

Annual Report

Local Government Tobacco and E-cigarette Control Activities 2023-2024



As the peak body for the Victorian local government sector, the Municipal Association of Victoria (MAV) offers councils a one-stop shop of services and support to help them serve their communities.

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. It is based on figures reported by councils participating in the Tobacco and E-cigarette Education and Enforcement Program.



ACKNOWLEDGEMENT OF COUNTRY

We acknowledge the traditional custodians of the land on which we live. We recognise their continuing connection to land, waters and culture and pay our respects to their Elders past and present.

DISCLAIMER AND COPYRIGHT

This report has been prepared by the Municipal Association of Victoria (MAV). The MAV is the statutory peak body for local government in Victoria, representing all 79 municipalities within the state. © Copyright MAV

Table of Contents

1	Executive Summary	3
2	Summary of Activity	4
3	Introduction	5
4	Education and Enforcement Activities	7
5	Proactive Visits.....	9
6	Complaints to Council	17
7	Opt-in Programs.....	24

1 Executive Summary

This report has been prepared for the Department of Health as a requirement of the Local Government Tobacco 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 2023 to 30 June 2024. Many councils also undertook further tobacco and e-cigarette education and enforcement activities, based on local priorities.

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 2023-24.

11,667 proactive visits and 142 days of test purchasing undertaken in 2022-23

During the period 1 July 2023 to 30 June 2024, councils undertook 11,667 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 142 days of test purchasing, with 2,249 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 2023/24 was higher than the requirements set out in the service agreements for tobacco retailers, eating and drinking areas and outdoor locations. The CSTM Program was just shy of meeting targets and the 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 councils nominated to participate in the CSTM Program in the financial year 2023-24. As with previous years councils were permitted to undertake alternative education visits to meet CSTM targets as they transitioned back to normal program delivery following COVID-19 pandemic. Thirty-nine councils (78 per cent of participating councils) undertook at least one day of test purchasing and 18 councils undertook alternative education visits to meet some, or all, of their CSTM targets.

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:

- Councils are supportive of the introduction of a licencing scheme to help with identifying business owners who have breaches in their store and the growth in illicit tobacco trading
- Enforcement issues associated with minors being able to sell tobacco products
- Continued examples of exposure to second-hand smoke due to smoking and vaping being allowed in outdoor drinking areas
- Need for clear information, advice and procedures regarding federal and state statutory changes.

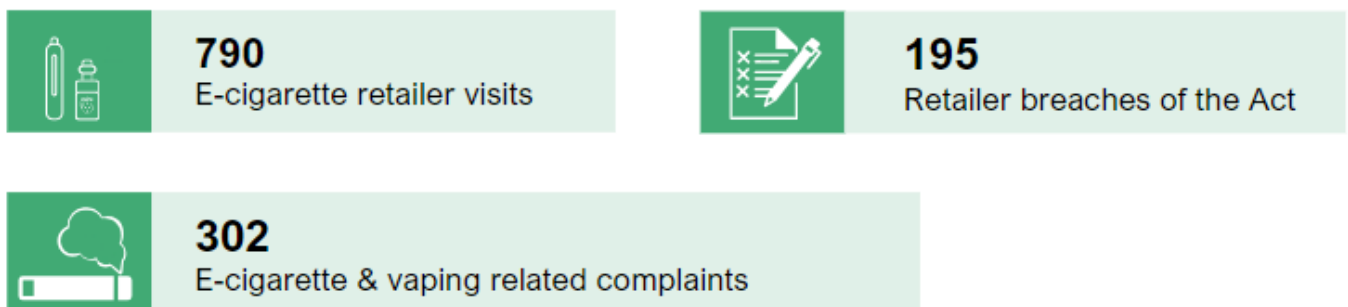
2 Summary of Activity

During the 2023/4 financial year councils undertook more than **11,667** inspections of retail, eating and drinking and outdoor areas, including:

Inspections & Enforcement



E-cigarettes & Vaping



3 Introduction

The partnership between the Department of Health 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, 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.

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 third and final 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.

4 Education and Enforcement Activities

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.

Councils who elected to participate in the CSTM Program need 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 councils	In response to complaints	Number total
Tobacco and e-cigarette retailers	2,958	342	3,300
Eating and drinking establishments	4,406	194	4,600
Outdoor locations	2,253	30	2,283
Enclosed workplaces	n/a	49	49
Cigarette sales to minors program (alternative education visits)	958	191	1,149
Prescribed Hospitals ¹	296	n/a	296
Total visits	10,871	806	11,677
Cigarette sales to minors program (actual test purchase days)	142	n/a	142 days
Cigarette sales to minors program (test purchase attempts)	2,249	n/a	2,249 attempts

1. Number of 20-minute block visits to hospitals

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

Setting	Total Visits	Target ¹	% completed
Tobacco and e-cigarette retailers	2,958	1,450	204%
Eating and drinking establishments	4,406	1,934	228%
Outdoor locations	2,253	1,113	202%
Cigarette sales to minors program ²	191	193	99%
Prescribed Hospitals ³	296	337	88%

1. Prescribed in each council's service agreement.

2. Number of test purchase days – 142 actual test purchase days and 958 alternative education visits in lieu of 49 test purchase days

5 Proactive Visits

Compliance and 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	2,061	71%
E-cigarette only retailers	36	1%
Tobacco and e-cigarette retailers	754	26%
Certified Specialist tobacconists	38	1%
Certified Specialist e-cigarette retailer	0	0%
TOTAL	2,902	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)	66	81	147
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)	79	13	92
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)	0	n/a	0
Specialist e-cigarette retailing premises displays a tobacco product	6(2AD)	1	n/a	1

Substantiated breaches	Section of Act	Tobacco product	E-cigarette product	Number total
Person carrying out a tobacco retailing business who displays tobacco products in an area other than the point of sale	6(2B)	2	16	18
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)	69	7	76
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)	27	64	91
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	20	13	33
Graphic warning not on price board	6(2AA)	37	1	38
TOTAL		302	195	497

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

Enforcement actions	Number total	% of total
Verbal warnings (including pending)	251	54%
Written warnings (including pending)	131	42%
Fines issued (including pending)	28	3%
Prosecutions (including pending)	5	1%
TOTAL	415	100%

Eating and Drinking Area Inspection Compliance

Table 6 - Eating and drinking area visits

*including vending machines

Locations inspected	Number total	% of total
Indoor dining and drinking areas	2,711	47%
Outdoor dining and drinking areas	2,785	48%
Food fairs	45	1%
Organised events other than food fairs	31	1%
Other	208	3%
TOTAL	5,780	1005

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 a single visit. 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 the Act	Number total	% of total
Person who smokes in an enclosed workplace	5A(1)	40	13%
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)	21	7%
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)	11	4%
Occupier of an outdoor dining and drinking area where smoking is prohibited and where a breach of Section 5C(1) occurs	5D(1)	1	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)	93	30%
A person smoking in an outdoor dining area	5EA	3	<1%
Occupier of an outdoor dining area where smoking is occurring	5EB	2	<1%
Occupier of an outdoor dining area who fails to display acceptable no smoking signs	5EC	13	4%

Substantiated breaches	Section of the Act	Number total	% of total
Occupier of a restaurant/cafe who fails to display acceptable no smoking signs	5F (1)	96	31%
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)	1	0%
Occupier of an enclosed licensed premises who fails to display acceptable no smoking signs	5R(1)	22	7%
Person who places or causes or permits the placement of a vending machine in any premises by a member of the public	13(1)	2	<1%
Person selling e-cigarettes from a vending machine	13(1A)	0	0%
TOTAL		310	100%

Table 8 - Enforcement actions for eating and drinking areas

Enforcement actions	Number total	% of total
Verbal warnings (including pending)	204	70%
Written warnings (including pending)	85	29%
Fines issued (including pending)	1	<1%
Prosecutions (including pending)	0	0
TOTAL	290	100%

Outdoor Area Inspection Compliance

Smoking and vaping bans are in place for designated outdoor locations. Each council determines the locations they will initiate visits to, based on local priorities.

Due to their nature, council visits and inspections of outdoor locations will often not include face-to-face meetings. Officers may check locations that have been the subject of complaints from the public or make general observations of whether smoking and vaping is occurring in particular locations. Councils can undertake meetings and inspections at complex locations, such as hospitals and other public buildings where smoking and vaping bans apply.

Table 9 - Council visits to outdoor locations by type

Location	Number total	% of total
Patrolled beaches	121	6%
Public swimming pools	155	7%
Outdoor children's playground equipment	792	36%
Outdoor skate park	80	4%
Underage sporting events	196	9%
Early Years services	400	18%
Schools	312	14%
Children's indoor play centres	17	1%
Public Hospitals	35	2%
Community Health Centres	16	1%
Victorian public premises (eg, courts, public hospitals, certain Victorian Government buildings)	66	3%
TOTAL	2,190	100%

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. Nonetheless, the table offers insight into the distribution of settings that were inspected.

Table 10 - 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)	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)	5	17%
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	7%
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)	3	10%
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%
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%

Substantiated breaches	Section of the Act	Number total	% 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%
Schools			
Person smoking in an outdoor area of school premises	5RD(1)	5	17%
Person smoking at or within 4 metres of any part of a pedestrian access point to school premises	5RD(2)	5	17%
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)	5	17%
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)	1	3%
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)	1	3%
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)	2	7%
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		29	100%

Table 11 - Enforcement actions for outdoor locations

Enforcement actions	Number total	% of total
Verbal warnings (including pending)	9	56%
Written warnings (including pending)	0	0
Fines issued (including pending)	7	44%
Prosecutions (including pending)	0	0%
TOTAL	16	100%

6 Complaints to 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 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 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 is guided by their local policies and priorities.

Complaints received by councils

Councils received 748 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 retailers ¹	343	46%
Tobacco retailers, e-cigarette retailers and specialists in response to sales to minors ²	123	16%
Eating and drinking areas	199	27%
Outdoor locations	34	5%
Enclosed workplaces	49	7%
TOTAL	748	100%

56% of complaints to councils about retailers were e-cigarette related (191 of 343)

90% of complaints to councils regarding sales to minors were e-cigarette related (111 of 123)

Visits in response to complaints

Councils reported undertaking 806 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 retailers, e-cigarette retailers and specialist tobacconists	342	42%
Tobacco retailers, e-cigarette retailers and specialists in response to sales to minors	191	24%
Eating and drinking areas	194	24%
Outdoor locations	30	4%
Enclosed Workplaces	49	6%
TOTAL	806	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 while responding to complaints

Councils identified a total of 325 breaches of the Tobacco Act 1987 while responding to complaints by the public. The majority of these were in retail settings (230 breaches, 71% of breaches identified).

Table 14 - Breaches as a result of complaints to councils by setting

Setting	Number total	% of total
Tobacco and e-cigarette retailers	230	71%
Eating and drinking establishments	81	25%
Outdoor locations	14	4%
TOTAL	325	100%

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 and outdoor locations).

Table 15a - Breaches as a result of complaints to council (retail settings)

Substantiated breaches as a result of complaints (Retail Settings)	Section of the Act	Number total	% of total
Displays a tobacco/e-cigarette advertisement at a retail outlet other than a specialist tobacconist or duty free shop	6(2AA)	88	27%
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)	14	4%
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)	3	1%
Specialist e-cigarette retailing premises displays a tobacco or e-cigarette advertisement of a product line of a tobacco product.	6(2AC)	0	0%
Specialist e-cigarette retailing premises displays a tobacco product	6(2AD)	1	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)	9	3%

Substantiated breaches as a result of complaints (Retail Settings)	Section of the Act	Number total	% of total
Person who sells cigarettes in a package containing less than 20 cigarettes (single cigarettes)	14	5	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)	18	6%
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)	7	2%
Certified Specialist Tobacconist or Certified specialist e-cigarette retailing premises that does not display certificate	15ZB	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	70	22%
Graphic warning not on price board	6(2AA)	15	5%
TOTAL		325	71%

Table 15b - 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 the Act	Number total	% of total
Person smoking in an enclosed workplace	5A(1)	9	3%
Occupier of an enclosed workplace where a breach of Section 5A(1) occurs	5B(1)	8	2%
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)	26	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)	10	3%
Occupier of an outdoor 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)	0	0%
Occupier of an outdoor drinking area where smoking is prohibited who fails to display acceptable no smoking signs	5E(1)	4	1%
A person smoking in an outdoor dining area	5EA	5	2%
Occupier of an outdoor dining area where smoking is occurring	5EB	7	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)	0	0%
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%
Occupier of an enclosed licensed premises who fails to display acceptable no smoking signs	5R(1)	1	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%
TOTAL		81	25%

Table 15c - Breaches as a result of complaints to council (outdoor locations)

Substantiated breaches as a result of complaints (Outdoor Locations)	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)	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)	5	2%
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)	1	<1%
A person who fails to comply with an inspector's direction to cease smoking at or within 10 metres of an outdoor skate park	5RG(4)	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)	4	1%
A person who fails to comply with an inspector's direction to cease smoking at or within 10 metres of an outdoor sporting venue during an organised underage sporting event, interval or practice session	5RI(4)	0	0%
Early Years' Service			
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%

Substantiated breaches as a result of complaints (Outdoor Locations)	Section of the Act	Number total	% 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 (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)	1	<1%
Failure to comply with an inspector's direction to cease smoking at or within 4 metres of a pedestrian access point to Victorian public premises	5RH(4)	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)	1	<1%
Failure to comply with an inspector's direction to cease smoking at or within 4 metres of a pedestrian access point to Victorian public premises	5RH(4)	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)	2	1%
Failure to comply with an inspector's direction to cease smoking at or within 4 metres of a pedestrian access point to Victorian public premises	5RH(4)	0	0%
TOTAL		14	4%

7 Opt-in Programs

Prescribed Hospitals and CSTM

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 Program (CSTM). The following details activities undertaken by councils who are participating in these programs.

Prescribed Public Hospital Education Program

The Prescribed Public Hospital Education 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 councils undertook hospital visits in the reporting period.

Table 16 - Hospital education activities

Hospital education visits activity	Number total
Councils participating	38
20 min block visits undertaken by councils	296
Unique number of education visits reported by councils	261
Number of meetings with hospital staff reported by councils	34

Table 17 - 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	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 18 - Number of enforcement actions undertaken

Enforcement actions	Number total
Verbal warnings	9
Written warnings (including pending)	1
Fines issued (including pending)	0
Prosecutions (including pending)	0
TOTAL	10

Council officers have noted a reduction in observed breaches at hospital entrances over the past few years. Discussions with hospital staff have revealed occasional challenges with hospital-wide no-smoking policies. It is important to note 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 Program (CSTM) funds councils to educate tobacco retailers, e-cigarette retailers and specialist tobacconists on their obligation not to sell cigarettes or e-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 of the 78 councils nominated to participate in the CTSM Program as part of the current service agreement.

As with previous years councils have been able to undertake a mix of actual test purchasing and alternative education visits in lieu of test purchasing as the program returns to normal delivery post the COVID-19 pandemic. Alternative activities include visits to tobacco and e-cigarette retailers, priority eating and drinking areas and outdoor areas where children and young people spend time.

Table 19 - CSTM summary (including actual test purchasing and alternative activities)

CSTM activity	Number total
Councils nominated to participate in CSTM	50
Test purchase days conducted	142
Percentage of test purchases resulting in a sale	9%
Number of enforcement actions (test purchasing)	287
Alternative education visits*	958
Number of enforcement actions (alternative visits)	94

* Undertaken in lieu of 49 test purchase days

Test Purchasing

Table 20 - Results of test purchasing activities undertaken

Actual test purchasing	Number total
Test purchase days	142
Test purchases undertaken	2,249
Sales resulting from test purchases	205
% of test purchases resulting in a sale	9%

Table 21 - Test purchases by setting

Test purchases by setting	Number total	% of total
Tobacco retailers	1,680	75%
Tobacco and e-cigarette retailers	543	24%
Specialist retailers	26	1%
TOTAL	2,249	100%

Table 22 - Test purchasing substantiated breaches

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)	200
Person who sells cigarettes in a package containing less than 20 cigarettes (single cigarettes), s.14	5
TOTAL	205

Table 23 - Test purchasing enforcement actions

Enforcement actions	Number total
Verbal warnings	67
Written warnings (including pending)	117
Fines issued (including pending)	98
Prosecutions (including pending)	5
TOTAL	287

CSTM Alternative Education Activities

Where a 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 is decreasing as the program returns to normal operations.

Table 24 - Alternative education activities

Activities	Number total
Education visits undertaken in lieu of test purchasing	958

Table 25 - Alternative education activities - types of businesses and settings visited

Setting	Number total	% of total
Tobacco only retailer	350	37%
E-cigarette only retailer	4	<1%
Tobacco & e-cigarette retailer	33	3%
Eating and drinking areas	258	27%
Outdoor locations	313	33%
TOTAL	958	100%

Table 26 - Alternative education activities – enforcement actions undertaken

Action	Retailer settings	Other settings	Number total	% of total
Verbal Warnings	63	1	64	68%
Written warnings	7	0	7	8%
Fines issued	3	20	23	24%
Prosecutions	0	0	0	0%
TOTAL	73	21	94	100%

Municipal Association of Victoria
Level 5, 1 Nicholson Street, East Melbourne VIC 3002
PO Box 24131, 15 Southern Cross Lane, Melbourne VIC 3000
Telephone: 03 9667 5555 Email: inquiries@mav.asn.au
www.mav.asn.au