



**Local Government Tobacco Control  
Activities  
1 July 2016 to 30 June 2017**

**Final report**

**December 2017**

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*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 and Human Services (DHHS) 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 2016 to 30 June 2017 which have been made possible with funding provided by DHHS. Many councils also undertake additional activities, based on local priorities.

The partnership between DHHS and local government on tobacco control continues to be strong, with all 79 councils seeking to participate 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 \$1,203,261.12 (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 2016 to 30 June 2017, councils undertook 16,336 visits to a variety of premises, enclosed workplaces and outdoor locations. Their performance data shows activity was above the service agreement requirements for tobacco retailers and eating establishments, on track with visits to outdoor locations, but slightly fewer test purchase days were undertaken than planned.

With regard to the sales to minors program, 55 councils participated in the program this financial year. While some councils were not able to meet all their target days, four councils exceeded the number of test purchase days they undertook.

## 2 Introduction

The partnership between the Department of Health and Human Services (DHHS) 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 establishments in 2000, the MAV has partnered with DHHS to administer funding for councils to undertake specific education and enforcement activities. The involvement of the MAV in administering the disbursement of the funds provided by DHHS 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 funded by DHHS 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 current three-year service agreements are those which relate to tobacco retailers, eating and drinking establishments 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 DHHS.

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

DHHS 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 DHHS 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.

The current service agreement period is for three years, from 1 July 2015 to 30 June 2018.

### 2.1.1 Council requirements

Under the current service agreement, councils are required to:

- undertake a designated number of education visits to tobacco retailers (including certified specialist tobacconists), eating and drinking establishments and outdoor locations where smoking bans apply
- 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 which provides additional funding for test purchasing activities.

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.

### 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 establishments 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.

##### 3.1.1 Total visits reported by councils

Setting	Initiated by councils	In response to complaints	Total Visits
Tobacco retailers and specialist tobacconists	2,900	36	2,936
Eating and drinking establishments	7,756	57	7,813
Outdoor locations	2,207	59	2,266
Enclosed workplaces	na	58	58
Cigarette sales to minors program	3,241 <sup>1</sup>	22	3,263
<b>Total</b>	<b>16,104</b>	<b>232</b>	<b>16,336</b>

1. Number of test purchases undertaken

##### 3.1.2 Council performance against agreed targets

Setting	Total Visits	Target*	% completed
Tobacco retailers and specialist tobacconists	2,900	1,449	200%
Eating and drinking establishments	7,756	1,449	535%
Outdoor locations	2,207	1,902	116%
Sales to minors test purchase days	208	212	98%

### 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 establishments and outdoor locations.

#### 3.2.1 Tobacco Retailer and Specialist Tobacconist Compliance

Substantiated breaches	Tobacco Act section	Number of breaches	% of total
Displays a tobacco advertisement at a retail outlet other than a specialist tobacconist or duty free shop	6(2AA)	9	4%
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)	10	4%
Person carrying out a tobacco retailing business who displays tobacco products in an area other than the point of sale	6(2B)	12	5%
Person who sells cigarettes in a package containing less than 20 cigarettes	14	1	0%
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)	125	53%
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)	77	33%
Certified Specialist Tobacconist that does not display certificate	15ZB	0	0%
<b>TOTAL</b>		<b>234</b>	<b>100%</b>

Enforcement actions	Number	% of total
Verbal warnings (including pending)	223	88%
Written warnings (including pending)	27	11%
Fines issued (including pending)	2	1%
Prosecutions (including pending)	0	0%
<b>TOTAL</b>	<b>252</b>	<b>100%</b>

### 3.2.2 Eating and Drinking Establishment Compliance

Substantiated breaches	Tobacco Act section	Number of breaches	% of total
Person who smokes in an enclosed workplace	5A(1)	48	15%
Occupier of an enclosed workplace where a breach of Section 5A(1) occurs	5B (1)	19	6%
A person who smokes in an outdoor dining and drinking area where smoking is not permitted	5C(1)	9	3%
Occupier of an outdoor dining and drinking area where smoking is prohibited where a breach of Section 5C(1) occurs	5D(1)	5	2%
Occupier of an outdoor dining and drinking area where smoking is prohibited who fails to display acceptable no smoking signs	5E(1)	63	19%
Occupier of a restaurant/cafe who fails to display acceptable no smoking signs	5F (1)	160	49%
Occupier of a bingo area or centre who fails to display acceptable no smoking signs	5H(1)	0	0%
Occupier of an area of a casino who fails to display acceptable no smoking signs	5K(1)	0	0%
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)	11	3%
Person who places or causes or permits the placement of a vending machine in any premises by a member of the public	13(1)	12	4%
<b>TOTAL</b>		<b>327</b>	<b>100%</b>

Enforcement actions	Number	% of total
Verbal warnings (including pending)	248	77%
Written warnings (including pending)	66	21%
Fines issued (including pending)	5	2%
Prosecutions (including pending)	2	1%
<b>TOTAL</b>	<b>321</b>	<b>100%</b>

### 3.2.3 Outdoor locations visits and compliance

Smoking bans have been introduced for a number of designated outdoor locations over the last few years. Due to their nature, council visits and inspections of outdoor locations will often not include a face-to-face meeting, but may be to check particular locations that have been the subject of complaints from the public, or 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.

### 3.2.4 Council visits to outdoor locations by type

Location	Number of visits
Patrolled beaches	247
Public swimming pools	194
Outdoor children's playground equipment	511
Outdoor skate park	128
Underage sporting events	172
Childcare ('education and care services' and 'children' services premises')	315
Schools	457
Children's indoor play centres	33
Victorian public premises (eg, courts, public hospitals, community health centres, certain Victorian Government buildings)	150
<b>Total</b>	<b>2,207</b>

### 3.2.5 Compliance with outdoor smoking laws

Substantiated breaches	Section of the Act	Number of breaches	% of total
<b>Patrolled beaches</b>			
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%
<b>Public swimming pools</b>			
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%
<b>Outdoor children's playground equipment</b>			
A person smokes at or within 10 metres of outdoor children's playground equipment	5RE(1)	6	29%
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%
<b>Outdoor skate park</b>			
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%
<b>Underage sporting events</b>			
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)	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%
<b>Childcare ('education and care services' and 'children' services premises')</b>			
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)	3	14%

Substantiated breaches	Section of the Act	Number of breaches	% of total
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%
<b>Schools</b>			
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)	2	10%
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%
<b>Children's indoor play centres</b>			
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%
<b>Victorian public premises (eg, courts, public hospitals, community health centres, certain Victorian Government buildings)</b>			
Person smoking at or within 4 metres of any part of a pedestrian access point to Victorian public premises	5RH(1)	9	43%
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)	1	5%
<b>TOTAL</b>		<b>21</b>	<b>100%</b>

Enforcement actions	Number	% of total
Verbal warnings (including pending)	23	100%
Written warnings (including pending)	0	0%
Fines issued (including pending)	0	0%
Prosecutions (including pending)	0	0%
<b>TOTAL</b>	<b>23</b>	<b>100%</b>

### 3.3 Complaints received by councils

Under the service agreement, councils are funded a set amount to respond to complaints they receive from the public. 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 a visit to the particular location from 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, or 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	% of total
Enclosed workplaces	58	23%
Tobacco retailers and specialist tobacconists	41	16%
Eating and drinking establishments	57	23%
Outdoor smoking bans	69	28%
Cigarette sales to minors	24	10%
<b>TOTAL</b>	<b>249</b>	<b>100%</b>

#### 3.3.2 Enforcement actions taken in response to complaints

Enforcement actions	Visits	Verbal warnings	Written warnings	Fines	Prosecutions	Total
Enclosed workplaces	58	35	5	0	0	<b>98</b>
Tobacco retailers and specialist tobacconists	36	19	4	1	0	<b>60</b>
Eating and drinking establishments	57	26	6	0	0	<b>89</b>
Outdoor smoking bans	59	21	5	0	0	<b>85</b>
Cigarette sales to minors	22	13	2	0	0	<b>37</b>
<b>TOTAL</b>	<b>232</b>	<b>114</b>	<b>22</b>	<b>1</b>	<b>0</b>	<b>369</b>

### 3.4 Cigarette sales to minors program

The Cigarette Sales to Minors (CTSM) Program funds councils on a full cost recovery basis to educate tobacco retailers and 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-six of the 79 councils had nominated to participate in the program when the service agreements were signed, however one council was not able to participate in this particular year. Its funding was adjusted accordingly.

#### 3.4.1 Results of activities undertaken

Test purchasing activity	Number
Councils participating	55
Test purchase days	210
Test purchases undertaken	3,241
Sales resulting from test purchases	283
% of sales resulting in a purchase	8.7%

#### 3.4.2 Number of enforcement actions undertaken:

Enforcement actions	Number
Written warnings (including pending)	220
Fines issued (including pending)	112
Prosecutions (including pending)	4
<b>Total</b>	<b>336</b>

## 4 Further information

For further information please contact:

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