

Attachment 2. Recommended amendments to the Public Health (Tobacco and Other Products) Bill as tabled



Definitions of 'tobacco sponsorship' and 'e-cigarette sponsorship'

Cancer Council 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

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.**

Prohibited ingredients – Tobacco product accessories

Cancer Council strongly supports the provision allowing tobacco product ingredients to be prohibited by regulation (set out in clause 87 of the Bill), particularly where those ingredients may be contributing to increased palatability, appeal or addictiveness of tobacco products.

Under the current wording, it appears to us that there is nothing in the Bill to prevent prohibited ingredients from being added to tobacco product *accessories* (such as cigarette papers or filters that do not form part of a tobacco product). We are concerned that the current wording allows for the development of industry innovations involving the addition of prohibited ingredients to tobacco product accessories in order to circumvent clause 87 of the Bill.

Recommendation

We recommend that clause 87 be amended to ensure it applies to both tobacco products and tobacco product accessories.

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.

Cancer Council 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.¹

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

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.**

Need for further restriction on trade communications

Clause 33 and 59 of the Bill essentially provide that a person may publish a tobacco/e-cigarette advertisement if the advertisement is a trade communication (subject to limitations).

While manufacturers do need to be able to communicate with wholesalers, and wholesalers do need to be able to communicate with retailers, such communication does not need to and should not promote smoking or vaping. Nor should it provide incentives to promote particular tobacco or e-cigarette products. Cancer Council strongly supports subclauses 33(2)(b) and 59(2)(b), which provide that permitted trade publications must not actively promote smoking/vaping or the use of regulated tobacco items/e-cigarette products. We also support subclauses 33(2)(c) and 59(2)(c), which limit trade communications about particular tobacco/e-cigarette products to ‘factual information about the item and the terms of the sale or supply of the item’.

In the digital era, content can easily make its way from closed to open platforms. Digital content and objects could be seen by customers in the retail environment. Even if this does not happen, such content no doubt influences how retailers feel about the products they sell, and the ways they talk to their customers (which is a powerful form of promotion). Several specific examples of trade communications were included in Appendix 1² of Cancer Council’s submission dated 14 July 2023 (which forms **Attachment 1** in this submission to the Committee). These examples demonstrate high levels of investment in this sort of promotion. Given the difficulties of containment to the business relationship and given, further, the objective of preventing any form of promotion to any person, we believe trade communication **should be limited to text only.**

Recommendation

We recommend additions to Clauses 33 and 59 to specifically exclude the use of video/audio or images and promotional objects in trade communications. We also recommend further restrictions be imposed on the **content/appearance of trade publications (e.g., prohibition on the use of colour/colour schemes, fonts and font size etc intended or having the effect of promoting brand image).**

¹ 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.

² See **Attachment 1** to submission on consultation on Exposure draft