

ANNUAL REPORT

2022-23



LOCAL GOVERNMENT
TOBACCO AND
E-CIGARETTE
CONTROL ACTIVITIES

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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 and e-cigarette control activities.

The MAV is the statutory peak body for local government in Victoria. While this report 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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EXECUTIVE SUMMARY

This report has been prepared for the Department of Health as a requirement of the Local Government Tobacco and E-cigarette Control Activity Program. Under this program, the MAV administers funding to councils to provide specific tobacco and e-cigarette education and enforcement activities across the state to reduce the incidence of smoking and vaping in the community.

This report outlines the activities undertaken by councils for the financial year 1 July 2022 to 30 June 2023. Many councils also undertook further tobacco and e-cigarette education and enforcement activities, based on local priorities. These additional activities are not included in this report.

The partnership between the Department of Health and local government on tobacco and e-cigarette control continues to be strong. Seventy-eight of the 79 councils participated in the program in the financial year 2022-23. A total of \$1,352,108.22 (ex GST) was expended, comprising disbursements to councils based on their reported activities, and a fee to the MAV to administer the program.

In addition to program funding, 20 councils were provided one-off funding (\$42,680 in total) to undertake an audit of their tobacco and e-cigarette retailers.

11,007 proactive visits and 125 days of test purchasing undertaken in 2022-23

During the period 1 July 2022 to 30 June 2023, councils undertook 11,007 visits to a variety of business premises, enclosed workplaces and outdoor locations to meet their targets. Additionally, councils participating in the Cigarette Sales to Minors (CSTM) program undertook 125 days of test purchasing, with 1,676 test purchases undertaken. Thirty-eight councils nominated to participate in the Prescribed Hospital Education Visits program.

The majority of targets were exceeded

Overall local government performance for 2022/23 was higher than the requirements set out in the service agreements for tobacco retailers, eating and drinking areas, outdoor locations and the CSTM program. Prescribed hospital inspections were slightly below target (see Table 2). Please note this is an aggregate of activities across the state and does not reflect the performance of individual councils.

Three-quarters of CSTM councils undertook at least one day of test purchasing in 2022-23

Fifty-one councils nominated to participate in the CSTM program in the financial year 2022-23. This was the first year since 2018-2019 that public health pandemic settings enabled full program delivery. As with previous years councils continued to be permitted to undertake alternative education visits to meet CSTM targets as they transitioned back to normal program delivery. Thirty-eight councils (75 per cent of participating councils) undertook at least one day of test purchasing and 32 councils undertook alternative education visits to meet some, or all, of their CSTM targets.

Despite recent challenges local government demonstrates ongoing commitment to the program

During 2022-23 there continued to be some disruption to the program, mainly due to workforce resource constraints. Significant flooding and storm events also impacted the program, particularly in rural areas. The continued commitment of local government to achieve the program deliverables demonstrates the value councils place on seeking to reduce the incidence of smoking and vaping in their communities.

Reforms to assist education and enforcement activities of councils

Council staff reported a number of operational issues which would benefit from further consideration for reform. These include:

- Difficulty in identifying retailers selling e-cigarettes and the growth in reports of illicit tobacco trading
- Ambiguity regarding enforcement of tobacco laws where they do not have jurisdiction if the products fall under the Drugs, Poisons and Controlled Substances Act 1981
- Tobacco laws being clear that retailer staff below the age of 18 are authorised to sell tobacco and e-cigarette products
- Continued examples of exposure to second-hand smoke due to smoking being allowed in outdoor drinking areas
- Need clear information and advice regarding federal and state statutory changes.

AT A GLANCE

During the 2022/23 financial year councils undertook more than **11,007** inspections of retail, eating and drinking and outdoor areas, Including:



3,032

Retail settings



4,059

Eating & drinking areas



2,014

Outdoor locations



302

Prescribed hospitals



125 days

Test purchasing



1,676

Test purchase attempts



570

Response to complaints



1,117

Enforcement actions

E-CIGARETTES & VAPING



711

E-cigarette retailer visits



212

Retailer breaches of the Act



348

E-cigarette & vaping related complaints

3 INTRODUCTION

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

Since smoking bans were introduced for eating areas in cafes and restaurants 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, education and enforcement 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.

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. Additional council officers can also be authorised where this is agreed by the Department.

Tobacco and e-cigarette control activities are 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.

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. This group comprises 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 second year of the three-year service agreement period from 1 July 2021 to 30 June 2024.

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 and e-cigarette retailers), 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.

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 instalments, 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.

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

Reporting requirements

Councils are required to provide two reports to the MAV each year outlining the activities undertaken in the previous six months. The first report outlines the activities undertaken for the period 1 July to 31 December of each year. The second report outlines activities undertaken for the period 1 January to 30 June. The MAV collates these reports for the Department of Health. The final report is published on the MAV website.

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.



EDUCATION & ENFORCEMENT VISITS

Councils were required to visit a target number of tobacco and e-cigarette retailers, eating and drinking areas and outdoor locations. Councils were also required to respond to complaints about smoking and vaping from the public. Where these generated a need for a visit, they are included in this report.

Those councils who elected to participate in the CSTM program needed to undertake a set number of test purchase days (or alternative education visits in lieu of test purchasing where required). Councils participating in the Prescribed Hospital Education Visits program were required to undertake a set number of visits to nominated hospitals.

Table 1 - Total activities reported by councils

| Setting | Initiated by council | Response to complaints | Number total |
|-------------------------------------|----------------------|------------------------|---------------|
| Tobacco and e-cigarette retailers | 2,710 | 322 | 3,032 |
| Eating and drinking establishments | 3,950 | 109 | 4,059 |
| Outdoor locations | 1,994 | 20 | 2,014 |
| Enclosed workplaces | n/a | 35 | 35 |
| CSTM (alternative education visits) | 1,481 | 84 | 1,565 |
| Prescribed hospitals * | 302 | n/a | 302 |
| Total Visits | 10,434 | 570 | 11,007 |
| CSTM (actual test purchase days) | 125 | n/a | 125 |
| CSTM (test purchase attempts) | 1,676 | n/a | 1,676 |

* Number of 20 minute block visits

Table 2 - Council performance against agreed targets (visits initiated by councils)

| Setting | Total visits | Target ¹ | % completed |
|------------------------------------|--------------|---------------------|-------------|
| Tobacco and e-cigarette retailers | 2,710 | 1,450 | 187% |
| Eating and drinking establishments | 3,950 | 1,934 | 204% |
| Outdoor locations | 1,994 | 1,113 | 179% |
| CSTM program ² | 224 | 197 | 113% |
| Prescribed hospitals ³ | 302 | 337 | 90% |

1. Prescribed in each council's service agreement

2. Number of test purchase days - 125 actual and 1,481 alternative visits in lieu of test purchasing converted to 99 test purchase day equivalents

3. Number of 20-minute block visits

5 PROACTIVE VISITS

COMPLIANCE & ENFORCEMENT

This section reports the details of the substantiated breaches of the Tobacco Act 1987 identified by council authorised officers. It also covers the subsequent enforcement actions taken in respect of tobacco retailers, eating and drinking areas and outdoor locations during proactive inspection activities.

Retail Inspection Compliance

Table 3 - Tobacco, e-cigarette and specialist retailer visits

| Locations inspected | Number total | % of total |
|--|--------------|-------------|
| Tobacco only retailers | 1,887 | 72% |
| E-cigarette only retailers | 31 | 1% |
| Tobacco and e-cigarette retailers | 678 | 26% |
| Certified Specialist Tobacconists | 30 | 1% |
| Certified Specialist E-cigarette Retailers | 2 | >1% |
| TOTAL | 2,628 | 100% |

Note: this total is slightly lower than the figure presented in Table 1 for tobacco retailers, as some councils did not provide a detailed breakdown of settings. Nonetheless, the table offers insight into the distribution of settings inspected.

Table 4 - Substantiated breaches for tobacco retailers, e-cigarette retailers and specialist retailers

| Substantiated breaches | Section of Act | Tobacco Product | E-cigarette Product | Number Total |
|--|----------------|-----------------|---------------------|--------------|
| Displays a tobacco advertisement at a retail outlet other than a specialist tobacconist or duty free shop | 6(2AA) | 33 | 81 | 114 |
| 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) | 72 | 7 | 79 |
| Certified e-cigarette retailer displaying products not in accordance with 6B | 6(2AB) | n/a | 1 | 1 |
| Specialist e-cigarette retailing premises displays a tobacco or e-cigarette advertisement of a product line of a tobacco product. | 6(2AC) | 0 | n/a | 0 |
| Specialist e-cigarette retailing premises displays a tobacco product | 6(2AD) | 1 | n/a | 1 |
| Person carrying out a tobacco retailing business who displays tobacco products in an area other than the point of sale | 6(2B) | 5 | 26 | 31 |
| Person who sells cigarettes in a package containing less than 20 cigarettes | 14 | 1 | n/a | 1 |
| 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) | 68 | 15 | 83 |
| 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) | 41 | 67 | 108 |
| Certified Specialist Tobacconist that does not display certificate | 15ZB | 0 | 0 | 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 | 6 | 4 | 10 |
| Graphic warning not on price board | 6(2AA) | 40 | 11 | 51 |
| TOTAL | | 267 | 212 | 479 |

Table 5 - Enforcement actions for tobacco retailers, e-cigarette retailers and specialist retailers

| Enforcement action | Number Total | % of Total |
|--------------------------------------|--------------|-------------|
| Verbal warnings (including pending) | 276 | 78% |
| Written warnings (including pending) | 86 | 20% |
| Fines issued (including pending) | 6 | 2% |
| Prosecutions (including pending) | 0 | 0% |
| TOTAL | 368 | 100% |

Eating and Drinking Area Inspection Compliance

Table 6 - Eating and drinking areas visits

* including vending machines

| Locations inspected | Number total | % of total |
|--|--------------|-------------|
| Indoor dining and drinking areas | 2,513 | 50% |
| Outdoor dining and drinking areas | 2,398 | 48% |
| Food fairs | 57 | 1% |
| Organised events other than food fairs | 31 | 1% |
| Other | 2 | >1% |
| TOTAL | 2,628 | 100% |

Note: this total is slightly higher than the figure presented in Table 1 for eating and drinking areas, as some councils include both outdoor and indoor areas in the detailed breakdown of settings where both settings were inspected in single visit. Nonetheless, the table offers insight into the distribution of settings that were inspected.

Table 7 - Compliance with eating and drinking area laws

| Substantiated breaches | Section of Act | Number total | % of total |
|--|----------------|--------------|------------|
| Person who smokes in an enclosed workplace | 5A(1) | 38 | 11% |
| Occupier of an enclosed workplace where a breach of Section 5A(1) occurs | 5B(1) | 3 | 1% |
| A person who smokes in an outdoor dining and drinking area where smoking is not permitted | 5C(1) | 3 | 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) | 4 | 1% |
| 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) | 4 | 1% |
| Occupier of an outdoor dining and drinking area where smoking is prohibited who fails to display acceptable no smoking signs | 5E(1) | 109 | 32% |
| A person smoking in an outdoor dining area | 5EA | 2 | 1% |

Table 7 - Compliance with eating and drinking area laws (cont)

| Substantiated breaches | Section of Act | Number total | % of total |
|---|----------------|--------------|-------------|
| Occupier of an outdoor dining area where smoking is occurring | 5EB | 3 | 1% |
| Occupier of an outdoor dining area who fails to display acceptable no smoking signs | 5EC | 31 | 9% |
| Occupier of a restaurant/cafe who fails to display acceptable no smoking signs | 5F(1) | 128 | 38% |
| Occupier of a bingo area or centre who fails to display acceptable no smoking signs | 5H(1) | 1 | >1% |
| Occupier of a gaming machine area who fails to display acceptable no smoking signs | 5N(1) | 1 | >1% |
| Occupier of an enclosed licensed premises who fails to display acceptable no smoking signs | 5R(1) | 3 | 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) | 0 | 0% |
| Person selling e-cigarettes from a vending machine | 13(1A) | 8 | 2% |
| TOTAL | | 338 | 100% |

Table 8 - Enforcement actions for eating and drinking areas

| Enforcement action | Number Total | % of Total |
|--------------------------------------|--------------|-------------|
| Verbal warnings (including pending) | 266 | 71% |
| Written warnings (including pending) | 110 | 29% |
| Fines issued (including pending) | 0 | 0% |
| Prosecutions (including pending) | 0 | 0% |
| TOTAL | 376 | 100% |

Outdoor Locations Inspections and Compliance

Smoking and use of e-cigarette (vaping) bans are in place for 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 locations that have been the subject of complaints from the public, or for officers just to make general observance of whether smoking and vaping 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 like hospitals and other public buildings, which have outdoor areas subject to smoking and vaping bans.

Each council determines the locations they will initiate visits to, based on local priorities.

Table 9 - Council visits to outdoor locations by type

| Locations inspected | Number total | % of total |
|--|--------------|------------|
| Patrolled beaches | 165 | 8% |
| Public swimming pools | 144 | 7% |
| Outdoor children's playground equipment | 482 | 24% |
| Outdoor skate parks | 109 | 5% |
| Underage sporting events | 126 | 6% |
| Early years services | 332 | 17% |
| Schools | 435 | 22% |
| Children's indoor playcentres | 21 | 1% |
| Public hospitals | 48 | 2% |
| Community health centres | 37 | 2% |
| Victorian public premises (eg, courts, public hospitals, certain Victorian Government buildings) | 95 | 5% |
| TOTAL | 1,991 | 99% |

Note: this total is slightly lower than the figure presented in Table 1 for outdoor areas, as some councils did not provide a breakdown of settings inspected. Nonetheless, the table offers insight into the distribution of settings that were inspected.

Table 10 - Compliance with outdoor smoking laws

Note: this table only includes sections of the Act where breaches were observed, rather than all sections of the Act that relate to outdoor areas.

| Substantiated breaches | Section of Act | Number total | % of total |
|---|----------------|--------------|------------|
| Outdoor Children's Playground Equipment | | | |
| A person smokes at or within 10 metres of outdoor children's playground equipment | 5RE | 7 | 37% |
| 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 | 5% |
| Schools | | | |
| Person smoking in an outdoor area of school premises | 5RD(1) | 5 | 26% |
| Person smoking at or within 4 metres of any part of a pedestrian access point to school premises | 5RD(2) | 5 | 26% |
| Public hospitals | | | |
| Person smoking at or within 4 metres of any part of a pedestrian access point to Victorian public premises | 13(1A) | 1 | 5% |
| TOTAL | | 19 | 99% |

Table 11 - Enforcement actions for outdoor locations

| Enforcement action | Number Total | % of Total |
|--------------------------------------|--------------|-------------|
| Verbal warnings (including pending) | 21 | 95% |
| Written warnings (including pending) | 0 | 0% |
| Fines issued (including pending) | 1 | 5% |
| Prosecutions (including pending) | 0 | 0% |
| TOTAL | 22 | 100% |

COMPLAINTS TO COUNCIL

Under their service agreements, councils are funded a set amount to respond to complaints they receive from the public. The number of visits in response to complaints varies, depending on the level and type of complaints made. As many breaches of smoking and vaping 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.

Complaints received by councils

Councils received 599 complaints from the public covering retail settings, eating and drinking areas and outdoor locations.

Table 12 - Number of complaints received by councils

| Setting | Number Total | % of Total |
|---|--------------|-------------|
| Tobacco/E-cigarette retailers and specialist tobacconists/e-cigarette retailers | 318 | 53% |
| Cigarette sales to minors ¹ | 119 | 20% |
| Eating and drinking areas ² | 109 | 18% |
| Outdoor locations | 17 | 3% |
| Enclosed workplaces | 36 | 6% |
| TOTAL | 599 | 100% |

Note:

1. 75% of complaints to councils about retailers were e-cigarette related (240 of 318)

2. 91% of complaints to councils regarding sales to minors were e-cigarette related (108 of 119)

Visits in response to complaints

Councils reported undertaking 570 visits to retailers, eating and drinking areas and outdoor locations in response to the complaints received.

Table 13 - Visits in response to complaints

| Setting | Number Total | % of Total |
|--|--------------|-------------|
| Tobacco/E-cigarette retailers and specialist tobacconists/e-cigarette retailers | 322 | 56% |
| Tobacco/E-cigarette retailers and specialist tobacconists/e-cigarette retailers in response to sales to minors | 84 | 15% |
| Eating and drinking areas | 109 | 19% |
| Outdoor locations | 20 | 4% |
| Enclosed workplaces | 35 | 6% |
| TOTAL | 570 | 100% |

Note: this table is likely an under-representation as some councils visit settings multiple times when following up on complaints and do not necessarily report the full number of visits undertaken.

Identified breaches of the Tobacco Act 1987

Councils identified a total of 323 breaches of the Tobacco Act 1987 while responding to complaints by the public. The majority of these were in retail settings (246 breaches, 77% of breaches identified).

The following tables break down figures for retail settings, eating and drinking areas and outdoor locations. The tables show both the number of breaches identified and the percentage of breaches across the three settings (retail, eating and drinking areas, outdoor locations). These tables only show sections of the Act where breaches were observed.

Table 14a - Breaches as a result of complaints to council (retail settings)

| Substantiated breaches as a result of complaints (Retail Settings) | Section of Act | Number total | % of total |
|---|----------------|--------------|------------|
| Displays a tobacco advertisement at a retail outlet other than a specialist tobacconist or duty free shop | 6(2AA) | 96 | 30% |
| 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 (Certified specialist tobacconist only) | 6(2A) | 21 | 7% |
| Person carrying out a tobacco retailing business who displays tobacco products in an area other than the point of sale (certified retailers only) | 6(2B) | 13 | 4% |
| Person who sells cigarettes in a package containing less than 20 cigarettes | 14 | 3 | 1% |
| 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) | 17 | 5% |
| 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) | 19 | 6% |
| 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 | 68 | 21% |
| Graphic warning not on price board | 6(2AA) | 9 | 3% |
| TOTAL | | 246 | 77% |

Table 14b - Breaches as a result of complaints to council (eating and drinking areas)

| Substantiated breaches as a result of complaints (Eating and Drinking Areas) | Section of Act | Number total | % of total |
|--|----------------|--------------|------------|
| Person who smokes in an enclosed workplace | 5A(1) | 6 | 2% |
| Occupier of an enclosed workplace where a breach of Section 5A(1) occurs | 5B(1) | 6 | 2% |
| A person who smokes in an outdoor dining and drinking area where smoking is not permitted | 5C(1) | 13 | 4% |
| 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) | 2 | 1% |
| Occupier of an outdoor dining and drinking area where smoking is prohibited where a breach of Section 5C(1) occurs | 5D(1) | 3 | 1% |
| Occupier of an outdoor dining and drinking area where smoking is prohibited who fails to display acceptable no smoking signs | 5E(1) | 7 | 2% |
| A person smoking in an outdoor dining area | 5EA | 3 | 1% |

Table 14b - Breaches as a result of complaints to council (eating and drinking areas) (cont)

| Substantiated breaches as a result of complaints (Eating and Drinking Areas) | Section of Act | Number total | % of total |
|--|----------------|--------------|------------|
| Occupier of an outdoor dining area where smoking is occurring | 5EB | 6 | 2% |
| Occupier of an outdoor dining area who fails to display acceptable no smoking signs | 5EC | 11 | 3% |
| Occupier of an enclosed restaurant/cafe who fails to display acceptable no smoking signs | 5F(1) | 2 | 1% |
| Occupier of an enclosed licensed premises who fails to display acceptable no smoking signs | 5R(1) | 3 | 1% |
| TOTAL | | 60 | 20% |

Table 14c - Breaches as a result of complaints to council (outdoor locations)

| Substantiated breaches as a result of complaints to council (outdoor locations) | Section of Act | Number total | % of total |
|---|----------------|--------------|------------|
| Patrolled beaches | | | |
| 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 | 5RE | 11 | 3% |
| Outdoor children's playground equipment | | | |
| A person smokes at or within 10 metres of outdoor children's playground equipment | 5R1(1) | 4 | 1% |
| Outdoor skate parks | | | |
| A person smokes at or within 10 metres of an outdoor skate park | 13(1A) | 1 | >1% |
| Schools | | | |
| Person smoking at or within 4 metres of any part of a pedestrian access point to school premises | 5RD(2) | 1 | >1% |
| TOTAL | | 17 | 4% |

7 OPT-IN PROGRAMS

PRESCRIBED HOSPITALS, CSTM & RETAILER AUDITS

As part of the service agreement councils can nominate to participate in the Prescribed Public Hospital Education program (if eligible) and the Cigarette Sales to Minors (CSTM) program. The following details activities undertaken by councils who are participating in these programs.

Prescribed Public Hospital Education Program

The Prescribed Public Hospital Education Visits program funds councils to educate people outside in-scope public hospital entrances about legislation relating to smoking and vaping 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 program as part of the current service agreement. Thirty-two councils undertook hospital visits in the reporting period.

Table 15 - Hospital education activities

| Hospital education visits activity | Number Total |
|--|--------------|
| Councils participating | 38 |
| 20 min block visits undertaken by councils ¹ | 302 |
| Unique number of education visits reported by councils | 260 |
| Number of meeting with hospital staff reported by councils | 44 |

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).

Table 16 - Substantiated breaches of hospital entrance laws

| Breaches | Number Total |
|---|--------------|
| 5RH(1) Person smoking at or within 4 metres of any part of a pedestrian access point to Victorian public premises | 11 |
| 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 | 11 |

Table 17 - Number of enforcement actions undertaken

| Enforcement action | Number Total |
|--------------------------------------|--------------|
| Verbal warnings (including pending) | 1 |
| Written warnings (including pending) | 0 |
| Fines issued (including pending) | 0 |
| Prosecutions (including pending) | 0 |
| TOTAL | 1 |

Council officers have noted a reduction in observed breaches at hospital entrances over the past few years. Of the reported breaches, six occurred during a single visit when the security guard was absent from the entrance. Discussions with hospital staff have revealed occasional challenges with hospital-wide no-smoking policies. It is important to note that these matters fall outside the jurisdiction and role of councils when it comes to enforcing the Tobacco Act 1987.

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 test purchasing days 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.

This has been the first year since 2018-19 that the CSTM program has not been interrupted by the COVID-19 pandemic and public health orders. Councils were able to undertake a mix of actual test purchasing and alternative education visits in lieu of test purchasing as the program began its return to normal delivery. Alternative activities included visits to tobacco and e-cigarette retailers, priority eating and drinking areas and outdoor areas where children and young people spend time.

Table 18 - CSTM summary (including actual test purchasing and alternative activities)

| CSTM activity | Number total |
|--|--------------------|
| Councils nominated to participate in CSTM | 51 |
| Test purchase days conducted | 125 |
| % of test purchases resulting in a sale | 14% |
| % of test purchases resulting in a sale | 1,481 ¹ |
| Alternative education visits – enforcement actions | 65 |

1. Equivalent of 99 test purchase days (where 15 visits = 1 test purchase day)

Table 19 - Results of test purchasing activities undertaken

| Actual test purchasing | Number total |
|---|--------------|
| Test purchasing days | 125 |
| Test purchases undertaken | 1,676 |
| Sales resulting from test purchases | 228 |
| % of test purchases resulting in a sale | 14% |

Table 20 - Test purchases by setting

| Test purchase setting | Number total | % of total |
|-----------------------------------|--------------|-------------|
| Tobacco Retailers | 1,184 | 71% |
| Tobacco and e-cigarette retailers | 468 | 28% |
| Specialist retailers | 24 | 1% |
| TOTAL | 1,676 | 100% |

Table 21 - Test purchasing substantiated breaches

| Substantiated breaches | 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) | 228 |
| Person who sells cigarettes in a package containing less than 20 cigarettes (single cigarettes), s.14 | 0 |
| TOTAL | 228 |

Table 22 - Test purchasing enforcement actions

| Enforcement action | Number Total |
|--------------------------------------|--------------|
| Verbal warnings (including pending) | 51 |
| Written warnings (including pending) | 153 |
| Fines issued (including pending) | 81 |
| Prosecutions (including pending) | 0 |
| TOTAL | 285 |

CSTM Alternative Education Activities

Where council has had difficulty delivering the CSTM program they have been able to undertake alternative education activities in lieu of test purchasing. The number of councils undertaking alternative education visits has decreased this year as the program returns to normal operations.

Table 23 - Alternative education activities

| Activities | Number total |
|--|--------------|
| Education visits undertaken in lieu of test purchasing | 1,481 |

Table 24 - Alternative education activities - types of businesses and settings visited

| Setting | Number total | % of total |
|-----------------------------------|--------------|-------------|
| Tobacco only retailers | 526 | 43% |
| E-cigarette only retailers | 9 | 1% |
| Tobacco and e-cigarette retailers | 38 | 3% |
| Eating and drinking areas | 497 | 40% |
| Outdoor locations | 163 | 13% |
| TOTAL | 1,233 | 100% |

Note: this total is slightly lower than the figure presented in Table 23 as some councils did not provide a detailed breakdown of settings. Nonetheless, the table does offer insight into the distribution of settings inspected.

Table 25 - Alternative education activities – enforcement actions undertaken

| Enforcement action | Retailer settings | Other settings | Number total |
|--------------------------------------|-------------------|----------------|--------------|
| Verbal warnings (including pending) | 25 | 7 | 32 |
| Written warnings (including pending) | 5 | 1 | 6 |
| Fines issued (including pending) | 1 | 26 | 27 |
| Prosecutions (including pending) | 0 | 0 | 0 |
| TOTAL | 31 | 34 | 65 |

Tobacco retailer audits

In 2020-21, councils which had difficulty undertaking tobacco education and enforcement activities due to the COVID-19 pandemic were able to do retailer audits. In 2022-23, those councils which had met all their target activities in previous years were provided with additional funding to undertake an audit of their tobacco and e-cigarette retailers. Twenty councils received this funding.

FURTHER INFORMATION

For further information please contact:

Municipal Association of Victoria (MAV)
Email inquiries@mav.asn.au

