



AUSTRALIAN MEDICAL
ASSOCIATION
ABN 37 008 426 793

T | 61 2 6270 5400
F | 61 2 6270 5499
E | ama@ama.com.au
W | www.ama.com.au

39 Brisbane Ave Barton ACT 2600
PO Box 6090 Kingston ACT 2604

AMA submission to the Department of Health and Aged Care – Public Health (Tobacco and Other Products) Legislation 2023

TobaccoReforms@allenandclarke.com.au

Introduction

The AMA supports the Public Health (Tobacco and Other Products) Legislation 2023, which aims to discourage people from smoking and vaping. To reduce the disease, disability and premature death caused by smoking and vaping, the AMA (and the medical profession more broadly) is committed to efforts that seek to continually reduce the number of people who smoke and vape.

The AMA understands that e-cigarette legislation is introduced in this Bill as an interim measure until a ban on non-prescription e-cigarettes is in force. The AMA calls on all governments to urgently work together to implement the retail ban. A prescription-only model for e-cigarettes ensures that people wanting to quit nicotine are provided with evidence-based medical advice and helps to prevent younger people from taking up smoking and vaping. We must act now to prevent more people becoming addicted to nicotine.

Discussion questions

Is the legislation package appropriate and adapted to consolidate these instruments?

As above.

Do you have any feedback on the definitions or interpretation provisions in the package?

The regulations should account for any novel and emerging products the industry may use to bypass the Bill's requirements. This can be done by ensuring that the regulations allow for a product or group of products to be deemed as tobacco products in future.

Do you have any feedback on the commencement provisions and anticipated transition timeframes?

No comment.

Do you have any feedback on the proposed advertising and sponsorship provisions in Chapter 2 of the Bill?

The AMA supports most aspects of the advertising and sponsorship provisions in Chapter 2 of the Bill. The AMA believes that all forms of public promotion and marketing of tobacco products should be banned. Tobacco products should not be promoted at the point of sale. Internal promotion by those in the tobacco trade should be strictly proscribed. Where it is required, it should be limited to the provision of information about price, availability, and characteristics. The AMA agrees that the marketing and advertising of e-cigarettes should be subject to the same restrictions as tobacco products, while they still exist in a retail setting.

The AMA does not believe that section 39 (page 40) and 66 (page 61) of the Bill regarding sponsorship exceptions for gifts, political donations and electoral expenditure for tobacco and e-cigarettes respectively, are appropriate to achieve the objectives of the Bill. The AMA does not support political parties accepting sponsorship from tobacco or e-cigarette companies and calls upon all parties to refuse to enter arrangements that clearly compromise government policy making on public health matters. There is no doubt that, like most other industry groups, the tobacco and e-cigarette industry lobbies and advocates for conditions that foster and support business growth. Legal and political efforts by the tobacco industry have hampered tobacco control efforts.¹ Given that the cost of using tobacco and e-cigarette products is largely carried by smokers, their families and the Government via the health system, it is not appropriate for political parties and other key decision-making bodies to accept financial donations from tobacco or e-cigarette companies. While the major political parties have announced they will not accept donations, there are still some parties that do.²

The AMA is concerned that the Bill does not provide adequate protection for people under the age of 18 purchasing tobacco and e-cigarette products online. Currently, a child or adolescent can easily bypass the question asking if they are 18 on tobacco and e-cigarette websites by clicking 'yes'. The AMA calls for a ban on the online sale of tobacco and e-cigarette products.

The AMA recommends that an addition be made concerning portrayals of smoking and vaping in media productions. The AMA believes that product placement in television programs and movies should be acknowledged at the beginning of the program through a dedicated classification symbol that alerts viewers to the depiction of smoking and/or vaping during the broadcast. A warning message should also be aired to alert viewers to depictions of smoking and/or vaping, in the same way as viewers are alerted to other sensitive content such as drug use, violence and coarse language.

Are the proposed advertising and sponsorship provisions likely to address emerging forms of media through which tobacco or e-cigarettes will be promoted? Are there other types of promotion that need to be considered?

The AMA supports the prohibition of e-cigarette advertisements, particularly targeted online advertising. A major driver of the increase in usage of e-cigarettes is the sophisticated and targeted marketing that largely occurs via social media, however social media is not explicitly

mentioned in the Bill.³ This emphasis on online marketing can make monitoring and policing the claims made by online e-cigarette retailers difficult. The AMA would welcome further information on how this will be regulated and enforced.

The department should be adequately resourced to ensure they can regularly monitor and report on emerging types of promotion for tobacco and e-cigarettes and that the regulations are updated accordingly to prevent them being used in future. Legislative frameworks may need to be frequently updated to ensure it aligns with the ever-changing digital landscape. The department should consider the findings of the Senate Economics References Committee inquiry into the *Influence of International Digital Platforms*.⁴

The AMA is concerned about the influence that international digital platforms have on the health and wellbeing of children, population health literacy, misinformation and the use of personal data and algorithms to market unhealthy products. Reset Australia reports that Facebook uses data it collects about underage users to create profiles of young people with harmful or risky interests, such as 13–17-year-olds interested in smoking, gambling, alcohol or extreme weight loss.⁵ Reaching one thousand young people profiled as interested in alcohol will cost advertisers around \$3.03, \$38.46 for those interested in extreme weight loss, or \$127.88 to those profiled as interested in smoking.⁶

Digital platforms such as TikTok have seen a rise in videos promoting e-cigarettes, with 63 per cent of the total e-cigarette videos depicting the product positively, and a total of more than 1.1 billion views.⁷ A major public health concern is the ease of access to purchase e-cigarettes through platforms such as Snapchat, Instagram or Facebook.⁸ The AMA has called for a targeted federal response to monitor and act on illegal advertising and promotion of vaping products, particularly online and on social media.⁹

When considering what regulations are needed to ensure that digital platforms remain a safe and healthy place for Australians, much can be learnt from the implementation of The General Data Protection Regulation (GDPR), the EU's tough data privacy and security law.¹⁰ The GDPR is seen as the benchmark for digital governance regulation globally. It clearly defines the individuals as the owner of their data and clearly states that consent to data use must be freely given, specific, informed and unambiguous.¹¹

Currently in Australia, the lack of transparency by international digital platforms and the ways in which they collect, share and use data, leaves individuals exposed to algorithms based on their online habits. There is a conception that regulating the collection and use of data collected by digital platforms is complex. However, digital platforms are predicated on rules and processes, and as such may be amended accordingly. The AMA suggests that regulation like the GDPR is introduced in Australia, helping individuals to better protect and own their data.

Do you have any feedback on the packaging and product requirements set out in Chapter 3 and in the Regulations?

The AMA supports the packaging and product requirements set out in Chapter 3 and in the Regulations. However, shisha tobacco products are exempt from some requirements without explanation. Shisha tobacco products are still harmful to health and should be subject to the same legislation as other tobacco products. The AMA requests further clarification on this distinction.

The tobacco industry was misleading consumers over so-called 'light', 'mild' and 'low tar' brands for many years and continue to do so by introducing other terms such as 'organic'. This strategy can be considered to be nothing less than systematic consumer fraud given that labelling cigarettes as such offers smokers a false sense of security based on sophisticated marketing and a misuse of words.

The AMA supports the addition of health promotion inserts into cigarette packaging. The AMA suggests these inserts should include contact information for Quitline and a message encouraging smokers to speak to their GP about quitting. The Bill should ensure it prohibits the tobacco industry including their own inserts and onsets in the product packaging.

Are there any novel or innovative product or packaging features that could be better addressed by the draft Bill?

It will be important for the department to regularly monitor for any novel and innovative products or packaging features arising internationally and in Australia. The legislative framework should be updated in a timely manner to prevent further distribution of products and packaging that may inhibit the objectives of the Bill.

Do you have any feedback in relation to the offence and civil penalty provisions set out in Chapter 3?

No comment.

Do you have any feedback on the permanent ban on certain regulated tobacco items provisions set out in Chapter 4?

The AMA supports the Bill outlining a permanent ban on chewing tobacco and snuffs intended for oral use. The AMA believes that Chapter 4 should introduce powers for the health minister to ban novel and emerging tobacco, e-cigarette, and other recreational nicotine-based products that are harmful to health. So far, legislation has not kept pace with the threats from e-cigarette use and there must be safeguards in place to stamp out any future novel products that are harmful to health.

Do you have any feedback on the reporting requirements set out in Chapter 5 and the Regulations?

The AMA supports the reporting requirements set out in Chapter 5 and the Regulations. The AMA agrees that, in lieu of completely banning political donations from the tobacco industry, any lobbying, marketing, and promotional expenditure should be transparent to ensure conflicts of interest are identified and minimised. The term 'lobbying' should be defined in legislation and expand reporting specifically to include direct and indirect lobbying to political and government leaders and staff. Solely including the term lobbying without definition risks underreporting if the tobacco or vaping organisation does not consider their actions as lobbying.

The AMA also supports reporting on tobacco product volumes and ingredients.

Do you have any feedback on the proposed compliance and enforcement provisions set out in Chapter 6?

The AMA supports in-principle strong compliance and enforcement of the Act. All governments should ensure that compliance and enforcement is adequately resourced, noting the scale and complexity of current illicit tobacco and e-cigarette markets.

Do you have any feedback on the transitional arrangements?

No comment.

Conclusion

The reforms under the Public Health (Tobacco and Other Products) Legislation 2023 are a good start to achieving the goal of a five per cent or less smoking prevalence in Australia by 2030. The AMA looks forward to seeing the implementation of the priorities under the *National Tobacco Strategy 2023-2030*, and the implementation of this legislation. The AMA urges governments to work together to quickly implement the retail ban on e-cigarettes.

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Contact

ama@ama.com.au

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