

Dr. Kathryn Barnsley [REDACTED]

Dear Kylie

We thought it might be helpful for you to be informed of the existence of the [Framework Convention on Tobacco Control \(FCTC\)](#), to which Australia is a signatory, and the responsibilities of government officials and members of parliament relating to dealings with the vaping and tobacco industries and their front organizations. Further, some recent articles relevant to lobbying and the tobacco industry have been recently published.

Article 5.3 of the FCTC states:

" *WHO Framework Convention on Tobacco Control*

*Article 5 General obligations ..... 3. In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law."*

Guidelines for [Implementation of Article 5.3](#) are attached. They say inter alia,

*"The purpose of these guidelines is to ensure that efforts to protect tobacco control from commercial and other vested interests of the tobacco industry are comprehensive and effective.*

*7. Parties should implement measures in all branches of government that may have an interest in, or the capacity to, affect public health policies with respect to tobacco control.*

*8. The aim of these guidelines is to assist Parties in meeting their legal obligations under Article 5.3 of the Convention.*

*The guidelines draw on the best available scientific evidence and the experience of Parties in addressing tobacco industry interference.*

*9. The guidelines apply to setting and implementing Parties' public health policies with respect to tobacco control. They also apply to persons, bodies or entities that contribute to, or could contribute to, the formulation, implementation, administration or enforcement of those policies.*

*10. The guidelines are applicable to government officials, representatives and employees of any national, state, provincial, municipal, local or other public or semi/quasi-public institution or body within the jurisdiction of a Party, and to any person acting on their behalf. Any government branch (executive, legislative and judiciary) responsible for setting and implementing tobacco control policies and for protecting those policies against tobacco industry interests should be accountable.*

*11. The broad array of strategies and tactics used by the tobacco industry to interfere with the setting and implementing of tobacco control measures, such as those that Parties to the Convention are required to implement, is documented by a vast body of evidence. The measures recommended in these guidelines aim at protecting against interference not only by the tobacco industry but also, as appropriate, by organizations and individuals that work to further the interests of the tobacco industry.*

*12. While the measures recommended in these guidelines should be applied by Parties as broadly as necessary, in order best to achieve the objectives of Article 5.3 of the Convention, Parties are strongly urged to implement measures beyond those recommended in these guidelines when adapting them to their specific circumstances. "*

In accordance with this, the Australian Government has provided a [guide for public officials](#) (attached) regarding interactions with the tobacco industry.

#### " **Executive Summary**

Tobacco use remains a leading cause of preventable death and disability in Australia and was estimated to kill almost 21,000 Australians in 2015.

Up to two-thirds of deaths in current smokers can be attributed to smoking and current smokers are estimated to die an average of 10 years earlier than non-smokers.

There is a well-established body of evidence that demonstrates that the tobacco industry has operated for decades with the intention of subverting the role of governments in developing and implementing public health policies to combat the tobacco epidemic.

Australia is a Party to the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC), which aims to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke.

Article 5.3 of the WHO FCTC requires public officials to protect public health policies in relation to tobacco control “from commercial and other vested interests of the tobacco industry”.

Australia’s obligations under Article 5.3 extend to new and emerging products, such as e-cigarettes and heated tobacco products, due to the increasing integration between their manufacturers and the tobacco industry.

This Guide outlines the legal obligations placed on public agencies and officials by the WHO FCTC. It should be viewed as a part of a comprehensive strategy of tobacco control."

The fundamental principles are that interactions by public officials should be avoided, except in specific circumstances where consultation is involved on a relevant matter. Such interactions should be accountable and transparent

Consultation with the tobacco industry should be limited to what is necessary for public officials or agencies to enact effective tobacco control measures. This includes the development of law or policy that directly regulates the tobacco industry and tobacco products.

Any consultations should wherever possible be public (unless prohibited at law), accountable and transparent. Unless prohibited by existing legislation, high-level information (such as the date of the meeting, the organisations represented and a broad description of the issue discussed) may be disclosed on the relevant agency website.

Levels of interaction with the tobacco industry will vary from agency to agency.

For some agencies, interactions would be highly unusual and can be managed appropriately with a high level of attention to this Guidance and the circumstances of the interaction, for example:

- A minimum of two officials should be present at all times in any meeting or interaction.
- For email interactions, copy in at least one other official to all communications.
- Ensure all meetings or interactions are recorded, with sufficient detail to establish, at a minimum:
  - the date, location, nature and method of the interaction or contact
  - the names of the parties and individuals involved
  - the matters discussed or considered and any decisions taken
  - any follow up activity planned or anticipated
- Do not agree to side meetings or accept invitations to social events or hospitality, such as offers for lunch, product or gifts.
- Do not engage in any interaction that creates the perception of partnership or cooperation.

Other agencies will need to have ongoing contact with the tobacco industry, for example, to ensure the effective administration of and compliance with legislation.

These agencies should ensure that interactions are limited to those that are necessary by applying the principles outlined in this Guidance as appropriate, for example:

- Limit the opportunities that the tobacco industry has to influence, undermine or defeat tobacco control policies.
- Stay mindful that the tobacco industry may have disguised objectives in conducting otherwise routine interactions.
- Stay mindful that entities may have disguised connections to the tobacco industry.
- Ensure other members of your team are kept aware of meetings and interactions with the tobacco industry.

These agencies should also ensure staff members are aware of Article 5.3 and monitor any interactions that are out of the ordinary.

The International Union against Tuberculosis and Lung Disease has also [provided a tool-kit to](#) assist governments to implement Article 5.3.

The FCTC recognises that [the tobacco industry uses "front" organizations](#) to pursue its agendas. This is sometimes difficult for members of Parliament and public servants to determine as it may be shrouded in secrecy. For example recently we have seen in Tasmania and elsewhere that peak retailer organisations have engaged in [lobbying on behalf of the tobacco and vaping industry](#). These lobbyists succeeded in defeating a Private members Bill in Tasmania.

This has been reported in the [Australian Financial Review](#) in a [series of stories](#) by Neil Chenoweth. Tobacco industry influence on establishing a Senate Enquiry, and in the subsequent minority Report was exposed. Recently the retail lobby chief resigned after its links to tobacco and vaping companies were revealed.

*"Mr Brodie's departure comes after it emerged that the NRA had a backroom role in a new campaign to legalise e-cigarettes announced by the Australian Association of Convenience Stores (AACS) earlier this month.*

*Six directors resigned last year and for five months the NRA board was reduced to three directors after [claims of irregularities](#) in a chaotic board restructure which began after The Australian Financial Review revealed [the NRA's links to tobacco funding](#).*

*The AACS – which is run by former British American Tobacco executive Theo Foukkare and long-time Philip Morris executive Ben Meredith – makes no secret of the major funding it receives from BAT, Philip Morris and Imperial Tobacco. Legalising vaping is a primary aim of the convenience store lobby.*

*"We unashamedly support our members and will always fight for their needs to remain relevant in a competitive market," Mr Foukkare told the Financial Review.*

During debate and briefings of the Legislative Council on the PUBLIC HEALTH AMENDMENT (TOBACCOFREE GENERATION) BILL 2014 there were Hansard records kept of briefings given to the Council by the tobacco industry representatives and all other persons who provided briefings. For example, a copy of the briefing by Imperial Tobacco to the legislative Council on Tuesday 17 March 2015 as recorded by Hansard, is attached. Transparency was thus observed. However, by 2018 the

practice of recording briefings had ceased, and the briefings to the Legislative Council on the PUBLIC HEALTH AMENDMENT (PREVENTION OF SALE OF SMOKING PRODUCTS TO UNDERAGE PERSONS) BILL 2018 were not recorded. Hon. Ivan Dean MLC requested these briefings to be recorded in accordance with the FCTC and in the public interest, however he was advised that this was not possible, as it was "too expensive".

Transparency in dealings with the tobacco and vaping industries, and their "front" organizations by government officials and members of parliament is essential. It should be avoided where possible - but if it is necessary for officials to meet with members of the industry, then the [guidance notes provided by the Australian government](#) should apply to all Tasmanian MPs, their staff and public servants.

We note the comments by [David Solomon on July 20 2022](#) that "*...ministerial diaries will have to include meetings between ministerial staff and lobbyists, and these will have to be properly documented and reported.*" This should also be adopted in Tasmania as it would ensure that tobacco industry lobbying could be identified, accountable and transparent.

We therefore respectfully request that the Integrity Commission incorporate the Guidelines for Implementation of 5.3 of the FCTC and the Guidance for Public Officials on Interacting with the Tobacco Industry into documentation and rules relating to lobbyists and the interaction of officials and MPs with lobbyists.

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