



Australian Government

Department of Health

REVIEW OF TOBACCO CONTROL LEGISLATION

Consultation Paper

18 January 2019



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WHY ARE WE UNDERTAKING A REVIEW?

The Department of Health (Department) is undertaking a thematic review (review) of its tobacco control legislation and is seeking input from stakeholders.

As part of the *Legislation Act 2003*, the Australian Government introduced changes to the sunset arrangements for legislative instruments such that they automatically cease to apply, unless an active decision has been made to retain them. The aim of the arrangements is to ensure that legislative instruments are kept up to date and only remain in force so long as they are needed.

The Department's tobacco control regulations are due to sunset on 1 April 2022. Before this occurs and consistent with the *Legislation Act 2003* a thematic review of these instruments and their enabling Acts is being undertaken.

This review applies to these Acts and Regulations:

- *Tobacco Advertising Prohibition Act 1992* (TAP Act);
- *Tobacco Advertising Prohibition Regulation 1993* (TAP Regulation);
- *Tobacco Plain Packaging Act 2011* (TPP Act); and
- *Tobacco Plain Packaging Regulations 2011* (TPP Regulations).

Given the age of the TAP Act and TAP Regulation it is timely to undertake a comprehensive review to ensure their effectiveness and efficiency.

The TAP Act prohibits the publication of tobacco advertisements within Australia (subject to certain limited exceptions). The TPP Act sets out requirements for the packaging and appearance of tobacco products.

While the TPP Regulations are effective and efficient in achieving their aims, under sunset arrangements the Government recognises that regulatory frameworks can be improved.

Why are we consulting?

We want to hear from interested stakeholders. Your responses will aid in identifying opportunities for regulatory changes. The Department will be undertaking two broad phases of consultation to inform the review:

- **Phase 1:** will seek your views and suggestions on the current legislation via open public online responses.
- **Phase 2:** will seek to collaboratively explore options for regulatory improvements via targeted stakeholder workshops.

This review will also be informed by consultation inputs provided as part of the development of the National Tobacco Strategy 2018-26.

How to give us your views?

If you wish to provide input and to share your views with us please go to the [Department's Consultation Hub](#) or visit [the Department of Health's Tobacco webpage](#) to learn more about the review.

Your views:  tobaccoreview@health.gov.au  www.health.gov.au/tobacco

Consultation Questions

For the purposes of the consultation, we are seeking your views to inform the review. The following questions may assist in writing your response.

Tobacco Advertising

1. What is working well in relation to the *Tobacco Advertising Prohibition Act 1992* and the *Tobacco Advertising Prohibition Regulation 1993*?
2. Do you consider the *Tobacco Advertising Prohibition Regulation 1993* simple, clear and easy to read? If not, which elements of the regulation pose particular challenges, and what changes would you suggest?
3. What, if any, changes could be made to the *Tobacco Advertising Prohibition Act 1992* and the *Tobacco Advertising Prohibition Regulation 1993*?
4. Are there any studies that would support the measures that you are suggesting?
5. Do you consider the *Tobacco Advertising Prohibition Regulation 1993* (or provisions within) redundant, unnecessary or otherwise not fit-for-purpose?

Tobacco Plain Packaging

6. What is working well in relation to the *Tobacco Plain Packaging Act 2011* and the *Tobacco Plain Packaging Regulations 2011*?
7. Do you consider the *Tobacco Plain Packaging Regulations 2011* simple, clear and easy to read? If not, which elements of the legislation pose particular challenges, and what changes would you suggest?
8. What, if any, changes could be made to the *Tobacco Plain Packaging Act 2011* and the *Tobacco Plain Packaging Regulations 2011*?
9. Are there any studies that would support the measures that you are suggesting?

General

10. What are the benefits to you associated with the current regulatory arrangements?
11. What are the costs or disadvantages to you associated with the current regulatory arrangements?
12. Do you consider that any of the legislation generates unnecessary administrative burden? If so, what changes could be made to address this?
13. Do you consider that any of the Department of Health's tobacco control legislation imposes significant unnecessary compliance costs on business, community organisations and individuals? If so, how could compliance costs be reduced?
14. Are there any other measures for tobacco control regulation that you think the Australian Government should consider and prioritise?

Responses close at **11:59PM AEDT on 18 March 2019**.

Protection from commercial and other vested interests of the tobacco industry

Australia is a party to the global tobacco control treaty, the World Health Organization Framework Convention on Tobacco Control (FCTC). Australia has an obligation under Article 5.3 of the FCTC when 'setting and implementing public health policies with respect to tobacco control...to protect these policies from the commercial and other vested interests of the tobacco industry'. The internationally agreed Guidelines for Implementation of Article 5.3 recommend that parties to the treaty 'should interact with the tobacco industry only when and to the extent strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products'.

In line with Australia's obligations under Article 5.3 of the FCTC, consultation with the tobacco industry and organisations and individuals that may be working to further the interests of the tobacco industry will be undertaken to the extent required consistent with Article 5.3.

The Guidelines for Implementation of Article 5.3 also include an overarching principle of transparency when governments are dealing with the tobacco industry or those working to further its interests. To help meet this obligation all respondents are required to disclose whether they have any direct or indirect links to, or conflicts of interest, or receive funding from the tobacco and/or e-cigarette industry.

WHAT HAPPENS NEXT?

The insights gained through this public consultation process will help inform the development of options for modernising, streamlining and simplifying the advertising prohibition legislation. These options will ensure that the advertising legislation is consistent and contemporary addressing potential gaps and limitations, including those resulting from the constantly emerging and changing technological landscape. It will also inform a refinement and review of the plain packaging legislation.

Any insights and/or options canvassed as part of the consultation process will be refined during targeted stakeholder workshops as part of Phase 2 of consultations. It is anticipated that these workshops will seek to collaboratively explore options for regulatory improvements in more detail to assist with the scoping and drafting process.

Have your say

We've made it easy to get involved, go to our review website on the [Department of Health's tobacco webpages](#).

If you have any questions or comments, get in touch via email at tobaccoreview@health.gov.au

Alternatively, write to us at any time during the review process:

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www.health.gov.au/tobacco



<https://consultations.health.gov.au>

