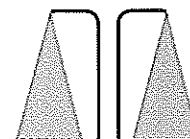


Our Ref: QM:FCC/smokingban
Your Ref:

Reply to: Head Office



Peninsula Community
Legal Centre Inc

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We gratefully acknowledge
the financial assistance of:

- Commonwealth Attorney-General's Department
- Department of Justice (Vic)
- Consumer Affairs Victoria
- Victoria Legal Aid
- City of Casey
- City of Glen Eira
- City of Kingston
- Frankston City Council
- Mornington Peninsula Shire

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27 August 2010

Chief Executive Officer
Frankston City Council
PO Box 490
FRANKSTON VIC 3199

Dear Sir,

Re: Proposed Smoking Ban – Part of Frankston Central Activity District

Thank you for providing the opportunity to comment on Frankston City Council's proposal to ban smoking from part of the Frankston Central Activity District. Peninsula Community Legal Centre (PCLC) has a number of concerns regarding the proposal.

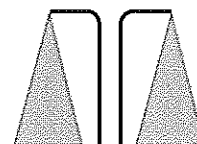
PCLC understands that the proposal has been introduced as a measure contributing to the implementation of the *Health and Wellbeing Plan 2009-2013*, which requires Council 'to examine ways in which Council can use education and legislative strategies to reduce smoking related harm in Frankston'.¹ Whilst it is acknowledged that smoking is an unhealthy habit and there may be a legitimate need for Frankston Council to engage in education activities with respect to the detrimental health effects of smoking, PCLC is concerned about the application of the proposed laws.

PCLC is concerned that the proposed laws could be applied in a discriminatory manner in at least the following ways:

- It is likely that the laws will target some of our most vulnerable community members disproportionately. Community members who suffer mental illness; young people and those who are homeless are likely to be the targets of the laws, as these members of the community are more likely to use public spaces.
- The proposed laws may be used as *de facto* move on powers, enabling law enforcement officers to give directions to people to 'move on' as a matter of discretion of the individual law enforcement officer. This creates a law that is discriminatory and contrary to the right of every person to

¹Frankston City Council, *Health and Wellbeing Plan 2009-2013*, Year 1 Objective.





Peninsula Community
Legal Centre Inc

enjoy his or her human rights without discrimination, such as freedom of movement in contravention of sections 8 and 12 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

- In addition to the abovementioned potential breaches of the Victorian Human Rights Charter, it is possible that the proposed laws will also contravene the right to assembly, included in section 16 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic).
- The proposed laws may be perceived as being used to raise revenue, where someone can be penalised for smoking on one side of the street, but not on the other. PCLC has outlined concerns for the likely disproportionate effect of the laws towards vulnerable members of the community and therefore raises concerns about the capacity of 'offenders' to pay any fines imposed. It is likely that fines will serve to further burden individuals already experiencing financial hardship.

In addition to these concerns about the application of the proposed laws, PCLC believes that it is unlikely that there will be any improvement in community health as a result of the proposal. PCLC believes that Council would be more likely to achieve improved outcomes for community health through community education measures rather than select narrow prohibition measures.

Please contact Andrea Florance on 9783 3600 (extension 34) should you have any queries.

Yours faithfully,

HELEN CONSTAS
CHIEF EXECUTIVE OFFICER
PENINSULA COMMUNITY LEGAL CENTRE INC.