

**Submission  
No 73**

## **INQUIRY INTO VAPING AND TOBACCO CONTROLS**

**Name:** Municipal Association of Victoria

**Date Received:** 28 March 2024



**Victorian Parliament's Public Accounts  
and Estimates Committee  
Inquiry into Vaping and Tobacco  
Controls**

**Submission  
March 2024**

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The MAV is the statutory peak body for local government in Victoria.

The MAV would also like to acknowledge the contribution of the councils who provided their comments and advice to inform this submission. While this submission aims to capture the perspectives of local government in Victoria, it does not purport to reflect the exact views of individual councils.

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# 1. Summary and recommendations

The MAV welcomes the opportunity to contribute to the Victorian Parliament's Public Accounts and Estimate Committee inquiry into vaping and tobacco controls in Victoria.

Victorian local government has a long history of positively impacting public health through community engagement, program delivery, regulatory activity and public health and wellbeing planning. Councils have contributed significantly to tobacco and e-cigarette education and enforcement across the state for many years.

While most Australians do not smoke or vape, the rapid increase in e-cigarette usage, and growing rates of tobacco usage among young people has been noted as an issue of concern by many councils. Local government is keen for local communities to be places where children and young people grow and thrive without addiction, dependency and the burden of preventable disease.

We welcome the Commonwealth Government's commitment to addressing this serious public health issue through the [National Tobacco Strategy 2023-2030](#) and the announcement of e-cigarette [reforms](#) currently being rolled out in stages through 2024.

Local government is also eagerly awaiting Commonwealth legislation being introduced to ban the sale of e-cigarettes. We will be keen to work with the Victorian Government about how new reforms will be supported at the state level to ensure any roles for local government are appropriate and achievable.

This submission responds to the Committee's Terms of Reference with a particular focus on regulatory and administrative frameworks that will assist minimise tobacco and e-cigarette harm in local communities. Our recommendations draw on our specific experience in administering the tobacco and e-cigarette education and enforcement program over more than 20 years, and councils' decades long involvement in working with local communities on preventative health initiatives.

Our recommendations include the Victorian Government:

- Advocating for a mandatory national tobacco industry product stewardship scheme to help reduce the impact tobacco products are having on the environment and waste stream
- Establishing a self funding positive retail and wholesale licensing scheme for tobacco and tobacco related products
- Developing an online tobacco retailer education platform that includes an online questionnaire to assist retailers to support their staff understand their responsibilities under the Tobacco Act 1987
- Expanding the scope of smoke and vape-free regulations to encompass all outdoor eating and drinking areas at all times, irrespective of food service
- Amending the Tobacco Act 1987 to ensure only individuals aged 18 and older can sell tobacco products to align with regulations for other age-restricted items and approaches of other jurisdictions in Australia
- Regulating and initiating education programs for sale and use of non-tobacco shisha and hookah pipes similar to other smoking products
- Supporting development of a protocol being developed between all levels of government to share information effectively to streamline and enhance current enforcement activities

## 2. Background

The Minister for Health is responsible for overseeing the implementation of the Tobacco Act 1987. Councils role in controlling use of tobacco products ranges from instigating health promotion initiatives identified through their Municipal Public Health and Wellbeing Plans and developing local laws for smoking controls in public places where this has been identified as a significant issue by local communities. They are also authorised to enforce provisions of the Victorian Tobacco Act 1987. Environmental health officers appointed under the Public Health and Wellbeing Act 2008 are automatically authorised to enforce provisions of the Tobacco Act. Additionally, councils have the flexibility to request authorisation from the Secretary of the Department of Health for other officers, such as local laws officers.

Most councils are also involved in the Local Government Tobacco Education and Enforcement Program funded by the Department of Health. This program has been running for over 20 years and provides funding to councils to undertake education and enforcement activities with tobacco and e-cigarette retailers, and in locations where smoking and vaping bans apply, such as eating and drinking establishments and specified outdoor areas.

Council education and enforcement activities mostly relate to checking that retail signage, displays and sales meet regulatory requirements. Councils can also enforce no-smoking bans when they consider this is an appropriate response. Specifically, councils enforce regulations related to the display and advertising of e-cigarettes, regardless of nicotine content. They also respond to community complaints related to signage, display and sale of tobacco products. In general, councils tend to prefer an educative approach in the first instance. They will undertake enforcement activity where repeated and/or blatant breaches of the Tobacco Act 1987 occur.

In the 2022-23 financial year the Department of Health funded program enabled councils to undertake over 11,000 visits to a variety of business premises, enclosed workplaces and outdoor locations. Fifty-one councils also participated in the Cigarette Sales to Minors test purchasing program. These councils undertook 125 days of test purchasing, with 1,676 test purchase attempts undertaken (with 14% resulting in a sale).

Councils do not have jurisdiction however, to enforce matters which come under the Drugs, Poisons and Controlled Substances Act 1981. In this regard, councils make their own risk assessments about staff safety when they are inspecting premises where illicit tobacco products may be being sold. Channels for councils to notify enforcement authorities about illicit products include the ATO, Crime Stoppers, local police and the Department of Health.

A number of councils have engaged in joint operations with local police where risk assessments at the council level deem these actions appropriate to the skills and training of the relevant council officers.

## **VICPOL & COUNCIL JOINT OPERATION CASE STUDY**

### **Metropolitan City Council E-cigarette Retailers Project**

A large outer metropolitan council's environmental health team saw an increase in tobacco/e-cigarette complaints and a decrease in compliance from tobacco/e-cigarette retailers, particularly with the display of e-cigarettes in 2021-22.

With the help of Victoria Police, the council conducted a joint operation to crack down on the sale of e-cigarettes to minors and other breaches of the Tobacco Act 1987 and Drugs, Poisons and Controlled Substances Act 1981.

The investigation involved a series of meetings and joint inspections at retail premises, and follow-up work such as education and outreach to schools and non-compliant retailers.

As a result of the operation, council officers issued official warnings and infringement notices for the display of e-cigarette products and drug paraphernalia. Victoria Police issued cautions and warnings to retailers who had received underage sales complaints.

### 3. MAV Comments

Set out below are MAV's comments to Terms of Reference 1 and 3.

#### **Terms of Reference 1 - Trends in vaping and tobacco use and the associated financial, health, social and environmental impacts on the Victorian community**

There are significant health and social impacts arising from vaping and tobacco use in the community which have been well documented by researchers and agencies such as the Cancer Council Victoria. Both Commonwealth and Victorian Governments have identified usage as a significant cause for concern in the [National Tobacco Strategy 2023-2030](#), and the [Victorian Public Health and Wellbeing Plan 2023-27](#). Tobacco and e-cigarette use contribute to avoidable burden of disease and injury, with significant financial implications to the entire community.

There are also significant environmental impacts of from the production of tobacco products and their disposal. E-cigarette waste is of particular concern – it does not biodegrade, even under extreme conditions. When e-cigarettes are discarded on the street, they eventually break down into microplastics and chemicals that flow into stormwater drains, polluting waterways and harming wildlife. Discarded cigarette butts and e-cigarettes pose many issues for council waste and litter management.

For many years, local government has been involved in activities to reduce and remove cigarette waste from the local environment and to educate the public on the safe disposal of cigarette butts. Even with this effort, cigarette butts are the single most reported litter item across Australia. The World Wildlife Fund (WWF) estimates up to 8.9 billion cigarette butts are littered in Australia every year. *“Laid end to end, these butts would stretch around Australia’s entire coastline more than six times”* ([WWF 2021](#)). Discarded butts consistently represent around 20% of all recorded litter items in Clean Up Australia’s Rubbish Reports, and cost millions of dollars to clean up each year.

Single use and re-useable e-cigarettes contain plastic, nicotine salts, heavy metals, lead, mercury, and flammable lithium-ion batteries. They are an environmental triple threat - considered e-waste, hazardous waste and plastic waste, making their safe disposal extremely difficult. Even if the batteries are removed the hazardous chemicals prevent them from being recycled through normal recycling services.

There are growing calls from a range of stakeholders, including councils and environmental groups, for the establishment of a mandatory product stewardship scheme for tobacco products. The World Wildlife Fund [estimates](#) such a scheme could reduce cigarette butt pollution by more than 50 percent. There are also calls for banning the use of cigarette filters as they have negligible health benefits for smokers and are the major source of cigarette litter. WWF’s report, [Ending cigarette butt litter \(2021\)](#), outlines programs and initiatives at the national and international level and potential solutions to cigarette butt litter.

At present, there are no laws at the national or state level that regulate how e-cigarettes should be disposed of when they reach the end of their lifespan. It is also yet to be seen if pharmacies will accept unwanted e-cigarette products through the Return of Unwanted Medicines scheme.

In the absence of identified responsibilities, some councils are setting up or trialling dedicated e-cigarette recycling programs to address the environmental and safety issues associated with e-cigarette litter. The costs of these programs are borne by the community.

## WASTE MANAGEMENT CASE STUDY

### Inner metropolitan council vape recycling trial

In response to the growing prevalence of e-cigarettes in the community, and the need for improved waste management approaches for these products, an inner metropolitan council is trialling a six-month vape recycling program to address the environmental impact of discarded vapes.

The initiative underscores the importance of responsible disposal practices to prevent environmental damage and safeguard the well-being of wildlife and pets

To facilitate safe disposal, residents can drop off vapes and associated items at the Town Hall. Through specialised recycling programs, council aims to mitigate the negative impact of vaping-related waste on the environment and promote a circular economy.

### MAV Recommendation:

For the Victorian Government to advocate for a mandatory national Tobacco Industry Product Stewardship Scheme to help reduce the impact tobacco products are having on the environment and waste stream, with the following principles:

- Full funding of the scheme by the entities involved in manufacturing, importing, selling, and purchasing tobacco products
- Mandatory establishment of collection points for tobacco waste at all retailers of tobacco products
- Clearly defined reporting requirements, including the number of tobacco products sold and the number collected through the scheme
- Transparent procedures for handling tobacco products at the end of their life cycle.

## Terms of Reference 3 – The adequacy of the State and Commonwealth legislation, regulatory and administrative frameworks to minimise harm from illicit tobacco and e-cigarettes compared to other Australian and international jurisdictions

The MAV welcomed the Commonwealth's e-cigarette reforms [announced](#) in May 2023. The critical issue is how these announcements will be enacted and delivered. At the time of preparation of this submission legislation has only recently been [introduced](#) into the Australian Parliament (21 March), with the outcome and operational implementation details still to be confirmed.

Due to the criminal nature of activities around illicit tobacco and e-cigarettes, it is appropriate that Victoria Police lead enforcement of illicit products in Victoria. The current arrangements do allow for councils to share local knowledge about traders and premises where illicit tobacco is being distributed and/or sold. More consistent statewide approaches to reporting illicit tobacco and e-cigarettes would be welcomed by councils.

We also recommend a number of changes to regulatory and management frameworks to reduce tobacco and e-cigarette harms and improve the health and wellbeing of our community. These are identified below.

### 1. Tobacco Licensing Scheme

Unlike many other states and territories, Victoria does not have a tobacco licensing or registration scheme in place for tobacco retailers. Although a licensing scheme will not solve all problems, it would enable clearer accountabilities on retailers and enhance capacity to enforce non-compliance and illicit sales. Such a scheme serves as a deterrent against non-compliance with tobacco control laws, imposing penalties such as license restrictions or revocation. Additionally, it could generate funds to support crucial education, monitoring, and enforcement initiatives aimed at mitigating tobacco-related harms.

The scheme should be:

- administered by the a state government department
- ensure only fit and proper people are able to sell e-cigarettes and tobacco products
- requirements to comply with legislation and regulations related to tobacco products and e-cigarettes
- significant penalties for non-compliance and non-registration
- have a publicly accessible database of licenced retail premises.

What is happening in other states?

- Queensland has passed legislation to establish a positive tobacco [licensing scheme](#), set to commence on 1 September 2024
- In South Australia, a person must hold a Retail Tobacco and E-Cigarette Merchant's Licence under Part 6 of the [Tobacco and E-Cigarette Products Act 1997](#)
- Western Australia has a [public register](#) of tobacco seller [licences](#)
- NSW has a [registration scheme](#) for sellers of tobacco, non-smoking products and non-nicotine e-cigarettes

### MAV Recommendation:

- The Victorian Government to establish a self funding positive retail and wholesale licensing scheme to monitor the sale of tobacco and tobacco related products (including shisha and hookah pipes) and assist enforcement of illegal sales and other breaches of the Tobacco Act 1987.

## 2. Employee Training and Proof of Training

In Victoria managers of tobacco retail stores are responsible for ensuring that anyone permitted to sell tobacco products does so responsibly and in accordance with the law. Managers can be fined if an employee sells tobacco products to a person under 18 years of age. The training must cover each of these topics:

- That employees must not sell tobacco products to persons under 18 for any reason
- That employees must ask for and see identification (ID) before selling a tobacco product to a person who might be under 18
- That if employees sell tobacco products to a person under 18, they are committing an offence and may be fined.

Managers must have written confirmation from employees that they have received this training. The Department of Health's [Retailer Guide](#) includes a training acknowledgement form that can be signed by the employee after receiving training from their manager.

Councils have encountered challenges with current training resources and documentation, which can impede enforcement efforts. For instance:

- Councils often have to modify existing resources to cater to the diverse needs of communities and retailers
- Relying on paper-based forms as proof of training is unsatisfactory. Instances have arisen where managers were unable to produce proof of training during enforcement interviews, only to present these at a later date. This impacts council ability to undertake enforcement actions and issue fines or undertake prosecutions where this is deemed appropriate.

Councils would welcome a more reliable system of training and an accurate method for documenting proof of training. This could be part of compliance with a retail licence. Proof of training could be accessible to the Department overseeing a licensing scheme and provided to council authorised officers where required upon request. Part of a license fee could be used to resource the training platform.

### What is happening in other states?

- NSW Health has developed [online training](#) to support NSW tobacco retailers and staff to comply with tobacco retailing laws when selling tobacco, non-tobacco smoking products, smoking accessories, e-cigarettes and e-cigarette accessories.
- Tasmanian Director of Public Health has developed [online training](#) to support tobacco retailers and staff to comply with tobacco retailing laws when selling tobacco products, non-tobacco smoking products, e-cigarettes and e-cigarette accessories.
- Queensland has an [Employee Information booklet and training acknowledgment form](#) that must be signed and kept by the employee

### MAV Recommendation:

- The Victorian Government develop an online tobacco retailer education platform that includes an online questionnaire to ensure staff understand their responsibilities under the Tobacco Act 1987.

### 3. Extension of Outdoor Eating and Drinking Bans

Currently under the Tobacco Act 1987 smoking tobacco products and vaping is prohibited in outdoor drinking areas when food is being served or when the area is adjacent to an eating area (subject to certain conditions). Smoking and vaping are permitted in these areas when food is not being served. This can be confusing for proprietors, staff, patrons and the public, and often leads to a lack of enforcement by businesses.

Extending the existing regulations to cover all outdoor areas where food and/or drinks are served and consumed would effectively prevent exposure to second-hand smoke and e-cigarette aerosol, reduce confusion regarding regulations for the community, businesses, and patrons, streamline enforcement efforts, and contribute to the normalisation of “smoke and vape free” environments.

What is happening in other states?

- In Queensland [smoking bans apply](#) to enclosed and outdoor areas of all places where food or drink is provided by a business or organisation
- In the Australian Capital Territory smoking is banned in public outdoor eating and drinking areas under the [Smoke-Free Public Place Act 2003](#)

#### MAV Recommendation:

- The Victorian Government expands the scope of smoke and vape-free regulations to encompass all outdoor eating and drinking areas at all times, irrespective of food service.

### 4. Prohibiting the Sale of Tobacco Products by Minors

Councils have been observing incidences where individuals under 18 years of age have been selling e-cigarettes and tobacco products to minors. The Tobacco Act 1987 does not prohibit this practice.

Young people under the age of 18 are in a critical phase of cognitive and decision-making development. Their brains are still developing, particularly in areas related to decision making, risk assessment and impulse control. This can make it challenging for some to fully comprehend the consequences of their actions. Adding to this, teens can be susceptible to peer pressure and external influences, meaning young people can sometimes prioritise social acceptance over prudent decision-making.

The ability of young people to be able to sell e-cigarettes and tobacco not only raises concerns about the responsible sale of age-restricted products but also deviates from societal norms and expectations regarding legal and responsible sales practices. As an example, minors are already prohibited from selling other age-restricted products, such as alcohol, as set out in the [Liquor Control Reform Act 1998](#).

What is happening in other states?

- In Queensland employees under 18 years of age [cannot sell or handle smoking products](#) as part of their job (from 1 September 2024).
- In Western Australia licence holders and their adult employees may sell tobacco products, however a tobacco retailer [must not authorise or allow employees](#) under the age of 18 years to sell tobacco products.

## MAV Recommendation:

- The Victorian Government amend the Tobacco Act 1987 to ensure only individuals aged 18 and older can sell tobacco products to align with regulations for other age-restricted items and approaches of other jurisdictions in Australia.

## 5. Consistency Regulating Non-Tobacco Smoking Related Products

Inconsistencies exist within Victorian legislation for the regulation of non-tobacco products that are designed for smoking, like cigarette papers and filters. As an example, the advertising of all cigarette papers is prohibited under the Tobacco Act 1987, but their display is not. Cigarette papers that are not banned under the Ministerial Ban Order can be displayed as long as the display does not form an advertisement e.g. display of large quantities of additional stock in branded boxes. The sale of these products is otherwise not regulated under the Tobacco Act 1987.

This approach to non-tobacco smoking related products leads to confusion for retailers, inconsistent approaches to enforcement across council areas as regulations are open to interpretation, and poor outcomes from a public health perspective. The Tobacco Act 1987 should treat non-tobacco products designed for smoking the same as tobacco products.

What is happening in other states?

- The display of tobacco products is prohibited in retail outlets in [South Australia](#). Tobacco products include cigarettes, cigars and any non-tobacco product that is designed for smoking. This includes cigarette packets, shisha tobacco, cartons, single cigars, loose tobacco, cigarette papers and filters. These products must not be visible from anywhere inside or outside a retail outlet.
- [NSW](#) bans the display of non-tobacco smoking products and smoking accessories in retail premises

## 6. Shisha

Under the Tobacco Act 1987 the sale, advertising and use of shisha tobacco that contains any amount of tobacco is treated the same as other tobacco products. Fruit or herbal-based products that do not contain tobacco are not subject to these laws. While non-tobacco shisha does not contain nicotine it still poses [significant health risks](#). Excluding non-tobacco shisha from the Tobacco Act 1987 has led to:

- regulatory loophole and difficulty undertaking education and enforcement activities (similar to non-nicotine e-cigarettes)
- undermining of public health measures and messaging
- adds to community confusion and normalises smoking.

Enforcing regulations regarding the display of hookah pipes presents another challenge, as it is regulated by the Drugs, Poisons and Controlled Substances Act 1981. This legislation allows retailers to exhibit up to three hookah pipes on their premises, with enforcement the responsibility of Victoria Police. Should a council officer identify a violation during a tobacco inspection at a retail establishment, they lack the authority to enforce it directly. Instead, they must report the breach to local police. The level of compliance and enforcement fluctuates, as police allocate resources based on varying priorities.

Priority Area 9 of the [National Tobacco Strategy 2023-2030](#) supports the strengthening of existing controls to prohibit or further restrict the marketing and use of novel and emerging products, including shisha

What is happening in other states?

- In [South Australia](#) shisha, whether it contains tobacco or not, cannot be used in any public place where smoking bans apply. This includes all enclosed public areas and workplaces, and outdoor public dining areas. All businesses that sell tobacco products, including shisha that may or may not contain tobacco, must have a Tobacco Retail Merchant's Licence.
- [Australian Capital Territory](#) - Shisha cafés are not permitted in the ACT as it is an offence under the Smoke-Free Public Places Act 2003 to use any smoking product in an enclosed public place or at an outdoor eating or drinking place. retailer must have a tobacco license to sell shisha smoking products and waterpipe devices. Under the Tobacco and Other Smoking Products Act 1927 shisha devices, waterpipes and bongs are classified as personal vaporisers and may not be displayed or advertised.
- [Shisha No Thanks](#) is a NSW-based research translation project focused on raising awareness of waterpipe smoking harms among young people from Arabic-speaking backgrounds in metropolitan Sydney. Led by South Eastern Sydney Local Health District in collaboration with partners and funded by The Cancer Institute NSW, the project offers resources and a free interactive online training module for community workers. This training aims to educate about shisha harms,

#### **MAV Recommendation:**

The Victorian Government consider regulating and initiating education programs for sale and use of non-tobacco shisha and hookah pipes similar to other smoking products.

#### **7. Illicit Tobacco Control**

Establishing more formal links between agencies and levels of government would assist councils to make referrals and share local insights with the appropriate agency. In turn, this would enable dots to be joined within and between other tiers of government. Having some level of centralised repository for information would aid intelligence gathering and prioritisation of effort by agencies best positioned to do so.

There exists an opportunity for collaboration between the Commonwealth and State government and councils, leveraging the local knowledge of councils.

#### **MAV Recommendation:**

- That a protocol or agreement be developed between all levels of government to clarify roles, responsibilities and communication to effectively share information, streamline and enhance current enforcement activities and ensure the safety of authorised officers.