



NACCHO

National Aboriginal Community
Controlled Health Organisation
Aboriginal health in Aboriginal hands

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Public Health (Tobacco and Other Products) Legislation 2023 – Inquiry

Submission to the
Community Affairs
Legislation Committee

October 2023

NACCHO welcomes the invitation and opportunity to provide feedback on the Community Affairs Legislation Committee's inquiry and report into the provisions of the Public Health (Tobacco and Other Products) Bill 2023 and the Public Health (Tobacco and Other Products) (Consequential Amendments and Transitional Provisions) Bill 2023.

Please find below a comprehensive review of the Bills in question. For context, much of the content included is unchanged from NACCHO's July 2023 submission to the Department of Health and Aged Care and its Public Consultation on the Exposure Draft of these proposed tobacco reforms. While NACCHO understands that the outcomes of this public consultation are still pending, the referral of these provisions to the standing committee warrants the development of this updated submission.

As is highlighted below, Aboriginal and Torres Strait Islander peoples are disproportionately affected by exposure to, and consequences of, tobacco use. It is crucial that the concerns of the community-controlled sector are heard if any meaningful change is to be made in redressing the health inequities faced by Aboriginal and Torres Strait Islander peoples.

ABOUT NACCHO

NACCHO is the national peak body representing 145 Aboriginal Community Controlled Health Organisations (ACCHOs) and assisting a number of other community-controlled organisations.

The first Aboriginal medical service was established at Redfern in 1971 as a response to the urgent need to provide decent, accessible health services for the largely medically uninsured Aboriginal population of Redfern. The mainstream healthcare system was not meeting the needs of Community. So it was, that over fifty years ago, Aboriginal people took control and designed and delivered their own model of health care. Similar Aboriginal medical services quickly sprung up around the country. In 1974, a national representative body was formed to represent these Aboriginal medical services at the national level. This has grown into what NACCHO is today. All this predated Medibank in 1975.

NACCHO liaises with its membership (including the eight state/territory affiliates organisations), governments and other organisations on Aboriginal and Torres Strait Islander health and wellbeing policy and planning issues, and leads advocacy relating to health service delivery, health information, research, public health, health financing and health programs.

NACCHO is assisted in its leadership of the sector by the eight affiliate organisations across all States and Territories of Australia. Affiliates lead jurisdictional cooperation between the ACCHOs, government and the public health sector, working to improve the responsiveness, quality and access to culturally appropriate public health services. They provide input to national policy informed by their grass-roots connectivity to Community through the ACCHOs.

ACCHOs range from large multi-functional services employing several medical practitioners and providing a wide range of comprehensive primary care and allied health services, to small services which rely on Aboriginal health practitioners and/or nurses to provide the bulk of primary health care services. Our 145 members provide services from about 550 clinics. Our sector provides over 3.1 million episodes of care per year for over 410,000 people across Australia, which includes about one million episodes of care in very remote regions.

ACCHOs contribute to improving Aboriginal and Torres Strait Islander health and wellbeing through the provision of comprehensive primary health care, integrating and coordinating care and services that can include home and site visits; medical, public health and health promotion services; allied health; nursing services; assistance with making appointments and transport; help accessing childcare or dealing with the justice system; drug and alcohol services; and help with income support. Our services build ongoing relationships with Community members, with continuity of care so that chronic conditions are managed, and preventative health care is targeted. Through local engagement and a proven service delivery model, our clients 'stick'. Clearly, the cultural safety with which we deliver our services is a key factor of our success.

Further enquiries about this submission should be directed to:

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Recommendations

NACCHO recommends that any efforts to increase consumer knowledge require meaningful actions to address the gaps in health equity and access to health information which affect Aboriginal and Torres Strait Islander peoples.

NACCHO recommends that the purpose of an event or function should not be relevant in determining whether a tobacco or e-cigarette advertisement is made available to the public (or part thereof) at a private event or function.

NACCHO recommends that members of Parliament, electoral candidates, and political parties, by way of political donation or electoral expenditure, must not be exempt from entering into tobacco/e-cigarette sponsorships, or that definitions of tobacco/e-cigarette sponsorships are expanded to include these parties, as these provisions in their current form will pose a significant threat to both public health and political transparency.

NACCHO recommends that the community-controlled sector consultation be sought in the development of health warnings and health promotion inserts recommended by the Chief Health Officer, in keeping with Priority Reform 1.

NACCHO recommends that any reports relating to the volume of tobacco products sold or supplied in Australia should include disaggregated data relating to the geographic location and rurality of sale or supply, where possible.

NACCHO recommends that, in keeping with Priority Reform 4 of the National Agreement, any data or information relating to marketing, research and development by reporting entities, which involves Aboriginal and Torres Strait Islander peoples, should be available to Aboriginal and Torres Strait Islander communities and organisations.

NACCHO recommends that data or information relating to research, policy development or data analysis, which involves or affects Aboriginal and Torres Strait Islander peoples, should be accessible by Aboriginal and Torres Strait Islander communities, organisations, and researchers.

Introduction

NACCHO welcomes the opportunity to provide feedback on the Community Affairs Legislation Committee Inquiry into the Public Health (Tobacco and Other Products) Legislation 2023. Aboriginal and Torres Strait Islander peoples aged 15 and above are almost 3 times as likely to identify as being current smokers than other Australians,¹ and tobacco use contributes to the total burden of disease among Aboriginal and Torres Strait Islander peoples (11.9%) more than any other risk factor.² Almost a quarter of all deaths of Aboriginal and Torres Strait Islander peoples in 2018 were attributable to tobacco use. Lung cancer is the most diagnosed cancer among Aboriginal and Torres Strait Islander peoples (but only the fourth-most common in non-Aboriginal and Torres Strait Islander peoples in Australia),³ and almost 90% of all lung cancer cases among Aboriginal and Torres Strait Islander peoples are found to be attributable to tobacco use.²

NACCHO have chosen to prepare feedback based on the Chapters outlined within the proposed Act, with feedback guided by the principles outlined in the *National Agreement on Closing the Gap*.

National Agreement on Closing the Gap

At the meeting of National Cabinet in early February 2023, First Ministers agreed to renew their commitment to Closing the Gap by re-signing the National Agreement, first signed in July 2020. The reforms and targets outlined in the National Agreement seek to overcome the inequality experienced by Aboriginal and Torres Strait Islander peoples so they achieve life outcomes equal to all Australians. This Government's first Closing the Gap Implementation Plan commits to achieving Closing the Gap targets *through implementation of the Priority Reforms*. This represents a shift away from focussing on the Targets, towards the structural changes that the Priority Reforms require, which are more likely to achieve meaningful outcomes for our people in the long term:

Priority Reform Area 1 – Formal partnerships and shared decision-making

This Priority Reform commits to building and strengthening structures that empower Aboriginal and Torres Strait Islander people to share decision-making authority with governments to accelerate policy and place-based progress against Closing the Gap.

Priority Reform Area 2 – Building the community-controlled sector

This Priority Reform commits to building Aboriginal and Torres Strait Islander community-controlled sectors to deliver services to support Closing the Gap. In recognition that Aboriginal and Torres Strait Islander community-controlled services are better for Aboriginal and Torres Strait Islander people, achieve better results, employ more Aboriginal and Torres Strait Islander people, and are often preferred over mainstream services.

Priority Reform Area 3 – Transformation of mainstream institutions

This Priority Reform commits to systemic and structural transformation of mainstream government organisations to improve to identify and eliminate racism, embed and practice cultural safety, deliver services in partnership with Aboriginal and Torres Strait Islander people, support truth telling about agencies' history with Aboriginal and Torres Strait Islander people, and engage fully and transparently with Aboriginal and Torres Strait Islander people when programs are being changed.

Priority Reform 4 – Sharing data and information to support decision making

This Priority Reform commits to shared access to location-specific data and information (data sovereignty) to inform local decision-making and support Aboriginal and Torres Strait Islander communities and organisations to support the achievement of the first three Priority Reforms.

General feedback – proposed reforms

Streamlining tobacco-related laws, regulations, instruments and court decisions

NACCHO agrees with the consolidation of the listed tobacco-related instruments into a single tobacco control Act and delegated legislation, in the interests of clarity and ease of access to appropriate information.

Chapter 1: Introduction

NACCHO acknowledges and agrees with the definitions and objects of the Bill listed in Chapter 1. It is, however, important to acknowledge that access to health information is not equitable. Any efforts to empower consumers by increasing knowledge of tobacco and its harms must consider such inequities, particularly for Aboriginal and Torres Strait Islander peoples, who are disproportionately affected by tobacco and its associated harms. Priority Reform 3 of the National Agreement highlights the importance of transforming mainstream organisations in delivering services in partnership with Aboriginal and Torres Strait Islander peoples.

NACCHO recommends that any efforts to increase consumer knowledge require meaningful actions to address the gaps in health equity and access to health information which affect Aboriginal and Torres Strait Islander peoples.

Chapter 2: Advertising and sponsorship

NACCHO agrees with the prohibition of tobacco and e-cigarette advertisements and sponsorships within the Act, although is very concerned with the sponsorship exceptions relating to political donations, gifts, and electoral expenditure. The Act's accompanying consultation paper itself states, *"strategies undertaken by industries marketing these products have the potential to undermine Australia's achievements to date in tobacco control and public health"*.⁴ Exemptions to bans on tobacco and e-cigarette sponsorship for politicians, political parties, members of Parliament and electoral candidates creates a significant conflict of interest which stands to affect the health and wellbeing of Aboriginal and Torres Strait Islander peoples, and indeed all Australians.

NACCHO also acknowledges the Act's efforts to restrict tobacco and e-cigarette advertisements at private events and functions. However, there remain some concerns that requiring the purpose of an event or function to include the promotion of smoke or tobacco items may invite tobacco entities to exploit loopholes and target vulnerable population groups, including Aboriginal and Torres Strait Islander peoples, in certain circumstances.

NACCHO recommends that the purpose of an event or function should not be relevant in determining whether a tobacco or e-cigarette advertisement is made available to the public (or part thereof) at a private event or function.

NACCHO recommends that members of Parliament, electoral candidates, and political parties, by way of political donation or electoral expenditure, are not exempt from entering into tobacco/e-cigarette sponsorships, or that definitions of tobacco/e-cigarette sponsorships are expanded to include these parties.

Chapter 3: Tobacco product requirements

NACCHO welcomes the inclusion of requiring health promotion inserts to be enclosed into tobacco product packaging by manufacturers. Health warning inserts may also prove to be beneficial, although careful consideration should be given to the content of such warnings, as previous concerns have been raised regarding the possible adverse impacts of negative messages relating to smoking among Aboriginal and Torres Strait Islander peoples and their levels of self-efficacy and self-worth.⁵ As such, NACCHO would welcome future opportunities for community-controlled input and consultation in developing any health inserts in order to ensure that a strengths-based approach to messaging which empowers Aboriginal and Torres Strait Islander peoples can be implemented. Partnering with the community-controlled sector and employing a shared decision-making approach would also be in keeping with the National Agreement's Priority Reform 1.

NACCHO recommends that the community-controlled sector consultation be sought in the development of health warnings and health promotion inserts recommended by the Chief Health Officer, in keeping with Priority Reform 1.

Chapter 4: Permanent bans on certain tobacco products

No feedback

Chapter 5: Reporting and information disclosure

NACCHO appreciates that the Act's efforts to increase transparency of the Australian tobacco industry through reporting and disclosure of information are largely tied to the activities of manufacturers and distributors, rather than those of consumers. However, demographic data relating to the sale and supply of tobacco and e-cigarette products, be it by jurisdiction, remoteness or otherwise, may provide valuable information regarding the reach and influence of tobacco entities. If any such data are to become available because of the requirements and Regulations of Chapter 5, NACCHO recommends that these data, as well as any other data relating to marketing and research which relate to Aboriginal and Torres Strait Islander peoples, should be shared with Aboriginal and Torres Strait Islander communities, organisations, and researchers. Indigenous data sovereignty is the key feature of Priority Reform 4 of the National Agreement and highlights the importance of ensuring that Aboriginal and Torres Strait Islander data is accessible by the people and communities whom the data represent.

NACCHO recommends that any reports relating to the volume of tobacco products sold or supplied in Australia should include disaggregated data relating to the geographic location and rurality of sale or supply, where possible.

NACCHO recommends that, in keeping with Priority Reform 4 of the National Agreement, any data or information relating to marketing, research and development by reporting entities, which involves Aboriginal and Torres Strait Islander peoples, should be available to Aboriginal and Torres Strait Islander communities and organisations.

NACCHO recommends that data or information relating to research, policy development or data analysis, which involves or affects Aboriginal and Torres Strait Islander peoples, should be accessible by Aboriginal and Torres Strait Islander communities, organisations, and researchers.

Chapter 6: Compliance and enforcement

No feedback

Chapter 7

No feedback

Conclusion

Many of the tobacco and e-cigarette reforms announced in late 2020 stand to benefit the health of the overall Australian population. However, it is unclear whether such changes are likely to have any substantive impact on Closing the Gap. Furthermore, some of the provisions of the Act risk exacerbating inequities by failing to consider the social determinants of health which disproportionately impact the health and wellbeing of Aboriginal and Torres Strait Islander peoples. Some provisions, predominantly those supporting exemption of politicians, political parties and Members of Parliament from prohibitions on tobacco sponsorships, actively undermine many of the positive steps outlined in these reforms.

Strengthening the alignment of the Act's provisions with the National Agreement on Closing the Gap and its Priority Reforms, as outlined above, would go some way to redressing some of the issues identified in this submission. Above all, further efforts must be made to elevate equity as a key feature of these reforms.

Reference list

1. Australian Institute of Health and Welfare. Aboriginal and Torres Strait Islander Health Performance Framework: 2.15 – Tobacco use. [Internet] Canberra: AIHW, Australian Government, 2023. Available from: [2.15 Tobacco use - AIHW Indigenous HPF](#)
2. Australian Institute of Health and Welfare. Australian Burden of Disease Study: impact and causes of illness and death in Aboriginal and Torres Strait Islander people 2018 – summary report. [Internet]. Canberra: AIHW, Australian Government, 2022. Available from: [Australian Burden of Disease Study 2018: Interactive data on risk factor burden among Aboriginal and Torres Strait Islander people, Tobacco use - Australian Institute of Health and Welfare \(aihw.gov.au\)](#)
3. Australian Institute of Health and Welfare. Cancer in Aboriginal & Torres Strait Islander people of Australia. [Internet]. Canberra: Australian Government; 2018. Available from: [Cancer in Aboriginal & Torres Strait Islander people of Australia, About - Australian Institute of Health and Welfare \(aihw.gov.au\)](#)
4. Department of Health and Aged Care. Public Consultation on the Exposure Draft – Consultation paper. [Internet]. Canberra: DoHAC. 2023. Available from: [Microsoft Word - Consultation Paper - final.docx \(health.gov.au\)](#)
5. Chamberlain C, Perlen S, Brennan S, Rychetnik L, Thomas D, Maddox R, Alam N, Banks E, Wilson A, Eades S. Evidence for a comprehensive approach to Aboriginal tobacco control to maintain the decline in smoking: an overview of reviews among Indigenous peoples. Systematic reviews. 2017 Dec;6(1):1-28. doi: 10.1186/s13643-017-0520-9

Appendix A: Summary of recommendations and feedback

Section	Page number	Suggested amendment/recommendation
1.1, Section 3	3	NACCHO recommends that any efforts to increase consumer knowledge require meaningful actions to address the gaps in health equity and access to health information which affect Aboriginal and Torres Strait Islander peoples.
2.2, Division 4, Section 29	31	NACCHO recommends that the purpose of an event or function should not be relevant in determining whether a tobacco advertisement is made available to the public (or part thereof) at a private event or function.
2.3, Division 3, Section 39	40	NACCHO recommends that members of Parliament, electoral candidates, and political parties, by way of political donation or electoral expenditure, must not be exempt from entering into tobacco sponsorships, or that definitions of tobacco sponsorships are expanded to include these parties, as these provisions in their current form will pose a significant threat to both public health and political transparency.
2.4, Division 4, Section 55	51	NACCHO recommends that the purpose of an event or function should not be relevant in determining whether an e-cigarette advertisement is made available to the public (or part thereof) at a private event or function.
2.5, Division 3, Section 66	61	NACCHO recommends that members of Parliament, electoral candidates, and political parties, by way of political donation or electoral expenditure, must not be exempt from entering into e-cigarette sponsorships, or that definitions of e-cigarette sponsorships are expanded to include these parties, as these provisions in their current form will pose a significant threat to both public health and political transparency.
3.3, Division 1, Section 77	71	NACCHO recommends that the community-controlled sector consultation be sought in the development of health warnings recommended by the Chief Health Officer, in keeping with Priority Reform 1.
3.3, Division 1, Section 81	72	NACCHO recommends that the community-controlled sector consultation be sought in the development of health promotion inserts recommended by the Chief Health Officer, in keeping with Priority Reform 1.
5.2, Division 1, Section 131	136 - 137	NACCHO recommends that any reports relating to the volume of tobacco products sold or supplied in Australia should include disaggregated data relating to the geographic location and rurality of sale or supply, where possible.
5.2, Division 1, Section 132-133	137 - 139	NACCHO recommends that, in keeping with Priority Reform 4 of the National Agreement, any data or information relating to marketing, research and development by reporting entities, which involves Aboriginal and Torres Strait Islander peoples, should be available to Aboriginal and Torres Strait Islander communities and organisations.
5.2, Division 3, Section 146	147 - 148	NACCHO recommends that data or information relating to research, policy development or data analysis, which involves or affects Aboriginal and Torres Strait Islander peoples, should be accessible by Aboriginal and Torres Strait Islander communities, organisations, and researchers.