

6 October 2023

Apolline Kohen, Committee Secretary
Senate Standing Committee on Community Affairs - Legislation Committee
PO Box 6100, Parliament House, Canberra ACT 2600
Via email only: community.affairs.sen@aph.gov.au

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

Dear Committee Secretary,

Lung Foundation Australia strongly support the *Public Health (Tobacco and Other Products) Bill 2023* and *Consequential Amendments and Transitional Provisions* (hereafter **the Bill**). Strengthening legislation on tobacco advertising, product regulation (including banning certain ingredients, for example, menthol) and standardisation, and improved compliance and enforcement will aid in reducing the uptake of tobacco smoking and e-cigarette use. It will also encourage and support current smokers and vapers in their efforts to quit. The reporting and information disclosures required of the tobacco industry (particularly the sales to the level of individual tobacco products) will enable health departments and public health advocates to understand the accessibility of tobacco in Australia. It will also inform interventions and future legislative reform.

While **we endorse the Bill to the committee, and encourage progression as a matter of urgency**, we do want to take this opportunity to reiterate areas of improvement:

- a. Ban online sales of tobacco and e-cigarette products and product accessories.
- b. Ban tobacco industry contributions of any type to any branch of government.
- c. Ban tobacco industry broadcasting of Corporate Social Responsibility activities.

About Lung Foundation Australia

Lung Foundation Australia is Australia's leading lung health peak body and national charity. Founded in 1990, we are the trusted point-of-call for the 1 in 3 Australians living with a lung disease.

We work to improve lung health and reduce the impact of lung disease and lung cancer. To do this we: deliver information and support services; facilitate access to peer support and exercise programs; coordinate clinical improvement activities and training for health professionals; provide research grants; fundraise; and advocate. Our telephone-based support services comprise respiratory nurses, specialist lung cancer nurses, a lung cancer support nurse, and a social work service. In partnership with Australians living with lung disease, and like-minded organisations, we advocate for:

- Reducing risk factors and improving early diagnosis;
- Equitably accessible evidence-based treatment and care;
- Strengthened government lung health policies, programs, and strategies;
- Improved health professional training, data infrastructure and research investment.

Our recommendations for strengthened tobacco control legislation

a) Ban online sales

We refer to clauses 32 and 58 that permit online sales of tobacco and e-cigarette products. Online sales contravene Australia's obligations under Article 13 of the WHO Framework Convention on Tobacco Control (FCTC) that states: "Internet sales of tobacco inherently involve advertising and promotion as defined in the Convention."^{1, p.8} The Convention defines 'tobacco advertising and promotion' as: "any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly".^{2, p.10} This is the same definition that the Bill adopts for a 'tobacco advertisement' (Clause 20) and 'e-cigarette advertisement' (Clause 43). Given these definitions, it is within the scope of the Bill to ban online sale of tobacco and e-cigarette products.

b) Ban political donations

We refer to clauses 40 and 67 that prescribe that it will not be an offence for tobacco companies to contribute a gift or a payment or reimbursement of expenditure incurred during the course of an election to members of Australia's parliaments, a political candidate, an Australian political party and entities or other people associated with, or who campaign for, parliamentarians, candidates, and political parties.

These clauses contravene Australia's obligations under Article 5.3 of the FCTC. The Guidelines for implementation of Article 5.3 state: "Parties should not allow acceptance by any branch of government or the public sector of political, social, financial, educational, community or other contributions from the tobacco industry or from those working to further its interests, except for compensations due to legal settlements or mandated by law or legally binding and enforceable agreements."^{3, p.11}

We note that the Australian National Party remains the last major party in Australia to accept donations from the tobacco industry, and while other political parties have stated that they will not accept donations, an explicit prohibition should be formalised in the Bill. New South Wales is the only Australian jurisdiction to prohibit political donations from the tobacco industry (amongst others) or a 'close associate', as outlined in their *Electoral Funding Act 2018*.

To meet Australia's obligations under the FCTC, and to reflect the actions under Priority Area 1 of the National Tobacco Strategy 2023-2030 ('Protect public health policy, including tobacco control policies, from all commercial and other vested interests'), a full legislative ban on political donations of any type by the tobacco industry is required.

c) Ban Corporate Social Responsibility broadcasting

Broadcasting of corporate social responsibility activities of the tobacco industry is not included as a form of advertising in the Bill – they are only referenced as an activity to be reported under Clause 133 (Marketing and promotional expenditure). Lung Foundation Australia endorse the view that "corporate social responsibility programmes are shaped by promotional priorities and constitute a specific form of marketing".^{4, p.34}

Further, the Guidelines for implementation of Article 5.3 of the FCTC state: "Activities that are described as "socially responsible" by the tobacco industry, aiming at the promotion of tobacco consumption, is a marketing as well as a public relations strategy that falls within the Convention's definition of advertising, promotion and sponsorship."^{3, p.10} A ban of the broadcasting of corporate social responsibility activities by the tobacco and e-cigarette product industries in the Bill would uphold Australia's FCTC obligations.

Further to these recommendations, we also advise the Committee of the counter-arguments that the tobacco industry will present to discredit the evidence-based measures included in the Bill. In particular, we highlight the proposed regulation to ban menthol in tobacco products. Australia is behind many similar nations in not having already enacted a ban on menthol. Menthol increases the addictiveness and attractiveness of tobacco products. We particularly note that menthol may enhance nicotine absorption through the lungs because the cool sensation can lead to breath-holding.⁵ Any counter-arguments by the tobacco industry concerning menthol can be well refuted and we encourage the Committee to reach out to ourselves or other experts if advice is required.

Lung Foundation Australia reiterate our support for the Bill. We encourage the Community Affairs Legislation Committee to consider the recommendations described above as they will help make Australia's tobacco control legislation best practice and world leading. Further, we endorse the submission of Cancer Council Australia (CCA) to the Committee and note that we continue to collaborate with CCA and other health-focussed NGOs on issues of public health policy importance.

We also reiterate the importance of prompt assent of the Bill and encourage the Committee to take decisive action that sees tobacco reforms progress as a matter of priority. With two sets of regulations supporting two current Acts of Australian tobacco legislation (*Tobacco Advertising Prohibition Act 1992* and *Tobacco Plain Packaging Act 2011*) soon to sunset, denying the tobacco industry the chance to capitalise on any legislative delay is imperative. We look forward to the committee report in November. If you would like to discuss our response further, please contact Paige Preston, General Manager of Policy, Advocacy and Prevention, at

or .

Yours sincerely,

Mark Brooke

Chief Executive Officer
Lung Foundation Australia

References

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5. Garten S, Falkner RV. Role of mentholated cigarettes in increased nicotine dependence and greater risk of tobacco-attributable disease. *Preventive Medicine* 2004; 38(6): 793-8, doi: 10.1016/j.ypmed.2004.01.019