

ATTACHMENT A

SCHEDULE OF DOCUMENTS - FOI 2150

Document No.	Date	Number of pages	Description	Decision on access	Exemption
1	04.10.2019	9	Ministerial Submission - 2018 Annual Report on the Tobacco Advertising Prohibition Act 1992	RI ¹	s 22 (part)
2	15.10.2019	14	Ministerial Submission - Guidance for Public Officials on Interacting with the Tobacco Industry	RI	s 22 (part)
3	29.01.2020	12	Ministerial Submission - Australian Government Response to the Senate Select Committee Reports on Red Tape: the Effect of Red Tape on Tobacco Retail	RI	s 22 (part)
4	09.07.2020	9	Ministerial Submission - 2019 Annual Report on the Tobacco Advertising Prohibition Act 1992	RI	s 22 (part)

¹ RI = Release with irrelevant information removed.



To: **Minister Hunt**

Subject: **2018 Annual Report on the Tobacco Advertising Prohibition Act 1992**

Critical date: 8 October 2019. The report must be tabled before each House of Parliament within 15 sitting days of you receiving it.

Recommendation/s:

1. **Note** the Department's 2018 Annual Report on its administration of the *Tobacco Advertising Prohibition Act 1992* (the Act) (Attachment A). **1. Noted**
2. **Sign** the report under section 34A of the Act for tabling in Parliament, indicating that there were no contraventions of the Act in 2018 (Attachment B). **2. Signed/Not signed/Please discuss**
3. **Sign** the letter to the President of the Senate in order for the report to be tabled out-of-session (Attachment C). **3. Signed/Not signed/Please discuss**
4. **s22** **4. Noted**

Signature 

Date: **4 / 10 / 19**

Media Release required? YES/ NO

Comments:

OFFICIAL

Contact Officer:	<i>Ms Lyndall Soper</i>	<i>A/g First Assistant Secretary, Population Health and Sport Division</i>	Ph: (02) 6289 8406 s22
Clearance Officer:	<i>Dr Lisa Studdert</i>	<i>Deputy Secretary, Aged Care, Sport and Population Health Group</i>	Ph: (02) 6289 4003 s22

Issues:

1. To meet the requirements of Section 34A of the *Tobacco Advertising Prohibition Act 1992* (the Act), the Department prepares an Annual Report in relation to contraventions of the Act for each calendar year.
2. No prosecutions were commenced under the Act during 2018. A Parliamentary report reflecting this is included for your signature at Attachment B.
3. A letter to the President of the Senate for the report to be tabled out-of-session is included for your signature at Attachment C.

s22

Background:

The Department is responsible for the administration of the Act and investigates complaints about potential breaches. For a contravention of the Act to be established, there must be a successful prosecution.

The Annual Report must specify the number and nature of any contraventions of the Act occurring in the preceding calendar year and the action taken in response to each contravention. An extract of the relevant provision of the Act is provided at Attachment D.

The report must be tabled before each House of Parliament within 15 sitting days of you receiving it. Once you have signed the report, the Department will arrange tabling in both Houses of Parliament.

s22

Attachments:

- A. 2018 Ministerial Annual Report on the Administration of the Act
- B. Report to the Parliament on contraventions of the Act during 2018
- C. Letter to the President of the Senate
- D. Section 34A of the Act

Consultations:

No divisions or agencies were consulted in the preparation of this Submission.



Australian Government

Department of Health

2018 Ministerial Annual Report on the Administration of the *Tobacco Advertising Prohibition Act 1992*

The *Tobacco Advertising Prohibition Act 1992*

Under the *Tobacco Advertising Prohibition Act 1992* (the Act), with certain limited exceptions, it is an offence to publish or broadcast a tobacco advertisement. A 'tobacco advertisement' is defined broadly to be any writing, still or moving picture, sign, symbol, or other 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 smoking, or the use of, tobacco products'. Under the Act, a 'tobacco product' includes tobacco (in any form) or any product that contains tobacco as its main or substantial ingredient.

The principal exceptions are for:

- advertisements broadcast or published as an incidental accompaniment to the publication of other matter, where the broadcaster or publisher receives no direct or indirect benefit for the publication or broadcast;
- advertisements that do not promote smoking or any particular tobacco product, and which relate solely to government or political matters;
- certain point-of-sale advertising;
- advertisements in tobacco trade communications; and
- anti-smoking advertisements.

In addition, for constitutional reasons, the offences in section 15 of the Act only extend to tobacco advertising published in Australia by corporations (foreign, trading or financial); or by entities engaged in interstate trade or commerce or trade or commerce between Australia and another country.

The Act defines 'published in Australia' as being an advertisement that either originates in Australia, or which has an Australian link but did not originate in Australia (or where the advertisement's origin cannot be determined). A tobacco advertisement has an Australian link if, at the time that it is published, the entity who published the advertisement is an Australian company or an Australian citizen.

On 6 September 2012, amendments to the Act took effect which extended the existing restrictions on tobacco advertising in Australia to the internet and other electronic media, for example mobile phones, where the advertisement is published in Australia.

The *Tobacco Advertising Prohibition Regulation 1993* sets out specific requirements regarding the format and content of permissible internet point-of-sale tobacco advertisements. An internet site containing a tobacco advertisement must provide a purchasing facility for a customer to make an online purchase of a tobacco product. Tobacco advertisements are also required to be presented in a plain, text-only format with graphic health warnings and warnings about age restrictions on tobacco sales. The aim of the regulations is to reduce the attractiveness and appeal of internet point-of-sale tobacco advertisements.

Since May 2017, the maximum penalty for an offence under the Act is 120 penalty units or \$25,200 for an individual and 600 penalty units or \$126,000 for a corporation.

Administration of the Act

The Department of Health (the Department) conducts investigations into potential breaches as part of its general role in administering the Act. Most investigations are resolved when the alleged tobacco advertisements are withdrawn or the Department concludes that the advertising falls within an exception under the Act.

If the Department considers that a breach has occurred, it will investigate the matter, and may refer it to the Commonwealth Director of Public Prosecutions (CDPP). The CDPP would determine whether to proceed with a prosecution under its own prosecution guidelines. Among other things, these guidelines require that there be a reasonable prospect of conviction, and that a prosecution would be in the public interest. If the CDPP decides not to refer charges, the Department may choose to engage its own legal representatives to initiate a prosecution.

To date, there have been two successful prosecutions under the Act, the most recent of these was in 2001 when a clothing retailer was prosecuted for repeatedly displaying tobacco-branded clothing despite several warnings. In 2003, the defendant was convicted and fined \$4,000.

2018 Annual Report

There was a high level of compliance with the Act during 2018. The Department received 78 complaints. No prosecutions commenced under the Act during 2018.

Of the 78 complaints received by the Department during the 2018 calendar year:

- 20 related to tobacco advertisements on the internet and social media;
- 16 related to online tobacco suppliers;
- 10 related to print advertising in magazines, newspapers and posters;
- 9 related to non-tobacco products such as e-cigarettes and other vaping products;
- 8 related to advertising the availability of tobacco products by retailers;
- 7 related to film or broadcast footage showing tobacco advertisements; and
- 8 related to other types of advertisements.

In 2018, 21 complaints were found to fall within various exceptions in the Act. Twenty complaints fell outside the scope of the Act. Investigations were discontinued for 16 complaints due to insufficient evidence or the matters being resolved before investigation could commence. Thirteen investigations were closed after the advertisements

in question were withdrawn. Three complaints were found not to be a breach. Five investigations are ongoing.

The number of complaints for 2018 (78) is 28 per cent higher than 2017 (61). The number of complaints between 2015 and 2017 has been relatively stable (59 in 2015, 65 in 2016, and 61 in 2017). There has been a large increase since 2014 (38 complaints) primarily due to a proliferation in the number of online retail tobacco websites and social media pages promoting the supply and/or use of tobacco and tobacco-related items.

The introduction of tobacco plain packaging and a general change in community standards and expectations in relation to tobacco advertising online and in the media has also generated an increased number of complaints on the depiction of tobacco products and associated images, especially if they are perceived to be glamorous or targeted at young people. The Department takes these complaints seriously even if they do not constitute a breach of the Act.

If the Department determines that an advertisement falling outside the scope of the Act may promote or encourage the purchase and/or use of tobacco products, it will write to the publisher requesting that it be removed by appealing to the publisher's sense of corporate and social responsibility. In many instances this approach has led to advertisements being removed.

A Parliamentary report stating that no prosecutions were commenced under the Act during 2018 is included for your signature at Attachment B. A letter to the President of the Senate in order for the Report to be tabled out-of-session is included for your signature at Attachment C.

DOCUMENT RELEASED UNDER
THE FREEDOM OF INFORMATION ACT (A-82/C3TH)

Summary of Tobacco Advertising Prohibition Act 1992 Complaints by Type and Outcome

Type of Complaint	Number
Internet and social media	20
Online tobacco suppliers	16
Print	10
Non-tobacco products potentially promoting the use of tobacco products	9
Advertising the availability of tobacco products by retailers	8
Film or broadcast footage showing tobacco advertisements	7
Other	8
Total	78

Outcome	Number
Exception applicable	21
Out of scope	20
Discontinued (insufficient evidence or matter resolved before investigation)	16
Advertisement withdrawn	13
Not initiated/round not to be a breach	3
Ongoing investigations	5
Total	78



COMMONWEALTH OF AUSTRALIA

TOBACCO ADVERTISING PROHIBITION ACT 1992

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

I, THE HON GREG HUNT, Minister for Health, 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 2013 and ending 31 December 2018.

Dated this

day of

October 2019

THE HON GREG HUNT MP



The Hon Greg Hunt MP
Minister for Health
Minister Assisting the Prime Minister for the
Public Service and Cabinet

Ref No: MS19-001360

Senator the Hon Scott Ryan
President of the Senate
Parliament House
CANBERRA ACT 2600

Dear President

Pursuant to standing order 166, relating to the presentation of documents when the Senate is not sitting, I present to you the 2018 Annual Report on the *Tobacco Advertising Prohibition Act 1992* for tabling in Parliament.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'G. Hunt', written over a diagonal watermark.

Greg Hunt

Encl (1)

Excerpt from the *Tobacco Advertising Prohibition Act 1992*

s34A Reports to Parliament

- (1) As soon as practicable after each 31 December occurring after 1 January 2001, the Minister must cause to be prepared a report on:
 - (a) the number and nature of any contraventions of the Act occurring in the preceding 12 months; and
 - (b) action taken by the Minister or a Commonwealth agency in response to each contravention.
- (2) A person who prepares a report under subsection (1) must give a copy to the Minister.
- (3) The Minister must cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after receiving it.

DOCUMENT RELEASED UNDER
THE FREEDOM OF INFORMATION ACT 1982 (C111)
BY THE DEPARTMENT OF HEALTH



Australian Government
Department of Health

FOR OFFICIAL USE ONLY
Ministerial Submission – Standard
MS19-001063 Version (1)
Date sent to MO:14/10/2019



To: **Minister Hunt**
cc: **Minister Colbeck**

Subject: **Guidance for Public Officials on Interacting with the Tobacco Industry**

Critical date: **29 October 2019**

Recommendation/s:

1. Endorse the Guidance for Public Officials on Interacting with the Tobacco Industry (the Guide) (Attachment A). **1. Agreed / Not agreed / Please discuss**

If you endorse the Guide, then:

2. Agree to write to your Ministerial colleagues to disseminate awareness of the Guide. Letters attached at Attachment B for your signature. **2. Signed / Not signed / Please discuss**

AND/OR

2b. It is proposed that the Secretary of the Department of Health will write to her counterparts to raise awareness of the Guide. **2b. Noted / Please discuss**

3. Note the Guide will be published on the Department's website after the steps above are complete. **3. Noted / Please discuss**

Signature

Date: **15/10/19**

Media Release required? **YES/ NO**

Comments:

Contact Officer:	Lyndall Soper	A/First Assistant Secretary, Population Health and Sport Division	Ph: (02) 6289 8406 s22
Clearance Officer:	Dr Lisa Studdert	Deputy Secretary, Population Health, Sport and Aged Care Royal Commission Taskforce	Ph: (02) 6289 4003 s22

Issues:

1. The Department has produced the '*Guidance for Public Officials on Interacting with the Tobacco Industry*' (the Guide) on how to protect tobacco control policy settings and implementation from interference from the tobacco industry and its interests (Attachment A).
2. The Guide supports Australia's commitments under Article 5.3 of the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC).
3. The Guide applies to 'public officials', including elected representatives and their staff, as well as public servants.
4. In support of the Guide and our FCTC obligations, you may wish to write to your Ministerial colleagues with responsibility for aspects of tobacco control, encouraging them to raise awareness through their respective Departments. Letters for your signature are at Attachment B.
5. It is proposed that a complementary or alternative approach would be for the Secretary of the Department to write to her counterparts encouraging adoption of the Guide within their agencies.

Background:

Under Article 5.3 of the WHO FCTC, Australia has committed to take steps to protect our tobacco control policy settings and implementation from interference from the tobacco industry and its interests.

The Guide was developed to strengthen Australia's compliance with Article 5.3 of the FCTC as it relates to public officials, government employees and other people acting on their behalf (eg. contractors and consultants). This follows the recommendation contained in the WHO FCTC Guidelines for implementation of Article 5.3 that Parties should "inform and educate all branches of government and the public about the addictive and harmful nature of tobacco products, the need to protect public health policies for tobacco control from commercial and vested interests of the tobacco industry and the strategies and tactics used by the tobacco industry to interfere with the setting and implementation of public health policies with respect to tobacco control."

The Guide includes practical tips on how to avoid tobacco industry interference in making and implementing public health policies and is a significant achievement for continuing to implement our commitments under the FCTC.

Attachments:

Attachment A: Guidance for Public Officials on Interacting with the Tobacco Industry.

Attachment B: Letters to the Prime Minister, Treasurer, Minister for Foreign Affairs and Trade; Minister for Home Affairs; Attorney-General.

Consultations:

The Department consulted widely on the draft Guide with relevant Australian Government agencies including the Office of International Law, the Attorney-General's Department; Department of Home Affairs; Australian Taxation Office; the Treasury; Department of Foreign Affairs and Trade; Department of Industry; National Measurement Institute; Australian Competition and Consumer Commission; Department of Communications and the Arts; Department of Employment; Department of Prime Minister and Cabinet; and through the Tobacco Control Interdepartmental Committee (IDC).

DOCUMENT RELEASED UNDER
THE FREEDOM OF INFORMATION ACT 1982 (CTH)
BY THE DEPARTMENT OF HEALTH



Australian Government

Department of Health

Guidance for Public Officials on Interacting with the Tobacco Industry

DOCUMENT RELEASED UNDER
THE FREEDOM OF INFORMATION ACT 1982 (CTH)
BY THE DEPARTMENT OF HEALTH

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 2015.¹ 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.²

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.³

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.

¹ Australian Institute of Health and Welfare 2019. Australian Burden of Disease Study: impact and causes of illness and death in Australia 2015. Australian Burden of Disease Study. Canberra: AIHW.

² Banks et.al. Tobacco smoking and all-cause mortality in a large Australian cohort study: findings from a mature epidemic with current low smoking prevalence. *BMC Medicine*, 2015. Available at: <http://www.biomedcentral.com/1741-7015/13/38>.

³ For example, see: Savell E, Gilmore A and Fooks, G. How Does the Tobacco Industry Attempt to Influence Marketing Regulations? A Systematic Review. *PLoS*. 2014. Available at: <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0087389>

- a member of the Australian Defence Force; or
 - other posted officer representing Australia overseas.
- **You are acting on behalf of any branch or level of government, including as:**
 - a contractor or consultant.

Agencies should consider incorporating this Guidance into staff induction materials.

4. Background

Impact of tobacco use on public health

The Australian Government, together with state and territory Governments, is committed to reducing the prevalence of tobacco smoking and its associated health, social and economic costs, and the inequalities it causes. Tobacco use remains a leading cause of preventable death and disability in Australia and was estimated to kill almost 21,000 Australians in 2015.⁴ The most recent available estimates also show that the social and economic costs of smoking (including health costs) in Australia were \$136.7 billion in 2015-16.⁵

There is no safe level of tobacco consumption; tobacco products are highly addictive and dangerous to health, with some tobacco products containing over 7000 chemicals, at least 69 of which are known to cause cancer.⁶ 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.⁷

By contrast, the aim of the tobacco industry around the world is to increase the amount of tobacco that people use, by dissuading cessation by existing smokers and encouraging new smokers (including young people). Consistent with this aim, a well-established body of evidence has demonstrated 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.⁸ The tobacco industry also tends to be well-funded and well-organised in this regard, and is able to exercise significant lobbying power and influence.

⁴ Australian Institute of Health and Welfare 2019. Australian Burden of Disease Study: impact and causes of illness and death in Australia 2015. Australian Burden of Disease Study. Canberra: AIHW.

⁵ Identifying the social costs of tobacco use to Australia in 2015/16, National Drug Research Institute, May 2019

⁶ U.S. Department of Health and Human Services, The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General, 2014; U.S. Department of Health and Human Services, How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: A Report of the Surgeon General; National Toxicology Program, Report on Carcinogens, Thirteenth Edition, U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program, 2014.

⁷ Banks et.al. Tobacco smoking and all-cause mortality in a large Australian cohort study: findings from a mature epidemic with current low smoking prevalence. *BMC Medicine*, 2015. Available at: <http://www.biomedcentral.com/1741-7015/13/38>.

⁸ For example, see: Savell E, Gilmore A and Fooks, G. How Does the Tobacco Industry Attempt to Influence Marketing Regulations? A Systematic Review. *PLoS*. 2014. Available at: <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0087389>

Inclusion of new and emerging products in Article 5.3 obligations

In recent years, there has been increasing integration between the tobacco industry and manufacturers of other products, such as e-cigarettes and heated tobacco products.

Australia supports the decision of the Sixth Conference of the Parties to the WHO FCTC, which invited parties to consider taking measures to: *"protect tobacco-control activities from all commercial and other vested interests related to ENDS/ENNDS (i.e. Electronic nicotine delivery systems/electronic non-nicotine delivery systems), including interests of the tobacco industry"*.

It is consistent with the requirements of Article 5.3 for Australia to extend the obligation to protect tobacco control policies from commercial and other vested interests of the tobacco industry to new and emerging products, such as e-cigarettes and heated tobacco products.

5. What constitutes 'public health policy' in relation to tobacco control?

At its simplest, any general tobacco control policy or program, including compliance activities and other activities associated with the regulation of the tobacco industry, constitute a 'public health policy in relation to tobacco control' if it fulfils the aim of improving the health of the population by reducing tobacco prevalence.

Such tobacco control policies and programs could include:

- Strategies, regulation or policies to reduce tobacco supply and demand;
- Strategies, regulation or policies to eliminate or reduce consumption of tobacco products;
- Strategies, regulation or policies to eliminate or reduce exposure to tobacco smoke;
- Strategies, regulation or policies relating to consumer law and competition policies;
- Taxation, excise and price programs;
- Trade facilitation;
- Retail and other licensing arrangements;
- Law enforcement strategies and activities for the detection, interception and reduction of illicit tobacco.

6. Limiting interactions with the tobacco industry

Agencies and officials must note the position of the Australian Government in relation to interactions with the tobacco industry.

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; and
- 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.

This guidance does not replace or detract from existing legislative and regulatory requirements on government agencies and individual public officials to maintain secrecy, confidentiality and privacy.

7. Avoiding and managing conflicts of interest with the tobacco industry

No organisation or individual with a commercial or vested interest in the tobacco industry should be involved in developing or implementing public health and related policies/programs on tobacco control.

Consistent with the APS Code of Conduct, avoid all real and perceived conflicts of interest with respect to the tobacco industry.

What should you declare?

Any current, previous or proposed connection, involvement or relationship with the tobacco industry by you or a close family member, including:

- Occupational activity with the tobacco industry, whether gainful or not.
- Any and all contributions from the tobacco industry, including research funding.
- Any intention to engage in an occupational activity within the tobacco industry within one year after leaving service as a public official.

8. Requiring information provided by the tobacco industry to be transparent and accurate

Information that is offered by the tobacco industry outside of disclosures required by law should be treated with caution and carefully scrutinised, to minimise

10. Avoiding preferential treatment

The WHO Guidelines for implementation of Article 5.3 of the FCTC provide that, because their products are lethal, the tobacco industry should not be granted incentives to establish or run their business. Any preferential treatment of the tobacco industry would be in conflict with tobacco control policy.¹²

Avoiding granting preferential treatment (including perceptions of such treatment) supports the implementation of Article 5.3.

- **Report** any attempt at any level to accept contributions from the tobacco industry or an agent of the tobacco industry, except for compensation due to legal settlements, mandated by law or pursuant to legally binding agreements.
- **Do not** provide preferential tax exemptions to the tobacco industry.
- **Do not** grant incentives, privileges or benefits to the tobacco industry.
- **Do not** give any awards or accolades to the tobacco industry.
- **Do not** engage with foreign governments in their capacity as representatives of their state-owned tobacco interests.

There may however be situations where it is necessary to engage with the tobacco industry with some kind of preferred treatment as it will have the effect of better managing the risk associated with tobacco and tobacco control function of the government. This engagement should only occur where strictly necessary and should respect the Australian Government's commitments on tobacco control.

11. De-normalising the tobacco industry's 'socially responsible' activities

The tobacco industry undertakes corporate social responsibility activities that are intended to promote, enhance, or market the corporate brand, product, public relations, or related image. These may include any youth, public education, political, social, financial, educational, or community contribution, such as:

- voluntary marketing codes;
- financial contributions to non-government organisations;
- promoting or encouraging activities to work with governments, for example to address the illicit trade in tobacco or supporting environmental projects;
- promoting products purportedly claiming to be less harmful than conventional tobacco products;
- providing scholarships; and
- organising or endorsing youth smoking prevention programmes.

¹² WHO, 'Guidelines for implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control' (2008), Principle 4.



**The Hon Greg Hunt MP
Minister for Health
Minister Assisting the Prime Minister for the
Public Service and Cabinet**

Ref No: MS19-001063

The Hon Scott Morrison MP
Prime Minister of Australia
Parliament House
Canberra ACT 2600

15 OCT 2019

Dear Prime Minister

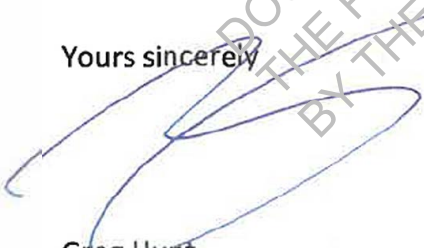
As a signatory to the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC), Australia requires public officials to protect public health policies in relation to tobacco control from commercial and other vested interests of the tobacco industry.

My Department, with assistance from the Office of International Law in the Attorney-General's Department, has developed a Guide for public agencies and officials that outlines their legal obligations under Article 5.3 of the WHO FCTC. I note that the definition of 'public officials' includes elected representatives and their staff.

I enclose a copy of the Guide for your information and for distribution through your relevant portfolio agencies.

The development of the Guide supports the declaration by the Australian Government on 5 January 2015 that it "...should interact with the tobacco industry only when and to the extent strictly necessary to enable [it] to effectively regulate the tobacco industry and tobacco products, and should ensure that any such interactions are conducted transparently".¹

Yours sincerely



Greg Hunt

Encl (1)

cc: The Treasurer, The Hon Josh Frydenburg MP
Attorney General, The Hon Christian Porter MP
Minister for Foreign Affairs and Trade, Senator The Hon Marise Payne
Minister for Home Affairs, The Hon Peter Dutton MP

¹ United Nations Treaty Collection. Available at: <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtid=9&no=IX-4&chapter=9&lang=en>



**The Hon Greg Hunt MP
Minister for Health
Minister Assisting the Prime Minister for the
Public Service and Cabinet**

Ref No: MS19-001063

The Hon Josh Frydenberg MP
The Treasurer
Parliament House
Canberra ACT 2600

15 OCT 2019

Dear Treasurer

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Yours sincerely



Greg Hunt

End (1)

cc:

The Prime Minister, The Hon Scott Morrison MP
Attorney General, The Hon Christian Porter MP
Minister for Foreign Affairs and Trade, Senator The Hon Marise Payne
Minister for Home Affairs, The Hon Peter Dutton MP

¹ United Nations Treaty Collection. Available at: <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtid=9&no=IX-4&chapter=9&lang=en>



**The Hon Greg Hunt MP
Minister for Health
Minister Assisting the Prime Minister for the
Public Service and Cabinet**

Ref No: MS19-001063

Senator The Hon Marise Payne
Minister for Foreign Affairs and Trade
Parliament House
Canberra ACT 2600

15 OCT 2019

Dear Minister

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Greg Hunt

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**The Hon Greg Hunt MP
Minister for Health
Minister Assisting the Prime Minister for the
Public Service and Cabinet**

Ref No: MS19-001063

The Hon Peter Dutton MP
Minister for Home Affairs
Parliament House
Canberra ACT 2600

15 OCT 2019

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¹ United Nations Treaty Collection. Available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtsg_no=IX-4&chapter=9&lang=en



**The Hon Greg Hunt MP
Minister for Health
Minister Assisting the Prime Minister for the
Public Service and Cabinet**

Ref No: MS19-001063

The Hon Christian Porter MP
Attorney General
Parliament House
Canberra ACT 2600

15 OCT 2019

Dear Attorney General

As a signatory to the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC), Australia requires public officials to protect public health policies in relation to tobacco control from commercial and other vested interests of the tobacco industry.

My Department, with assistance from the Office of International Law in the Attorney-General's Department, has developed a Guide for public agencies and officials that outlines their legal obligations under Article 5.3 of the WHO FCTC. I note that the definition of 'public officials' includes elected representatives and their staff.

I enclose a copy of the Guide for your information and for distribution through your relevant portfolio agencies.

The development of the Guide supports the declaration by the Australian Government on 5 January 2015 that it "...should interact with the tobacco industry only when and to the extent strictly necessary to enable (it) to effectively regulate the tobacco industry and tobacco products, and should ensure that any such interactions are conducted transparently"¹

Yours sincerely

Greg Hunt

Encl (1)

cc: The Treasurer, The Hon Josh Frydenburg MP
The Prime Minister, The Hon Scott Morrison MP
Minister for Foreign Affairs and Trade, Senator The Hon Marise Payne
Minister for Home Affairs, The Hon Peter Dutton MP

¹ United Nations Treaty Collection. Available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtidsg_no=IX-4&chapter=9&lang=en



To: Minister Hunt

Subject: Australian Government Response to the Senate Select Committee Reports on Red Tape: The Effect of Red Tape on Tobacco Retail

Critical date: 7 February 2020

Recommendation/s:

- | | |
|--|--|
| 1. NOTE your previous in principle approval (<u>Attachment A</u>) of the Australian Government Response to the Senate Select Committee on Red Tape (<u>Attachment B</u>). | 1. Noted/ Please discuss |
| 2. NOTE the Minister for Home Affairs has agreed to Recommendation 3 of the Response (<u>Attachment C</u>) as it relates to his portfolio. | 2. Noted/ Please discuss |
| 3. Sign the letter to the Prime Minister seeking approval to table the Australian Government Response to the Senate Select Committee on Red Tape in Parliament (<u>Attachment D</u>). | 3. Signed / Not signed / Please discuss |

Signature

Date: 29/1/2020

Media Release required? YES/ NO

Comments:

Contact Officer:	David Laffan	Assistant Secretary, Alcohol, Tobacco and Other Drugs Branch	Ph: (02) 6289 9375 s22
Clearance Officer:	Trish Garrett	A/g Deputy Secretary, Population Health, Sport and Aged Care Royal Commission Taskforce Group	Ph: (02) 6289 4003 s22

Issues:

1. You previously indicated your in principle approval (Attachment A) of the Government response to the Senate Select Committee (the Committee) on Red Tape: *The Effect of Red Tape on Tobacco Retail* (Attachment B).
2. The Minister for Home Affairs has now approved the response to Recommendation 3, as it falls within the remit of the Department of Home Affairs (Attachment C).
3. Your final approval of the Australian Government response is sought and includes a letter to the Prime Minister seeking approval to table the response in Parliament (Attachment D).

Background:

The Senate established the Committee on Red Tape on 11 October 2016 to inquire into and report on the effect of restrictions and prohibitions on business (red tape) on the economy and the community, by 1 December 2017. The Committee decided to conduct its inquiry by focussing on specific areas. The interim report released on 27 June 2017 presented the Committee's findings and conclusions about the effect of red tape on the tobacco retail sector. The Committee released its final report on 3 December 2018, re-stating the three recommendations on tobacco retail contained in its interim report.

The Department of Health (Department), on behalf of the Australian Government and with input from the Department of Home Affairs, has drafted a response to the Interim and Final Reports (Committee Reports), which examine "*the restrictions and prohibitions placed on business and their effect on the economy and community*".

The Government response provides information on the current status of Australian Government tobacco control regulation, including the current approach to alternative nicotine delivery systems. It also includes the input provided by the Department of Home Affairs on the Duty Drawback Scheme (DDS) in response to Recommendation 3 on tobacco retail in the Committee Reports. The response notes, but does not indicate Government support for, or a position on the Committee's three recommendations.

Attachments:

Attachment A: In principle approval of the Government response.

Attachment B: Australian Government Response to the Senate Select Committee on Red Tape: *Effect of Red Tape on Tobacco Retail*.

Attachment C: Signed Letter to the Minister for Home Affairs, the Hon Peter Dutton MP, approving the draft Australian Government response to Recommendation 3 of the Senate Select Committee Reports.

Attachment D: Letter to the Prime Minister, the Hon Scott Morrison MP, seeking approval to table the Government response in Parliament.

Consultations:

Department of Home Affairs, Department of Prime Minister and Cabinet.

Minister	Minister Hunt
PDR Number	MS20-00020
Subject	Australian Government Response to the Senate Select Committee Reports on Red Tape: The Effect of Red Tape on Tobacco Retail
Initiator	The Hon Scott Morrison MP
Drafting Officer	s22
Contact Officer	David Laffan 02 6289 9375 s22
Clearance Officer	Trish Garrett 02 6289 4003 s22
Division/Branch	Population Health and Sport / Alcohol Tobacco and Other Drugs

Adviser/DLO Comments:Return to
Dept for:Redraft ☐NFA ☐



To: Minister Hunt

Subject: DRAFT Australian Government Response to the Senate Select Committee Reports on Red Tape: The Effect of Red Tape on Tobacco Retail

Critical date: 13 December 2019

Recommendation/s:

- | | |
|---|---|
| <p>1. APPROVE in principle the draft Australian Government Response to the Senate Select Committee reports (<u>Attachment A</u>).</p> <p>2. Sign the letter to the Minister for Home Affairs seeking approval to the draft Australian Government Response to Recommendation 3 of the Senate Select Committee reports (<u>Attachment B</u>).</p> | <p>1. Approved / Not agreed / Please discuss</p> <p>2. Signed/Not signed/Please discuss</p> |
|---|---|

Signature

Date: 25/11/19

Media Release required? YES/ NO

Comments:

Contact Officer:	David Laffan	Assistant Secretary, Alcohol, Tobacco and Other Drugs Branch	Ph: (02) 6289 9375 s22
Clearance Officer:	Glenys Beauchamp	Secretary, Department of Health	Ph: (02) 6289 8400 s22

Issues:

1. The Department of Health (Department), on behalf of the Australian Government and with input from the Department of Home Affairs, has drafted a response to the Senate Select Committee on Red Tape (the Committee): the effect of red tape on tobacco retail reports (Committee Reports) which examine the restrictions and prohibitions placed on business and their effect on the economy and community. This ministerial submission seeks your in principle approval of the Government response at Attachment A.

2. The proposed response provides information on the current status of Australian Government tobacco control regulation, including the current approach to alternative nicotine delivery systems. It also includes the input provided by the Department of Home Affairs on the Duty Drawback Scheme (DDS) in response to Recommendation 3 on tobacco retail in the Committee Reports.
3. The draft response notes, but does not indicate Government support for, or a position on the Committee's three recommendations.
4. Prior to your final approval of the Government response, approval is required from the Minister for Home Affairs on the draft response to Recommendation 3. If you agree to provide in principle approval of the draft Government response, please sign the letter to the Minister for Home Affairs at Attachment B.
5. Once approval has been received from the Minister for Home Affairs, another ministerial submission will be provided to you. This will seek your final approval of the draft Australian Government response and will include a letter to the Prime Minister seeking approval to table the Government response in Parliament.

Background:

The Senate established the Select Committee on Red Tape on 11 October 2016 to inquire into and report on the effect of restrictions and prohibitions on business (red tape) on the economy and the community, by 1 December 2017. The Committee decided to conduct its inquiry by focussing on specific areas. This interim report released on 27 June 2017 presented the Committee's findings and conclusions about the effect of red tape on the tobacco retail sector. The Committee released its final report on 3 December 2018 restating the three recommendations on tobacco retail contained in its interim report.

Attachments:

Attachment A: Draft Australian Government Response to the Senate Select Committee on Red Tape: *Effect of Red Tape on Tobacco Retail*.

Attachment B: Letter to the Minister for Home Affairs, the Hon Peter Dutton MP, seeking approval on the draft Australian Government response to Recommendation 3 of the Senate Select Committee Reports.

Consultations: Department of Home Affairs, Department of Prime Minister and Cabinet.

DOCUMENT RELEASED UNDER
THE FREEDOM OF INFORMATION ACT 1982 (CTH)
BY THE DEPARTMENT OF HEALTH

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BY THE DEPARTMENT OF HEALTH



**THE HON PETER DUTTON MP
MINISTER FOR HOME AFFAIRS**

Ref No: MC19-024600

The Hon Greg Hunt MP
Minister for Health
Minister Assisting the Prime Minister for the Public Service and Cabinet
Parliament House
CANBERRA ACT 2600

Dear Minister *Greg*

Thank you for your letter of 25 November 2019 and for the opportunity to comment on the Australian Government's proposed response to the recommendations of the Senate Select Committee on Red Tape's report on the effect of red tape on tobacco retail.

I appreciate the collaborative approach taken by your Department in the development of the response and the various interim responses, particularly with regard to Recommendation 3.

I approve inclusion of content in Recommendation 3 provided by the Department of Home Affairs for submission to the Prime Minister.

Thank you for raising this matter.

Yours sincerely

PETER DUTTON

18/12/19

Minister for Health

6 JAN 2020

Referred by

☐ Minister
☐ Chief of Staff
☐ Adviser

☒ Response
☒ Phone Call
☒ Information

☐ Department ☐ Urgent by

Other

☐ Campaign
☐ Constituent
☐ Background Information Required

☐ Refer to

Comments:



The Hon Greg Hunt MP
Minister for Health
Minister Assisting the Prime Minister for the
Public Service and Cabinet

Ref No: MS20-000020

The Hon Scott Morrison MP
Prime Minister
Parliament House
CANBERRA ACT 2600

29 JAN 2020

Dear Prime Minister

I am writing to seek approval to table the Australian Government response to the recommendations of the Senate Select Committee on Red Tape: *Effect of Red Tape on Tobacco Retail*. The Senate Select Committee tabled the Interim Report on 27 June 2017 and the Final Report was tabled on 3 December 2018.

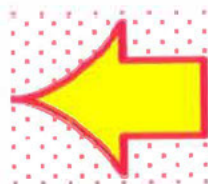
In preparing the enclosed response to the Senate Select Committee, my Department sought input from the Department of Home Affairs, which has been approved by Minister Dutton and incorporated into the response.

Your assistance in this matter is greatly appreciated.

Yours sincerely

Greg Hunt

Encl (1)





To: Minister Hunt

Subject: 2019 Annual Report on the Tobacco Advertising Prohibition Act 1992

Critical date: 21 July 2020. The report must be tabled before each House of Parliament within 15 sitting days of you receiving it.

Recommendation/s:

1. **Note** the Department's 2019 Annual Report on its administration of the *Tobacco Advertising Prohibition Act 1992* (the Act) (Attachment A). **1. Noted**
2. **Sign** the report under section 34A of the Act for tabling in Parliament, indicating that there were no contraventions of the Act in 2019 (Attachment B). **2. Signed/Not signed/Please discuss**
3. **Sign** the letter to the President of the Senate in order for the report to be tabled out-of-session (Attachment C). **3. Signed/Not signed/Please discuss**

s22

4. Noted

Signature

Date: / /

Media Release required? YES/ NO

9 JUL 2020

Comments:

Contact Officer:	David Laffan	A/g First Assistant Secretary, Population Health and Sport Division	Ph: (02) 6289 9375 s22
Clearance Officer:	Sharon Appleyard	A/g Deputy Secretary, Population Health, Sport, Cancer and Health Workforce Group	Ph: (02) 6289 4003 s22

Issues:

1. To meet the requirements of Section 34A of the *Tobacco Advertising Prohibition Act 1992* (the Act), the Department prepares an Annual Report in relation to contraventions of the Act for each calendar year.
2. No prosecutions were commenced under the Act during 2019. A Parliamentary report reflecting this is included for your signature at Attachment B.
3. A letter to the President of the Senate for the report to be tabled out-of session is included for your signature at Attachment C.

s22

Background:

The Department is responsible for the administration of the Act and investigates complaints about potential breaches. For a contravention of the Act to be established, there must be a successful prosecution.

The Annual Report must specify the number and nature of any contraventions of the Act occurring in the preceding calendar year and the action taken in response to each contravention. An extract of the relevant provision of the Act is provided at Attachment D.

The report must be tabled before each House of Parliament within 15 sitting days of you receiving it. Once you have signed the report, the Department will arrange tabling in both Houses of Parliament.

s22

Attachments:

- A. 2019 Ministerial Annual Report on the Administration of the Act
- B. Report to the Parliament on contraventions of the Act during 2019
- C. Letter to the President of the Senate
- D. Section 34A of the Act

Consultations:

No divisions or agencies were consulted in the preparation of this Submission.



Australian Government

Department of Health

2019 Ministerial Annual Report on the Administration of the *Tobacco Advertising Prohibition Act 1992*

The Tobacco Advertising Prohibition Act 1992

Under the *Tobacco Advertising Prohibition Act 1992* (the Act), with certain limited exceptions, it is an offence to publish or broadcast a tobacco advertisement. A 'tobacco advertisement' is defined broadly to be any writing, still or moving picture, sign, symbol, or other 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 smoking, or the use of, tobacco products'. Under the Act, a 'tobacco product' includes tobacco (in any form) or any product that contains tobacco as its main or substantial ingredient.

The principal exceptions are for:

- advertisements broadcast or published as an incidental accompaniment to the publication of other matter, where the broadcaster or publisher receives no direct or indirect benefit for the publication or broadcast;
- advertisements that do not promote smoking or any particular tobacco product, and which relate solely to government or political matters;
- certain point-of-sale advertising;
- advertisements in tobacco trade communications; and
- anti-smoking advertisements.

In addition, for constitutional reasons, the offences in section 15 of the Act only extend to tobacco advertising published in Australia by corporations (foreign, trading or financial); or by entities engaged in interstate trade or commerce or trade or commerce between Australia and another country.

The Act defines 'published in Australia' as being an advertisement that either originates in Australia, or which has an Australian link but did not originate in Australia (or where the advertisement's origin cannot be determined). A tobacco advertisement has an Australian link if, at the time that it is published, the entity who published the advertisement is an Australian company or an Australian citizen.

On 6 September 2012, amendments to the Act took effect which extended the existing restrictions on tobacco advertising in Australia to the internet and other electronic media, for example mobile phones, where the advertisement is published in Australia.

The *Tobacco Advertising Prohibition Regulation 1993* sets out specific requirements regarding the format and content of permissible internet point-of-sale tobacco advertisements. An internet site containing a tobacco advertisement must provide a purchasing facility for a customer to make an online purchase of a tobacco product. Tobacco advertisements are also required to be presented in a plain, text-only format with graphic health warnings and warnings about age restrictions on tobacco sales. The aim of the regulations is to reduce the attractiveness and appeal of internet point-of-sale tobacco advertisements.

Since May 2017, the maximum penalty for an offence under the Act is 120 penalty units or \$25,200 for an individual and 600 penalty units or \$126,000 for a corporation.

Administration of the Act

The Department of Health (the Department) conducts investigations into potential breaches as part of its general role in administering the Act. Most investigations are resolved when the alleged tobacco advertisements are withdrawn or the Department concludes that the advertising falls within an exception under the Act.

If the Department considers that a breach has occurred, it will investigate the matter, and may refer it to the Commonwealth Director of Public Prosecutions (CDPP). The CDPP would determine whether to proceed with a prosecution under its own prosecution guidelines. Among other things, these guidelines require that there be a reasonable prospect of conviction, and that a prosecution would be in the public interest. If the CDPP decides not to refer charges, the Department may choose to engage its own legal representatives to initiate a prosecution.

To date, there have been two successful prosecutions under the Act, the most recent of these was in 2001 when a clothing retailer was prosecuted for repeatedly displaying tobacco-branded clothing despite several warnings. In 2003, the defendant was convicted and fined \$4,000.

2019 Annual Report

There was a high level of compliance with the Act during 2019. The Department received 50 complaints. No prosecutions commenced under the Act during 2019.

Of the 50 complaints received by the Department during the 2019 calendar year:

- 16 related to tobacco advertisements on the internet and social media;
- 14 related to online tobacco suppliers;
- 5 related to print advertising in magazines, newspapers and posters;
- 2 related to advertising the availability of tobacco products by retailers;
- 2 related to non-tobacco products such as e-cigarettes and other vaping products;
- 1 related to film or broadcast footage showing tobacco advertisements; and
- 10 related to other types of advertisements.

In 2019, 13 complaints were found to fall within various exceptions in the Act. Twelve investigations were closed after the advertisements in question were withdrawn. Twelve complaints fell outside the scope of the Act. Investigations were discontinued for nine complaints due to insufficient evidence or the matters being resolved before investigation

could commence. One complaint was found not to be a breach. Three investigations are ongoing.

The number of complaints for 2019 (50) is 36 per cent lower than 2018 (78), and 18 per cent lower than 2017 (61). The number of complaints between 2015 and 2017 were relatively stable (59 in 2015, 65 in 2016, and 61 in 2017), following the increase since 2014 (38) which was primarily due to a proliferation in the number of online retail tobacco websites and social media pages promoting the supply and/or use of tobacco and tobacco-related items.

The introduction of tobacco plain packaging and a general change in community standards and expectations in relation to tobacco advertising online and in the media has also generated an increased number of complaints on the depiction of tobacco products and associated images, especially if they are perceived to be glamorous or targeted at young people. The Department takes these complaints seriously even if they do not constitute a breach of the Act.

If the Department determines that an advertisement falling outside the scope of the Act may promote or encourage the purchase and/or use of tobacco products, it will write to the publisher requesting that it be removed by appealing to the publisher's sense of corporate and social responsibility. In many instances this approach has led to advertisements being removed.

A Parliamentary report stating that no prosecutions were commenced under the Act during 2019 is included for your signature at Attachment B. A letter to the President of the Senate in order for the Report to be tabled out-of-session is included for your signature at Attachment C.

Summary of *Tobacco Advertising Prohibition Act 1992* Complaints by Type and Outcome

Type of Complaint	Number
Internet and social media	16
Online tobacco suppliers	14
Print	5
Advertising the availability of tobacco products by retailers	2
Non-tobacco products potentially promoting the use of tobacco products	2
Film or broadcast footage showing tobacco advertisements	1
Other	10
Total	50

Outcome	Number
Exception applicable	13
Advertisement withdrawn	12
Out of scope	12
Discontinued (insufficient evidence or matter resolved before investigation)	9
Not initiated found not to be a breach	1
Ongoing investigations	3
Total	50



COMMONWEALTH OF AUSTRALIA

TOBACCO ADVERTISING PROHIBITION ACT 1992

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

I, The HON GREG HUNT, Minister for Health, 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 2019 and ending 31 December 2019.

Dated this 28 day of July 2020.

THE HON GREG HUNT MP



The Hon Greg Hunt MP
Minister for Health
Minister Assisting the Prime Minister for the
Public Service and Cabinet

Ref No: MS20-000678

Senator the Hon Scott Ryan
President of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear President

Pursuant to standing order 166, relating to the presentation of documents when the Senate is not sitting, I present to you the 2019 Annual Report on the *Tobacco Advertising Prohibition Act 1992* for tabling in Parliament.

Yours sincerely

Greg Hunt

Encl (1)

DOCUMENT RELEASED UNDER
THE FREEDOM OF INFORMATION ACT 1982 (CTH)
BY THE DEPARTMENT OF HEALTH

Excerpt from the *Tobacco Advertising Prohibition Act 1992*

s34A Reports to Parliament

- (1) As soon as practicable after each 31 December occurring after 1 January 2001, the Minister must cause to be prepared a report on:
 - (a) the number and nature of any contraventions of the Act occurring in the preceding 12 months; and
 - (b) action taken by the Minister or a Commonwealth agency in response to each contravention.
- (2) A person who prepares a report under subsection (1) must give a copy to the Minister.
- (3) The Minister must cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after receiving it.

DOCUMENT RELEASED UNDER
THE FREEDOM OF INFORMATION ACT 1982 (Cth)
BY THE DEPARTMENT OF HEALTH