

18 September 2008

Victorian Tobacco Control Strategy Submission
Tobacco Policy and Programs Section
Department of Human Services
GPO Box 4057
MELBOURNE VIC 3001

Dear Sir/Madam

CITY OF MELBOURNE SUBMISSION - VICTORIAN TOBACCO CONTROL STRATEGY

The City of Melbourne welcomes the opportunity to provide a submission in relation to the Victorian Tobacco Control Strategy. Council actively promotes and supports the reduction and cessation of smoking through tobacco control activities co-ordinated by our Health Services Branch.

Council recognises the serious health implications of tobacco smoking and strongly supports the Department of Human Services in implementing the Victorian Tobacco Control Strategy to strengthen and augment the recent legislative reforms that have proven successful in reducing the prevalence of smoking in Victoria.

Please find attached the City of Melbourne's submission in the appropriate format for your consideration.

Should you wish to discuss any details of our submission, please contact Brendan Garrett Team Leader Health Services on telephone 9658 8803.

Yours sincerely

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Acting Director Community and Culture

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Doc ref DM 4850458 / SR 807200

Victorian Tobacco Control Strategy 2008-2013 Consultation Submission

Front cover sheet

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Organisation City of Melbourne

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Confidential Yes No

Please indicate if you are:

- A person under the age of 18
 - A representative group/organisation of businesses that sell tobacco
 - An owner or manager of a business that sells tobacco products
 - An employee of a business that sells tobacco products
 - A professional association or non-government organisation
 - Involved in the tobacco industry other than by retailing
 - A health group or organisation
 - A health or medical professional
 - A teacher, educator or youth worker
 - A union
 - Involved in the advertising industry
 - An interested member of the public (please indicate your smoking status below)
Current smoker Ex-smoker Never smoked
 - Other (please specify) Local government
- Additional comments included? Yes (please attach) No

Part A: Reforming tobacco point-of-sale displays in retail outlets

A number of issues have been identified in relation to reforming tobacco retailer point-of-sale displays. Comments are invited to assist the Victorian Government to implement the proposed reforms. In particular, you may wish to respond to the following questions:

1. Which of the following options do you support, and why?

a) a complete ban on tobacco point-of-sale displays

It would seem inevitable that a complete ban on tobacco point-of-sale displays will be introduced at some time in Victoria, a reform that is supported by the City of Melbourne. Whether this reform should be implemented in a single action, or graduated by further reducing the allowable display size, is a matter for DHS. A complete ban would be more readily enforceable as opposed to requiring authorised officers to measure displays of retailers. The complete ban, rather than a further size reduction, would provide a much stronger message and provide greater clarity to the community in reporting offences.

b) restricting tobacco point-of-sale display to 1 square metre

See above.

2. How much time would Victorian businesses require to adapt to these changes?

DHS should be guided by business representatives in relation to this question. A minimum of twelve months would seem appropriate.

3. How should 'specialist tobacconist' be defined?

An exemption for 'specialist tobacconists', unless the definition is specific, would prove difficult for councils to enforce. It is recommended that an exhaustive definition, ie. not an inclusive definition, be provided. An example would be that 'a specialist tobacconist is a retailer of tobacco products that does not sell any food'. If the definition relates to 'predominant activity' of the business, this will be very difficult to enforce, as was evident with similar exemptions for licensed premises when the smoke-free dining laws were introduced and assessed through the 'predominant activity' test.

4. How could retailers advise customers of tobacco products that are not on display?

Businesses should be permitted to display a price-board similar to the current allowance provided for cartons of tobacco products. Any such provision for a price-board should have a size limit and style (eg. black & white only) imposed.

5. Any further comments.

A system of positive licensing for tobacco retailers, as in Tasmania, should be considered by DHS. The fees recovered through the licensing system could be directed to education programs and organisations such as QUIT.

Part B: Review of penalties prescribed in the Tobacco Act and tougher legislative enforcement of the Tobacco Act

A number of issues have been identified in relation to reviewing penalties and tougher enforcement of the Act. Comments are invited to assist the Victorian Government to implement the proposed reforms. In particular, you may wish to respond to the following questions:

1. What aspects of legislative compliance should be prioritised while reviewing enforcement of the Tobacco Act?

Greater investigative powers should be provided to authorised officers to facilitate effective enforcement. It is recommended that powers of entry and other associated powers should mirror those provided for authorised officers under the Food Act 1984. As nearly all enforcement of the Tobacco Act in Victoria is undertaken by officers authorised under the Food Act, making the powers commensurate would eliminate doubt in the admissibility of evidence obtained by an Environmental Health Officer in the course of an inspection.

Efforts should be focussed on improving the consistency of enforcement of the Tobacco Act across various municipalities.

The vicarious liability of business owners and managers in relation to their employees should be increased to provide a greater deterrent to business in allowing offences being committed under the Tobacco Act. This could be achieved by reviewing the 'occupier' definition to include a 'person concerned in the management of the premises'. Alternatively, a provision for offences by bodies corporate could be introduced similar to that provided for at sections 51 and 52 of the Food Act 1984.

2. Should the infringement and maximum penalties in the Tobacco Act be increased and to what extent?

The City of Melbourne supports a general increase in the penalties provided in the Tobacco Act. It is appropriate that these be determined in consultation with the Department of Justice.

3. Which penalties should be increased and why?

The penalties for business owners knowingly allowing an offence to occur should be increased to reflect the gravity of the offence.

4. How can minors be further prevented from purchasing tobacco products?

The penalties for selling tobacco products to minors should be increased.

A positive licensing system for tobacco retailers as mentioned above at our response to Part A, question 5, would also bring greater awareness of the responsibilities of tobacco retailers in complying with the Tobacco Act. The threat or possibility of a retailer losing their ability to sell tobacco, would be likely to have a significant deterrent effect, rather than the current negative licensing system that has not had any tangible impact.

5. Any further comments.

Nil.

Part C: Supporting families

A number of issues have been identified in relation to smoking when children are present, smoking and pregnancy and smoking and young people. Comments are sought to assist the Victorian Government to implement the proposed legislative reforms. In particular, you may wish to respond to the following questions:

C.1 Smoking in cars carrying children

1. Should the ban on smoking in cars apply to children 16 years or younger or to children and young people under the age of 18 years?

It seems appropriate that the ban apply for those under the age of 18 years to be consistent with the sales to minors provisions.

2. Any further comments.

This offence should be created for in the Summary Offences Act rather than the Tobacco Act. It is presumed that Victoria Police members will enforce this offence in the course of their duties, particularly those members regulating traffic.

It is unlikely that any Victorian council would expect its authorised officers to enforce this offence if introduced.

C.2 Smoking cessation in pregnancy

1. How can the Victorian Government best deliver smoking cessation information and support to pregnant women?

The Health Promotion Program should be extensive and targeted not only to pregnant women, but the entire community.

The support systems should be well integrated with the current system and programs in place for pregnant women in Victoria.

2. How should smoking cessation information and support be tailored to the needs of pregnant Aboriginal Victorians and other groups with high rates of smoking during pregnancy?

See above.

3. Any further comments.

Nil.

C.3 Young people

C.3.1 Banning sales of cigarettes from temporary outlets

1. How should 'temporary outlet' be defined?

Guidance should be sought from the existing provisions in New South Wales.

2. Any further comments.

Due to the transient nature of temporary outlets, proactive surveillance should be supported by DHS to ensure that offences can be detected as and when they occur.

C.3.2 Provide the Minister for Health with the power to ban particular tobacco products and packaging

3. What criteria should be met before the Minister for Health can ban a tobacco product or packaging?

Prior to the Minister exercising this power, it may be appropriate for tobacco manufacturers to be advised of the Minister's intention. It is assumed that any such exercise of power would require promulgation through the Government Gazette.

4. Any further comments.

Nil.

C.3.3 Smoking on school grounds

5. How can the Victorian Government better promote smoke-free schools?

An Order under the Education and Training Reform Act banning smoking on Victorian Government school grounds is supported by the City of Melbourne as the most appropriate means to better promote smoke-free schools. An education and awareness program should be implemented across all schools in Victoria.

6. Any further comments.

Nil.

C.4 Helping smokers to quit

1. What type of cessation initiatives are most likely to be effective in helping Aboriginal Victorians to quit and stay quit?

A media campaign featuring prominent Aboriginals in society such as AFL footballers should be considered.

2. What type of cessation initiatives are most likely to be effective in helping socio-economically disadvantaged smokers to quit and stay quit?

A media campaign focussing on the financial cost of smoking to individuals and families should be considered.

3. Any other comments.

Nil.
