



Public Health Association
AUSTRALIA

Public Health (Tobacco and Other Products) Bill 2023

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The **Public Health Association of Australia** (PHAA) is Australia's peak body on public health. We advocate for the health and well-being of all individuals in Australia.

We believe that health is a human right, a vital resource for everyday life, and a key factor in sustainability. The health status of all people is impacted by the social, commercial, cultural, political, environmental and economic determinants of health. Specific focus on these determinants is necessary to reduce the root causes of poor health and disease. These determinants underpin the strategic direction of PHAA. Our focus is not just on Australian residents and citizens, but extends to our regional neighbours. We see our well-being as connected to the global community, including those people fleeing violence and poverty, and seeking refuge and asylum in Australia.

Our mission is to promote better health outcomes through increased knowledge, better access and equity, evidence informed policy and effective population-based practice in public health.

Our vision is for a healthy population, a healthy nation and a healthy world, with all people living in an equitable society, underpinned by a well-functioning ecosystem and a healthy environment.

Traditional custodians - we acknowledge the traditional custodians of the lands on which we live and work. We pay respect to Aboriginal and Torres Strait Islander elders past, present and emerging and extend that respect to all other Aboriginal and Torres Strait Islander people.

Strong support for this Bill

Thank you for your invitation to provide input to the *Public Health (Tobacco and Other Products) Bill 2023*, together with its related consequential and transitional Bill.

Smoking remains the greatest cause of preventable death in Australia. At present the key target of government policy, as expressed in the recently renewed *National Tobacco Strategy 2023-30*, released in May 2023 and agreed by all Australian governments, is to see national daily smoking prevalence reduced to less than 10% by 2025, and less than 5% by 2030. The present Bill actively assists in achieving these vital targets. The Bill should be supported by the Committee and speedily enacted through Parliament.

The Bill forms part of the package of tobacco-related public health measures announced by the Minister for Health and Aged Care in December 2022 and in April 2023. Some of those measures were funded in the 2023-24 Budget. Elements of the package requiring legislation, together with timely legislative improvements to the regulation of tobacco products, are presented through this Bill.

It is essential that the Bill be understood as one component of the many-pronged National Tobacco Strategy. The Strategy sets the vision for reducing, and ideally eliminating, the harm caused by tobacco and associated products. The elements of this Strategy, including strong regulation, workplace safety measures, cessation support, information and behaviour change campaigns, revenue measures, approaches for priority populations including Aboriginal and Torres Strait Islander peoples, and the protection of policy-making from commercial interference, are all interlocking and mutually supporting. The Strategy should remain a guiding framework for policy work through the current decade. The Strategy is also aligned with relevant parts of the *National Preventive Health Strategy 2021*.

The work done over the past few years to produce this Bill has resulted in a comprehensive proposed modernisation of the legislation, and is to be commended. The Bill is the result of four years of work by health ministers of successive governments and by the Department of Health and Aged Care, giving good reason to expect that the legislation will have cross-Parliament support. The Bill is widely supported across the health sector.

Most recently, the final consultation on the draft Bill was conducted by the Department in mid-2023. PHAA's submission on that late draft is available at <https://www.phaa.net.au/documents/item/5981>. We acknowledge that specific suggestions made by us have been taken up in the final draft Bill.

As the Minister stated in introducing the Bill, “[the Bill] consolidates and improves on the existing tobacco framework into one Bill with associated regulation, thereby streamlining the operation of the laws”, and also “facilitates the transition to the new regime.”

The Bill is good legislative housekeeping, as well as containing very welcome legislative initiatives.

Finally, the Bill also addresses the imminent sun-setting after 10 years of specific legislative provisions enacted in the reforms of 2012 relating to tobacco product packaging, advertising and promotion, which therefore require legislative renewal.

Accordingly, we strongly support passage of this Bill. We urge the Committee to endorse the Bill, and we urge the Parliament to pass it as promptly as possible.

Overseas initiatives

The Bill picks up a number of measures drawn from international best practice. We are aware that other nations are further experimenting on tobacco reduction policy, and we note in particular the very recent announcement by the UK Government to adopt the policy (pioneered in New Zealand) of setting a rising age-based date for legal purchase of tobacco products. We consider this a policy idea with good prospects. However, with the work on the current Bill complete and ready for passage, we discourage any delay in enacting the present legislation while the policy merits of that proposal are examined.

Related e-cigarette regulatory initiatives

For wider context, the Government has also announced a package of reforms to the distribution and use of vaping products. It is important to understand the entirety of the products of the nicotine industry as interrelated problems, requiring comprehensive and integrated solutions. The present Bill therefore does not stand in isolation, but should be seen as one part of a strong public health response.

We urge the Committee to continue its interest in these matters when the Government presents, in the near future, measures to implement its policy response to the vaping epidemic. The present Bill contains some provisions relating to e-cigarettes. But again, we urge that the present Bill be passed promptly without delay while the wider e-cigarette regulation work is finalised.

Power to make further regulations to keep pace with novel online marketing devices

Online marketing continues to emerge as a major concern, especially regarding marketing which reaches children (whether as the deliberate targets of such marketing, or otherwise). We therefore feel that the law will benefit from clear powers for health ministers to make regulations that keep up with mutating online marketing techniques, supporting the objectives of the legislation. The regulation-making power in clauses 20(6) and (7) and clauses 43(6) and (7) create such a power.

Power to make further regulations to prohibit ingredients that increase palatability

We support the provision of the Bill (clause 87) that provides a regulation-making power allowing tobacco product ingredients to be prohibited where those ingredients may be contributing to increased palatability, appeal or addictiveness of tobacco products.

Observing the FCTC rejection of industry lobbying

We also urge the Committee to be alert to any attempt by industry interests to lobby the Committee, its members, other members of Parliament, and parliamentary staff, mindful of Australia's obligations under the *Framework Convention on Tobacco Control 2002* to guard against any such policy influence.

The Framework Convention provides, in Article 5.3 and in associated Guidelines, that "There is a fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy interests", and commits Australia as a Convention party to ensure that "In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law."

Possible amendments

In regard to any possible late amendments, and noting our concerns about delay in enacting this Bill, we offer the limited proposals that follow.

Concept of 'genuine purpose in the public interest'

We have a concern about the wording of one of the exceptions to an activity being defined as a 'tobacco advertisement', in clauses 27 and 50, specifically the words "any other genuine purpose in the public interest." Given the contestability of the expression "public interest", we would not want this phrasing to allow a loophole. We would suggest adding words such as "and not for any purpose related to promoting or selling tobacco products", or the like.

Definition of 'targeted online advertising'

We are aware of the submission being made to you by Cancer Council Australia, which advises (in Attachment 2) that you support an amendment such that "subclauses 30(3) and 56(3) be amended to include a power to prescribe by way of regulation further circumstances in which a tobacco or e-cigarette advertisement made available to, or accessible by, a person using the internet will be taken to be made available to, or accessible by, the public or a section of the public." We agree.

Definitions of 'sponsorship'

Likewise, we support another proposal by Cancer Council that "the wording in clauses 38 and 65 be broadened to ensure contributions to bodies corporate, and other organisations/causes are also captured where these have the aim, effect, or likely effect of promoting smoking/vaping etc."

Conclusion

To repeat, we strongly support passage of this Bill, we urge the Committee to endorse the Bill, and we urge the Parliament to pass it as promptly as possible.

The PHAA appreciates the opportunity to make this submission. Please do not hesitate to contact us should you require additional information or have any queries in relation to this submission.



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