting: Outdoor locations			
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)	0	0%
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)	0	0%
Public Swimming Pools			
A person smokes within the outdoor area of a public swimming pool complex	5RC(1)	0	0%
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)	0	0%
Outdoor Children's Playground Equipment			
A person smokes at or within 10 metres of outdoor children's playground equipment	5RE(1)	0	0%
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)	0	0%
Outdoor Skate Park			
A person smokes at or within 10 metres of an outdoor skate park	5RG(1)	0	0%
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)	0	0%
Underage Sporting Event			
A person smokes at or within 10 metres of an outdoor sporting venue during an organised underage sporting event, interval or practice session	5RI(1)	0	0%
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)	0	0%
Early Years' Service			

Substantiated breaches as a result of complaints	Section of the Act	# total	% of total
Person smoking in an outdoor area of an education and care service premises or children's service premises (child care centre or kindergarten)	5RB(1)	0	0%
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 (child care centre or kindergarten)	5RB(2)	0	0%
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 (child care centre or kindergarten)	5RB(5)	0	0%
Schools			
Person smoking in an outdoor area of school premises	5RD(1)	0	0%
Person smoking at or within 4 metres of any part of a pedestrian access point to school premises	5RD(2)	0	0%
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)	0	0%
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)	0	0%
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)	0	0%
Public Hospitals			
Person smoking at or within 4 metres of any part of a pedestrian access point to Victorian public premises	5RH(1)	0	0%
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)	0	0%
Community Health Centres			
Person smoking at or within 4 metres of any part of a pedestrian access point to Victorian public premises	5RH(1)	0	0%
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)	0	0%
Public Premises			
Person smoking at or within 4 metres of any part of a pedestrian access point to Victorian public premises	5RH(1)	0	0%

Substantiated breaches as a result of complaints	Section of the Act	# total	% of total
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)	0	0%
TOTAL		209	100%

3.4 Prescribed public hospital education visits

The Prescribed Public Hospital Education Visits program funds councils to educate people outside in-scope public hospital entrances about legislation relating to smoking within proximity to building entrances. Under the program councils receive funding to conduct 20-minute education visits at these hospitals and undertake meetings with hospital staff.

This is a voluntary program, and councils nominate whether they will participate or not. If councils are not able to undertake their target number of 20-minute block visits, their funding is reduced accordingly.

Thirty-eight councils nominated to participate in the Prescribed Public Hospital Education Visits as part of the current service agreement. Thirty-two councils undertook hospital visits in the reporting period.

3.4.1 Hospital education activities

Hospital education visits activity	Number total
Councils participating	38
20 min block visits undertaken by councils ¹	346
Unique number of education visits reported by councils	266
Number of meetings with hospital staff reported by councils	23

1. A number of councils did not specify whether the 20 min block visits were inspections or meetings with hospital staff (therefore the reported inspections and meetings is likely an under-representation of the actual activities undertaken).

This year's inspections were again disrupted by the COVID-19 pandemic, with public health response priorities resulting in staffing shortages and a constrained environment for council officers engaging with hospital staff about smoking laws. The presence of COVID-19 testing sites adjacent to hospital building entrances also presented challenges for inspections by council officers (two officers are required to be in attendance for these visits).

3.4.2 Substantiated breaches of hospital entrance laws

Breach	Number total
5RH(1) Person smoking at or within 4 metres of any part of a pedestrian access point to Victorian public premises	10
5RH(4) 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	0
Total	10

3.4.3 Number of enforcement actions undertaken

Enforcement actions	Number total
Verbal warnings	6
Written warnings (including pending)	1
Fines issued (including pending)	0
Prosecutions (including pending)	0
Total	7

Council officers reported that observed breaches at hospital entrances are becoming less prevalent. Meetings with hospital staff suggest that there are sometimes issues with broader hospital no-smoking policies, however these were outside councils' jurisdiction and role in enforcing the Tobacco Act.

3.5 Cigarette sales to minors program

The Cigarette Sales to Minors (CTSM) Program funds councils to educate tobacco retailers, e-cigarette retailers and specialist tobacconists on their obligation not to sell cigarettes to minors, and to enforce breaches where these occur. Under the CSTM program councils recruit a young person from outside the local area and supervise the young person closely as they attempt to purchase cigarettes from local retailers.

This is a voluntary program, and councils nominate whether they will participate or not. If councils are not able to undertake their target number of days of test purchasing, their funding is reduced accordingly.

Fifty-one of the 78 councils nominated to participate in the CTSM Program as part of the current service agreement.

The CSTM program has again been disrupted by the COVID-19 pandemic and Chief Health Officer Directions, restrictions on vehicle passengers, availability of test purchase assistants and council pandemic policies. Consequently, councils were able to undertake test purchasing and/or alternative education visits to meet CSTM targets. Alternative visits included retailers, priority eating and drinking areas and outdoor areas children and young people spend time.

3.5.1 CSTM summary (including actual test purchasing and alternative activities)

CSTM activity	Number Total
Councils nominated to participate in CSTM	51
Test purchase days conducted	55
% of test purchases resulting in a sale	13%
Alternative education visits	3,196 ¹
Alternative education visits – enforcement actions	181

1. Equivalent of 213 test purchase days (where 15 visits = 1 test purchase day)

3.5.2 Results of test purchasing activities undertaken

Actual Test Purchasing	Number total
Test purchase days	55
Test purchases undertaken	881
Sales resulting from test purchases	113
% of test purchases resulting in a sale	13%

3.5.3 Products purchased/intended for purchase

Product	Total Number
Tobacco related	884
E-cigarette related	18

3.5.4 Test purchases by setting

Test purchases by Setting	# visits	% by setting
Tobacco Retailers	640	73%
E-cigarette retailers	2	<1%
Tobacco and E-cigarette retailers	210	24%
Certified specialist tobacconists	29	3%
Certified e-cigarette retailing premises	0	0%
Total	881	100%

3.5.5 Test purchasing substantiated breaches

Breach	Number total
Person who sells a tobacco or e-cigarette product to a person under 18 years (includes a manager unless prevention measures are taken) – tobacco related, s.12(1)	106
Person who sells a tobacco or e-cigarette product to a person under 18 years (includes a manager unless prevention measures are taken) – e-cigarette related, s.12(1)	6
Person who sells cigarettes in a package containing less than 20 cigarettes (single cigarettes), s.14	1
Total	113

3.5.6 Test purchasing enforcement actions

Enforcement actions	Tobacco related	E-cigarette related
Verbal warnings	50	0
Written warnings (including pending)	82	2
Fines issued (including pending)	27	10
Prosecutions (including pending)	0	1
Total	159	13

3.5.7 Alternative education activities

Due to COVID-19 public health restrictions councils were requested to undertake alternative education activities in lieu of being able to undertake test purchasing.

Activities	Total visits
Education visits undertaken in lieu of test purchasing	3,196

3.5.8 Alternative education activities -types of businesses and settings visited

Setting	Total visits	% of visits
Tobacco only retailer	927	32%
E-cigarette only retailer	14	0%
Tobacco & E-cigarette retailer	49	2%
Eating and Drinking Areas	1,354	46%
Outdoor locations	590	20%
TOTAL	2,934¹	100%

1. This number is lower than the 3,196 visits in Table 3.5.5 as some councils did not specify the setting for their alternative visits. It does, however, give an indication of the types of settings visited.

3.5.9 Alternative education activities – enforcement actions undertaken

Action	Retailer settings	Other Settings	Total
Verbal Warnings	100	38	138
Written warnings	15	0	15
Fines issued	0	28	28
Prosecutions	0	0	0
Total	115	66	181

4. Further information

For further information please contact:

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