Smoking and Tobacco Products Advertisements (Prohibition) Bill 1989
(Private Senator's Bill)

Date Introduced: 31 August 1989
House: Senate
Presented by: Senator Janet Powell

Digest of Bill

Purpose
To prohibit certain advertisements of smoking and tobacco products.

Background
Tobacco, particularly in the form of cigarettes, contributed in 1986 to approximately 17 070 deaths in Australia.¹ All Australian Governments, Federal, State and Territory, have recognised the health threat of tobacco.

Advertising of tobacco is believed to be one factor that initiates smoking. Health authorities and anti-smoking lobby groups have asserted that tobacco advertising is designed to exploit the desire of most people to feel more sophisticated. Tobacco manufacturers have argued that the decision to smoke is an adult determination. However, there is evidence to indicate that smoking habits are established by the age of 15. The 12 to 15 year old is believed to easily accept the implication that taking up smoking will make them feel and appear more mature and sophisticated.² Until 1976, under the Broadcasting and Television Act 1942, television and radio advertisements for cigarettes or cigarette tobacco were permitted provided each advertisement was followed by a health warning. Amendments to the Broadcasting and Television Act 1942 banned radio and television tobacco advertising from 1 September 1976.

In October 1977, the Senate Standing Committee on Social Welfare in its report, Drug Problems in Australia – an intoxicated society ?, recommended that the Federal Government ban the advertising of tobacco products whether by way of corporate advertising or by exhibiting of the brand name in a planned fashion (i.e. sponsorship of sporting organisations and events as a vehicle for advertising), on radio and television and in areas under direct Commonwealth control. It was also recommended that the Federal Government appeal to sports persons not to lend their names and prestige to the promotion of tobacco products, and that the Commonwealth make any grants to sporting and cultural bodies conditional on their not accepting money from manufacturers and retailers of tobacco products.³ The Committee found that, despite television and radio advertising being banned in 1976, manufacturers have responded by sponsoring sporting and cultural organisations and events to compensate for their lost...
promotional opportunities. For example, tobacco manufacturers have purchased the right to advertise at grounds where sporting events are televised, and to use sporting organisations and events as their vehicle for advertising. Television broadcasts of sporting events continue to show background corporate advertising bearing the name of the sponsor whose product is tobacco as do advertisements for events. It is argued that these circumspect forms of television advertisements are allowable because under the 1976 legislative amendments they are ‘accidental’ or ‘incidental’ accompaniment to the broadcasting or televising of an event. However, this view has been opposed, and court action continues regarding a promotion before a recent Sydney rugby league grand final. To a large extent these problems arise because there is no ban on tobacco advertising by way of print or billboards or other visual displays.

In May 1989, the Parliamentary Joint Committee on the National Crime Authority in its report, Drugs, Crime and Society, recommended that the Commonwealth Government ban all advertising of alcohol and tobacco products on radio, television, in cinemas and in print. The Committee expressed concern about the advertising of legal drugs in Australia, especially alcohol and tobacco. The Committee found, that while there was no evidence that alcohol advertising increased demand for alcohol, there was evidence from other countries that a total ban on tobacco advertising would lead to a decline in the sale of cigarettes.

Main Provisions
The Bill, except for sub-clause 5(3) (see below), will operate from 1 January 1990 (clause 2).

‘Tobacco product’ is defined to be cigarettes, cigars, tobacco in any form, snuff, cigarette paper, cigarette rollers and pipes (clause 3).

Clause 5 provides the term ‘advertisement’ includes a notice, circular, pamphlet, brochure, programme, price-list, wrapper or other document that is designed to attract public attention, or is designed to bring in business. These items will be an advertisement unless part of a sales publication of a corporation that manufactures or distributes tobacco products. In addition, an announcement or notification made by means of a poster, placard, or other document posted up on or displayed on a wall, billboard, hoarding, or any other object will be an advertisement (sub-clause 5(3)). Under sub-clause 5(3), an advertisement made in pursuance of a contract, will operate from the day the contract expires, or 1 July 1991, whichever is the earlier. The term ‘advertisement’ will also include announcements or notifications made on radio and television and any other form of announcement or notification that is designed to attract public attention or is designed to bring in business (sub-clauses 5(4) and 5(5)).

Clause 6 provides that a corporation is not, subject to clause 7 (see below), to publish, or orally communicate to a person, an advertisement that contains an express or implied inducement, request, or suggestion to buy, promote, or use tobacco products. In addition, a corporation is not to distribute samples of tobacco products except to a person who is engaged in the
sale or distribution of those products. The maximum penalty for breach of this provision will be a fine of $50,000. An additional penalty will be incurred where a contravention continues over two or more days. A corporation will be guilty of a separate offence for each day the contravention continues. The maximum penalty for breach of this provision will be a fine of $5,000.

Clause 7 will allow certain advertisements of smoking and tobacco products, including an advertisement made by way of one notice in a premises where tobacco products are sold, that states the names of the brands of the tobacco products sold. The notice is not to exceed .5 square metres, is not to be self-illuminated, and is not to contain any word or representation inducing or promoting the use of tobacco products. In addition, an advertisement relating to smoking contained in a newspaper printed or published overseas brought into Australia will be allowable. However, the Minister may declare that this exception does not apply to certain newspapers.

No suit will lie against a party for a failure to honour a contract for the advertising of tobacco products or smoking after the commencement of this Bill (clause 8).

Proof that an advertisement contains the brand name of a tobacco product or the name of a corporation that manufactures tobacco products will be evidence that the advertisement contains an express or implied inducement, request, or suggestion to buy, promote, or use tobacco products (clause 9).

Any employee of a corporation who directly, or indirectly, is a party to their corporation contravening clause 6 (see above), will be guilty of an offence. The maximum penalty for a breach of this provision will be a fine of $2,000 (clause 10).

Clause 11 provides that all the prohibitions that apply to corporations in clause 6 will also apply to individuals engaged in trade and commerce between Australia and overseas countries, between States, between States and Territories, between Territories, and within a Territory other than the Northern Territory. The maximum penalty for breach of those prohibitions, by an individual, will be a fine of $2,000. An additional penalty will be incurred where a contravention continues over two or more days. An individual will be guilty of a separate offence for each day the contravention continues. The maximum penalty for breach of this provision will be a fine of $200.

References
3. Ibid., p. 100.
For further information, if required, contact the Education and Welfare Group.

5 September 1989

Bills Digest Service
Legislative Research Service

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

© Commonwealth of Australia 1989

Except to the extent of the uses permitted under the Copyright Act 1968, no part of this publication may be reproduced or transmitted in any form or by any means, including information storage and retrieval system, without the prior written consent of the Department of the Parliamentary Library. Reproduction is permitted by Members of the Parliament of the Commonwealth in the course of their official duties.