

Local Government Response to Proposed Outdoor Smoking Bans

**Submission**

Municipal Association of Victoria

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“Local Government Response to Proposed Outdoor Smoking Bans Submission” has been prepared by the Municipal Association of Victoria (MAV) for discussion with member councils.

The MAV is the statutory peak body for local government in Victoria, representing all 79 municipalities. 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 submission provides a state-wide local government perspective about the proposed introduction of new outdoor smoking bans which were announced earlier this year by the Minister for Health for locations where children are concentrated, in particular playgrounds, public swimming pools and baths, skate parks and children’s sporting events.

First, we reiterate our support for the introduction of new state-wide laws for additional designated outdoor areas, noting that this will be an improvement on the current situation whereby there are no state laws relating to outdoor areas apart from the limited bans on outdoor dining areas which are considered in certain situations to be “enclosed”, and between the flags on patrolled beaches.

We also congratulate the Minister and the Department for providing the opportunity for councils and the community to provide detailed comment about the proposals.

Following extensive council input to this consultative process, a number of significant issues have emerged which have led us to conclude that there are operational issues which can be worked through in respect of developing new laws to ban smoking in children’s playgrounds, skate parks and public swimming pools, but that one size is not going to fit all with respect to children’s sporting events.

**We consider that achieving reductions in the incidence of smoking at children’s sporting events will be better achieved through non-regulatory measures which support communities and sporting organisations than via complicated state-wide laws.**

These measures include the Department of Health working with councils to develop a model law that could be amended by councils to take account of local conditions, to ensure a level of consistency across the state, and working with sporting event organisers to promote the importance of not smoking, including continuing to work with Quit Victoria to promote the resource “Going smokefree outdoors – a guide for sporting clubs”.

Our suggestion for a local approach to be taken with sporting grounds is consistent with our previous recommendations to the Minister for Health in support of smoking bans. In 2011, following extensive consultations with councils in the development of the recommendations, we had suggested that children’s playgrounds and alfresco dining areas were worthy of immediate new laws to bring Victoria into line with other states and provide better consistency than could be achieved through ad hoc local laws, but that further investigation was required in respect of sporting grounds and other areas.

Now that investigation has been undertaken, we have concluded that state-wide laws for children’s sporting events may work against the very reduction in smoking they intend to achieve.

We also reiterate the MAV’s support for state-wide bans for alfresco dining areas to be included in the suite of measures aimed at specific outdoor public places.

# 2 Introduction

The Minister for Health announced earlier this year that the Victorian Government would be introducing state-wide bans on a number of other outdoor locations, focusing on locations where children are concentrated, in particular playgrounds, public swimming pools and baths, skate parks and children’s sporting events. These proposals build on the smoking bans that were introduced for patrolled beaches in 2012.

Since this announcement, the Department of Health has undertaken a consultation process with councils and the wider community to assist it develop the legislation and the measures that wuld be necessary to provide to support their introduction.

Councils in Victoria have provided extensive input to the survey initiated by the Department of Health, with 71 of 79 councils providing detailed responses. Responses were due to be provided by 17 May 2013.

Councils were also asked to provide a designated officer for the Department of Health to liaise with about the development of the bans, as they are likely to impact a range of areas within councils, including public health, local laws and infrastructure.

The Department of Health has now collated the feedback from councils and is currently liaising with the MAV about the issues and concerned raised.

# 3 Issues requiring consideration

Issues the MAV would like to draw to the attention of the Department of Health are set out below.

**Playgrounds:**

* No substantive problems for councils emerged about how the smoking bans for playgrounds will be drafted into law. Council comments about where the 10 metre boundary should apply will assist the legislative drafters be clearer about what is intended by the new law that is being developed
* Erection of signage is a key practical issue which will need to be worked through with the Department
* There will need to be provision of funding assistance to councils (via the service agreements administered by the MAV on behalf of the Department of Health) to assist the introduction of the new bans
* A largely self-enforcement approach by the community is recommended, with signage being a key driver in giving people at the playground the ability to point out to smokers they need to cease smoking in the designated area
* There will be some enforcement implications for councils, however, to respond to complaints, and possibly for local laws officers to also be authorised to enforce the provisions of the Tobacco Act in addition to environmental health officers. It would be helpful for the Department of Health to provide training and communications materials for councils to use to educate these council officers about the Tobacco Act
* There is also a need for education and awareness materials to be developed by the Department of Health for councils to disseminate to ensure consistency of message across the state.

**Skate parks:**

* Comments applicable to playgrounds also apply to skate parks (see above)
* A number of councils raised whether it is worth having smoking bans in areas likely to be dominated by children under 18 without adult supervision, given that minors cannot be fined for smoking tobacco products under the Tobacco Act 1987. Other councils, however, identified there would continue to be benefits from having signage in place at these locations and the capacity for enforcement officers to hand out information material where appropriate.

**Public swimming pools and sea baths**

* Comments applicable to playgrounds also apply (see above).

**Children’s sporting events:**

* Signficant issues with defining a ban in legislation have emerged. These include:
* Problems with defining boundaries (eg, overlaps with other facilities such carparks and general picnic areas, 10 metres is relatively easy for people to self-assess, however 20 metres is a harder distance to judge unless there are boundary signs)
* Problems defining a children’s sporting event (eg, multiple events being held at same location at the same time could mean one oval is to be smoke-free because children are playing sport, while the neighbouring oval (less than 20 metres away) is an event for over 18 year olds. It is even more complicated when the events involve participation of under 18 year olds playing up in over adult events
* Messaging implications if the law has to provide an exemption for people smoking in their cars (assuming no children are present) within the boundary of the ban
* Problems in determining when the laws are active and when they are not (eg, does the 30 minute rule come into effect before an event start-time or when training commences, and how would these variances would be defined in law)
* Complicated laws will require complicated signage if people need to be advised about the detail of the law and that penalties will appy. If there are lots of caveats and explanations required to be provided in the signs, this is likely to dilute the no-smoking message, and could give rise to mockery and in turn a community backlash aginst the bans
* Other practical issues include:
* likelihood of increased butt litter around the boundary mark, and need for re-siting of rubbish bins
* As many children’s sporting events are held on weekends throughout the year, there is also going to be an increase in out-of-hours and weekend work requirement of enforcement officers, even if a self-regulatory approach is encouraged. Given the concentration of people at many sporting events (as opposed to playgrounds), councils are highly likely to need to respond to complaints on weekends. The detailed nature of the proposed ban is also highly likely to result in community complaints that will require investigation.

While a number of councils have proposed a total smoking ban for sporting grounds all the time, to make it simpler to define the “when”, the problems of defining boundaries for all sporting grounds across the state remain.

# 4 Conclusions & Recommendations

In summary, our recommendations about the proposed smoking bans for new outdoor areas are:

For playgrounds, swimmng pools and skate parks:

* Assistance and provision of signage will be required to be provided to all councils across the state to be erected at each location where the law will apply
* An extensive public awareness campaign will be very important to supporting communities take a self-regulatory approach to enforcing the new laws
* Funding be provided for training of local laws officers and other non-EHO staff approved to be authorised to enforce the Tobacco Act provisions where appropriate
* An implementation timetable that allows time for councils to erect signage will be important, noting that there will be considerable more complexity involved with this task than was required to accompany the introduction of smoking bans between the flags at patrolled beaches.

For children’s sporting events:

* That state-wide laws are not proceeded with, but they are replaced by a suite of measures which support self-regulatory approaches, including a strong communication campaign, provision of signage for sporting grounds encouraging people not to smoke around children, and provision of education materials being provided to sporting assocations
* We note that given the wide diversity of sporting facilities across the state, their regulation may best be dealt with through local laws, rather than state laws. We would encourage the Department of Health to work with councils to develop a model law that could be amended by councils to take account of local conditions
* There is also considerable potential, with most sporting events involving event organisers, for effective communication materials to be available to promote the importance of not smoking, including continuing to work with Quit Victoria to promote the resource “Going smokefree outdoors – a guide for sporting clubs”.

Finally, we reiterate the MAV’s support for state-wide bans for alfresco dining areas to be included in the suite of measures aimed at specific outdoor public places.

# 5 Further information

Please contact Rosemary Hancock at the MAV, telephone 9667 5520 or email rhancock@mav.asn.au