



15 January 2020

Committee Secretary
Economics and Governance Committee
Parliament House
George Street
Brisbane Qld 4000

By email only: egc@parliament.qld.gov.au

Dear Committee Members,

Thank you for the opportunity to contribute to your consideration of the *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019* (the **Bill**).

Cancer Council Queensland, the Heart Foundation and the Australian Council on Smoking and Health (**ACOSH**) submit that the Committee should **recommend that the Bill be amended, to prohibit political donations from the tobacco industry in Queensland**. Other than this suggestion, we make no further comment on the Bill, or any of the proposed amendments to electoral laws.

Tobacco products, unlike any other consumer goods, kill when used exactly as intended by their manufacturers. The tobacco industry includes manufacturers, importers and distributors of tobacco products and processors of tobacco leaf – an entire group of businesses whose only goal is to make profits, directly or indirectly, from tobacco products – without regard to the health consequences or economic burden on society.¹

Tobacco smoking remains the leading preventable cause of death and disease in Australia. The tobacco industry has a long history of undermining public health policy through donating to major political parties in Australia, with companies targeting their gifts during critical policy debates or immediately before elections.

Reducing smoking related illness and death is a priority for Cancer Council Queensland, the Heart Foundation and ACOSH, and integral to this is ensuring that the tobacco industry has no influence on public health policy.

Tobacco smoking as a public health issue

Tobacco smoke contains more than 7,000 chemicals, including at least 69 known carcinogens. Smoking leads to a wide range of disease including many types of cancer, heart disease and stroke, chest and lung illnesses and stomach ulcers. It was responsible for the death of more than 20,000 Australians in 2015.² In 2015, 9.3% of the disease burden in Australia was due to tobacco use, making it the leading risk factor that contributed to



disease burden and deaths². This equates to 443,235 years of healthy life lost (disability-adjusted life years or DALYs) from death and illness due to tobacco use in Australia in 2015.² This also means tobacco smoking was responsible for significant loss of productivity and economic losses, as well as burden on the health system – which is entirely preventable. The total social cost of smoking in Australia in 2015-16 was estimated at \$137 billion.²

In Queensland, tobacco smoking is the leading cause of premature death and disease, and accounts for approximately 12% of all deaths.³ Furthermore, in 2015-16, tobacco smoking accounted for about 58,700 hospitalisations, representing a preventable strain on our health system.³

Due to a combination of tobacco controls, including effective public policy both federally and at the state level, Queensland has halved the rate of daily smokers over the last two decades to now just 11%.³ This dramatic reduction is largely linked to effective public health policy, namely: increases in tobacco tax, public education campaigns, bans on advertising and promotion of tobacco products, expansion of smoke free workplaces and public places and plain-packaging.¹³

Despite this positive decrease in daily smoking for Queensland adults, the rate is still 19% higher than the national average, and Queensland rank third highest out of all Australian jurisdictions.³

Rates of smoking in regional and remote areas are almost double the rates in major cities. Rural families in Queensland bear a much higher burden of social costs from smoking including costs of spending on tobacco products, out-of-pocket health costs for the dozens of conditions made worse by smoking, and the impact on families of losing breadwinners who become ill or die early, often in middle age.

The tobacco industry's long-term influence

Industry attempts to use political donations for better access and a more favourable response from political parties. This is just one of many strategies the tobacco industry has employed over decades in an effort to derail or weaken tobacco control policies.⁴

Despite the measures introduced by Australian and State governments in recent years, there is clear evidence that tobacco companies are continuing to promote their products through retail outlets and elsewhere and to lobby against any action that might reduce their sales.^{5,6}

A study found, that over 10 years, Australian political parties accepted donations totalling \$1.9million from the tobacco industry, excluding donations below the then reportable threshold of \$12,800.⁴ The study identified that the function of the donations was to; buy immediate influence (e.g. when a relevant change was to be debated), build long term relationships, exploit a flawed political system, to favour exchange, and to limit the public's right to know about corporate influence on policy-makers.⁴

Australia is not the only country influenced by tobacco industry donations. The tobacco industry contributes millions of dollars each election cycle to congressional candidates in the US, and has influenced the obstruction of many tobacco control policies. Both Democrats and Republicans accept donations from tobacco industry, and for decades members of both parties have in turn voted pro-tobacco, against sensible healthy public policy.^{7,8}



Australia is a party to the World Health Organization Framework Convention on Tobacco Control, which states in Article 5.3 (4.11) '*Parties should, in addition, raise awareness about the tobacco industry's practice of using individuals, front groups¹ and affiliated organisations to act, openly or covertly, on their behalf or to take action to further the interests of the tobacco industry*', with a further recommendation that governments prohibit '*...contributions by the tobacco industry or any entity working to further its interests to the coffers of political parties, candidates or campaigns...*'.⁹ A front group is an organisation that purports to represent one agenda while in reality it serves some other party or interest whose sponsorship is hidden or rarely mentioned.⁹ The tobacco industry has a long history of using front groups which often have hidden links to the tobacco industry.⁹

- The Australian Hotel Association (**AHA**) has, in the past, received funding from the tobacco industry, and has traditionally opposed restrictions on smoking. The AHA has actively supported the tobacco industry in opposing smoking restrictions and bans and challenged the scientific evidence on the health effects of second-hand smoke.
- The Alliance of Australian Retailers (**AAR**) is a tobacco industry front group financed by Philip Morris, Imperial Tobacco and British American Tobacco.¹⁰ Internal tobacco industry and AAR documents that were leaked to the media revealed '*The tobacco industry not only funded the campaign being run by the AAR to stop plain packaging being introduced, it also employed the public relations firm to run the campaign, approving who did media interviews and managed the strategy for lobbying government*'.

The use of front groups is something that needs to be considered when regulating political donations.

Tobacco industry donations nationally

In Australia, it is a legal requirement that donations of more than \$13,500 made by individuals or entities to registered political parties are declared to the Australian Electoral Commission. The Australian Electoral Commission posts on its website donor annual returns dating back to the financial year 1998–99.

The Australian Labor Party and Liberal Party of Australia no longer accept donations from tobacco companies, and the Greens have a longstanding policy of not accepting tobacco company donations.

The National Party has continued to accept donations from the tobacco industry, making it the last major party to do so. The Nationals have received \$25,580 from Philip Morris since the Liberals rejected tobacco industry donations in 2013.

The Liberal Democratic Party has accepted \$55,140 from tobacco companies since 2013–14. Former senator David Leyonhjelm told the *Sydney Morning Herald* in 2014 that he had no qualms about accepting donations from companies that produced products that could kill users, because smokers could "*freely choose*" to take up the habit.² Alarming, he also said donations from Philip Morris had influenced his stance on plain packaging: "*I've gone from being strongly opposed to totally opposed to plain packaging*".² This highlights the influence that political donations from the tobacco industry can have on public policy.



Current legislation in Queensland

In Queensland, the set disclosure threshold for gifts and loans is currently \$1,000, and there is a requirement on political parties and candidates to declare any reportable gifts or loans within seven days throughout the year. Banning donations from property developers and property development industry bodies from October 2017 was a positive step towards limiting external influence on policy, and the High Court has found that these laws ‘*stand valid and operative*’ (*Spence v Queensland* [2019] HCA 15, [5]). However, donations from the tobacco industry also need to be banned.

Effective legislation banning tobacco industry donations

New South Wales has taken a positive stance by prohibiting political donations from the tobacco industry (amongst others) or a person who is a close associate, as outlined in the *Electoral Funding Act 2018* (NSW). This legislation replaced the previous *Election Funding, Expenditure and Disclosures Act 1981*, and is a valuable example of the government’s commitment to protecting the interests of public health.

The definition of a ‘close associate’ includes:

- A director or officer of the corporation or the spouse of a director or officer
- A related body corporate of the corporation
- A person (or the spouse of such a person) whose voting power in the corporation or related body corporate of the corporation is greater than 20%
- If the corporation or a related body corporate of the corporation is a stapled entity in relation to a stapled security – the other stapled entity in relation to that stapled security
- If the corporation is a trustee, manager or responsible entity in relation to a unit trust: a person who holds more than 20% of the units in the trust, or
- A person who is a beneficiary of a discretionary trust.

Why these donations should be banned now

Given that Queensland’s major political parties refuse to accept political donations from tobacco industry, why should these donations be banned in 2020?

Over the next electoral term, the Queensland Parliament will likely be asked to consider legislation to make tobacco products less attractive to children and less accessible to children and to those trying to quit or stay quit. It may also be asked to consider changes in laws regarding e-cigarettes. Health groups would like Parliamentarians from all political parties to be able to assess such proposals on their merits, free from any real or even perceived pressure to protect future party funding,

Prior to introducing the Bill, the Government announced “sweeping reforms” to Queensland’s electoral system “*which will make elections fairer, more transparent and just*”.¹¹ Announcing these reforms, Premier Anastacia Palaszczuk said, “*People are wanting a government brave enough to do what needs to be done in this space – and take money out of politics.*”¹¹ This is an opportune time to ban donations from the tobacco industry.

At the same time, we are observing a resurgence in the tobacco industry, and its attempts to influence public policy. The industry is ruthlessly exploiting gaps in legislation through such strategies as evidence-free public discourse about so-called “harm-minimisation” alternatives, product and packaging innovation, pricing strategies, product design and ingredient manipulation.¹²



These activities of the tobacco industry provide important reasons to further restrict the impact and influence of the tobacco industry on Queensland's health policy.

Recommendation

A legislative ban on political parties accepting donations from tobacco companies (including a close associate) is an effective way of protecting democratic processes and preventing avoidable deaths due to tobacco smoking.

We recommend an amendment to Queensland's *Electoral Act 1992*, to include banning of donations from the tobacco industry, ahead of the State election in 2020. Proposed amendments to the *Electoral Act* (based on NSW legislation) are **attached**, for illustrative purposes.

There should be no place for the tobacco industry in politics. For Queenslanders to lead healthier and more productive lives, we need to ensure that the tobacco industry has no influence on public health policy.

If you have any queries, please contact Adj. Associate Professor James Farrell OAM, General Manager, Advocacy at Cancer Council Queensland, on [REDACTED] or [REDACTED].

Yours sincerely,

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5. Daube M, Harper T. 2017. 'Exposing the hydra of Big Tobacco', MJA InSight.
6. Bayley M, Scollo M, Wakefield MA. 2018. 'The proliferation of 'We Sell Tobacco Here' signs at the point-of-sale tobacco retailers in Melbourne, Australia', *Tobacco Control*, 27:334.
7. Givel MS and Glantz SA. Tobacco lobby political influence on US state legislatures in the 1990s. *Tobacco Control*, 2001; 10(2):124-134.
8. Luke DA and Krauss M. Where there's smoke there's money: Tobacco industry campaign contributions and US Congressional voting. *American Journal of Preventive Medicine*, 2004; 27(5):363-372.
9. World Health Organisation. 2003, 'WHO Framework Convention on Tobacco Control', Geneva, Switzerland.
10. See https://www.tobaccotactics.org/index.php/Alliance_of_Australian_Retailers
11. 'Sweeping electoral reforms to make elections fairer and more transparent' (media release, 29 October 2019).
12. Cancer Council Australia, Submission – Consultation on Review of Tobacco Control Legislation, 18 March 2019.
13. Diethelm P et al (2015). *Refuting tobacco-industry funded research*, *Tobacco Prevention & Cessation*, 2015;1 (November):6

Attachment: Proposed amendments to the Electoral Act

Subdivision 4 Political donations from ~~prohibited donors~~ property developers

273 Meaning of *prohibited donor*

- (1) For this subdivision, *prohibited donor*—
- (a) means—
 - (i) a property developer; ~~or~~
 - (ii) an industry representative organisation, a majority of whose members are property developers;
 - (iii) a tobacco industry business entity; or
 - ~~(ii)~~ (iv) an industry representative organisation, a majority of whose members are tobacco industry business entities; but
 - (b) does not include an entity for whom a determination is in effect under section 277.
Note—
See section 307C(4) in relation to the non-effect of a determination in particular circumstances.
- (2) For subsection (1)(a), each of the following persons is a *property developer*—
- (a) a corporation engaged in a business that regularly involves the making of relevant planning applications by or on behalf of the corporation—
 - (i) in connection with the residential or commercial development of land; and
 - (ii) with the ultimate purpose of the sale or lease of the land for profit;
 - (b) a close associate of a corporation mentioned in paragraph (a).
- (3) For deciding whether a corporation is a corporation mentioned in subsection (2)(a), any activity engaged in by the corporation for the dominant purpose of providing commercial premises at which the corporation, or a related body corporate of the corporation, will carry on business is to be disregarded, unless the business involves the sale or leasing of a substantial part of the premises.
- (4) For subsection (1)(a), each of the following persons is a tobacco industry business entity is:
- (a) a corporation engaged in a business undertaking that is mainly concerned with the manufacture or sale of tobacco products;
 - (b) a close associate of a corporation mentioned in paragraph (a).
- ~~(4)~~(5) Section 205 does not apply for this section.
- ~~(5)~~(6) In this section—

close associate, of a corporation, means any of the following persons—

- (a) a related body corporate of the corporation;
- (b) a director or other officer of the corporation;
- (c) a person with more than 20% of the voting power in the corporation or a related body corporate of the corporation;
- (d) a spouse of an individual mentioned in paragraph (b) or (c);

- (e) if the corporation or a related body corporate of the corporation is a stapled entity in relation to a stapled security—the other stapled entity in relation to the stapled security;
- (f) if the corporation is a trustee, manager or responsible entity in relation to a unit trust—a person who holds more than 20% of the units in the trust;
- (g) if the corporation is a trustee, manager or responsible entity in relation to a discretionary trust—a beneficiary of the trust.

director, of a corporation, see the Corporations Act, section 9. **officer**, of a corporation, see the Corporations Act, section 9.

related body corporate, of a corporation, see the Corporations Act, section 9.

relevant planning application means—

- (a) an application for, or to change, a development approval under the *Planning Act 2016* or the repealed *Sustainable Planning Act 2009*; or
- (b) a request to the Minister administering the *Planning Act 2016* or the repealed *Sustainable Planning Act 2009* or a local government about the making or amendment of a planning instrument or designation under either Act; or
- (c) an application for, or to change, an SDA approval under the *State Development and Public Works Organisation Act 1971*; or
- (d) a request or application to the Minister who administers the *State Development and Public Works Organisation Act 1971* or the Coordinator-General about the following under that Act—
 - (i) the declaration or variation of a coordinated project, prescribed development, prescribed project or State development area;
 - (ii) the imposition of, or change to, conditions on a coordinated project;
 - (iii) the preparation or variation of a development scheme; or
- (e) an application for, or to change, a PDA development approval under the *Economic Development Act 2012*; or
- (f) a request to the Minister who administers the *Economic Development Act 2012* or the MEDQ about the making, declaration or amendment of any of the following under that Act—
 - (i) a priority development area or provisional priority development area;
 - (ii) a development scheme, interim land use plan, or PDA-associated development for a priority development area;
 - (iii) a provisional land use plan or PDA-associated development for a provisional priority development area; or
- (g) an application or request of a type prescribed by regulation to be a relevant planning application.

stapled entity—

(a) means an entity the interests in which are traded along with the interests in another entity as stapled securities; and

(b) for an entity mentioned in paragraph (a) that is a trust, includes any trustee, manager or responsible entity in relation to the trust.

voting power see the Corporations Act, section 610.