

2002-2003-2004

The Parliament of the  
Commonwealth of Australia  
THE SENATE

**(EXPOSURE DRAFT)**

*(Comments on this Bill may be emailed to Senator.Allison@aph.gov.au)*

**Tobacco Advertising Prohibition (Film,  
Internet and Misleading Promotion)  
Amendment Bill 2004**

**No.      , 2004**

*(Senator Allison)*

**A Bill for an Act to amend the *Tobacco Advertising Prohibition Act 1992* to prohibit tobacco advertising and the offering for sale of tobacco products on the Internet and the prohibition of tobacco product placement in films, and for related purposes**



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21 **A Bill for an Act to amend the *Tobacco Advertising***  
22 ***Prohibition Act 1992* to prohibit tobacco advertising**  
23 **and the offering for sale of tobacco products on the**  
24 **Internet and the prohibition of tobacco product**  
25 **placement in films, and for related purposes**

26 The Parliament of Australia enacts:

27 **1 Short title**

28 This Act may be cited as the *Tobacco Advertising Prohibition*  
29 *(Film, Internet and Misleading Promotion) Amendment Act 2004*.

30 **2 Commencement**

31 This Act commences on the day on which it receives the Royal  
32 Assent.

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*Tobacco Advertising Prohibition (Film, Internet and Misleading Promotion) Amendment Bill*  
2004 No. , 2004 1

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1     **3 Objects**

2             The objects of this Act are:

- 3             (a) to ensure that the intent and operation of the *Tobacco*  
4                 *Advertising Prohibition Act 1992* maintains pace with  
5                 technological advances in advertising and remains current  
6                 and effective by adding Internet advertising to the means of  
7                 tobacco advertising which are prohibited; and  
8             (b) to prohibit the offering for sale of tobacco products on the  
9                 Internet; and  
10            (c) to prohibit the use of certain words in advertising which are  
11                 misleading, deceptive and are not conducive to public health.

1       **Schedule 1—Amendment of the Tobacco**  
2                               **Advertising Prohibition Act 1992**  
3

4       **1 Section 8**

5               Insert:

6                       *computer game* means a computer game made after 1 July 2004  
7                       and includes a computer program and any associated data capable  
8                       of generating a display on a computer monitor, television screen,  
9                       liquid crystal display or similar medium that allows the playing of  
10                      a game.

11                     *film* means a film made after 1 July 2004 and includes a  
12                     cinematographic film, a slide, video tape and video disc and any  
13                     other form of recording from which a visual image, including a  
14                     computer generated image can be produced (with or without its  
15                     sound track) and includes a computer game.

16                     *product placement* includes the depiction of advertisements of  
17                     tobacco products or smoking in a film, television program or  
18                     computer game in return for a benefit given by the manufacturer,  
19                     distributor or retailer of the tobacco product to the maker of the  
20                     film, television program or computer game.

21       **2 Section 8 (after paragraph (a) of the definition of tobacco**  
22                               **product)**

23               Insert:

24                     (ab) any product designed or intended for consumption by smoking;  
25                     and

26       **3 Section 8 (at the end of the paragraph (c) of the definition**  
27                               **of tobacco product)**

28               Add:

29                     “, cigar case or cigarette case”.

30       **4 Paragraph 9(1)(f)**

31               Repeal the paragraph, substitute:

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- 1 (f) any other words (for example the whole or a part of a brand name)  
2 or designs, or colour or colour schemes, or combination of words,  
3 designs and colour schemes, that are closely associated with a  
4 tobacco product or a range of tobacco products (whether also  
5 closely associated with other kinds of products), including the  
6 words “mild”, “light” and “menthol” and phrases including “low  
7 tar”, “super mild”, “ultra mild”, “extra mild”, “ultra light” and  
8 “special filter” or any other image, message or communication by  
9 any means associated with tobacco products.

10 **5 Before subsection (10)(1)(a)**

11 Insert:

- 12 (aa) the person includes the advertisement, or something that  
13 contains the advertisement, on an Internet site;

14 **6 After subsection (10)(1)(b)**

15 Insert:

- 16 (ba) the person includes the image of a tobacco product or  
17 tobacco brand name as defined in section 9 in a film  
18 produced or screened in Australia;  
19 (bb) for the purpose of this section, *includes* means that the image  
20 is clearly visible and intended to be visible to the film viewer  
21 in the manner known as product placement;

22 **7 After section 13**

23 Insert:

24 **13A Films not to include product placement of tobacco products**

25 A person or a regulated corporation must not, knowingly or  
26 recklessly, screen a film or television program, made after 1 July  
27 2004 containing a product placement of a tobacco product, in  
28 Australia or Norfolk Island on or after 1 July 2004.

29 Penalty:

- 30 (a) for an individual—120 penalty units;  
31 (b) for a body corporate—5,000 penalty units.



1 **13B Persons engaged in film industry not to offer or accept a**  
2 **product placement arrangement**

3 A person or a regulated corporation must not, knowingly or  
4 recklessly, demand, solicit, offer or accept any direct or indirect  
5 benefit for the inclusion in Australia or Norfolk Island on or after  
6 1 July 2004 in a television program, film or computer game, any  
7 depiction or image of a tobacco product, a tobacco advertisement  
8 or the smoking of tobacco.

9 Penalty:

- 10 (a) for an individual—120 penalty units;  
11 (b) for a body corporate—5,000 penalty units.

12 **13C Tobacco products not to be offered for sale on the Internet**

13 A person or a regulated corporation must not, knowingly or  
14 recklessly, offer on or after 1 July 2004 a tobacco product for sale  
15 on the Internet.

16 Penalty:

- 17 (a) for an individual—120 penalty units;  
18 (b) for a body corporate—5,000 penalty units.

19 **13D Computer games not to include product placement of tobacco**  
20 **products**

21 A person or a regulated corporation must not, knowingly or  
22 recklessly, include in a computer game that is available in  
23 Australia or Norfolk Island on or after 1 July 2004 a product  
24 placement of a tobacco product, a tobacco advertisement or any  
25 audio or visual depiction of the smoking of tobacco.

26 Penalty:

- 27 (a) for an individual—120 penalty units;  
28 (b) for a body corporate—5,000 penalty units.

29 **8 At the end of section 16**

30 Add:

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- 1 (4) For the purposes of this section, the Internet is not taken to be a  
2 place where tobacco products may be offered for sale.

3 **9 After section 22**

4 Insert:

5 **22A Commonwealth expenditure prohibited where cosponsorship**  
6 **from tobacco companies exist**

- 7 (1) No expenditure shall be made by the Commonwealth for any  
8 purpose or promotional activity where the purpose or promotional  
9 activity is also supported by a manufacturer, distributor or retailer  
10 of tobacco products.
- 11 (2) For the purposes of this section, support includes payment,  
12 advertising, the provision of facilities or equipment or personnel  
13 resources to assist the purpose or promotional activity mentioned  
14 in subsection (1).
- 15 (3) For the purposes of subsection (1), purpose includes cultural,  
16 sporting and like activities.
- 17 (4) For the avoidance of doubt, the prohibition of Commonwealth  
18 expenditure provided for in this section includes and extends to  
19 departments and agencies of the Commonwealth and any agents or  
20 contractors of the Commonwealth acting in their capacity as agents  
21 or contractors of the Commonwealth.

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## **Schedule 2—Amendment of the Broadcasting Services Act**

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### **1 Schedule 5, Part 3, Division 1, at the end of clause 10**

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Add:

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*Internet content containing tobacco advertising*

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- (3) For the purposes of this Schedule, a tobacco advertisement or the product placement of a tobacco product hosted on the Internet inside Australia or hosted on the Internet outside Australia is ***prohibited content***.

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Note: **Tobacco advertising** and **product placement** are defined in the *Tobacco Advertising Prohibition Act 1992*