

# Creating smoke-free outdoor dining and drinking areas in your council

## Introduction

Victorian councils can reduce harms of tobacco use for their communities and denormalise smoking by introducing local laws to restrict smoking in outdoor areas not yet covered by state legislation for example, in outdoor drinking and dining areas. Several Victorian councils have trialled, implemented or are investigating smoke-free outdoor dining and drinking areas. Baw Baw Shire adopted smoke-free outdoor dining and drinking areas in 2011.

By making outdoor dining and drinking areas smoke-free your council can directly improve the health of the local community. At the same time, your council will promote a positive health message and create a cleaner and safer environment.

## Community support

There is strong public support in Victoria for smoke-free areas. A 2012 survey<sup>1</sup> of Victorian adults by the Cancer Council Victoria found that 72% of respondents supported smoking bans at outdoor restaurant dining areas (alfresco dining).

## Current legislation

Smoking in enclosed workplaces in Victoria is regulated by the *Tobacco Act 1987* (Vic).

However, these laws make no provision for controlling outdoor smoking in places where people congregate, such as outdoor dining and drinking areas. Therefore, councils can make local laws that cover these areas.

In Victoria, the *Local Government Act 1989* (Vic) (the “Act”) gives a very general power to councils to do “all things necessary or convenient to be done in connection with the achievement of its objectives and the performance of its functions”: section 3F (1).

Relevant objectives are listed in section 3C of the Act and include:

- The promotion of the social, economic and environmental viability and sustainability of the local area;
- To improve the overall quality of life of people in the local community.

Further, relevant functions of councils listed under the Act include:

- To advocate and promote proposals which are in the best interest of the local community: section 3E(1)(a); and
- To make and enforce Local Laws: section 3E (1) (f).

The above objectives clearly encompass the making of local laws to protect the health of your council’s community.

## **Introducing smoke-free dining and drinking on council owned land. What is the best way to go about this?**

Councils can implement smoke-free dining policies by passing relevant local laws in accordance with the *Local Government Act 1989* (Vic). Specifically, section 111 gives councils the power to make local laws and section 119 outlines the procedure that councils must follow when making local laws.

Additionally, councils can introduce bans on smoking in outdoor dining and drinking areas by including smoke-free clauses in their footpath agreements/licenses and other property leases. As each agreement is renewed, transferred or altered, new clauses can be included that prohibit smoking and require the venues to display signage to inform patrons that the area is smoke-free.

### **Steps to introduce smoke-free outdoor dining and drinking areas in your council:**

- Prepare a report and recommendation for adoption by council (see Appendix 1).
- Prepare a draft Smoke-free Dining and Drinking Policy for adoption by council (see Appendix 2).
- Present the report and policy to council for their consideration and approval.
- If successful, develop an implementation and communication plan to inform residents and the local community.
- Ensure that requirements under the *Local Government Act 1989* (Vic) and/or the council's existing local laws are followed.

It is recommended that councils supply outdoor dining and drinking venues with appropriate No Smoking signage to assist with customer education and compliance, such as table signs and information sheets.

### **What elements should be included in an education and communication plan?**

Information could include signage at the nominated areas, a press release with a nominated person to act as the spokesperson for the council, a letter to all residents and development of a brochure and/or information on the council website. An education and communication plan must comply with the *Local Government Act 1989* (Vic) and any relevant local laws applicable to council.

Effective consultation is a key part of engaging communities in local decision making processes. It is recommended your council conduct a community consultation process on proposed smoke-free areas. Public consultation can be facilitated through council run events, council website or online community forums such as Bang the Table ([www.bangthetable.com](http://www.bangthetable.com)).

### **How much will it cost council?**

There can be some cost associated with signage, however affixing the international No Smoking symbol to existing signage can be one way to reduce this cost. Some New South Wales councils have found they have actually saved money due to reduced cleaning costs.

## Economic impacts

Councils may be concerned that the introduction of smoke-free policies in outdoor dining areas will negatively impact local business. Business owners, traders and hotel associations are often worried they will lose revenue as a result of smoking bans. This argument arose during the implementation of indoor smoking bans. However, numerous peer reviewed economic studies have concluded that smoking bans do not have a significant impact on revenue and often have a positive effect.<sup>2</sup> These findings are replicated by evaluations of smoke-free policies in outdoor drinking and dining in Australia.

In the Victorian local government area of Baw Baw, 82% of traders reported that there was either no difference or an increase in customers to their business following bans.<sup>3</sup> In Queensland traders reported a net gain of approximately 20% in patronage to outdoor dining and drinking areas after a smoking ban was put in place<sup>4</sup> and the 2009 survey by Manly Council in New South Wales of local businesses with smoke-free alfresco dining policies<sup>5</sup> found that more than two thirds (67%) indicated that the policy had had no effect on their business either way. In addition most businesses report that the smoke-free policy was easy to implement and that the majority of customers responded positively.

In many instances smoke-free policies are good for business as non-smokers, who make up 86% of the Victorian population, are more likely to frequent eating and drinking establishments that are smoke-free. Smoke-free policies offer local businesses other potential benefits including lower cleaning and maintenance costs and a reduction in employee absenteeism due to respiratory illnesses.

## Appendix 1: Sample Report

Smoking is banned in most enclosed workplaces in Victoria.<sup>6</sup> This includes restaurants, cafes, shopping centres and licensed venues. Since January 2010, smoking has also been banned in cars carrying persons under the age of 18 years.

However, state legislation does not extend to outdoor dining and drinking areas. This is where councils can provide for better public health for its residents by implementing additional smoking bans in public places not yet covered by state legislation.

There is substantial evidence linking exposure to second-hand smoke with a range of serious and life threatening health impacts including heart disease, cancer, asthma and other respiratory problems. Children exposed to second-hand smoke are at an increased risk of asthma, sudden infant death syndrome (SIDS), acute respiratory infections and ear problems.<sup>7</sup>

While most of the evidence relates to indoor exposure, there is emerging evidence showing how smoking affects air quality in outdoor locations such as outdoor dining areas.<sup>8 9 10 11</sup>

A study which measured cigarette smoke levels in a variety of outdoor locations found that a person sitting near a person smoking in an outdoor area could be exposed to levels of cigarette smoke similar to the exposure of someone sitting in an indoor tavern where smoking is allowed.<sup>12</sup> Exposure to SHS is significantly increased where people are under an overhead cover, and as the number of nearby smokers increase.<sup>13</sup> Therefore, in outdoor areas where people tend to congregate, such as outdoor dining areas, the presence of people smoking can present a health risk to patrons and staff.

In addition to the health impacts, cigarettes are an environmental issue. Cigarette butts take up to five years to break down, and are one of the most common items found during Clean Up Australia Day.<sup>14</sup>

There is strong public support in Victoria for smoke-free areas. A 2012 survey<sup>15</sup> of 4,501 Victorian adults by the Cancer Council Victoria found that the majority of those surveyed (72%) supported smoking bans at outdoor restaurant dining areas (alfresco dining)

There is also evidence to suggest that smoking bans support smokers who are attempting to quit as well as reduce their overall cigarette consumption.<sup>16</sup>

It is proposed that in the interests of the health of our local community and environment, council adopt a comprehensive smoke-free outdoor areas policy. This policy will also help to further denormalise smoking.

### Sample Resolution

That council adopt the attached Smoke-free Outdoor Dining and Drinking Policy which includes banning smoking in the outdoor areas on council land specified in the policy.

Further, this policy be enforced in any leases, licenses or other estates that apply to council owned and managed lands and properties and that internationally recognised signage be erected to indicate these areas are smoke-free.

## Appendix 2: Sample Victorian Council Smoke-free Outdoor Dining and Drinking Policy

### **Objectives**

The objectives of *(name)* Council in banning smoking in dining areas are to:

- Improve the health of the community;
- Improve public amenity and maintenance of council property;
- Raise community awareness of the negative health impact of smoking and denormalise smoking;
- Provide community leadership to protect the health and social wellbeing of the community;
- Minimise cigarette butt pollution on council owned outdoor areas.

### **Principles**

This policy recognises that council has:

- An obligation to promote public health outcomes where council provides assets and services intended to be of benefit to children and other members of the community;
- An understanding that scientific evidence indicates there is no risk-free level of exposure to second-hand smoke. Emerging research indicates that outdoor second-hand smoke levels can be comparable to indoor levels under specific conditions while smoking is taking place;
- An acknowledgement that the consequences of people smoking in certain outdoor areas may result in children playing with and swallowing discarded cigarette butts that can lead to vomiting and other symptoms of nicotine poisoning;
- A commitment to improve the natural environment and the amenity of the local area by reducing the amount of cigarette butt litter found in outdoor spaces and reduce fire risk from discarded butts in bushland, parks and reserves.

### **Victorian legislation**

In Victoria, the *Local Government Act 1989* (Vic) (the “Act”) gives a very general power to council to do “all things necessary or convenient to be done in connection with the achievement of its objectives and the performance of its functions” (section 3F(1)).

The objectives and functions of council set out in the Act encompass the making of local laws which protect council’s community.

Part 5 of the Act details the power council has in relation to making local laws and includes provisions that cover penalties and infringement notices. Specifically, section 111 gives council the power to make local laws and section 119 outlines the procedure that council must follow when making local laws.

The Act also gives council the power to make local laws that may:

- Prescribe a penalty not exceeding 20 penalty units for a contravention of a local law (s.115);
- Provide for the issue of Infringement notices stating the amount of the fixed penalty for an offence against the local law as an alternative to a prosecution for the offence (s.117). The local law must specify the person or class of persons who are authorised to issue a notice of infringement.

### ***Smoke-free areas***

Smoking will be banned in the following council open space areas: in outdoor dining and drinking areas.

### ***Signage***

Signs will be installed in prominent places in the outdoor areas listed above. The signs will include the international No Smoking symbol and the wording:

WARNING: Penalties apply. Regulated under the *Local Government Act 1989* (Vic).

### ***Leases, licenses and other council agreements***

Council buildings and outdoor dining areas that are leased, licensed or hired by council will have smoke-free clauses inserted into their agreements for use.

### ***Enforcement of policy***

In implementing council's Smoke-free Outdoor Dining and Drinking Policy, a program of community education and awareness, specifically targeting residents and day visitors, will be undertaken.

Enforcement of this policy will be supported by persuasion and self-policing, rather than punitive enforcement (although the power to issue penalties/ infringement notices will be available).

### ***Related Victorian legislation***

Local Government Act 1989 (Vic).

## REFERENCES

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- <sup>2</sup> Scollo M, Lal A, Hyland A, Glantz S. Review of the quality of studies on the economic effects of smokefree policies on the hospitality industry. *Tobacco Control*, 2003 Mar; 12(1):13-20.
- <sup>3</sup> Baw Baw Shire Council, Smoke Free Outdoor Areas Evaluation. August 2012.
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- <sup>5</sup> Manly Council 2009, Smoke-free Alfresco Dining Evaluation Survey.
- <sup>6</sup> *Tobacco Act 1987*. (Vic)
- <sup>7</sup> U.S. Department of Health and Human Services. The health consequences of involuntary exposure to tobacco smoke: a report of the Surgeon General. Atlanta, Ga.: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health; 2006.
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- <sup>14</sup> Clean Up Australia Day, 2013 Rubbish Report - Victoria . Available from: <http://www.cleanup.org.au/files/2013-victoria.pdf>
- <sup>15</sup> Centre of Behavioural Research in Cancer, Attitudes towards smoking at outdoor areas: Findings from the Victorian Smoking and Health surveys, unpublished report by Cancer Council Victoria; 2012.
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