



PHILIP MORRIS LIMITED'S SUBMISSION TO THE SENATE COMMUNITY AFFAIRS LEGISLATION COMMITTEE

- INQUIRY INTO TOBACCO ADVERTISING PROHIBITION -

The Senate referred three topics to the Community Affairs Legislation Committee for inquiry and report by 4 August 2004:

- The provisions of the Commonwealth Electoral Amendment (Preventing Smoking Related Deaths) Bill 2004;
- The exposure draft of the Tobacco Advertising Prohibition (Film, Internet and Misleading Promotion) Amendment Bill 2004; and
- The adequacy of the response to date of the Australian Competition and Consumer Commission to Senate orders requiring the ACCC to report on various issues concerning tobacco.

Philip Morris Limited is pleased to have been invited to offer these comments on those matters. We support meaningful and effective regulation of tobacco products. Participating in Inquiries such as this gives us an opportunity to contribute to that process.

The Commonwealth Department of Health and Ageing has noted that “ideally from a public health perspective no one would use tobacco products but an outright ban on all tobacco use would be impractical because tobacco consumption remains a culturally accepted practice” in Australia.¹ In addition, the World Health Organization has noted that even with success in tobacco control measures, the same number of people will be using tobacco in 50 years that use it today.

Consequently, there is a need for sensible tobacco regulation that aims to reduce the harm associated with tobacco use. Those efforts should focus on preventing smoking initiation, particularly among young people; promoting cessation; and protecting non-smokers from exposure to smoke. However, because some adults

¹ Commonwealth Department of Health and Ageing, Tobacco Advertising Prohibition Act 1992 Issues Paper, August 2003, p. 13.

either have difficulty quitting or are unwilling to quit smoking there is also a need for a regulatory focus on reducing the net harm for those who do continue to smoke. Product regulation can play an important role in that.

As an affiliate of one of the world's leading tobacco companies, we have expertise and insights to contribute. We have technical expertise that can better inform the regulatory process, and we are committed to working constructively with governmental stakeholders to develop meaningful and effective regulation of tobacco products. It is in that spirit that we offer these comments.

PARTICIPATING IN THE POLITICAL PROCESS:

Views on The Commonwealth Electoral Amendment Bill 2004

Public participation in political discussion is “a central element of the political process”² and is protected by the Commonwealth Constitution. That protection extends to “each member of the Australian community.”³ It is appropriate, therefore, that the Commonwealth Electoral Act 1918 permits individuals and corporations to contribute to electoral candidates and parties.

The Electoral Act requires those payments and donations to be disclosed to the Australian Electoral Commission and to the public. The disclosures are available online at <http://search.aec.gov.au/annualreturns/>, and are searchable by Party, by State or Territory, and by Donor. Philip Morris Limited complies with and fully supports those disclosure requirements.

The Commonwealth Electoral Amendment (Preventing Smoking Related Deaths) Bill would effectively exclude a single class of corporations, their business partners, and their employees from participating in an important part of political discourse. The Bill proposes denying Federal electoral funding to any party, group or candidate who accepts a gift from “a person who derives substantial revenue from the manufacture, distribution or retail of tobacco products.” Doing so would disenfranchise not only Philip Morris Limited but its approximately 700 employees; not only tobacconists and other tobacco retailers, but their thousands of employees; not only tobacco growers but their families as well. Those people and the principle of free political speech deserve better.

The Bill also would discriminate against individual politicians and their political parties. Donations can be made to individual politicians or to particular political parties. The effect of this Bill would be to preclude individual politicians or their parties from electing from whom they can seek or receive money. This is discriminatory and should not be permitted.

Prohibiting contributions (or forcing candidates to choose between accepting those contributions or receiving government electoral funding) is unnecessary as well as

² *Attorney-General v. Times Newspapers Ltd.* (1974) AC 273, 315 per Lord Simon of Glaisdale.

³ *Lange v Australian Broadcasting Corporation* (1997) 145 CLR 96 at 115.

undesirable. While permitting donations is consistent with the Constitutionally-protected right to participate in political discourse, *disclosing* those contributions to the AEC, and making those disclosures available to the public in a readily-accessible format such as the Internet, is the best way to promote transparency and accountability in elected officials and strengthen the political process. We would urge the Committee to recommend that the proposals in the Commonwealth Electoral Amendment Bill 2004 not be adopted.

COMMUNICATING WITH ADULT SMOKERS:

Views on the Tobacco Advertising Prohibition Amendment Bill 2004

Cigarette smoking causes serious and fatal diseases in smokers and is addictive. Tobacco products should therefore be subject to meaningful, effective and comprehensive legislation and regulation, including restrictions on tobacco advertising and promotion.

Tobacco product advertising and marketing is already extremely restricted in Australia. As its name implies, the Tobacco Advertising Prohibition Act 1992 (“TAPA”) prohibits any statement, in any medium, which “publicizes or otherwise promotes” a tobacco product, with limited exceptions for trade communication and commercial correspondence, among others. State and Territory laws further regulate the retail display of tobacco products.

The TAPA is currently being reviewed by the Commonwealth Department of Health and Ageing, and many of the provisions in the Exposure Draft are already under consideration. The Department published an extensive Issues Paper on updating the TAPA in August 2003, and Philip Morris Limited and presumably other stakeholders submitted comments on the Discussion Paper last October.

In that submission, we pointed out that some communications with adult smokers are both appropriate and necessary. This would particularly hold true were products with reduced harm properties to be introduced in the future, because, otherwise, adult smokers of conventional cigarettes would have no means of knowing that such alternatives were available. Carefully-regulated, responsible communications with business partners and with adults who choose to smoke are important and are not inconsistent with public health objectives.

We respectfully suggest that the Committee consider the Department of Health and Ageing’s significant work on this topic when the Committee develops its recommendations on the Tobacco Advertising Amendment Bill.

The exposure draft of the Tobacco Advertising Amendment (Film, Internet and Misleading Promotion) Amendment Bill 2004 proposes extending or clarifying the TAPA’s prohibitions in three main areas. First, the Bill would prohibit advertising on the internet (which is already prohibited under the TAPA). Second, it would prohibit tobacco product placement in films or television programs (which Philip Morris Limited has not done for over 10 years). Third, it would prohibit the use of descriptors in advertisements, and all advertisements are already prohibited. We

address the descriptor point in the next section. Philip Morris Limited's views on the two other proposals is detailed below.

Restricting Internet Advertising and Sales

The Tobacco Advertising Amendment Bill proposes explicitly prohibiting internet advertising and prohibiting internet sale of tobacco products. Philip Morris Limited acknowledges the concerns raised in the Bill regarding the use of emerging technologies such as the Internet, and supports meaningful and effective regulation in this area.

The TAPA currently prohibits *all* forms of publication of a tobacco advertisement in any medium, including publication on the internet, although it does recognise certain limited exceptions. With advances in technology, we believe consideration should be given to providing for a new explicit exemption for some form of tobacco product advertising on age-restricted websites. That would be consistent with the TAPA objectives of preventing youth access and exposure to tobacco products and would permit responsible competition among product manufacturers.

For example, regulations could limit internet tobacco advertisements to websites with multi-tiered access controls; passwords and IDs that are unique to the user; regulator access; and age and residence verification mechanisms. Websites could be required to display health warnings, the Quit line telephone number, and other anti-smoking messages. Regulated, restricted internet sites could be one of the most responsible ways to communicate about tobacco products with adult consumers, and would allow manufacturers to communicate directly to adult smokers without exposing minors to tobacco advertisements. Thus, we respectfully suggest that a ban on all internet advertising should be reconsidered: internet advertising, with age verification, should be permitted. Internet advertising without age verification should be prohibited.

We agree that unrestricted consumer internet cigarette sales should also be prohibited. The TAPA effectively leaves regulation of points of sale (and point-of-sale advertising) to the States and Territories. Accordingly, it does not currently regulate consumer internet sales. We believe that such sales could and should be permitted if there were mechanisms in place to ensure that all taxes are being paid and that the recipient is of legal age. Until such time as those mechanisms are available and in place, though, we agree that such consumer internet sales should be prohibited.

Business-to-business internet communications and sales should continue to be permitted. The TAPA explicitly excludes trade communications from its prohibitions, and permits access-restricted business-to-business internet sales. They should remain regulated but permitted. Trade communications are an essential part of any product manufacturer's business. The TAPA should continue to permit tobacco product manufacturers to communicate on normal business matters with retailers and other tobacco industry customers, including sales and communications via secure access-restricted internet or e-mail. Such communications are an essential part of doing business and are unlikely to reach an audience outside the trade.

Prohibiting Product Placement

We want to make one point clear: We do not pay for product placement in films, television programs or computer games, and it has been our policy for more than a decade to deny all requests for permission to use, display, or refer to Philip Morris cigarette brand names, products, packages, or advertisements in electronic media produced for viewing or use by the general public. We support the proposed prohibition on product placement.

THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION:

Views on the ACCC's Response to Senate Orders

Between September 2001 and November 2002, the Senate passed several resolutions requiring the Australian Competition and Consumer Commission ("ACCC") to investigate and report on a number of issues concerning tobacco. One investigation is still ongoing, and relates to the Senate's 27 June 2002 resolution requiring the Commission to report "as soon as possible" on

Whether Australian tobacco companies have engaged in misleading or deceptive conduct in their use of the terms 'mild' and 'light'.

We do not feel it is appropriate to comment on the substance of that ongoing investigation or the "adequacy of the ACCC response", which this Committee is considering – other than to acknowledge, as the ACCC does, that the investigation raises complex issues and to note that Philip Morris Limited has cooperated with that investigation.

Philip Morris Limited believes that its use of the terms "mild" and "light" and other flavour descriptors has been and is appropriate and useful for adults who choose to smoke. However, Philip Morris Limited also agrees that it is important that consumers understand that *no* cigarette (including lower tar and nicotine cigarettes) has been scientifically established to be safer than any other.

We believe that regulation is an appropriate way to address concerns about consumer perceptions of lower tar and nicotine cigarettes and flavour descriptors. We also believe that the proposal by the Department of Health and Ageing and the Department of Treasury to remove machine-measured yield numbers from cigarette packets is one appropriate way to address those concerns.

Regulations could also require manufacturers to provide consumers with more information about what descriptors mean and what they do not mean. The Trade Practices Act could be amended to require further information or legends on cigarette packets, such as

- The amount of tar and nicotine actually inhaled depends on how one smokes;
- Smokers should not assume that low tar cigarettes are less hazardous than other cigarettes; and
- Low tar cigarettes are not a suitable alternative to quitting.

Legislation and regulations could require manufacturers to provide more extensive information, via on- or in-pack communications, consumer information announcements in newspapers or elsewhere, or communications at points of sale. Such regulation would insure uniformity and consistency of approach. Philip Morris Limited has recently announced an initiative to communicate that information directly with adult consumers by means of in-pack information leaflets.⁴ In addition, such information has appeared for a number of years on Philip Morris International's website:

http://www.philipmorrisinternational.com/pages/eng/smoking/T_and_N_yields.asp

We would support legislation or regulation requiring such communications.

LEGISLATING SOLUTIONS FOR HARM REDUCTION

This submission began by emphasizing the importance of allowing stakeholders to participate in the political process. Philip Morris Limited takes that participation seriously, and we appreciate this opportunity to have our views heard.

Regulation, and not confrontation, is the best way to address concerns about tobacco products and the companies that make and sell them, and regulation can establish clear rules for those companies to follow. As an affiliate of one of the world's leading tobacco companies, Philip Morris Limited can constructively contribute to that process.

It is in that spirit that we submit these comments, and we hope to work with the Committee, the Senate, Parliament and other stakeholders to achieve meaningful and effective regulatory solutions to the important tobacco issues this Committee is considering.

Meaningful and effective tobacco regulations should aim to reduce the harm associated with tobacco use while acknowledging that some adults will nevertheless choose to smoke. Regulations designed to reduce consumption are appropriate, but product development can and should also play a role in harm reduction, and regulations can provide an impetus for doing so.

One of the key business priorities for Philip Morris both here in Australia and internationally, is the development of tobacco products that have the potential to reduce the harm caused by smoking. We have undertaken significant research on this matter, and we believe that investigations into such products should form an integral part of the Government's tobacco harm reduction strategy.

⁴ A copy of an in-pack leaflet is attached as Attachment 1

But for these products to be manufactured, marketed, and their potential benefits communicated to adult smokers, a regulatory framework should be established. Such a framework could, for example, require tobacco product ingredients to be disclosed and specify the format for doing so; set standards for measuring and reporting tobacco smoke constituents; set standards for product improvement; and establish guidelines or requirements for communicating about product improvements.

We would be pleased to share our knowledge on this matter with the Committee, the Department of Health, or the Government in general.

Philip Morris Limited
11 June 2004