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Department of Health
and Aged Care

***Public Health (Tobacco and Other Products)
Bill 2023 and the Public Health (Tobacco
and Other Products) (Consequential
Amendments and Transitional Provisions)
Bill 2023***

Submission from the Department of Health and Aged Care
to the Senate Standing Committee on Community Affairs Legislation Committee
Inquiry into the Public Health (Tobacco and Other Products) Bill 2023 and the Public
Health (Tobacco and Other Products) (Consequential Amendments and Transitional
Provisions) Bill 2023

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Introduction

The Department of Health and Aged Care (the department) welcomes the opportunity to make a submission to the Senate Standing Committee on Community Affairs Legislation Inquiry into the Public Health (Tobacco and Other Products) Bill 2023 and the Public Health (Tobacco and Other Products) (Consequential Amendments and Transitional Provisions) Bill 2023 (the Bills).

The Australian Government is committed to reducing the prevalence of tobacco use and its associated costs, consistent with Australia's obligations as a party to the [World Health Organization \(WHO\) Framework Convention on Tobacco Control](#) (FCTC).¹ These commitments are reflected in the [National Tobacco Strategy 2023-2030](#) (National Tobacco Strategy) and [National Preventive Health Strategy](#) (NPHS) 2021-2030 which include the following targets:

- achieve a national daily smoking prevalence² for adults (≥ 18 years) of less than 10% by 2025, and 5% or less by 2030; and
- reduce the daily smoking rate among First Nations peoples (≥ 15 years) to 27% or less by 2030.^{3,4}

The Public Health (Tobacco and Other Products) Bill 2023 (the Bill) and the regulations proposed to be made under the Bill will consolidate Commonwealth tobacco regulation into one legislation package, thereby streamlining the operation of the legal framework. The Bill modernises and simplifies the existing provisions and introduces new measures to discourage smoking and tobacco use. In order to limit the risk of e-cigarette products becoming a gateway into smoking, and to address the health risks posed by vaping and e-cigarette products, the Bill includes similar advertising and sponsorship prohibitions in relation to e-cigarette products as for tobacco products. The consolidation of the tobacco control legislation will help to strengthen the tobacco control framework to meet current and emerging issues. The Bill will be supported by the Public Health (Tobacco and Other Products) (Consequential Amendments and Transitional Provisions) Bill 2023.

The reforms in the Bills reflect the outcome of a thematic review into tobacco legislation and recognise that further progress to combat smoking rates, to discourage uptake and to encourage cessation is needed to achieve the targets outlined in the National Tobacco Strategy and NPHS. The thematic review, undertaken by the department, involved a comprehensive analysis aimed at identifying options to modernise the Commonwealth legislative framework for tobacco control to ensure it remains fit-for-purpose, and to address current gaps and limitations. This included identifying options to enable Australian laws to keep up with the changing tobacco environment, to address challenges such as novel and emerging products and marketing strategies which influence consumer behaviour and seek to undermine existing tobacco control measures. The thematic review considered

¹ United Nations, 'Chapter IX, Health, WHO Framework Convention on Tobacco Control' (Web Page, United Nations Treaty Collection, 21 May 2003) UNTC.

² As tobacco smoking remains the predominant form of tobacco use in Australia by a wide margin, all prevalence estimates in this document refer to tobacco smoking unless stated otherwise.

³ Department of Health and Aged Care, 'National Prevention Health Strategy 2021-2030' (2021). Available at: National Preventive Health Strategy 2021-2030 | Australian Government Department of Health and Aged Care.

⁴ Department of Health and Aged Care, 'National Prevention Health Strategy 2021-2030' (2021). Available at: National Preventive Health Strategy 2021-2030 | Australian Government Department of Health and Aged Care.



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international best practice and precedents, submissions received in public consultations⁵ and the available evidence base.

The reforms in the Bills are also aimed at ensuring Australia meets its ongoing obligations under the WHO FCTC.

Subject to passage through the parliament, the Bills are intended to commence on proclamation with a target date of 1 April 2024.

Further detail on the contents of the Bills is available in the [Explanatory Memorandum](#).⁶ The Committee may wish to consider the [Impact Analysis](#) which is incorporated in the Explanatory Memorandum and available online. The Impact Analysis includes detailed discussion of the policy objectives and evidence base for the measures contained in the Bill.⁷

Tobacco control in Australia

The Bills represent a component of Australia's comprehensive tobacco control approach. Consistent with the obligations under the WHO FCTC, Australian governments at all levels have progressively implemented wide-ranging evidence-based tobacco control measures to reduce the prevalence of smoking and its associated health, social, environmental and economic costs. The National Tobacco Strategy sets Australia's national policy framework for tobacco control and complements existing policies and legal frameworks in states and territories.

Australia has taken a broad approach to tobacco control, employing diverse tobacco control strategies that apply to a range of tobacco products.⁸ This approach has been instrumental in achieving the long-term decline in smoking prevalence in Australia as shown in Figure 1. Working together, population-based strategies such as mass media campaigns, smoke-free legislation and tax increases have been shown to reduce smoking prevalence across all socio-economic groups and play a vital role in reducing smoking-related inequalities.⁹ The measures provided for in the Bill, including health warnings on tobacco packaging, tobacco advertising prohibitions and tobacco plain packaging, are intended to complement Australia's broader approach.

⁵ Three broad consultations informed the thematic review process and development of the Bill. An online public consultation (January-May 2019) followed by a series of stakeholder workshops (May-July 2019), and consultation on exposure draft legislation (May-July 2023) involving both written public consultation and face-to-face stakeholder workshops.

⁶ [ParlInfo - Public Health \(Tobacco and Other Products\) Bill 2023 \(aph.gov.au\)](#)

⁷ The full version is available on the Office of Impact Analysis website: <https://oia.pmc.gov.au/published-impact-analyses-and-reports>

⁸ Department of Health and Aged Care, 'What we're doing about smoking and tobacco' (Australian Government, 2023). Available at: [What we're doing about smoking and tobacco | Australian Government Department of Health and Aged Care](#).

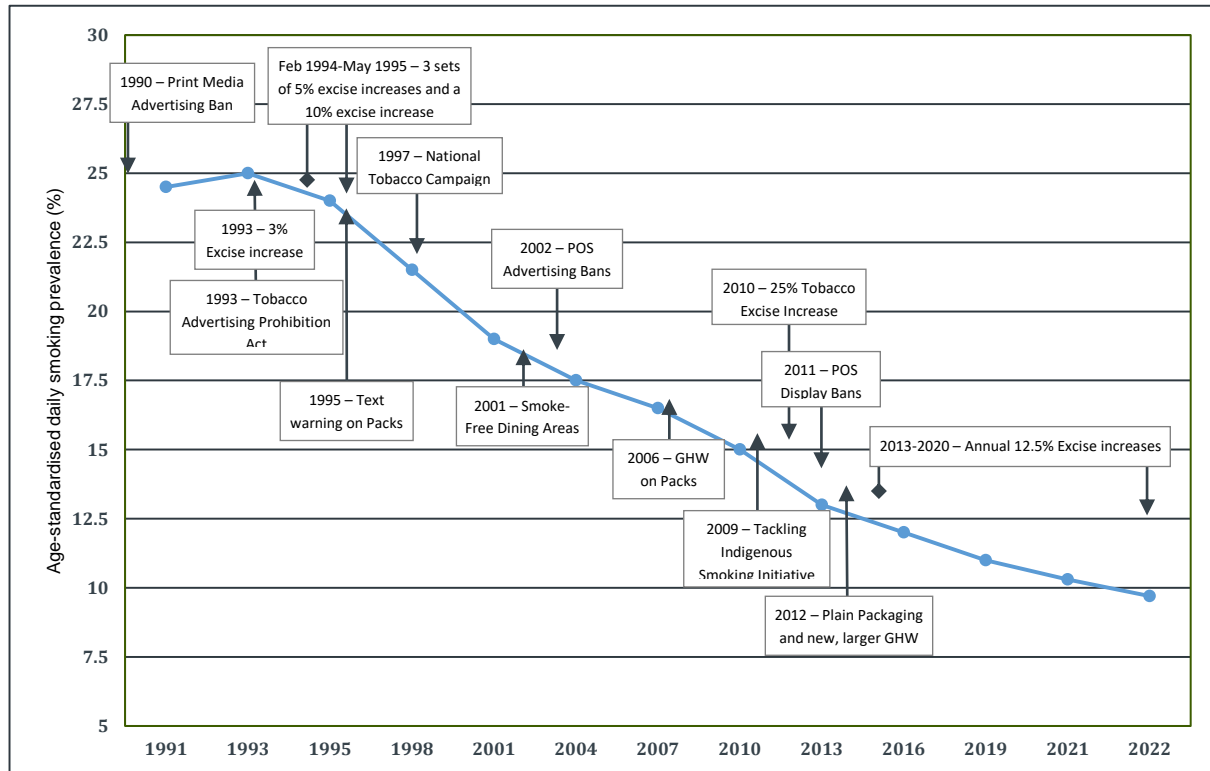
⁹ Department of Health, 'National Preventative Health Strategy 2021-2030' (Australian Government, 2021). Available at: [National Preventive Health Strategy 2021-2030](#); Y Hu et al, 'The Impact of Tobacco Control Policies on Smoking Among Socioeconomic Groups in Nine European Countries, 1990-2007' (2017) *Nicotine and Tobacco Research* 19(12): 1441-1449. Available at: [Oxford Academic](#).



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Figure 1: Graph displaying daily smoking in the general population people aged 18 years and older and key tobacco control measures implemented in Australia since 1990.¹⁰



Tobacco related harm

Despite Australia's success in reducing the smoking rate over recent decades, tobacco continues to be the leading cause of preventable death and disability in Australia. Up to two-thirds of deaths in people who smoke can be attributed to smoking and, on average, people who smoke aged 45 and over are estimated to die 10 years earlier than people who do not smoke.¹¹ In any year, for every person who smokes who dies early, at least 30 more will be living with one or more of the many debilitating diseases caused by smoking.¹² These include cancer, chronic lung and heart disease, diabetes, infections, dental problems, breathing problems and chronic respiratory conditions, hearing and vision loss, fertility problems, osteoporosis, and early menopause in women.¹³

¹⁰ Graph adapted from: Department of Health and Aged Care, 'Smoking Prevalence Rates' (Australian Government, 2018). Available at: Department of Health | Smoking prevalence rates; additional data provided from Australian Bureau of Statistics, 'National Health Survey: First Results' (ABS, 2017-18) and Smoker Status (2021-22). Available at: Australian Bureau of Statistics.

¹¹ E Banks et al, 'Tobacco Smoking and All-Cause Mortality in a Large Australian Cohort Study: Findings From a Mature Epidemic with Current Low Smoking Prevalence' (2015) BMC Medicine, 13:38.

¹² Centers for Disease Control and Prevention, 'Smoking and Tobacco Use Fast Facts and Fact Sheets' Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion (May 2023). Available at: Fast Facts and Fact Sheets | Smoking and Tobacco Use | CDC.

¹³ Ibid.



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Tobacco use contributes to and compounds existing health and social inequalities in Australia. It is the greatest contributor (23%) to the health gap between First Nations and non-First Nations peoples.¹⁴ Smoking causes more than one-third of all deaths in First Nations populations.¹⁵ In comparison to the general population, the smoking rate in Australia among First Nations peoples remains very high. In 2017-18, 13.3% of people aged 15 years and older in the general population reported daily smoking,¹⁶ whilst 37.4% of First Nations peoples aged 15 years and older reported daily smoking in 2018-19.¹⁷

Some population groups are more likely to use tobacco and face greater barriers to quitting. Others are more vulnerable to the health harms of tobacco use regardless of whether they have higher rates of tobacco use. These affected population groups include but are not limited to people from socioeconomically disadvantaged areas; people living with mental illness; people living with a chronic health condition; pregnant people and children and young people.

For people who do not smoke, exposure to second-hand smoke is a significant cause of preventable death and disability.¹⁸ Second-hand smoke has been causally linked to cancer, respiratory and cardiovascular diseases, and to adverse effects on the health of infants and children.¹⁹

The harms of tobacco use and production are wide ranging, from health and social impacts to the economy and the environment. The costs of tobacco use borne by the Australian community in 2015–16 were estimated to be \$137 billion.²⁰ All population groups including those with higher smoking rates or who are at a higher risk of harm from smoking are expected to benefit from the measures in the Bill.

¹⁴ Australian Institute of Health and Welfare, 'Australian Burden of Disease Study: Impact and Causes of Illness and Death in Australia 2011', Australian Institute of Health and Welfare (May 2016). Available at: [Australian Burden of Disease Study: impact and causes of illness and death in Australia 2011, Highlights - Australian Institute of Health and Welfare \(aihw.gov.au\)](https://www.aihw.gov.au/reports/australian-burden-of-disease-study/australian-burden-of-disease-study-2011-highlights).

¹⁵ K Thurber et al, 'Tobacco Smoking and Mortality Among Aboriginal and Torres Strait Islander Adults In Australia' (2021) International Journal of Epidemiology 50(3): 942-954. Available at: [Tobacco smoking and mortality among Aboriginal and Torres Strait Islander adults in Australia - PMC \(nih.gov\)](https://pubmed.ncbi.nlm.nih.gov/34811111/).

¹⁶ Australian Bureau of Statistics, 'National Health Survey: First Results, 2017-18' (Australian Bureau of Statistics, February 2019). Available at: <https://www.abs.gov.au/statistics/health/health-conditions-and-risks/national-health-survey-firstresults/latest-release>.

¹⁷ Australian Bureau of Statistics, 'National Aboriginal and Torres Strait Islander Health Survey' (Australian Bureau of Statistics, December 2019). Available at: [National Aboriginal and Torres Strait Islander Health Survey, 2018-19 financial year | Australian Bureau of Statistics \(abs.gov.au\)](https://www.abs.gov.au/statistics/health/health-conditions-and-risks/national-aboriginal-and-torres-strait-islander-health-survey/2018-19-financial-year).

¹⁸ US Department of Health and Human Services, 'The Health Consequences of Involuntary Exposure to Tobacco Smoke: a Report of the Surgeon General (2006) Office of the Surgeon General. Available at: [The Health Consequences of Involuntary Exposure to Tobacco Smoke - NCBI Bookshelf \(nih.gov\)](https://www.ncbi.nlm.nih.gov/books/NBK139561/).

¹⁹ US Department of Health and Human Services, 'The Health Consequences of Involuntary Exposure to Tobacco Smoke: a Report of the Surgeon General (2006) Office of the Surgeon General. Available at: [The Health Consequences of Involuntary Exposure to Tobacco Smoke - NCBI Bookshelf \(nih.gov\)](https://www.ncbi.nlm.nih.gov/books/NBK139561/).

²⁰ Whetton S, Tait R, Scollo M et al. Identifying the social costs of tobacco use in Australia in 2015/16. Perth: National Drug Research Institute, Curtin University; May 2019. Available from: <http://ndri.curtin.edu.au/NDRI/media/documents/publications/T273.pdf>.



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Overview of the Bill

Consolidation of existing tobacco control measures

The Bill will consolidate into a single Act and regulations eight existing tobacco related instruments including the:

- *Tobacco Advertising Prohibition Act 1992 (TAP Act);*
- *Tobacco Advertising Prohibition Regulation 1993;*
- *Tobacco Plain Packaging Act 2011 (TPP Act);*
- *Tobacco Plain Packaging Regulations 2011;*
- *Competition and Consumer (Tobacco) Information Standard 2011*
- *Trade Practices (Consumer Product Safety Standard) (Reduced Fire Risk Cigarettes) Regulations 2008;*
- *Trade Practices Act 1974 – Consumer Protection Notice No. 10 of 1991 – Permanent Ban on Goods; and*
- the following court enforceable undertakings between the Australian Competition and Consumer Commission and tobacco companies issued in 2005:
 - Philip Morris, ref D05/23079;
 - British American Tobacco Australia, ref D05/23081; and
 - Imperial Tobacco Limited, ref D05/68710.

The TAP Act and Tobacco Advertising Prohibition Regulation 1993 seek to improve public health by limiting the exposure of the public to messages and images that may persuade them to start or continue smoking, or to use or continue using tobacco products. The TPP Act and Tobacco Plain Packaging Regulations 2011 regulate the retail packaging and appearance of tobacco products in order to reduce the appeal of tobacco products to consumers; increase the effectiveness of health warnings on the retail packaging of tobacco products; and reduce the ability of the retail packaging of tobacco products to mislead consumers about the harmful effects of smoking or using tobacco products.

The other instruments included in the package are those that set out the requirements for graphic health warnings, the safety standard for reducing the risk of death or injury caused by fires resulting from smouldering cigarettes inadvertently coming into contact with flammable materials and the permanent ban on oral tobacco products. The package also addresses the relevant aspects of the court enforceable undertakings relating to prohibiting the use of terms such as ‘light’ and ‘mild’.

Proposed reforms

The overarching rationale for new measures was informed by the thematic review and is directed to preventing the uptake of smoking, encouraging cessation and addressing the public health risks posed by vaping and the use of e-cigarette products. The rationale is detailed in the Impact Analysis. The new measures proposed in the Bill are intended to improve upon existing tobacco control measures. The measures are informed by evidence, public consultation and the experience of other regulators internationally.



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Further restrictions on advertising and promotion - Although Australia has significant tobacco advertising prohibitions, there are new platforms where advertising is evident. Supported by the strong evidence demonstrating the influence advertising and promotion of tobacco products has on uptake and continuation of smoking, the Bill includes further restrictions to ensure modern advertising platforms are captured. New civil penalty provisions have been introduced for greater flexibility and to facilitate compliance with legislative requirements without the need to resort to criminal prosecution. In addition, to continue to meet the objective of the TAP Act to improve public health, additional regulation is required to limit the public's exposure to advertising and promotion of e-cigarettes and other novel products. This approach reflects that public exposure to e-cigarette advertising and promotion poses a range of direct and indirect risks to tobacco control and population health.

Further standardise tobacco packets and products – including cigarette pack and carton size, roll your own (RYO) tobacco pouch size and little cigar and cigarillo pack size - Provision is made in the Bill to further standardise tobacco packets and products via the regulations. Varying cigarette pack sizes and RYO pouch sizes increases product differentiation based on price and increases appeal to different market segments. Larger cigarette pack sizes are associated with increased consumption, and increased consumption makes it harder for people who smoke to quit.²¹ Small RYO pouch sizes and the availability of little cigars and cigarillos in small pack sizes provide a low price point for youth and are a key factor in observed increases in youth uptake.²²

Regulation of tobacco product characteristics - Provision is made in the Bill for regulations to be made that relate to the appearance and physical features of tobacco products. This could include dissuasive measures such as health warnings to appear on products. Like their packaging, cigarettes themselves can be a powerful communication tool. Products incorporating dissuasive measures better communicate the risks and harms of smoking, compared to a standard product, in a manner that cannot easily be avoided.²³ Research indicates that cigarettes with dissuasive measures are perceived as significantly less appealing, more harmful, and less likely to encourage trial.²⁴ The regulations can also

²¹ Blackwell A, Lee I, Scollo M, Wakefield M, Munafo M, Marteau T (2019) 'Should cigarette pack sizes be capped?', *Addiction*; Lee I, Blackwell AKM, Hobson A, Wiggers D, Hammond D, De-loyde K, et al (2023) 'Cigarette pack size and consumption: a randomized cross-over trial' 118(3):489–99, *Addiction*; Persoskie A, Donaldson EA, Ryant C (2018) 'How tobacco companies have used package quantity for consumer targeting', 28(4):365–373, *Tobacco Control*.

²² Bayly M, Scollo M, Wakefield M (2019) 'Who uses rollies? Trends in product offerings, price and use of roll-your-own tobacco in Australia', *Tobacco Control*, 28:317–324, <http://dx.doi.org/10.1136/tobaccocontrol-2018-054334>. Nyman A, Sterling K, Weaver S, Majeed B, Eriksen M (2016) 'Little cigars and cigarillos: Users, perceptions, and reasons for use', *Tobacco Regulatory Science*, 2(3):239–251. Richardson A, Rath J, Ganz O, Xiao H, Vallone D (2013) 'Primary and dual users of little cigars/cigarillos and large cigars: Demographic and tobacco use profiles', *Nicotine & Tobacco Research*, 15(10):1729–1736. Antognoli E, Gonzalez S, Trapl E, Cavallo D, Lavanty B, Lim R, Flocke S (2018) 'Cigarettes, little cigars, and cigarillos: Initiation, motivation, and decision-making', *Nicotine and Tobacco Research*, S5–S11. Kong G, Bold K, Simon P, Camenga D, Cavallo D, Krishnan-Sarin S (2017) 'Reasons for cigarillo initiation and cigarillo manipulation methods among adolescents', *Tobacco Regulatory Science*, 3(2 Suppl 1):S48–S58.

²³ Hoek J, Robertson C (2015) 'How do young adult female smokers interpret dissuasive cigarette sticks? A qualitative analysis.' 5(1):21–39, *Journal of Social Marketing*. [1] Hoek J, Gendall P, Eckert C, Louviere J (2015) 'Dissuasive cigarette sticks: the next step in standardised ('plain') packaging?' *Tob Control* doi: <https://doi.org/10.1136/tobaccocontrol-2015-052533> [published Online First: Epub Date]

²⁴ Moodie C, Gendall P, Hoek J, MacKintosh AM, Best C, et al (2017) 'The response of young adult smokers and non-smokers in the united kingdom to dissuasive cigarettes: An online survey.' *Nicotine & Tobacco Research*; Hoek J, Gendall P, Eckert C, Louviere J (2015) 'Dissuasive cigarette sticks: the next step in standardised ('plain') packaging?' *Tob Control* doi: <https://doi.org/10.1136/tobaccocontrol-2015-052533> [published Online First: Epub Date]



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prescribe such things as standardised cigarette dimensions and characteristics of filter tips which are intended to reduce product appeal.

Update and improve health warnings - The Bill will make provision for health warnings to be updated and improved via the regulations. Australia's suite of graphic health warnings were introduced in 2012 under the Competition and Consumer (Tobacco) Information Standard 2011. It is important that health warnings are updated to reflect this evidence in order to adequately inform Australians of what is currently known about the health consequences of smoking. Additionally, the impact of health warnings wear out over time and changes are needed to maintain and enhance their impact and effectiveness.^{25 26}

Require health promotion inserts to encourage and empower people who smoke to quit - The Bill will require health promotion inserts to be included in tobacco product packaging. Health promotion inserts are small information cards included in tobacco product packets, which provide messages highlighting the benefits of quitting and promote effective cessation resources and strategies. The measure aims to empower people who smoke by providing education and quitting information to increase knowledge and awareness of supports. Health promotion inserts are accessible and acceptable to people who smoke, but as yet are an untapped channel for communicating with Australian people who smoke.²⁷

Prohibit the use of brand and variant names that falsely imply reduced harm - The Bill includes a prohibition on the use of certain words or characters ('prohibited terms') in relation to brand names or variant names of tobacco products. The prohibition of such terms is intended to further limit tobacco promotion or advertising as brand and variant names are one of the few remaining vehicles that can be used for this purpose.

Reduce tobacco palatability by restricting additives - The Bill allows the regulations to prescribe prohibited ingredients. Flavours and additives will be prohibited because they can enhance the attractiveness and palatability of tobacco products; change the colour of products to make them more appealing; create the impression of health benefits; and they are associated with energy and vitality.²⁸ Tobacco products contain many additives that enhance the attractiveness and palatability of tobacco products, fostering uptake and addiction, particularly among youth.

Reduce tobacco product attractiveness by regulating product design features that create novelty value - The Bill includes the ability to prohibit novel design features via the regulations. Product design features, such as crush balls/capsules (which add a flavour or substance to a tobacco product when crushed by the user) and novel cigarette filters make products more attractive to people who smoke and attract new users.²⁹

²⁵ C Ratneswaran et al (2016) 'Desensitisation to Cigarette Package Graphic Health Warnings: a Cohort Comparison Between London and Singapore' 6(10): e012693, BMJ Open.

²⁶ H Parada et al (2018) 'Trajectories of responses to pictorial cigarette pack warnings' 20(7):876-881, Nicotine and Tobacco Research.

²⁷ E Brennan et al (2021) 'Public support for introducing cigarette pack inserts in Australia' 30(1): 117-118, Tobacco Control; C Moodie (2018) 'Adult smokers' perceptions of cigarette pack inserts promoting cessation: a focus group study' 27(1): 72-77, Tobacco Control.

²⁸ WHO FCTC Guidelines for Implementation of Article 5.3; Article 8; Article 9; and 10; Article 11; Article 12; Article 13; Article 14 – 2011 edition.

²⁹ R Talhout et al. (2018) 'Cigarette Design Features: Effects on Emission Levels, User Perception, and Behavior' 4(1):592-604. Tobacco Regulatory Science.



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Require mandatory disclosure of tobacco industry volumes and pricing, product ingredients and tobacco industry advertising, promotion and sponsorship activities and expenditure -
New reporting requirements outlined in the Bill will increase transparency of industry practices and support policy development for tobacco control measures.

Implementation

The Consequential and Transitional Bill provides for the commencement of the proposed legislation (including the regulations) on 1 April 2024. A 12-month transition period from the date the Regulations take effect is proposed for manufacturers, importers and distributors. During this time, tobacco products that meet the packaging and product requirements from the existing TPP Act will be considered compliant. This will facilitate industry putting the necessary arrangements in place to become compliant with new requirements.

In addition to the 12-month period, there will be a further period of 3 months for sell through to allow retailers sufficient time to clear out old stock. During this time a retailer may continue to sell and possess tobacco products that are compliant with the TPP Act. It is proposed that full compliance with the new Act and Regulations will be required from 1 July 2025.

For reporting entities that are required to submit reports on sales volumes, product ingredients, and promotional expenditure each financial year, reports will be required for the 2024-2025 financial year, and each subsequent financial year.

Resources will be prepared to ensure industry and consumers are informed of the changes and to support compliance with the reforms. Guidance materials will be prepared and distributed to support manufacturers and retailers to understand the new legislative requirements. Fact sheets will be prepared to educate stakeholders and the public. Further information on proposed implementation activities is outlined in the [Impact Analysis](#).

Reforms to address e-cigarettes

While the Bill seeks to regulate advertising and promotion of e-cigarettes it does not address the broader regulation of e-cigarette availability and supply. The Australian Government has committed to introducing new controls on e-cigarette importation, contents and packaging and, together with state and territory governments, is separately developing these reforms to protect Australians from the harms of e-cigarettes through stronger legislation, enforcement, education and support.