



**Local Government Tobacco and E-cigarette
Control Activities
1 July 2022 to 30 June 2023**

Final report

December 2023

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

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

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1. Executive Summary

This report has been prepared for the Department of Health as a requirement of the 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 2022 to 30 June 2023. 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 participate 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 delivery¹. 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.

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

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

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 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.

2. 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 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.

3. Education and 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 councils	In 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
Cigarette sales to minors program (alternative education visits)	1,481	84	1,565
Prescribed Hospitals ¹	302	n/a	302
Total visits	10,434	570	11,007
Cigarette sales to minors program (actual test purchase days)	125	n/a	125
Cigarette sales to minors program (test purchase attempts)	1,676	n/a	1,676

1. Number of 20-minute block visits to hospitals

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

	Total Visits	Target¹	% 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%
Cigarette sales to minors 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

4. 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	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 retailer	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 actions	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	5,001	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 the 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%
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%

Substantiated breaches	Section of the Act	Number total	% of total
Occupier of a bingo area or centre who fails to display acceptable no smoking signs	5H(1)	1	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)	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 actions	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

Location	Number total	% of total
Patrolled beaches	165	8%
Public swimming pools	144	7%
Outdoor children's playground equipment	482	24%
Outdoor skate park	109	5%
Underage sporting events	126	6%
Early Years services	332	16%
Schools	435	21%
Children's indoor play centres	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	98%

Note: this total is slightly lower 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 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%

Substantiated breaches	Section of the 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(1)	7	37%
A person who fails to comply with an inspector's direction to cease smoking at or within 10 metres of outdoor children's playground equipment	5RE(4)	0	0%
Outdoor skate park			
A person smokes at or within 10 metres of an outdoor skate park	5RG(1)	0	0%
A person who fails to comply with an inspector's direction to cease smoking at or within 10 metres of an outdoor skate park	5RG(4)	0	0%
Underage sporting 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%
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%
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	26%
Person smoking at or within 4 metres of any part of a pedestrian access point to school premises	5RD(2)	5	26%
Failure to comply with an inspector's direction to cease smoking in an outdoor area of, or at or within 4 metres of any part of a pedestrian access point to, school premises	5RD(5)	0	0%
Children's indoor play centres			
Person smoking at or within 4 metres of any part of a pedestrian access point to a children's indoor play centre	5RF(1)	0	0%
Failure to comply with an inspector's direction to cease smoking at or within 4 metres of any part of a pedestrian access point to a children's indoor play centre	5RF(4)	0	0%

Substantiated breaches	Section of the Act	Number Total	% of total
Public Hospital			
Person smoking at or within 4 metres of any part of a pedestrian access point to Victorian public premises	5RH(1)	1	5%
Failure to comply with an inspector's direction to cease smoking at or within 4 metres of a pedestrian access point to Victorian public premises	5RH(4)	0	0%
Community Health Centre			
Person smoking at or within 4 metres of any part of a pedestrian access point to Victorian public premises	5RH(1)	0	0%
Failure to comply with an inspector's direction to cease smoking at or within 4 metres of a pedestrian access point to Victorian public premises	5RH(4)	0	0%
Public Premises			
Person smoking at or within 4 metres of any part of a pedestrian access point to Victorian public premises	5RH(1)	0	0%
Failure to comply with an inspector's direction to cease smoking at or within 4 metres of a pedestrian access point to Victorian public premises	5RH(4)	0	0%
TOTAL		19	100%

Table 11 - Enforcement actions for outdoor locations

Enforcement actions	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%

5. 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 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 404 complaints from the public covering retail settings, eating and drinking areas and outdoor locations.

Table 12 - Number of complaints received by councils

Complaints received	Number total	% of total
Tobacco/E-cigarette retailers and specialist tobacconists/e-cigarette retailers ¹	318	53%
Cigarette sales to minors ²	119	20%
Eating and drinking areas	109	18%
Outdoor locations	17	3%
Enclosed workplaces	36	6%
TOTAL	404	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 565 visits to retailers, eating and drinking areas and outdoor locations in response to the complaints received.

Table 13 - Visits in response to complaints

Visits in response to complaints	Number Total	% of total
Tobacco retailers, e-cigarette retailers and specialist tobacconists	322	57%
Tobacco retailers, e-cigarette retailers and specialists in response to sales to minors *	78	14%
Eating and drinking areas	110	19%
Outdoor locations	20	4%
Enclosed Workplaces	35	6%
TOTAL	565	100%

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).

Table 14a - 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)	96	30%
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)	21	7%
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)	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	0%
Specialist e-cigarette retailing premises displays a tobacco product	6(2AD)	0	0%

Substantiated breaches as a result of complaints (Retail Settings)	Section of the Act	Number total	% of total
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)	13	4%
Person who sells cigarettes in a package containing less than 20 cigarettes (single 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%
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	68	21%
Graphic warning not on price board	6(2AA)	9	3%
TOTAL		246	76%

Table 14b - Breaches as a result of complaints to council (eEating and dDrinking aAreas)

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)	6	2%
Occupier of an enclosed workplace where a breach of Section 5A(1) occurs	5B(1)	6	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)	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 drinking area where smoking is prohibited where a breach of Section 5C(1) occurs	5D(1)	3	1%
Occupier of an outdoor drinking area where smoking is prohibited where a breach of Section 5C(1A) occurs	5D(3)	0	0%
Occupier of an outdoor 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%
Occupier of an outdoor dining area where smoking is occurring	5EB	6	2%

Substantiated breaches as a result of complaints (Eating and Drinking Areas)	Section of the Act	Number total	% of total
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 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		60	19%

Table 14c - 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)	11	3%
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)	4	1%
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			

Substantiated breaches as a result of complaints (Outdoor Locations)	Section of the Act	Number total	% of total
A person smokes at or within 10 metres of an outdoor skate park	5RG(1)	1	0%
A person who fails to comply with an inspector's direction to cease smoking at or within 10 metres of an outdoor skate park	5RG(4)	0	0%
Underage Sporting Event			
A person smokes at or within 10 metres of an outdoor sporting venue during an organised underage sporting event, interval or practice session	5RI(1)	0	0%
A person who fails to comply with an inspector's direction to cease smoking at or within 10 metres of an outdoor sporting venue during an organised underage sporting event, interval or practice session	5RI(4)	0	0%
Early Years' Service			
Person smoking in an outdoor area of an education and care service premises or children's service premises (child care centre or kindergarten)	5RB(1)	0	0%
Person smoking at or within 4 metres of any part of a pedestrian access point to education and care service premises or children's service premises (child care centre or kindergarten)	5RB(2)	0	0%
Failure to comply with an inspector's direction to cease smoking in an outdoor area of, or at or within 4 metres of any part of, a pedestrian access point to education and care service premises or children's service premises (child care centre or kindergarten)	5RB(5)	0	0%
Schools			
Person smoking in an outdoor area of school premises	5RD(1)	0	0%
Person smoking at or within 4 metres of any part of a pedestrian access point to school premises	5RD(2)	1	0%
Failure to comply with an inspector's direction to cease smoking in an outdoor area of, or at or within 4 metres of any part of a pedestrian access point to, school premises	5RD(5)	0	0%
Indoor Play centres			
Person smoking at or within 4 metres of any part of a pedestrian access point to a children's indoor play centre	5RF(1)	0	0%
Failure to comply with an inspector's direction to cease smoking at or within 4 metres of any part of a pedestrian access point to a children's indoor play centre	5RF(4)	0	0%
Public Hospitals			
Person smoking at or within 4 metres of any part of a pedestrian access point to Victorian public premises	5RH(1)	0	0%
Failure to comply with an inspector's direction to cease smoking at or within 4 metres of a pedestrian access point to Victorian public premises	5RH(4)	0	0%
Community Health Centres			

Substantiated breaches as a result of complaints (Outdoor Locations)	Section of the Act	Number total	% of total
Person smoking at or within 4 metres of any part of a pedestrian access point to Victorian public premises	5RH(1)	0	0%
Failure to comply with an inspector's direction to cease smoking at or within 4 metres of a pedestrian access point to Victorian public premises	5RH(4)	0	0%
Public Premises			
Person smoking at or within 4 metres of any part of a pedestrian access point to Victorian public premises	5RH(1)	0	0%
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		17	5%

6. Opt-in Programs (Prescribed Hospitals, CSTM and 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 meetings 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

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 17 - Number of enforcement actions undertaken

Enforcement actions	Number total
Verbal warnings	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 days of test purchasing, their funding is reduced accordingly.

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

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. 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%
Alternative education visits	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 purchase 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 purchases by 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

Breach	Number total
Person who sells a tobacco or e-cigarette product to a person under 18 years (includes a manager unless prevention measures are taken)	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 actions	Number total
Verbal warnings	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 retailer	526	43%
E-cigarette only retailer	9	1%
Tobacco & E-cigarette retailer	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

Action	Retailer settings	Other settings	Number total
Verbal Warnings	25	7	32
Written warnings	5	1	6
Fines issued	1	26	27
Prosecutions	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.

7. Further Information

For further information please contact:

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