List of chapters available at tobaccoinaustralia.org.au

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Tobacco advertising and promotion
# Chapter 11

## Tobacco advertising and promotion

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Tobacco advertising and promotion

11.0 Background

By world standards, Australia has been a pioneering nation in the control of tobacco advertising and promotion. Advocacy from the 1960s onward by early tobacco control advocates such as Dr Cotter Harvey, founder of the Australian Council on Smoking and Health, and Dr Nigel Gray, then director of the Anti-Cancer Council of Victoria (now The Cancer Council Victoria) put tobacco advertising on the political agenda. Direct cigarette advertising on radio and television was phased out over the three years between September 1, 1973 and September 1, 1976. The ban was introduced by the Labor Government under Gough Whitlam, and seen through to completion by the Liberal Government of Malcolm Fraser.

Advertising which was construed as ‘accidental or incidental’ to a broadcast or transmission was allowed to continue, a provision included as a late amendment to the legislation before it was passed in 1976. There is little doubt that this amendment occurred in direct response to tobacco industry lobbying. The tobacco industry had already managed to ensure major exposure on television in the United States following a direct advertising ban by engaging in sponsorship of sport: they planned to do the same in Australia, provided the legislation gave them the opportunity.

In October 1988, the then Federal Minister for Health, Dr Neal Blewett, stated his support for a national ban on tobacco advertising in newspapers and magazines, advising that he would proceed with legislation provided he had the support of the states. In the following year federal support was gained for a ban in the recommendations of the Parliamentary Joint Committee on the National Crime Authority. In May 1989, that Committee, comprising representatives from all major political parties, unanimously recommended to Parliament that tobacco advertising be completely banned.

In August 1989 Democrat Senator Janet Powell announced her intention to table the Smoking and Tobacco Products Advertisements (Prohibition) Bill, which proposed a ban on tobacco advertising in the print media, billboards and cinema, and to outlaw sporting sponsorship. The legislation was subsequently amended by the Government to include print media (locally produced newspapers and magazines), but exclude cinema, billboard and sponsorship advertising, on the grounds that these more correctly fell within state jurisdictions. The Smoking and Tobacco Products Advertisements (Prohibition) Act was passed on December 28, 1989.

The ‘accidental or incidental’ loophole enabled exploitation of advertising legislation on a massive scale, becoming the major battleground for further restrictions on tobacco advertising during the early 1990s. With the passage on December 17, 1992, of the

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federal government’s Tobacco Advertising Prohibition Act, most forms of tobacco sponsorship were phased out by December 1995, with cricket sponsorship concluding on April 30, 1996. (Sponsorship exemptions were granted to events that were of international importance that would otherwise not be held in Australia if sponsorship were banned.) No advertising on billboards, illuminated signs and other outdoor signs could be displayed after December 31, 1995. The maximum penalty for any regulated corporation to ‘knowingly or recklessly’ publish, or authorise or cause a tobacco advertisement to be published after July 1, 1993 is $12,000 for a natural person and $60,000 for a corporation. ‘Accidental or incidental’ transmission of any advertising material (essentially material which is outside the control of the publisher, and for the publication of which the publisher receives no direct or indirect benefit) remains permitted.

Because of the comprehensiveness of its legislation, Australia was described recently by British American Tobacco Australia officials as having one of the ‘darkest markets in the world’, rivalled only by Canada, in which to market tobacco products.\(^5\)\(^p\)\(^i\)\(^n\)\(^1\) Despite this situation, tobacco industry marketing continues today by taking advantage of legislative gaps and loopholes. Bans on tobacco advertising are recognised as being an essential component of a comprehensive tobacco control strategy. While Australia has closed all ‘above-the-line’ marketing opportunities to the tobacco industry, the industry has capitalised on gaps in federal, state, and territory legislation by focusing on non-traditional means of promotion. Industry marketing efforts include event promotions, in-store displays and innovative packaging. Additionally, movies and the internet present important opportunities for tobacco product promotion.

This chapter briefly outlines why tobacco advertising is a problem, examines existing Australian federal, state, and territory tobacco advertising legislation, and details the current and future marketing strategies of the tobacco industry. A glossary of key advertising terms can be found in the box, left.

### Table 11.1
Glossary of key advertising terms

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
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<tbody>
<tr>
<td>Above-the-line</td>
<td>marketing via the mass media (print, television, radio, posters/billboards and cinema)(^3)</td>
</tr>
<tr>
<td>Advertising</td>
<td>any paid form of non-personal presentation and promotion of ideas, goods, or services by an identified sponsor(^4)</td>
</tr>
<tr>
<td>Below-the-line</td>
<td>marketing via methods other than mass media (print, television, radio, posters/billboards and cinema)(^3)</td>
</tr>
<tr>
<td>Buzz marketing</td>
<td>using high-profile entertainment or news to encourage people to talk about a brand or product(^5)</td>
</tr>
<tr>
<td>Dark market</td>
<td>highly restricted marketing environment(^3)</td>
</tr>
<tr>
<td>Guerrilla marketing</td>
<td>a form of unconventional marketing, such as chalk messages on a sidewalk, which is often associated with staged events(^6)</td>
</tr>
<tr>
<td>Marketing</td>
<td>business activities that direct the exchange of goods and services between producers and consumers(^5)</td>
</tr>
<tr>
<td>Mobile seller</td>
<td>a salesperson who carries tobacco products in a tray or container for the purpose of selling the product directly to customers in venues such as bars or outdoor events</td>
</tr>
<tr>
<td>Non-branded advertising</td>
<td>advertising that promotes smoking but contains no specific tobacco brand</td>
</tr>
<tr>
<td>Point-of-sale marketing</td>
<td>the arrangements of product and placement of promotional material in retail stores(^2)</td>
</tr>
<tr>
<td>Product placement</td>
<td>paid promotion of a product or brand through entertainment media: movies, television, etc. that is often incorporated in to the storyline(^2)</td>
</tr>
<tr>
<td>Promotion</td>
<td>the coordination of all seller-initiated efforts to set up channels of information and persuasion to sell goods and services or to promote an idea. The tools can include advertising, direct marketing (communicate directly with consumers), sales promotion (marketing aimed at the sales force or distributors), public relations (execution of strategies that earn public understanding and acceptance)(^8)</td>
</tr>
<tr>
<td>Relationship marketing</td>
<td>the ongoing process of identifying and maintaining contact with high-value consumers(^5)</td>
</tr>
<tr>
<td>Split packets</td>
<td>tobacco packages that can be divided into multiple, smaller packs once purchased; the smaller packs sometimes do not bear the required health warnings and information</td>
</tr>
<tr>
<td>Tobacco display</td>
<td>tobacco products visible at retail stores</td>
</tr>
<tr>
<td>Viral marketing</td>
<td>creating entertaining or informative messages that are designed to be passed along, like a virus, in an exponential fashion, often electronically or by email(^5)</td>
</tr>
<tr>
<td>Word of mouth marketing</td>
<td>creating advertising that encourages people to talk about the brand or products, includes buzz marketing and viral marketing(^5)</td>
</tr>
</tbody>
</table>
11.1 The merits of banning tobacco advertising

Tobacco companies have always defended their promotions by claiming that advertising serves only to encourage adult smokers to switch or try new brands. This is certainly one important function of tobacco advertising. However, published research shows that tobacco advertising also is associated with an increase in overall tobacco consumption and therefore is an important focus for comprehensive tobacco control. Additionally, new smokers, primarily adolescents, enter the cigarette market every day.

The 2000 US Surgeon General’s report on reducing tobacco use highlights the influential nature of industry advertising and promotion:

- Despite the overwhelming evidence of the adverse health effects from tobacco use, efforts to prevent the onset or continuance of tobacco use face the pervasive challenge of promotional activity by the tobacco industry.
- The tobacco industry uses a variety of marketing tools and strategies to influence consumer preference, thereby increasing market share and attracting new consumers.
- Advertising increases consumption of tobacco products by encouraging children or young adults to experiment with tobacco products and initiate regular use, reducing current smokers’ motivation to quit and prompting former smokers to resume smoking.
- Among all US manufacturers, the tobacco industry is one of the most intense in marketing its products. Only the automobile industry markets its products more heavily.

11.1.1 Tobacco advertising increases youth smoking

The industry commonly claims that its promotional activities are not intended to influence and have no impact on children. However, numerous academic reviews have identified tobacco advertising as a key influence on youth to initiate smoking. Youth exposed to tobacco advertising hold positive attitudes toward tobacco use. The industry, however, argues that in the absence of causal proof (that advertising directly induces children to smoke); there is insufficient evidence to justify banning tobacco advertising.

DiFranza and colleagues demonstrated that exposure to tobacco advertising directly causes youth to take up smoking by evaluating the available literature on tobacco promotion against the Bradford Hill criteria, originally developed to explain disease causality. Epidemiologists use these stringent criteria to determine whether a causal link (rather than a statistical association) exists between exposure to a risk factor and development of a disease. The researchers found that the body of published evidence supports the criteria for causality: ‘First, children are exposed to tobacco promotion before the initiation of tobacco use. Second, exposure increases the risk for initiation. Third, there is a dose-response relationship, with greater exposure resulting in higher risk. Fourth, the association between exposure and increased risk is robust; it is observed with various study methods, in multiple populations, and with various forms of promotion and persists after controlling for other factors. Fifth, scientifically
plausible and theoretically based mechanisms whereby promotion could influence initiation exist. Finally, no explanation other than causality can account for the evidence.\textsuperscript{11,13,14}

In 1984, Philip Morris lamented how best to address the decreasing sales of its flagship brand, Marlboro, in Australia: “The key problem seems to be its lack of appeal to younger smokers and this is the area which needs to be addressed. One possibility might be to concentrate on sampling and promotion as many young smokers have never had any first hand experience with the product.”\textsuperscript{17} Again, in 1990, Philip Morris recognised the potential for increased sales among Australia’s large youth population, “given predisposition to try/adopt new brands, this segment represents significant market opportunity.”\textsuperscript{18}

11.1.2  
Marketing to ‘over 18s’

When analysing marketing strategies and effects, it is important to avoid arbitrarily drawing the transition of youth to adulthood as a single event that happens on one’s 18th birthday. Decisions made by those turning 18 are plainly affected by influences to which they are exposed before turning 18, including advertising. In internal documents the industry acknowledges the importance of capturing the youth market. The tobacco industry actually uses the term ‘young adult’ to describe the youth market: ‘From time to time when describing market categories and target audiences we use references such as young smokers, young market, youth market etc. These terms do not accurately describe what we are talking about. In the future when describing the low-age end of the cigarette business please use the term ‘young adult smoker’ or ‘young adult smoking market.’ Please advise all members of your department that these terms should be used in all written materials in the future.”\textsuperscript{19}

Along with their parent companies abroad, Australian tobacco companies developed a ‘youth strategy’ that has evolved from unabashed marketing to children in the 1950s\textsuperscript{20}, to denial of this practice from the late 1960s, and eventually to the present day position of concern to show themselves as a socially responsible industry actively campaigning against teenage smoking.\textsuperscript{21} A core part of this social responsibility is the claim to only market tobacco products to adults aged 18 and over, and to support certain youth tobacco prevention programs. However, as Carter notes: ‘It is commonly observed that teens tend to mimic those just older than themselves and strive to establish themselves as independent, and that the industry’s youth smoking programs play to those characteristics by emphasising the ‘forbidden fruit’ aspects of smoking. As years of dedicated research, media circulation demographics, and even common sense dictates, it is impossible to quarantine those under 18 years of age from aspiring to, or participating in, activities designed for those over 18.”\textsuperscript{21}

An RJ Reynolds report explains the vital importance of the young smokers: ‘Younger adult smokers have been the critical factor in the growth and decline of every major brand and company over the last 50 years. They will continue to be just as important to brands/Companies in the future for two simple reasons: The renewal of the market stems almost entirely from 18 year old smokers. No more than 5% of smokers start after age 24. (And) the brand loyalty of 18 year old smokers far outweighs any tendency to switch with age.”\textsuperscript{22}
11.1.3 Awareness of tobacco marketing

As part of a four-country study on tobacco control in 2003, Australian adult smokers were surveyed about their awareness of tobacco industry advertising. The research findings are detailed in Table 11.2. Smokers were most aware of advertisements at retail outlets with almost half of smokers noticing such advertisements. Smokers claimed also to be aware of forms of advertising that had been long banned under Australian legislation. The authors suggested that this could be explained by a mixture of promotion in channels where promotion is still allowed (point of sale, on packaging, and sponsorship exemptions), incidental promotions (for example, in movies) and through cross-border advertising (either direct via satellite TV or the internet, or indirectly—for example, broadcast of sporting events such as Grand Prix with lots of promotion on cars and around the track). The substantial awareness of sports sponsorship where exemptions are allowed (for example, Formula One racing) demonstrates the importance of not allowing such exemptions. The study suggests that tobacco advertising may remain in a community’s collective memory for many years after it has been severely restricted.

<table>
<thead>
<tr>
<th>Type of marketing</th>
<th>% of respondents aware</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advertisements</td>
<td></td>
</tr>
<tr>
<td>Noticed tobacco advertisement in store</td>
<td>48%</td>
</tr>
<tr>
<td>Noticed tobacco advertisement on billboards*</td>
<td>14%</td>
</tr>
<tr>
<td>Noticed tobacco advertisement in newspapers/magazines*</td>
<td>14%</td>
</tr>
<tr>
<td>Sponsorship</td>
<td></td>
</tr>
<tr>
<td>Sports sponsorship**</td>
<td>33%</td>
</tr>
<tr>
<td>Arts sponsorship**</td>
<td>3%</td>
</tr>
<tr>
<td>Promotions</td>
<td></td>
</tr>
<tr>
<td>Special price</td>
<td>29%</td>
</tr>
<tr>
<td>Direct mail</td>
<td>0%</td>
</tr>
<tr>
<td>Signs</td>
<td>19%</td>
</tr>
<tr>
<td>Branded clothing</td>
<td>11%</td>
</tr>
<tr>
<td>Free samples*</td>
<td>3%</td>
</tr>
<tr>
<td>Gift/discount</td>
<td>10%</td>
</tr>
</tbody>
</table>


11.1.4 Industry arguments to retain tobacco advertising

In addition to its claims that advertising does not influence the uptake of smoking by young people, the tobacco industry uses other ‘key messages’ when lobbying against advertising bans:

- Companies often cite ‘freedom of speech’ protection, arguing they have a right to inform consumers about their products. This erroneously implies that cigarette advertisements contain important consumer information and smokers base their decision to smoke by weighing up such information and making an educated choice. Most cigarette advertising has little to no ‘information’ other than the brand name. This argument also ignores the fact that most smokers commence before they are consenting adults and so by law, are deemed not to be legally sentient. Most smokers are also inadequately informed about the harms of smoking, in part due to historic tobacco industry efforts to discredit health information. Tobacco companies have only recently publicly acknowledged that smoking causes disease having ‘maintained the stance that smoking had not been proven to be injurious to health through 1999’.

- A common industry argument is that tobacco is a legal product therefore it should be legal to advertise. However, in most countries there are precedents for prohibiting the promotion of certain harmful products. Internationally, governments have banned or restricted advertising for other legal products, such as prescription-only

* type of tobacco advertisement is banned in all Australian jurisdictions
** tobacco sponsorship is banned apart from a limited number of international events
pharmaceuticals, guns, explosives and some industrial chemicals. Equally, tobacco is not freely sold in Australia; it is illegal to sell cigarettes to children (under age 18).

As previously described, the industry publicly states that advertising and promotion only serve to encourage brand switching among adult smokers. Clive Turner, when with the UK-based Tobacco Advisory Council, encapsulated the industry position: 'Certainly no tobacco advertising is concerned with encouraging nonsmokers to start or existing smokers to smoke more and it seems blindingly obvious that, unless you are a smoker, tobacco advertising or sponsorship has absolutely no influence whatsoever in persuading or motivating a purchase'.

But according to advertising executive Emerson Foote, former CEO of the international advertising group McCann-Erickson, which has handled millions of dollars in tobacco industry accounts: 'The cigarette industry has been artfully maintaining that cigarette advertising has nothing to do with total sales. This is complete and utter nonsense. The industry knows it is nonsense. I am always amused by the suggestion that advertising, a function that has been shown to increase consumption of virtually every other product, somehow miraculously fails to work for tobacco products.'

### 11.1.5 The effects of advertising bans

The effectiveness of advertising bans in reducing tobacco use and ‘denormalising’ tobacco products are much more plausible reasons for tobacco industry opposition. Regulating advertising and promotion can reduce both the prevalence and initiation of smoking. Based on an analysis of tobacco use before and after the introduction of advertising bans, it is estimated that comprehensive advertising bans reduce smoking initiation by 6 percent and smoking prevalence by 4 percent. A partial ban is likely to only reduce prevalence and initiation by 2 percent. Empirical evidence also shows that comprehensive advertising bans reduce tobacco consumption, but incomplete bans have little or no effect because companies transfer expenditure to media in which advertising is still allowed. Comprehensive advertising bans are essential to reducing the health burden of tobacco use.

### 11.2 Tobacco industry expenditure on advertising

It is difficult to assess how much money the Australian tobacco industry invests in advertising and promoting its products. In the US, all tobacco companies must annually report the total amount that is spent on advertising and promotion to the Federal Trade Commission. Unlike their American counterparts, Australian tobacco companies are not legally required to disclose equivalent information.

The FCTC requires: ‘if (a party) does not have a comprehensive ban, the disclosure [should occur] to relevant governmental authorities of expenditures by the tobacco industry on advertising, promotion and sponsorship not yet prohibited.’ For example, as point-of-sale advertising is not currently banned at the federal level, Australia could legitimately call for the industry to disclose all promotional spending in this area.

In 2000, eight years after the ‘above the line’ advertising ban in Australia, advertising agency Belgiovane Williams Mackay (BWM) obtained the $10 million account for
the newest entrant into the Australian tobacco market, Imperial Tobacco, which then controlled just 16.5 percent of the market. BWM’s advertising brief for Imperial was for ‘below-the-line’ marketing activity, including point of sale material, packaging, events management, e-commerce and relationship marketing.29 If the remaining 83.5 percent of the tobacco market were spending an equivalent amount, then at least a further $50 million was then being spent on tobacco advertising. This is likely to be a very conservative estimate because it does not include any price discounting or promotions that the manufacturers would pass on to retailers who stock and sell their products.

11.3

Federal legislation

Advertising of tobacco products in Australia has been progressively restricted since the 1970s. As described earlier, cigarette advertising bans on radio and television have been in place since 1976. In 1989, the federal government introduced the Tobacco Products Advertisements (Prohibition) Act 1989, which prohibited advertising of tobacco products in all newspapers and magazines, effective from December 1990.

The Tobacco Products Advertisements (Prohibition) Act 1989, in conjunction with the amended Broadcasting Act 1942, prohibited direct advertising in the print and broadcast media. The Tobacco Products Advertisements (Prohibition) Act 1989 was repealed in December 1992 by the Tobacco Advertising Prohibition Act 1992 (TAP Act) which came into effect on July 1, 1993.30

11.3.1

Tobacco Advertising Prohibition Act 1992

The Tobacco Advertising Prohibition Act 1992 was introduced to provide a national standard for tobacco advertising. The objectives of the TAP Act are to:

1. Limit the exposure of the public to messages and images that may persuade them:
   a) to start smoking, or to continue smoking; or
   b) to use, or to continue using, tobacco products.

2. To improve public health.

The TAP Act defines an advertisement as any writing, still or moving picture, sign, symbol or other visual image, or any audible message, or any combination of two or more of those things, that gives publicity to, or otherwise promotes or is intended to promote:

a) smoking
b) the purchase or use of a tobacco product or a range of tobacco products
c) the whole or a part of a trade mark that is registered under the Trade Marks Act 1955 in respect of goods that are or include tobacco products
d) the whole or a part of a design that is registered under the Designs Act 2003 in relation to products that are or include tobacco products

11.3.1.1 Tobacco advertising permitted under the TAP Act

All tobacco advertising and sponsorship was completely banned, with limited exceptions, by the passage of the TAP Act. A tobacco advertisement may be broadcast or published if it is accidental or incidental to the matter being broadcast. Individuals who do not receive any benefit from broadcasting a tobacco advertisement are permitted to do so. For example, individuals may wear clothing that is branded with tobacco industry trademarks without breaching the Act.

Advertising exceptions also include advertisements broadcast or published:
- during political discourse
- at point of sale, unless regulated by the state or territory
- in periodicals printed outside Australia and not principally designed for Australia
- as information in trade publications (those circulated only to the tobacco or tobacco retailing sectors)
- on aircraft during international flights

When the TAP Act was originally passed, the Minister for Health and Aged Care was given discretionary power to grant sponsorship exemptions to events that were of international importance that would otherwise not be held in Australia if sponsorship were banned. Several exemptions were initially granted including:

- Australian Formula One Grand Prix
- Rally Australia
- Australian Ladies Masters Golf
- Whitbread Round the World Yacht Race
- America’s Cup Challenge (sailing)
- Indy Car Grand Prix
- Australian Motorcycle Grand Prix
- Winfield Cup (rugby league)
- Benson and Hedges Cup (cricket)
11.3.2 Tobacco Advertising Prohibition Amendment Act 2000

Under the Tobacco Advertising Prohibition Amendment Act 2000, passed in November 2000, the original discretion which permitted the Minister to grant an exemption for international sporting and cultural events was revoked. As of October 2006, no further events were permitted to display tobacco industry sponsorship. Furthermore, no new events were granted an exemption as of October 2000. This amendment made Australia one of the first countries to legislate for an end to tobacco sponsorship of international sporting and cultural events. At the time of the amendment in 2000, there were five events of international significance that were permitted to carry tobacco sponsorship when they were staged in Australia. They were the:

- Ladies Masters Golf
- Indy 300
- Rally Australia
- Motorcycle Grand Prix
- Formula One Grand Prix

Both the Motorcycle and Formula One Grand Prix continued to carry tobacco sponsorship until the October 1, 2006 deadline.

At the 2007 Formula One Grand Prix in Melbourne the Ferrari team was the only team to continue to be sponsored by a tobacco company, the Philip Morris brand Marlboro. While the Ferrari team was not permitted to exhibit any of this sponsorship, the car and driver uniforms were 'branded' with a distinctive white bar code (Figure 11.1). The race team was therefore effectively promoting the well-known red and white colours of Marlboro, illustrating how advertising can still continue to function after a ban. Subsequent races in other nations where tobacco sponsorship is not prohibited, saw the 'official' Marlboro logo back on the car. Australian Formula One viewers are exposed to this marketing through television broadcasts and would be able to surmise that the white bar code is a substitute for the Marlboro logo.

The 2000 amendment also required reporting by the Health Minister of any contraventions of the TAP Act to Parliament. Specifically, the amendment requires that a report be prepared on:

- the number and nature of any contraventions of the Act occurring in the preceding 12 months
- action taken by the Minister or a Commonwealth agency in response to each contravention

The report is presented annually to Parliament and currently only contains information regarding prosecutions under the TAP Act. The report does not currently include summaries of received complaints or of advertisements that are found in breach of the TAP Act but not subsequently prosecuted. A sample report can be found in Attachment 11.1.
11.3.3

Review of the TAP Act

A review of the TAP Act was announced by Trish Worth, Parliamentary Secretary to the Federal Minister for Health and Ageing on May 31, 2002. An in-depth submission to the Australian Government Department of Health review by The Cancer Council Australia (supported by other health groups) outlined that while the TAP Act has been successful in limiting public exposure to traditional forms of tobacco advertising, it has been less effective in countering other forms of marketing. These ‘below-the-line’ forms of tobacco marketing include internet marketing, sales promotions at public events, point-of-sale advertising, ‘guerrilla marketing’ and text-message promotions.

During the time of the review, the Senate Community Affairs Legislation Committee issued a report, Tobacco Advertising Prohibition, in September 2004 which recommended that changes be made to strengthen the TAP Act, particularly in the areas of film, internet and misleading promotions. The Tobacco Advertising Prohibition (Film, Internet and Misleading Promotion) Amendment Bill 2004 served as a proposed draft of these changes. The objectives of the bill were:

- to ensure that the intent and operation of the TAP Act maintains pace with technological advances in advertising and remains current and effective by adding Internet advertising to the means of tobacco advertising which are prohibited; and
- to prohibit the offering for sale of tobacco products on the Internet; and
- to prohibit the use of certain words in advertising which are misleading, deceptive and are not conducive to public health.

To the dismay of many in the Australian public health community, in 2005 the Australian Government Department of Health issued a response to the 2002 review and concluded that the TAP Act was currently working well to protect the Australian public from advertising messages and the gains made by making amendments to the Act would be insignificant. As a result, no changes to the TAP Act resulted from the review.

11.4

State and territory legislation

States and territories are able to enact regulations that are more rigorous than the TAP Act. To varying degrees all states and territories legislate controls on the advertising and promotion of tobacco products. Where the TAP Act does not restrict point-of-sale advertising and the display of tobacco in retail locations, the states and territories all have their own restrictions and controls. A summary of legislation for each state and territory follows below. Table 3 at the end of this section provides an overview of state and territory legislation.

11.4.1

Australian Capital Territory

Advertising and promotion of tobacco is controlled by the Tobacco Act 1927, including all amendments. Under the ACT’s Tobacco Act 1927, there are strict requirements about how smoking products (tobacco and herbal smoking products) can be advertised and displayed.

A tobacco advertisement is defined as anything (writing, sound, picture, symbol, light or other visible device, object or sign) that a reasonable person would consider publicises or promotes:

- the purchase or use of a tobacco product
- the trademark or brand name, or part of a trademark or brand name, of a tobacco product

Items which advertise or promote tobacco products or tobacco smoking are not permitted at point-of-sale. No gifts or 'value-added' promotional items can be associated with the purchase of tobacco products. A tobacco product itself cannot be given away if this promotes the sale of a tobacco product. It is illegal to conduct a competition that promotes smoking or promotes a tobacco product. Examples of prohibited advertising include brand-name promotional material, and toys, novelty items or clothes with a tobacco name or logo.

11.4.1.1 

**Display of tobacco products**

Tobacco products or packaging cannot be displayed in a way which together forms a tobacco advertisement. Retailers are permitted to display a sign outside the shop or on the door that indicates tobacco products are sold provided the sign does not contain a trademark or name of a tobacco product or tobacco manufacturer or distributor. Display regulations include:

- tobacco products may only be displayed behind the sales counter (not on the counter)
- the display must be at least one metre from the customer’s side of the sales area
- only one facing of each product line of cigarettes can be displayed
- the display of cigarette cartons is not permitted
- only one point-of-sale for tobacco products is permitted in most retail outlets; up to five points of sale are permitted in liquor-licensed outlets
- a health warning notice must be displayed at or adjacent to where tobacco products are displayed. The notice must be at least 10% of the size of the tobacco display or one metre square in size (whichever is smaller)
- retailers who choose to sell, but not to display tobacco products, are not required to post the health warning sign
- information board and price tickets are permitted

11.4.1.2 

**Discussion paper**

In December 2006 ACT Health issued a discussion paper, *Options for Controlling Access to Flavoured Tobacco Products and Split Packets*. Interested stakeholders were encouraged to submit recommendations on mechanisms to ensure the sale of smoking products that are appealing to young people are effectively controlled. 
11.4.2

South Australia

The two main pieces of legislation affecting the advertising and promotion of tobacco products in South Australia are the Tobacco Products Regulation Act 1997* and the Tobacco Products Regulations 2004**. All activities intended to publicise or promote the purchase or use of tobacco products are banned. This includes advertising and promotional material at point-of-sale.***

11.4.2.1

Mobile tobacco sales

The use of mobile cigarette ‘girls and boys’ which has been a common form of marketing in nightclubs, is banned. For example, nightclub tobacco vendors typically dressing in bright tobacco company colours and approaching young patrons and offering tobacco products for sale are not permitted in South Australia.

11.4.2.2

Split cigarette packets

The South Australian government introduced a variation of the Tobacco Products Regulations 2004 to prohibit the sale of cigarette packets that are designed to be divided into portions that contain less than 20 cigarettes each, commonly known as ‘split packets’. Such packages were declared prohibited via a notice in the South Australian Gazette on November 9, 2006 and the ban came into effect on November 10, 2006.44

11.4.2.3

Products appealing to children

On November 1, 2006, the South Australian government banned the sale of tobacco products that possess a distinctive fruity, sweet or confectionery character.45 (See Figure 11.2 for an example of banned product, the DJ Mix brand.) To date, South Australia is the only state to implement a ban on the sale of these flavoured products.

11.4.2.4

Pending regulations for the display of tobacco at retail

On December 18, 2006 the South Australian Mental Health and Substance Abuse Minister announced new restrictions on the display of tobacco products that will come into effect on November 1, 2007. The restrictions will limit the size of tobacco displays to three square metres that must carry an A3 (420 x 297 mm) sized graphic warning of the effects of smoking adjacent to the packets. Alternatively, displays of one or less square metres must carry an A4

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(297 x 210 mm) size graphic warning. Displaying cigarette cartons will be banned and only one packet of each product will be permitted to be on display. Large stores will be prevented from having prominent displays of tobacco products facing public areas, such as in shopping malls.\textsuperscript{46}

### 11.4.3 New South Wales

Two key pieces of legislation relate to the advertising and promotion of tobacco products in New South Wales: the \textit{Public Health Act 1991} and the \textit{Public Health (Tobacco) Regulation 1999\textsuperscript{*}}.

These two pieces of legislation prohibit overt advertising of tobacco products as well as regulating how tobacco products can be displayed at point of sale. The \textit{Public Health Act 1991} also prohibits tobacco related promotions, sponsorships, competitions and free sampling of tobacco.\textsuperscript{***}

#### 11.4.3.1 Packaging

Uniquely and significantly, the 1999 regulation acknowledges that images on the package itself constitute advertising. Limits on the maximum allowable size of a tobacco package to 1800 cubic centimetres means that on-pack advertising is permitted only on carton sized packages or smaller. The regulation also prohibits certain types of on-pack advertising elements including:

- statements alluding to sporting, sexual or business success
- people or cartoon characters
- scenes, activities, words, representations or illustrations that have appeal to children or young persons
- holograms

Additionally, if a package containing tobacco products also contains within it any tobacco advertisement (not being an advertisement printed on the products themselves) the advertisement must also display a health warning.

#### 11.4.3.2 Display restrictions

The 1999 regulation contained several changes to the way tobacco products could be displayed at retail. NSW Health acknowledges that ‘displays are also an advertisement’ and that they are permitted despite a total ban on all advertising at retail.\textsuperscript{47 p 5} Compliant displays abide by the following set of conditions:

- two package faces per brand variant (each brand may have many variants, for example Horizon has many variants including: Menthol Blue, Menthol White, Menthol Yellow, Orange, Yellow, Purple, Red) and only one carton of each brand variant visible

\textsuperscript{*} \url{http://www.austlii.edu.au/au/legis/nsw/consol_act/ph1991126.txt}


\textsuperscript{***} For additional information on the history of tobacco advertising legislation in New South Wales see: Chapman S. Anatomy of a campaign: the attempt to defeat the NSW Tobacco Advertising Prohibition Bill 1991. \textit{Tob Control} 1992;1:50-6.
images cannot be created by joining packages together
- display is behind the counter (not permitted on the counter)
- display contains at least 50 packages at all times
- display has a health warning affixed referring people to the Quitline
- no display embellishments allowed, such as mirrors, lights, streamers or non-tobacco items (lighters and matches permitted)
- price tickets or a price board are permitted (only one type of pricing mechanism per shop)

11.4.3.3
Pending regulatory changes

In April 2006, NSW Health Minister John Hatzistergos announced further pending amendments to the Public Health Act 1991 that will substantially increase penalties for companies that breach tobacco advertising regulations as well as prohibit tobacco products being sold from cars, caravans, trailers, stalls, tents or market stands. Fines for advertising breaches will increase to $660,000 for a first offence and upwards of a $1 million for a second offence.41

11.4.4
Northern Territory

Legislation and regulation pertaining to tobacco advertising in Northern Territory falls under the Tobacco Control Act (2002)** and the Tobacco Control Regulations***. Tobacco advertising was banned from May 31, 2003. No tobacco advertisements of any type may be displayed, published or broadcast. All tobacco advertising at point-of-sale such as posters, backlit signs, desk pads, flags and floor stickers is also banned. Retail staff are not permitted to wear clothing or other items with tobacco logos or trademarks. Shops cannot be decorated in tobacco brand colours. Retailers cannot advertise brand names of cigarettes or the sale of cigarettes at discounted prices, including using expressions such as ‘cheap smokes’ or ‘discount cigarettes’. All giveaways, competitions and other value added marketing are prohibited.49

Tobacco must be sold over the counter from a premise with a licence to sell tobacco products. A display can have no moving parts, and tobacco products can only be displayed at the point of sale. This means that mobile cigarette ‘girls and boys’ who typically approach young people in nightclubs and pubs are no longer permitted.50

11.4.4.1
Display restrictions

Display restrictions also came into effect in May 2003. These include51:

* Displaying a minimum number of packets was put in place because often small retailers display a small number of products. Once the legislation was passed, it was theorised that these smaller retailers would either choose not to display products or to stop selling products altogether. As this provision is not currently being enforced, it is not possible to evaluate how many retailers have opted not to display or sell tobacco products rather than increase their tobacco display size to 50 packets.

** http://www.austlii.edu.au/au/legis/nt/control_act/ta163/

*** http://notes.nt.gov.au/dcm/legisl/legisl/rd/d989974724dbe65b1382561c8017c2b2/ee114a24238c051692570060019e93a?openDocum ent
a Quitline sign must be displayed alongside any tobacco display
- only one point of sale per outlet which must be behind the counter
- one package plus one carton of each type of tobacco may be displayed
- the area of the display cannot exceed four square metres
- display must be two metres from children's products including confectionery
- if a display faces a window or entrance it must be two metres away from the window or entrances
- either a price board or price tickets is permitted, not both

11.4.5 Queensland

Tobacco advertising and promotion is controlled and restricted by the *Tobacco and Other Smoking Products Act 1998* and the *Tobacco and Other Smoking Products Regulation 1998*. The Act prohibits tobacco advertising including any promotions, competitions, and product giveaways. This also extends to any images of the consumption of tobacco products at retail point-of-sale.

A review of Queensland's tobacco laws was carried out in early 2004. The review informed the drafting of new tobacco laws under the *Tobacco and Other Smoking Products Amendment Bill 2004*, which was passed by Queensland Parliament on November 11, 2004. The new laws commenced in phases between January 1, 2005 and July 1, 2006 and include restrictions on how tobacco products can be displayed at retail outlets and a ban on tobacco advertising or competitions.52

11.4.5.1 Display restrictions

An overview of the tobacco display laws which came into effect on December 31, 2005 is as follows53:

- only one smoking product display per retail outlet is allowed and mandatory signs must be displayed
- smoking product displays can be no more than one square metre
- in tobacconists only, smoking product displays can be up to three square metres
- additional smoking products must be totally covered
- cigarette carton displays are prohibited
- display panels, tobacco special tickets and smoking products in shopper loyalty programs are prohibited
- unbranded advertising of smoking products (e.g. 'Cigarettes sold here') is prohibited
- a quit-smoking sign must be displayed at the main point of sale

11.4.6

Tasmania

The control of the marketing and promotion of tobacco products in Tasmania falls under the *Public Health Act 1997*. In addition to banning overt advertising and promotion, including at point-of-sale, the *Public Health Act 1997* contains restrictions on the display of tobacco products, including:

- displaying no more than one packet of each product line of tobacco (no cartons), with no more than 150 packages on display in total and must be less than four square metres in size
- displaying no tobacco products within a distance of 75 centimetres of any confectionery, or other products designed or marketed for the use of children
- the display unit must not be on any counter that is accessible to the public
- the display must not contain any visual embellishments including borders, partial images of packages or trademarked images from packages, devices that cause movement, mirrors or other reflective device, holograms, interior lighting, exterior lighting attached to the sales unit or external spotlighting
- the display must be positioned such that it is not visible outside the shop and must be two metres away from the entrance and positioned perpendicular to any windows
- the premises cannot be colour coding in colours that form part of the usual packaging of the tobacco product within five metres of the display

11.4.6.1

Displaying graphic warnings at tobacco display

In 2004 a statutory requirement was issued to all licensed tobacco retailers in Tasmania to display a specific graphic health warning on the retail tobacco display (as opposed to at the point-of-sale). The diseased mouth graphic warning is the same one that appears on the cigarette packages themselves (Figure 11.3). The regulatory system allows the point-of-display warnings to be varied in a flexible manner without legislative changes, meaning that the warning could be varied should the government require this.
One outcome of this requirement was that 40 Tasmanian retailers, including one of Australia’s two major supermarket chains (Coles), voluntarily moved their tobacco products entirely out of public sight to avoid displaying the graphic warning. This has unexpectedly provided evidence for the technical and financial feasibility of requiring all retailers to move their tobacco products out of sight.54

11.4.6.2

Pending legislative changes

In May 2006, the Tasmanian Department of Health conducted a consultation to strengthen measures within the Public Health Act 1997 to further protect children from tobacco products. One of the recommended actions was to ‘prohibit tobacco product displays but allow price boards and product availability information including catalogues.’55 56

In March 2007, the state government announced its intentions to further restrict, not ban, the display of tobacco products by reducing displays to one square metre for general retailers and four square metres for specialist tobacconists. This requirement is to commence July 1, 2007 with a six-month phase-in period.

11.4.7

Victoria

Two pieces of legislation restrict the marketing and promotion of tobacco in Victoria*, the Tobacco Act 1987** and the Tobacco Regulations 1997***.

On March 1, 2006 significant amendments came into effect that further strengthen restrictions on the sale and advertising of tobacco. In summary, the amendments affecting advertising and promotion include57:
- banning smoking, the promotion of tobacco products and the sale of tobacco products at underage ‘music/dance’ events
- widening of the definition of ‘tobacco advertisement’ to include non-branded advertising, buzz marketing (as defined by the Act) and the advertising of cigarette papers
- banning ‘buzz marketing’ and non-branded tobacco advertising

11.4.7.1

Underage ‘music/dance’ events

An underage ‘music/dance’ event is defined as an event that57:
- involves the provision of music (whether live or recorded and whether for listening to or dancing to or both)
- is predominantly organised or intended for, or predominantly attended by persons under the age of 18 years
- is open to members of the public (whether with or without payment)
- takes place in any area or premises other than a private residence

Examples of events that which are affected include:

- ‘FReeZa’ events
- ‘Blue Light’ discos
- Underage events held at licensed premises
- School-run events

All people who attend the event are prohibited from smoking, including adults and young people. This also applies to all outdoor areas of underage ‘music/dance’ events. Tobacco products cannot be sold at these events. Event organisers must ensure that cigarette vending machines, tobacco advertisements and tobacco displays are completely covered in an opaque material or removed while an underage ‘music/dance’ event is taking place.

11.4.7.2 Buzz marketing and non-branded advertising

The Victoria Department of Human Services defines buzz marketing as the use of colours, images and props to create an environment consistent with a brand’s identity or reminiscent of previous tobacco advertising. Generally, buzz marketing is undertaken in nightclubs, at dance events, fashion events, or other similar events. Since branded tobacco advertising is prohibited in shops that sell tobacco, many traditional advertisements have been replaced with non-branded ‘suggestive’ methods to promote tobacco use. Non-branded tobacco advertising includes backlit posters directly above cigarette displays, depicting images of smoking paraphernalia such as matches and lighters (Figure 11.4). Although these posters do not promote a particular brand of tobacco, they are attractive to the eye and may encourage and promote the consumption of tobacco. Non-branded tobacco advertisements are also banned outside of retail outlets. Additionally, advertisements of ‘cheap’ or ‘discount’ cigarettes are also prohibited.

11.4.7.3 Display restrictions

The Tobacco Act 1997 includes restrictions on how tobacco products can be displayed. Compliant displays feature the following:

- Show only one of each product line of a tobacco product. Different size packages are not treated as different product lines.
- Displaying cartons is not permitted. An exception to this applies in the case of duty-free outlets beyond the customs barrier at Melbourne Airport, which are permitted to display cigarette cartons.
- Only one display area per store is permitted which must be at point-of-sale.
- Price tickets and price boards are permitted.


** Blue Light aims to assist the police to rectify the imbalance of proactive and reactive policing among young people. It aims to do this by providing young people with positive alternatives and strategies to avoid becoming an offender or victim of crime. The discos are held in the community and supervised by the police.
the total display area for advertising tobacco products must not be larger than four square metres
- no lights or other accents are permitted as part of the display
- a black and white health warning/smoking cessation sign must be displayed either at the entrance or near the tobacco display

### 11.4.8

#### Western Australia

In Western Australia, tobacco advertising and promotion is controlled through the *Tobacco Products Control Act 2006* and the *Tobacco Products Control Regulations 2006*. The *Tobacco Products Act 2006* repealed the 1990 Act and includes provisions that ban advertising, promotion and sponsorship. Advertising is banned at point of sale unless the advertisement only advises about the availability of tobacco for sale; advertising of any price discounting is not permitted. Prizes and competitions are banned and no free samples can be distributed. Mobile sellers, defined as people carrying tobacco products, are prohibited.

#### 11.4.8.1 Restriction of tobacco product displays

Changes enacted on July 31, 2006 restrict the way tobacco can be displayed at retail. These include:
- one retail sale-point only
- display is not greater than one square metre in size
- show no more than 150 different product lines and only one of each type of package of the product line
- no carton or a part of a carton can be displayed
- displaying a health warning sign (297 mm x 210 mm in size) that is in accordance with the regulations
- price boards and price tickets are permitted at the point of sale only
- display is behind (but not on) a counter across which customers are served on the seller’s side or directly above a counter across which customers are served so that the vertical distance between the bottom of the display and the floor level on the customer's side of the counter is at least 1.7 m
- displays cannot be embellished or illuminated in any way
- at least one metre away from children's products including confectionery

Further regulations introduced on February 28, 2007 ban certain types of tobacco and packages from being displayed by retailers. Packages that cannot be displayed but can be sold by retailers include:

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* http://www.slp.wa.gov.au/statutes/swans.nsf/5d62d4e56e9e4b348256ebd0012c422/6af6657a7ee3888482571540025d99/$FILE/Tobacco%20Products%20Control%20Act%202006.PDF
** http://www.slp.wa.gov.au/statutes/regs.nsf/3b7e552d42801b348256ec3002c128/ab250202ff8e4d4b482571b90025e796/$FILE/Tobacco%20Products%20Control%20Regulations%202006.PDF
Section: 11.5

**Tobacco advertising legislation violations**

There have been violations of both federal and state tobacco advertising legislation. Key examples of these breaches are detailed below.

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**Table 11.3**

Overview of advertising restrictions by state and territory as at May 1, 2007

<table>
<thead>
<tr>
<th></th>
<th>Point-of-sale advertising</th>
<th>Size</th>
<th>Display Packet Facings</th>
<th>Cartons</th>
<th>Promotions, contests and giveaways</th>
<th>Mobile (transportable) tobacco sales</th>
<th>Flavoured cigarettes</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian Capital Territory</td>
<td>prohibited</td>
<td>none</td>
<td>1</td>
<td>prohibited</td>
<td>prohibited</td>
<td>none</td>
<td>policies to regulate are under consideration</td>
<td></td>
</tr>
<tr>
<td>New South Wales</td>
<td>prohibited</td>
<td>none</td>
<td>2</td>
<td>prohibited</td>
<td>prohibited</td>
<td>pending amendments to ban sales from cars, caravans, stalls, tents or market stands</td>
<td>none</td>
<td>packages cannot bear images that appeal to children or images of people, cartoons, or holograms</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>prohibited</td>
<td>4m²</td>
<td>1</td>
<td>1</td>
<td>prohibited</td>
<td>sale of sweet or fruit flavoured products is banned</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Queensland</td>
<td>prohibited</td>
<td>1m²</td>
<td>1</td>
<td>prohibited</td>
<td>prohibited</td>
<td>none</td>
<td>none</td>
<td>none</td>
</tr>
<tr>
<td>South Australia</td>
<td>prohibited</td>
<td>3m²</td>
<td>1</td>
<td>prohibited</td>
<td>prohibited</td>
<td>sale of sweet or fruit flavoured products is banned</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tasmania</td>
<td>prohibited</td>
<td>1m²</td>
<td>1</td>
<td>prohibited</td>
<td>prohibited</td>
<td>none</td>
<td>none</td>
<td></td>
</tr>
<tr>
<td>Victoria</td>
<td>prohibited</td>
<td>4m²</td>
<td>1</td>
<td>prohibited</td>
<td>prohibited</td>
<td>n/a (buzz marketing is banned)</td>
<td>none</td>
<td>buzz marketing and non branded advertising banned</td>
</tr>
<tr>
<td>Western Australia</td>
<td>prohibited</td>
<td>1m²</td>
<td>1</td>
<td>prohibited</td>
<td>prohibited</td>
<td>prohibited</td>
<td>ban the display of sweet or fruit flavoured cigarettes</td>
<td></td>
</tr>
</tbody>
</table>

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* as November 1, 2007
** as of July 1, 2007
11.5.1

Federal TAP Act breaches

As most violations and suspected violations of the TAP Act have not resulted in prosecution it is difficult to assess the extent to which the Act is being violated and enforced. As previously discussed in this chapter, annual reports on contraventions of the TAP Act contain limited information on prosecutions only. It is also uncommon for complaints and actual breaches to result in a prosecution. The only successful federal prosecution of a tobacco advertising violation was in 2002 when television Channel Nine was found guilty of recklessly broadcasting a tobacco advertisement during the program 60 Minutes in October 2000. An image of actor Russell Crowe smoking and displaying a package of Marlboro cigarettes while being interviewed was broadcast during the program. Despite Channel Nine appealing the ruling, the Australian Broadcasting Authority (ABA) successfully argued the images encouraged smoking. No fine was imposed. However, a breach was recorded against the network’s licence.

In 2001, Network Ten was found to have broadcast a tobacco advertisement, in violation of the TAP Act, during a women’s golf tournament. Ten had shown signage for Philip Morris’s Alpine cigarette brand and in interviewing the sales manager had made particular reference to the company’s name. The network was not prosecuted but was advised to take further precautions during live interviews to avoid broadcasting tobacco advertisements and to provide staff with training on the provisions of the TAP Act.

In April 2006 the radio Station 3AW Melbourne was found to have broadcast three tobacco advertisements during an archival radio play broadcast. The station was held to be in breach of the TAP Act but was not officially prosecuted as the licensee was a first time offender and agreed to: ‘take steps to ensure that all future archival broadcasts are considered and reviewed prior to broadcasting, so that any potentially unlawful material is identified and removed from any further proposed broadcasts.

In March 2007, print advertisements and billboards promoting a concert by American R & B singer-songwriter, Beyoncé (Knowles), were found to be in violation of the TAP Act. The singer was shown posing with an old-fashioned cigarette holder (Figure 11.5). The concert promoters were advised to remove the advertisements or potentially face prosecution.

Subsequent print versions of the advertisement contained the identical image of the singer with the cigarette holder removed.

11.5.2

Advertising Standards Bureau

Advertisements that promote smoking can also be reviewed by the Advertising Standards Bureau (ASB), if a complaint is submitted. ASB is national system of advertising self-regulation and provides a free public service of complaint resolution. It provides determinations on complaints about most forms of advertising in relation to issues including the use of language, the discriminatory portrayal of people, concern for children, portrayals of violence, sex, sexuality and nudity, and health and safety. The ASB can only advise companies to modify or withdraw their advertisements, based on

received complaints. Should a company choose not accept the ASB recommendation, the ASB has no enforcement capabilities.

In February 2006, an advertisement for Nicotinel Gum, a smoking cessation product sold in Australia by Novartis, was found to contain ‘stylised and glamourous visual imagery of the smoking woman (that) strongly linked glamour, excitement and positive messages to smoking in the first place’. Novartis, the makers of the product, has agreed to modify the advertisement. The ASB has also upheld complaints for other advertisements that promote smoking, including:

- April 2007, magazine Cosmo Bride, images of a women smoking in a clothing advertisement
- September 2006, clothing manufacturers George Gross/Harry Who, images of smokers in clothing advertisement in a catalogue
- July 2006, Everlast, image of young boy smoking in clothing advertisement (Figure 11.6)

**11.5.3 New South Wales prosecution of Philip Morris and Wavesnet**

In December 2000, NSW Department of Health officials attended an event billed as ‘your one-stop online fashion and accessory boutique’. The Wavesnet website offered tickets to these events that were marketed as ‘Glisten’ parties. As Dr Stacy Carter, a University of Sydney researcher and event attendee describes, at all the Glisten events one cigarette brand, Philip Morris’s Alpine, featured in a ‘luminous white altar’ that was ‘tended at all times by a pair of gorgeous, glamorous, ageless women, identical icons, in shiny silver-white bobbed wigs, long sparkling white gowns, and perfect faces’ (Figure 11.7) In December 2001, NSW Health took legal action against Wavesnet and Philip Morris. (For further discussion on Wavesnet see Section 11.6.1)

In November 2002, Philip Morris became the first cigarette company in Australia fined for breaching advertising laws under the NSW Public Health Act 1991. Philip Morris was fined $9000 and ordered to pay $42,000 in court costs for illegally advertising at the Glisten event. Wavesnet, the Philip Morris associated company, was fined $15,000 with $28,000 in court costs. The Wavesnet website and associated events are no longer in operation.

**11.6 Marketing of tobacco in the age of advertising bans**

As traditional forms of marketing have been closed to the tobacco industry, companies have sought out novel ways of promoting their products. An advertising ban does not mean that tobacco companies will no longer seek to market their products; it means they will continue to market their products through avenues that have not been closed by the ban. Advertising bans may not reduce the total level of advertising expenditure

* Despite the company declaring the advertisement would be removed, this advertisement reappeared on billboards and posters around Australia in April 2007.
but result in shifting resources to other forms of marketing and promotion.\(^2\) When more of the remaining media are eliminated, the options for substitution are also eliminated. Several ‘below-the-line’ advertising techniques have been identified\(^3, 29, 72\):

- event promotions, including dance parties, fashion shows, and music festivals
- point-of-sale marketing
- packaging design
- brand stretching
- internet based marketing and the development of corporate websites
- advertising in international magazines
- text-message promotions
- product placement in movies

11.6.1

Promotional events

In its submission to the 2003 *TAP Act* review, The Cancer Council Australia highlighted how the tobacco industry uses event based marketing to promote its products to young people: “Typically, products are sold and displayed in a glamorous or ‘cool’ setting, such as a nightclub or fashion or music event. The product benefits from the associations created with the event or venue, the people present at the event or venue, and other brands that are being marketed there. The events and venues generally have no restrictions on smoking, creating a perfect environment in which to create the desired associations between smoking and both the other experiences being enjoyed and the positive elements of the surrounding context and environment as a whole. Many of these events, particularly outdoor music events, are not restricted to those over the age of 18, so the youth who are exposed to the marketing are both young adults and much younger teenagers.”\(^37\) p 14

The submission details more than 25 examples of event-based marketing across Australia. An illustrative example, *Wavesnet*, is highlighted in the following case study.*

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Wavesnet—A case study of event based marketing

For many years tobacco manufacturer Philip Morris has been communicating with the predominantly female smokers of their brand Alpine cigarettes in various guises. The strategy began in the late 1990s with a quarterly magazine called Waves and the sponsorship of graduate designers fashion shows, and finally gifts sold together with Alpine packs such as make-up mirrors and cosmetic bags. Part of the aim was to develop a database of Alpine smokers, which apparently numbered about 40,000 by the time the internet was integrated into the mix. Databases are important to the tobacco companies as they provide a way of communicating directly with their customers plus constitute a valuable source of market research.

The internet strategy began with the registration of Wavesnet as a company in October 2000 and the development of a funky website, www.wavesnet.net as a promotional tool. Mojo, the advertising agency managing the Alpine account, established the site. The link to Philip Morris was not immediately evident; however, a search of who controls the Wavesnet company revealed that it has three directors and a company secretary who are either directors of Mojo or its holding company, Publicis. Philip Morris has since confirmed that it licensed the use of the Wavesnet trademark to Publicis.

The Wavesnet website promoted accessories and a series of young designer fashion shows—Fashion's Future Designer Awards—in nightclubs in a number of capital cities. It also included an online survey where visitors to the site could subscribe and obtain free entry to the fashion shows, free drinks, gifts and invitations to future events. The fashion awards were also promoted in women's magazines. The site was promoted to young women in various media as a place to 'shop 4 the latest accessories @ www.wavesnet.net . . . & 10% off everything when u join wavesnet'. Later the promoters became more explicit in their event promotion running a series of dance parties under the banner Glisten.

The events heavily promoted Alpine cigarettes, a brand almost exclusively smoked by women. The colours used on the website and at the events were themed around the colours on the Alpine packs. The only cigarettes available during the event were Alpine cigarettes sold by women in outfits colour coordinated with the pack and the lighting. An organiser for other major events has revealed that in return for handing over sponsorship dollars for another event, Philip Morris wanted 'its corporate colours to be evident at the rave, and for cigarette sellers in fetching outfits to roam the dance floors looking for customers', thereby achieving greater exposure of tobacco products to potential customers.

Computer terminals at the Wavesnet fashion events allowed attendees to sign up on-site. Wavesnet's general manager confirmed that there were plans to host more events and that building up a database of members' likes and dislikes was one of the reasons for the existence of the Wavesnet website.

A key element of the strategy is affinity marketing—leveraging the power of other popular youth brands and products such as cosmetics, CDs, confectionery, lingerie and clothing with the target market. At the state final of Wavesnet's Fashion's Future Design Awards—Who will you be wearing next?—in
Melbourne, all attendees were given free gift packs including products such as lingerie, jewellery, herbal tea, mouse pads, magazines, CDs and confectionery.

Not all the sponsors were informed about the involvement of Philip Morris and Alpine cigarettes. The editor of a female online magazine, Femail, which promoted Wavesnet Fashion’s Future Design Awards, was not aware that its paid advertorial was sponsored by Philip Morris or that the company owned the Wavesnet trademark. Philip Morris’s involvement was not mentioned in the online copy. Later, other sponsors of the Glisten events were also concerned at being linked to Philip Morris; for example, one of the co-sponsors, De Jour tampons, withdrew its support after it was told of Philip Morris’s involvement. The company owner said that she did not want her company associated with Philip Morris and would not have agreed to be involved had they known of this prior to the events.

Following controversy over the Wavesnet operation, the entire operation was repackaged under the new name of ‘Glisten’ (Figure 11.8).

Despite state level attempts to control these activities (some states have banned mobile cigarette girls and boys and Victoria has banned all tobacco from under 18 events) events based marketed continues. Two recent examples include:

- The Big Day Out (2007), the biggest outdoor youth music event of the Australian summer, held in cities around the country, granted exclusive sales right to Imperial Tobacco. At the Sydney event, Imperial promoted and sold the Peter Stuyvesant brand. The cigarettes are sold from ‘smoking lounges’ where patrons can relax and enjoy a cigarette. The company states that this is purely a sales agreement, not a promotional opportunity.

- In April 2007, guests of a Fashion TV Red Ribbon Foundation party at the Sydney Opera House were given complimentary packages of Davidoff cigarettes. While it is prohibited in New South Wales to distribute free samples of cigarettes to members of the public, events that are restricted to members of a relevant trade (i.e. hospitality) are permitted to distribute free samples. It is unclear from media reports if the event in question was a relevant trade specific party.

11.6.2 Tobacco displays as advertising

While all states and territories regulate the size, position, and design of tobacco displays at retail, (South Australia regulations come in to effect November 2007) it is a common to see large colourful ‘powerwalls’ of tobacco products in most supermarkets, convenience stores, and petrol stations (Figure 11.9). Prohibiting the sale of tobacco products to children under 18 is intended to restrict their access to tobacco. This is undermined and contradicted by the bright displays that attract these same children. Because tobacco is displayed alongside other universally purchased consumer goods, displays create the impression that tobacco is much more socially acceptable and commonly used than is truly the case. Focus group research with both smokers and non-smokers has found support for display bans. The removal of displays is seen as a ‘logical extension’ of advertising bans.
The industry argues that displays are necessary to provide information to adult smokers about different brands in order to encourage brand switching. 2006 research showed that 90 percent of adult smokers in Victoria never decide on what brand they will purchase at retail and only 1 percent said they always decided on what brand based on the retail display. These findings suggest that adults virtually never use the information that the industry states the displays impart. There is evidence that displays do influence children's smoking relevant attitudes and intentions. Experimental research with Australian adolescents found that the presence of tobacco displays influenced their beliefs about the ease of purchasing cigarettes, increased their ability to recall cigarette brands and weakened their resolve not to smoke in the future.

11.6.2.1

International display bans

Norway, Ireland, Iceland and Thailand have banned all tobacco advertising and displays at retail. Several Canadian provinces have banned retail displays, the province of Saskatchewan pioneering the banning of pack displays (Figure 11.10). Health Canada, the Canadian federal government agency responsible for tobacco control, is currently reviewing the display of tobacco products at retail and is proposing a total ban, across Canada, on all tobacco displays where children are permitted. Health Canada describes the marketing potential of tobacco displays: "The ubiquitous presence of these displays means that they reach young people, former smokers and smokers trying to quit. Their presence makes tobacco products socially prominent, and this prominence conflicts with the health message that tobacco products are harmful. Such displays may undermine government efforts to protect young people and others from inducements to use tobacco products and from becoming dependent on them."
11.6.2.2 The Australian retail setting

Australian tobacco industry document research reveals that as cigarette marketing became increasingly restrictive in Australia the retail environment evolved as the primary communication vehicle for building cigarette brands. The industry employs techniques such as strengthening on-pack brand imagery, redesigning point-of-sale hardware to emphasise particular brands, forming alliances with retailers, rewarding retailers through loyalty programs, and promoting brands through retail trade magazines. Carter concluded: "The point-of-sale, always an important marketing environment for the Australian cigarette industry, has been transformed in the last five decades. Originally retail marketing was a mere support mechanism for above-the-line activities. When above-the-line was banned, the retail environment became the front line for brand building, absorbing massive resources and being seen as the primary site for sustaining relationships with the consumer. When retail advertising was restricted by some states, the industry conceded only incrementally and under duress. The fact that the law is broken in retail marketing suggests that the retail promotions, however modest, are still highly prized in Australia's dark market."

Retailers have received guidance on how to maximize sales of tobacco products. Service Station Australia Limited (a national industry organisation representing fuel retail outlets in Australia) advised retailers to:

- Strategically place cigarette dispenser, ideally behind the point of sale unit in full view of customers.
- Have a minimum range of premium and leading brands on display, remember smokers are very loyal to 'their' brand. If the range is too narrow they will not come back.
- Enlist the support of the cigarette manufacturers, when placing an order request a visit from a sales representative, they are 'experts'; and if you ask the right questions they can provide very useful advice.

Additionally, retailers were advised to support the tobacco industry associated National Association of Tobacco Retailers (NATR), an advocacy group which opposes tobacco display bans.

State and territory display restrictions often include allowing only one packet of each product line to be displayed. Australian tobacco companies have exploited this loophole by introducing more products lines. For example:

- **Peter Jackson** product lines have almost doubled from 1999 to 2005, increasing from 11 to 21
- **Winfield** went from 11 product lines in 1998 to 18 in 2004

In June 2007, it was reported that Philip Morris is opening a 'concept store' on the fashionable Chapel Street in Melbourne's South Yarra. Tobacco control advocates argued that the planned shop was 'the latest initiative by the tobacco industry to lure new customers from the most vulnerable demographic'. In addition to stocking both Philip Morris and competitor cigarette brands, the store will include 'retractable windows' to accommodate smokers under Victoria's indoor smoking ban.
11.6.2.3  
Vending machines

The cigarette vending machine functions as a self-service form of display. Tasmania and ACT ban self-operated vending machines; the seller must operate the machine on behalf of the purchaser. All other states and territories restrict vending machines to licensed or gaming premises, but allow members of the public to operate the machines. As described by the VicHealth Centre for Tobacco Control, the placement of vending machines at adult social venues or events ‘operates to create, or reinforce, a damaging association between the venue or event, and the enjoyment that is had there, and the use of tobacco products or particular brands of tobacco products’.

Vending machines can also serve to glamorise tobacco products by showcasing them in attractive and eye-catching displays (Figure 11.11).

Figure 11.11  
Cigarette vending machine in a bar  

11.6.3  
Packaging as advertising

Packaging differentiates brands, being particularly important in homogenous consumer goods categories like cigarettes. Marketing literature routinely highlights the critical role played by pack design in the overall marketing mix, emphasising that the ‘product package is the communication life-blood of the firm’, the ‘silent salesman’ that reaches out to customers and that packaging ‘act(s) as a promotional tool in its own right’.

Cigarette packaging conveys brand identity through brand logos, colours, fonts, pictures, packaging materials and shapes. The world’s most popular cigarette brand, Marlboro, can readily be identified through its iconic red chevron. The Marlboro brand is estimated to be worth $US27 billion, making it the 10th most valuable brand in the world.

With the global increase in tobacco advertising and sponsorship bans, the pack becomes the most important promotional vehicle for reaching potential and current smokers. British American Tobacco (BAT) and Philip Morris have predicted that in the future, pack design alone will drive brand imagery. Imperial Tobacco Ltd’s former vice president of marketing agreed that packaging is vital in marketing. ‘It’s very difficult for people to discriminate blind-tested. Put it in a package and put a name on it, then it has a lot of product characteristics.’

This corroborates an earlier comment made by a BAT official that ‘one of every two smokers is not able to distinguish in blind (masked) tests between similar cigarettes … for most smokers and the decisive group of new, younger smokers, the consumer’s choice is dictated more by psychological, image factors than by relatively minor differences in smoking characteristics.’

Unique among industries, the tobacco industry has always claimed that it has no interest in attracting new customers (i.e. non-smokers) but is interested only in stimulating brand-switching among current smokers and in maintaining brand loyalty in current customers. This position has been comprehensively undermined by a multitude of revelations from internal industry documents that candidly acknowledge the vital importance of attracting new smokers (predominantly youth). It is therefore taken as read that in designing tobacco packs to appeal to potential purchasers, the tobacco industry counts among these, those already smoking the brand, those smoking other brands and those not yet smoking but who might be persuaded to take it up.

The industry denies that packs are a form of advertising. However, there is abundant evidence that privately the industry thinks very differently about the promotional potential of packs. For example, in 1995 a Brown and Williamson employee stated ‘… if you smoke, a cigarette pack is one of the few things you use regularly that makes a statement about you. A cigarette pack is the only thing you take out of your pocket 20 times a day and lay out for everyone to see. That’s a lot different than buying your soap powder in generic packaging.’

As previously discussed, several nations have banned the open display of tobacco products in retail locations. These jurisdictions have reasoned that: ‘Power walls and counter top displays are highly visible and eye-catching. They present an unavoidable and unfortunate spill of promotional imagery and product reminders to vulnerable consumers including young people, former smokers … and smokers of all ages who are trying to quit.’ Bans on the retail display of tobacco will likely further increase industry investment in innovative pack design, with the pack functioning as a portable advertisement.

Pack design can not only communicate the ‘personality’ of a cigarette brand to the smoker, but smokers can project these characteristics by handling and displaying the package throughout their daily routines. Just as designer clothing, accessories and cars serve as social cues to style, status, values and character so too can cigarette packs signify a range of attributes about users. As ‘badge products’ cigarettes can reinforce the characteristics conjured by brand image.

**11.6.3.1 Innovations in cigarette packaging**

The tobacco industry trade magazine, *World Tobacco*, contains numerous examples of frank appeals to manufacturers to utilise packaging as an advertising vehicle. Tobacco manufacturers were advised ‘if your brand can no longer shout from billboards, let alone from the cinema screen or the pages of a glossy magazine … it can at least court smokers from the retailer’s shelf, or from wherever it is placed by those already wed to it.’ Industry internal documents confirm that companies invest significant research effort into pack design to communicate specific messages to specific demographic groups, chiefly young people. In the early 1990s Philip Morris saw opportunities in packaging innovation among young people because they ‘are ready for change’ and ‘once exposed to innovative [packaging] especially young adults see their current packaging as dated and boring.’ Packs aimed at younger women should be ‘slick, sleek, flashy, glittery, shiny, silky, bold.’

International packaging manufacturers and designers remain optimistic about opportunities to increase the appeal of cigarette packs despite intrusive health warnings. One manufacturer commented in the trade press that: ‘With the uptake of printed inner frame cards what we will increasingly see is the pack being viewed as a total opportunity for communications—from printed outer film and tear tape through to the inner
frame and inner bundle. Each pack component will provide an integrated function as part of a carefully planned brand or information communications campaign. One packaging firm urged tobacco companies to skirt ‘draconian legislation’ by using pack over-wrapping to create an in-store advertisement. ‘Where cigarette advertising is banned by law’ says the company, ‘the retailer can ‘quite coincidentally’ stack up a kind of billboard using the products at the point of sale if, for example, the cigarette cartons of a particular brand bear different parts of an overall design, which complete a puzzle or a caption when stacked up.’

Advances in printing technology have enabled printing of on-pack imagery on the inner frame card, outer film and tear tape, and the incorporation of holograms, collectable art, metallic finishes, multi-fold stickers, photographs, and retro images in pack design. In the early 1900s, collectable cigarette cards were a major form of in-pack promotion. A contemporary return to the package as the primary source of advertising is apparent in the following Australian examples:

- Subtle changes to cigarette packs and trademarks were observed on both Benson & Hedges and Winfield cigarette packs during 2000–02. When researchers called the company to inquire about the changes, an employee said they were ‘playing with the logo because we can’t do any advertising anymore.’

- In February 2006, one month prior to the adoption of picture-based warnings on tobacco packages, Peter Stuyvesant cigarettes were being sold in ‘trendy retro-style tins’ which, unlike soft packets of cigarettes with on-pack printed warnings, had health warning stickers that were easily peeled off. (Figure 11.12) Retailers reported that the tins were very popular with younger smokers.

- British American Tobacco Australia (BATA) introduced split Dunhill packs in October 2006. The pack could be split along a perforated line to create two mini packs, easily shared between two smokers perhaps unable to afford a full pack (Figure 11.13). Once split, one of the two packs did not bear the mandatory graphic health warning. BATA was forced to remove the packets from the market when it was found to be in breach of tobacco product labelling laws.

- When the descriptive terms ‘light’ and ‘mild’ were prohibited, and cigarette tar yields were scheduled to be replaced with qualitative information about harmful constituents, the industry responded by developing colour-coded packages with new terms: ‘Now your Horizon customers can get their favourite brand in an exciting new look pack. With new descriptors and clearer numbers all our packs are much easier to identify. Research proves that your customers will find the new pack more appealing and a lot easier to recognize.’

Figure 11.12
Peter Stuyvesant cigarettes packed in a tin container with a removable warning
Source: Quit Victoria.

Figure 11.13
Split package of Dunhill cigarettes
Source: Quit Victoria.
Plain packaging as a solution to end the promotional power of packaging

In Australia in 1992, the Centre for Behavioural Research in Cancer recommended that regulations be extended to cover the colours, design and wording of the entire exterior of the pack. In 1995, Cunningham and Kyle argued for the plain, ‘generic’ packaging of tobacco products, stressing that the pack was a key promotional vehicle and as such should be subject to the same controls that apply to all forms of tobacco advertising.

Plain packaging would require the removal of all brand imagery (including corporate logos and trademarks) from cigarette packs, permitting manufacturers to only print the brand name in a mandated size, font and place, in addition to health warnings and other legally required product information such as toxic constituents, tax-paid seals, or package contents (Figure 11.14). The size and shape of the package would also be regulated in order to prevent novelty pack shape varieties replacing on-pack imagery. All Australian states and territories already mandate the minimum number of cigarettes in a pack (20), reasoning that small packs, being less expensive, are more attractive to youth. Plain packaging would encompass pack interiors and the cigarette itself, given the demonstrated potential for manufacturers to use colours, bandings and markings and different length and gauges to make cigarettes more ‘interesting’ and appealing (Figure 11.15). Plain packaging would effectively standardise the appearance of all cigarette packages and cigarettes, greatly reducing the status signalling roles and appeal of cigarettes.
11.6.3.3
Effects of plain packaging

As plain packs have never been legislated, evidence about their possible impact necessarily derives from experimental studies where subjects have typically been presented with both mock-up plain and branded packs and asked about associations and preferences. A 1995 Canadian expert panel report, When Packages Can’t Speak: Possible Impacts of Plain and Generic Packaging of Tobacco Products, containing several such studies, is the most comprehensive review of the likely effects of plain packaging. Collectively, these and other studies have consistently shown that compared to branded packs, plain packs are perceived as ‘dull and boring’, cheap looking and reduce the flair and appeal associated with smoking. Teens are much less likely to associate specific brands with specific types of people when packs are plain, and even less so when plain packs also featured a photo of a lung.

The body of plain pack research shows consistently that pack brand imagery distracts from and therefore reduces the impact of health warnings. Students had an enhanced ability to recall health warnings on plain packs, suggesting that pack imagery can distract from health warnings. Health warnings on plain packs were seen as being more serious than the same warnings on branded packs, suggesting that brand imagery diffuses the overall impact of health warnings. A recent multi-country tobacco survey examining the effectiveness of warnings showed that smokers in Canada, who were at the time of the study exposed to large picture-based warnings, were significantly more likely to report thinking about the health risks of smoking, to stop from having a cigarette, and to think about quitting because of the health warnings. The same study also showed that the larger and more prominent a health warning, the more likely it is to be recalled. Plain packaging would enable the warning size to be further increased and allow for additional information elaborating on warnings and about smoking cessation to be printed on packs. Unregulated package colouring and imagery also contributes to consumer misperceptions that ‘light and mild’ brands are safer.

11.6.4
Smoking in movies as promotion

While advertisements for cigarettes can no longer be shown in cinemas before movies, audiences are often exposed to pro-smoking imagery during the movie. In 2002, the total amount of smoking in movies was greater in youth-rated films than adult-rated films, significantly increasing adolescent exposure to movie smoking. Smoking in the movies decreased from 1950 to 1990 and then increased rapidly so that smoking in movies in 2002 was as common as in 1950. A more recent (2006) study, the most comprehensive research to date examining total depictions of smoking in movies, has found that the total number of smoking characters is actually declining. The study included the top 100 US box office hits for each year from 1996 to 2004. This downward trend was however weakest in films aimed at an adolescent audience. Although many of the movies included in the study depict no adult smoking, more than one third depict smoking as being more prevalent than among US adults at the time of release.

Several review articles have shown that smoking in movies is associated with increases in adolescent smoking initiation. A possible limiting factor of this body of research is that the majority of the studies have been conducted with American youth. In a US cohort study, 52.2 percent of smoking initiation was attributed to exposure to smoking in movies. A criticism of such studies is that smoking may be just one of a constellation of movie characteristics that have broad appeal to children attracted to
such films. If smoking were removed from such movies, youth who are more likely to smoke may still be attracted to the same sort of films because of wider characteristics of characters and scenes in such movies. Smoking scenes may therefore not be independently predictive of smoking among youth.

Depictions of smoking also enhance positive views of smokers and increase intent to smoke. Teenagers whose favourite stars smoke on the big screen are three times more likely to smoke than those whose favourite stars do not smoke (Figure 11.16).

There is limited research on the effects or amount of smoking imagery on television. A New Zealand study of primetime television content found that one in four programs contained tobacco imagery, most of which might be regarded as ‘neutral or positive’. This equalled to two smoking scenes for every hour of programming. A US study examined the level of youth exposure to televised movie trailers that contained smoking imagery between August 2001 and July 2002. The researchers found that 14.4 percent of televised trailers included images of tobacco use. Tobacco use was shown in 24 percent of the trailers for R-rated (restricted) movies and 7.5 percent of the trailers for PG-13 and PG-rated (parental guidance) movies. Ninety-five percent of all youth aged 12 to 17 years in the US saw at least one movie trailer depicting tobacco use on television during the study period. Youth are also exposed to smoking images through video and DVD rentals of both current and historical movie releases.

11.6.4.1

Counter-advertising

There is some evidence to suggest that showing an antismoking, counter-advertisement before films that glamorise smoking negates positive associations. An Australian study with adolescent females showed that viewing a counter-advertisement increased the number of non-smokers who disapproved of the smoking scenes in the movie and increased the number of smokers who believed they would not be smoking within the next year. A similarly designed study with American adolescents found that those who viewed the counter advertising prior to a film showing characters smoking held more negative opinions about the smoking actors. A second Australian study with youth cinema patrons found that while placing an antismoking advertisement before movies containing smoking scenes can help to immunise non-smokers against the influences of film stars’ smoking, caution must be exercised in the type of advertisement screened. Some types of advertising were found to reinforce smokers’ intentions to smoke.

11.6.4.2

The tobacco industry and movies

Despite publicly denying that it has not and does not pay for product placement (paying a fee for a product to appear on screen) in movies, study of internal tobacco industry documents reveals a history of paid promotion. For example:

- $350,000 to have Lark cigarettes appear in the James Bond movie Licence to Kill (1989)
- $42,000 to place Marlboro cigarettes in Superman II (1980)
- $30,000 to place Eve cigarettes in Supergirl (1984)
- $5,000 to have Lucky Strike appear in Beverly Hills Cop (1984)

*The Australian MA-rating is similar to the US R-rating. Children over 15 are permitted to view MA-rated movies provide they are accompanied by a parent or guardian.
an agreement to pay a $500,000 fee to actor, Sylvester Stallone, to use Brown and Williamson products in five feature films.\textsuperscript{149}

In November 2006, Philip Morris USA issued a press release announcing that the company was asking that its brands no longer be displayed on screen and urged the movie industry to no longer use any tobacco products in films aimed at a youth audience.\textsuperscript{150} This campaign has been criticised as being an industry ‘PR campaign’ that hopes to skirt meaningful regulation.\textsuperscript{151}

11.6.4.3

**Bollywood and smoking**

Smoking imagery in movies is not limited to the Hollywood film industry. In May 2005 the Health Minister of India announced a total ban on smoking and tobacco product imagery in all Indian films.\textsuperscript{152} The proposed ban has yet to be legislated or enforced as the Indian film industry has volunteered to control the amount of smoking in Bollywood films. According to research conducted by the Indian agency, the Burning Brain Society and supported by the World Health Organization, despite film industry promises to self-regulate tobacco promotion on screen, tobacco brands have appeared in more than 40 percent of Indian films released since 2004.\textsuperscript{153}

11.6.4.4

**Proposed policy options**

The Cancer Council New South Wales has proposed that counter advertising be shown before films that contain pro-smoking imagery.\textsuperscript{154} Their suggested action points include that:

- all movies are assessed for inappropriate smoking content prior to release
- once they have been identified, these films are accompanied by strong smoking education advertisements
- this requirement is written into law at State and Federal levels

Action on Smoking and Health Australia has called for action to amend the TAP Act to ensure that inducements to promote tobacco products and smoking in films and other media are clearly illegal, with substantial penalties for breaches, and to increase funding for counter advertising.\textsuperscript{155}

The Smoke Free Movies group based at the University of California, San Francisco has outlined four policy actions to reduce smoking depictions in films:\textsuperscript{156}

- Rate new smoking movies ‘R’. Any film that shows or implies tobacco use should be rated ‘R’. The only exceptions should be when the presentation of tobacco clearly and unambiguously reflects the dangers and consequences of tobacco use or is necessary to represent the smoking of a real historical figure.
- Certify no pay-offs. The producers should post a certificate in the closing credits declaring that nobody on the production received anything of value (cash money, free cigarettes or other gifts, free publicity, interest-free loans or anything else) from anyone in exchange for using or displaying tobacco.
- Require strong anti-smoking ads. Studios and theatres should require a genuinely strong anti-smoking ad (not one produced by a tobacco company) to run before any film with any tobacco presence, in any distribution channel, regardless of its Motion Picture Association of America (MPAA) rating.
Stop identifying tobacco brands. There should be no tobacco brand identification nor the presence of tobacco brand imagery (such as billboards) in the background of any movie scene.

In May 2007, the MPAA announced it will consider smoking—alongside sex, violence and ‘adult’ language—when it is deciding what rating to assign films. Films which glamorise smoking could receive a higher rating. The MPAA ruled out giving all films containing scenes with smoking an ‘R’ or restricted rating.

Thailand has banned smoking scenes on all local television channels since 2000. Any image of an actor smoking or a tobacco product is ‘pixilated’ or blurred out. There is no published data available on the effectiveness of this policy in preventing youth uptake.

Some Indian tobacco control groups continue to call for a legislated ban on all tobacco and smoking imagery in all films, including all foreign films shown in India.

Finally, there is not universal agreement on controlling the promotion of smoking in the movies. Important questions of limiting freedom of speech and censoring artistic license arise when there is no evidence that smoking imagery has been sponsored by the industry. Additionally, portrayals of smoking in movies can vary from overtly glamorous to neutral to remarkably negative; removal of all tobacco imagery could be a disadvantage to tobacco control. An Australian study of viewer reactions to the movie, The Insider, a movie containing varied smoking images, found participants held more negative views of the business conduct of the tobacco industry than those who saw an equivalent control film.

Internet promotion

Just as tobacco company marketers have infiltrated youth-friendly venues it is conceivable that they have a presence on youth-friendly websites. While the internet is being used extensively to sell cigarettes, its largely unregulated status holds much potential as a vehicle for both promoting smoking and advertising tobacco products.

Internet use by young people is part of their everyday life. In 2006 more than half of youth and young adult Australians (age 15–24) used the internet on a daily basis. Many popular youth websites rely on users to provide content in the form of videos, diaries, photographs, and music. There is the potential for the anonymous exploitation of these sites (including by tobacco companies) to reach a large audience, particularly youth, by both promoting and culturally undermining smoking.

One study examining the tobacco content on the video-sharing website, YouTube, found that tobacco imagery is ‘prolific and accessible’ on the site. Videos with pro-smoking content ranged from images of young men and women smoking, to smoking fetish scenarios, to magic tricks featuring cigarettes. Additionally, vintage cigarette advertisements appear on the site. While the research was unable to determine if the tobacco industry had posted any of this material on the website, there was evidence that distributors of the Swedish smokeless tobacco, snus, had posted promotional videos on the site.

A content analysis study of pro-tobacco websites revealed that tobacco has a pervasive presence on the internet, especially on e-commerce sites and sites featuring hobbies, recreation, and ‘fetishes’. Only 11 percent of the sites examined contained health warnings. The pro-tobacco sites frequently associated smoking with ‘glamorous’ and ‘alternative’ lifestyles, and with images of attractive, young males and females. Many

of the websites offered interactive site features that are potentially appealing to young people.

Several Australian websites also sell cigarettes. These sites often do not post health warnings nor do they comply with state and territory based legislation surrounding point-of-sale advertising. In May 2005, following media reports about internet tobacco sales, the Australian Federal Police announced an ongoing investigation as to whether owners of tobacco sales sites are breaking laws prohibiting tobacco advertising. In May 2007, the Ministerial Council on Drug Strategy (MCDS) announced that amendments would be made to the TAP Act to include advertising on the internet.

Possible changes include broadening the current definition of ‘to publish an advertisement’ to include ‘transmitting’ the advertisement in electronic form. The federal government will also investigate the inclusion of elements such as:

- display listings of tobacco products for sale in a text-only format
- display prescribed graphic health warnings on the site
- require an age restricted access system so that minors are discouraged from visiting the site and viewing the advertisements within
- quantify any and all taxes and other charges that may be payable over and above the advertised price on the product

The MCDS agreed to work collaboratively towards restricting the retail sale and advertising of tobacco products over the internet and banning sales to people under 18 years of age. Health groups have called for a ban on internet sales of tobacco products to consumers.

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COMMONWEALTH OF AUSTRALIA

TOBACCO ADVERTISING PROHIBITION ACT 1992

REPORTING REQUIREMENTS UNDER SECTION 34A OF THE
TOBACCO ADVERTISING PROHIBITION ACT 1992

I, THE HON CHRISTOPHER PYNE MP, Parliamentary Secretary to the Minister for Health and Ageing, pursuant to subsection 34A of the Tobacco Advertising Prohibition Act 1992 (the “Act”), declare that there were no contraventions of the Act for the period commencing 1 January 2005 and ending 31 December 2005.

Dated this 14th day of February, 2006.

CHRISTOPHER PYNE