

## Public Health (Tobacco and Other Products) Bill

The Victorian Health Promotion Foundation (VicHealth) strongly supports the *Public Health (Tobacco and Other Products) Bill 2023* ('the Bill') which consolidates, streamlines and simplifies eight disparate tobacco control laws/regulatory instruments. The Bill also modernises limits on the marketing of tobacco products, introducing several controls that have been in place in other countries for some time.

**Together with Cancer Council Victoria, we note the imminent sunset of current regulations covering packaging and advertising and promotion. Any delay in the introduction of new regulations without doubt would be exploited by tobacco companies and would result in significant exposure of Australians, particularly young Australians, to the highly sophisticated kinds of marketing still allowed in some other countries. We urge the Community Affairs Legislation Committee and both Houses of Parliament to consider the Bill and its associated Transition Bill and Regulations without delay.**

### Background

VicHealth is an independent government authority established under the Victorian *Tobacco Act 1987* with a mandate to promote good health for all Victorians, including providing evidence-based policy advice. We are a pioneer in health promotion, working with partners to discover, implement and share solutions to the health problems facing Victorians and Australians. We seek a community where everyone enjoys better health and wellbeing. VicHealth works to keep people healthy, happy and well – preventing chronic disease and reducing the burden of poor health on everyday Australians.

VicHealth has a strong focus on reducing tobacco use. Since our inception in 1987, we have invested significantly in the work of Quit Victoria, supporting the delivery of education campaigns, cessation support, tobacco policy and research. While smoking rates have reduced in recent decades – thanks in part to the role of price increases on tobacco products, mass media campaigns and legislative changes such as plain packaging – growth in e-cigarette use presents a new and significant challenge. Over the past years, it has become increasingly clear that e-cigarettes are harmful to those that use them and the people that surround those consumers.

E-cigarettes have also had an impact on smoking rates, with recent data analysed by the Centre for Behavioural Research in Cancer showing a three-fold increase in current tobacco smoking by 14-17 year olds in just four years, up from 2.1 per cent in 2018 to 6.7 per cent in 2022.

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#### Victorian Health Promotion Foundation

Level 2, 355 Spencer Street, West Melbourne VIC 3003  
PO Box 13137, Law Courts VIC 8010  
T +61 3 9667 1333 W [vichealth.vic.gov.au](http://vichealth.vic.gov.au)  
E [vichealth@vichealth.vic.gov.au](mailto:vichealth@vichealth.vic.gov.au)

ABN 20 734 406 352

#### Patrons

The Honourable Linda Dessau AC  
Governor of Victoria (Patron-in-Chief)  
Professor Emeritus  
Sir Gustav Nossal AC CBE

## **Recommended amendments to the Public Health (Tobacco and Other Products) Bill as tabled**

As per our submission on the Exposure Draft (July 2023), VicHealth again is supportive of the recommendations made by Cancer Council Victoria. Outlined below are two key recommended amendments that VicHealth would like to draw attention to.

### **Definitions of ‘tobacco sponsorship’ and ‘e-cigarette sponsorship’**

Together with Cancer Council Victoria, VicHealth supports the intent and broadly supports the definitions of ‘tobacco sponsorship’ and ‘e-cigarette sponsorship’ set out in clauses 39 and 66 of the Bill. However, we note in the definitions reference to contributions made to an ‘event, activity or individual’. The term ‘individual’ is defined in section 2B of the *Acts Interpretation Act 1901* (Cth): Section 2B clearly states that ‘*individual means a natural person*’. We fear that the use of the term ‘individual’ in clauses 39 and 66 of the Bill is likely to have the unintended effect of significantly narrowing the scope of clauses 39 and 66.

Under the current wording, it appears to us that contributions to sporting teams, incorporated retail entities or other organisations or causes may, unintentionally, not be captured (even where they have the aim, effect, or likely effect of promoting smoking/vaping or a regulated tobacco item/e-cigarette product). This is contrary to the intention expressed in the Explanatory Memorandum to the Bill (in particular, the examples provided on page 50). We are also concerned that under the current wording, the sponsorship prohibitions in clauses 39 and 66 could potentially be avoided through the use of inventive corporate structuring by individuals.

### **Recommendation**

In line with Cancer Council Victoria, we strongly recommend 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.**

### **Definition of ‘targeted online advertising’**

Subclauses 30(3) and 56(3) of the Bill extend the meaning of ‘publishes’ to specifically include forms of targeted online advertising.

Together with Cancer Council Victoria, VicHealth strongly supports subclauses 30(3) and 56(3), which will help to ensure several new and emerging methods for reaching members of the public through online media platforms are captured by the legislation. We note that the wording in subclauses 30(3) and 56(3) does appear to be broad enough to capture

temporary digital publication of a tobacco or e-cigarette advertisement (i.e., publication of an advertisement which disappears once viewed by the internet end user). The wording also appears broad enough to capture subscription-based content (i.e., content paid for by the internet user and personalised to them). We strongly support prohibition of both these forms of targeted internet advertising, which we note are increasingly utilised by the tobacco and e-cigarette industry.<sup>1</sup>

While we fully support the *intent* of subclauses 30(3) and 56(3), we fear that the *wording* may not be sufficiently broad to capture future forms of online promotion. Online marketing techniques are constantly and rapidly evolving, with the techniques used to reach individuals becoming increasingly more sophisticated. Future technological developments in this area are difficult to predict, and the need for frequent amendments to capture new forms of digital promotion should be avoided.

### **Recommendation**

In line with Cancer Council Victoria, we recommend that subclauses 30 and 56 be amended to ensure some level of ‘futureproofing’. **We suggest 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.**

### **Conclusion**

In summary, VicHealth strongly supports the strengthening of tobacco regulatory reforms to reduce smoking and e-cigarette use prevalence. Strengthening the areas in the Bill outlined above and in the submission from Cancer Council Victoria will go a long way to protecting the health of all Australians and ensure Australia is world leading in tobacco and e-cigarette control.

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<sup>1</sup> Jancey J. [Vaping and e-cigarettes are glamourised on social media, putting young people in harm’s way](#), in *The Conversation* 2021; Carey R & Jancey J. [TikTok promotes vaping as a fun, safe and socially accepted pastime – and omits the harms](#), in 2023.