

18 February 2022

Ms Anna Cronin  
Commissioner  
Better Regulation Victoria

Via email: [illicittobaccoreview@betterreg.vic.gov.au](mailto:illicittobaccoreview@betterreg.vic.gov.au)

Dear Commissioner

### **Review of Victoria's approach to illicit tobacco regulation**

The MAV welcomes the opportunity to contribute to the review of Victoria's approach to illicit tobacco regulation. For many years, councils in Victoria have been involved in initiatives seeking to reduce the incidence of smoking in their communities. Distribution and sale of cheaper tobacco products which circumvent and/or breach the intent of Commonwealth and state laws is of interest and concern, particularly if this is resulting in increased smoking prevalence and profiteering by organised crime.

Councils undertake a range of activities to reduce tobacco harm in their local communities. Their Municipal Public Health and Wellbeing Plans have regard for the Victorian Public Health and Wellbeing Plan 2019-2023 which has as a key focus area the need to reduce smoking-related harm. In implementing their local-level plans, councils deliver a range of initiatives to reduce smoking related harm, with activities ranging from health promotion messaging for their communities, to the development of local no-smoking policies.

Most councils are also involved in the Local Government Tobacco Education and Enforcement Program funded by the Department of Health. This program provides funding to councils to undertake education and enforcement activities with specified types of premises, such as those selling tobacco products and where smoking and signage laws apply. In the 2020-21 financial year this funding enabled councils to make over 13,500 visits to a variety of business premises, enclosed workplaces and outdoor locations. Additionally, 54 councils undertook desk-top reviews to identify tobacco retailers operating in their municipalities to share with the Department of Health. Fifty-eight of the 79 councils also participated in the Cigarette Sales to Minors test purchasing program.

Increasingly more councils are reporting concerns about the sale of illicit tobacco. The issues being raised with the MAV include:

- the difficulties and inappropriateness of councils investigating illicit tobacco activities, particularly where there are likely to be links to organised crime
- the need for improved communication protocols so councils can advise other relevant state and Commonwealth agencies about places where illicit tobacco is likely being distributed from and/or sold
- concerns being raised by other retailers selling tobacco products who are complying with legal requirements that their products are being undercut by non-compliant products.



### **Clarity around agency roles**

Council staff have often noted a lack of clarity as to which agency is responsible for responding to their reports advising of possible illicit tobacco activities. Currently councils will share their observations of potential breaches they consider in need of further investigation with a variety of agencies, in the hope that this will assist investigations that might already be underway, and corrective action able to be undertaken. These agencies commonly include:

- local police
- the Commonwealth Illicit Tobacco Taskforce via the Australian Tax Office
- the Victorian Department of Health's Office of Medicinal Cannabis and Tobacco Control, Public Health Division, and
- the Department of Health's tobacco policy unit.

Councils have noted where there is a good relationship with local police there are improved enforcement outcomes. This can be impacted by other local policing priorities. They have less contact with the Commonwealth agencies and would tend to rely on communicating and seeking advice from state agencies.

Greater clarity around roles and responsibilities would assist councils make referrals and share insights about local activities to the appropriate agency. In turn, this would enable dots to be joined within and between other tiers of government. Often companies and organised crime syndicates will be working across multiple locations and jurisdictions. Having some level of centralised repository for information would aid intelligence gathering and prioritisation of effort by agencies best positioned to do so.

### **Current Victorian regulatory framework**

The Minister for Health having responsibility for the Tobacco Act 1987 works well, with support by councils and other agencies such as Victoria Police being authorised to enforce relevant provisions as and when required.

Council powers to enforce the provisions of the Tobacco Act derive from the automatic authorisation of environmental health officers appointed under the Public Health and Wellbeing Act 2008. They can also request other officers to be authorised by the Secretary of the Department of Health, such as local laws officers. In practice, the powers used by councils mostly relate to checking that signage and sales meet regulatory requirements. They can enforce no-smoking bans when they consider this is an appropriate response. In general, councils tend to prefer an educative approach in the first instance.

Councils can also enact local laws relating to smoking and tobacco control which do not conflict with Commonwealth or state legislation. In practice, most councils will follow state laws. A number of councils have also initiated local laws banning smoking in particular precincts, such as shopping malls and around council buildings and facilities.

Annual funding provided by the Department of Health through the local government tobacco control program has enabled councils to reinforce state-level priorities. This financial year approximately \$1.3 million is budgeted to be disbursed to councils to deliver education and enforcement activities with tobacco retailers, hospitality premises and various outdoor locations. These funds are provided to the MAV, which remits them to councils according to a formula agreed with the Department of Health. This arrangement has operated for over 20 years, with the mature relationship providing solid foundations for state-wide priorities to be delivered locally, informed by local insights.

The partnership approach has been considered instrumental in achieving quite significant reductions in the incidence of smoking in the community, and entrenching good understanding of tobacco laws, particularly with the hospitality sector.

Community education programs are also required to enable consumers of tobacco products understand the criminal aspects to illicit tobacco supplies, so that they can be better informed about their purchases.

### **Licensing of tobacco distribution and retail proprietors**

Introduction of a licensing regime for tobacco distribution and retail providers would assist all government agencies identify and communicate with retailers selling tobacco products. It would also strengthen the powers of agencies to act against those selling illicit tobacco through it becoming an offence to not be licensed.

If registrations of tobacco retailers by councils under the Public Health and Wellbeing Act were envisaged in conjunction or instead of a licensing regime, consideration of scope and purpose would be required. Illicit tobacco suppliers are by definition not known, and sellers will not always be businesses with premises which can be inspected for compliance with specific public health requirements in the way that applies to other premises registered by councils. As identified in the report into illicit tobacco by the Federal Parliamentary Joint Committee on Law Enforcement Inquiry, much of illicit tobacco is imported and circulated via travellers importing products directly and via online purchases with various distribution conduits.

Given this, and the fact that multiple Commonwealth and state agencies have interests in limiting the spread of illicit tobacco sources, licensing by a state agency would appear to be preferred. With appropriate reporting channels in place, councils would be able to continue to provide local insights about locations of concern. A licensing system managed by the state would also provide better understanding of the proprietors involved in selling tobacco, including those operating across multiple municipalities.

As we have not had the opportunity to consult in detail with councils on this matter, we recommend that any proposals for a licensing system which might include new roles for local government need to be consulted about with the sector.

### **Role of councils**

We support the current arrangements for tobacco control whereby the Minister for Health is responsible for the provisions of the Tobacco Act, with councils playing a supporting role via funded service agreements and initiating local policies where these are a priority and the councils have the capacity to deliver them.

Based on insights from administering the local government tobacco control activity program, most councils would be reluctant to have a prime role in surveillance or the seizure of illicit tobacco products. There is, however, an opportunity for Commonwealth and state governments to use councils' local knowledge about traders and premises where illicit tobacco is being distributed and/or sold. Please note that we have not had the opportunity to consult with councils about this proposal, and that we would need to do this to confirm this position.

The MAV looks forward to continuing to work collaboratively with the Victorian Government on the development of a policy response which responds to the reported increases in illicit tobacco being available for sale in the community. We recommend that councils are fully consulted and engaged in policy development being undertaken so that their practical advice and insights can inform any change proposals which might be considered.

Should you wish to discuss this further please contact Rosemary Hancock, Manager Health and Local Economies ([rhancock@mav.asn.au](mailto:rhancock@mav.asn.au)).

Yours sincerely



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