

COUNTERING TOBACCO TACTICS

A GUIDE TO IDENTIFYING,
MONITORING AND PREVENTING
TOBACCO INDUSTRY INTERFERENCE
IN PUBLIC HEALTH



**NO
EVIDENCE**



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FOREWORD

Preventing tobacco industry interference in health policies is potentially the single most effective measure that governments can adopt to tackle tobacco deaths and diseases.

Political leadership is urgently needed, as tobacco kills over five million people a year - including 15,000 Australians. Unlike communicable diseases, tobacco deaths and diseases are spread by the marketing tactics and misleading practices of a powerful industry.

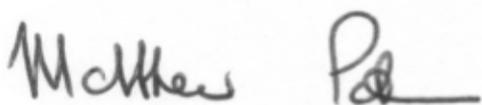
Governments have the mandate and the power to protect and improve the health of their populations. Yet for decades tobacco industry interference has actively opposed and undermined government action to put in place comprehensive tobacco controls.

The tobacco industry is formidable and determined at any cost to recruit new users. Its only loyalty is to its shareholders, but it is reinventing itself as “socially responsible” - and therefore eligible for a seat at government tables. It then uses this position to block or delay tobacco control measures.

The tobacco industry and related third parties are not “stakeholders” in public health – they are the problem.

The World Health Organization’s Framework Convention on Tobacco Control (WHO FCTC) has been ratified by Australia and over 170 countries. Article 5.3 and its guidelines provide a roadmap for why and how tobacco industry interference in health policies must be prevented.

We recommend this guide as a tool for advocates and policy makers who believe that the interests of public health are best served by reducing tobacco’s toll of preventable chronic diseases and ending tobacco industry interference in health policies.



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About ASH

Action on Smoking and Health (ASH) Australia is a national non-government health organisation committed to reducing tobacco use and ending the misleading and deceptive conduct of the tobacco industry. Founded in 1994, ASH is funded by the Cancer Council Australia and the Heart Foundation.

The ASH Board is chaired by Associate Professor Matthew Peters, a Thoracic Physician and includes public health experts from the Cancer Council Australia (Paul Grogan), Heart Foundation (Maurice Swanson), University of Sydney (Professor Simon Chapman) and the Royal Australasian College of Physicians (Dr Stephen Stick). Anne Jones OAM, Chief Executive Officer since 1994, is a policy adviser on tobacco control in Australia, and a technical adviser on tobacco control for the International Union on Tuberculosis and Lung Disease (The Union). Stafford Sanders is the Communications Officer and coordinator of two national coalitions aiming to reduce tobacco diseases, the Protecting Children from Tobacco coalition of 41 organisations and the SmokeFree Australia workplace coalition of 11 organisations.

ASH is a member of Framework Convention Alliance (FCA) made up of over 350 organizations from more than 100 countries working on the development, ratification and implementation of the WHO FCTC.

Purpose of this guide

This guide has been developed to assist advocates and policy-makers to identify, monitor, expose and counter the multiple industry tactics currently used in Australia's "dark market".

The term "dark market" refers to a situation where conventional tobacco advertising in mainstream media has been prohibited by law (ie TV, radio, billboards and print) resulting in a shift to new marketing tactics including tobacco industry interference in the development and implementation of public health policies and legislation.

Tobacco industry tactics can be categorised under five main industry goals: reinventing the image, influencing friends in high places, "astro-turfing" or using third parties posing as "grass roots", intimidation, and "TAPS" - Tobacco Advertising,

Promotion and Sponsorship.

The industry hides behind a libertarian cloak, complaining that Australia is an over-regulated "nanny state" that will suffer job losses and further hardship if more regulation such as plain packaging is required by law. However, restrictions on marketing and other industry tactics are mostly partial rather than comprehensive, as our latest examples of tactics will illustrate.

There are lessons in this guide for Australia and other jurisdictions that want to implement tougher tobacco controls. A key lesson is that the industry will interfere in public health by exploiting every loophole and finding creative ways of pushing tobacco, unless legislation and policies prevent interference and comprehensively ban all forms of TAPS.

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The views expressed in this Guide are those of ASH Australia and do not necessarily represent the views of the individuals listed above.

2. CONTEXT

Tobacco facts

Tobacco kills more than five million people a year worldwide including 15,000 Australians a year. Tobacco smoking is the biggest single preventable cause of both cancer and heart disease – our two leading causes of early death; it is also linked with the seven diseases causing most deaths.²

The impact, which could be prevented, is catastrophic - including:³

- Around 15,000 premature deaths, including 36 deaths a year among those aged under 15 years of age.
- Total costs to the nation of more than \$31 billion a year.
- 56% of total costs of drug abuse - more than alcohol and all other drugs combined.
- Over \$15 billion in costs to workplaces - twice as much as alcohol and all other drugs combined.
- Over 750,000 hospital bed days - around 8% of them occupied by children under 15.
- Over \$600 million in hospital costs for treating tobacco-related diseases.

While the majority of Australians do not smoke, around 16% of people over 14 years of age (just under 3 million) are daily smokers.⁴

The Tobacco Industry (TI): who are they?⁵

The TI in Australia is dominated by three transnational corporations: British American Tobacco, Philip Morris and Imperial Tobacco. These “Big 3” companies are all wholly owned subsidiaries of their overseas parents. The subsidiaries are not listed on the Australian stock exchange. The Big 3 have shareholders, and hold annual general meetings - but not in Australia.



David Crow
Managing Director,
BAT Australasia

Plays an active role in recruiting and the company’s social responsibility image. Asked in a 2008 newspaper feature what sort of people sign up to make and market cigarettes...

“People who love a challenge”, Crow says cheerfully. “They want to work in a funky, edgy kind of business.”⁶



Nerida White
Director Communications,
Philip Morris Asia;

Formerly Corporate Communications Manager for Philip Morris Australia and often its Australian spokesperson.



Alison Cooper
Chief Executive
Imperial Tobacco

Reported as still refusing to accept unequivocally that smoking causes cancer.

1. WHO Report on the Global Tobacco Epidemic (2009) at www.who.int/tobacco/mpower/2009/a2_gtor_report_summary.pdf

2. Australian Bureau of Statistics (2008) Causes of Death, Australia 2008 at www.abs.gov.au/ausstats/abs@.nsf/mf/3303.0?OpenDocument; Collins and Lapsley, National Drug Strategy (2008) Counting the Costs... at www.nationaldrugstrategy.gov.au/internet/drugstrategy/publishing.nsf/Content/mono64

3. ASH Australia website at www.ashaust.org.au/lv4/PolliesGuide.htm with links to sources 4. Australian Institute of Health and Welfare, Household Drug Survey (2007) at www.aihw.gov.au/publications/phe/ndshs07-df/ndshs07-df.pdf - Chapter 4, p. 23 5. ASH Australia, latest details at www.ashaust.org.au/lv4/WhoAreTheTI.htm

6. Sydney Morning Herald feature, 27/9/08

Many other organisations and individuals support the industry and benefit directly or indirectly from sales of its addictive products. The TI and those furthering its interests⁷ include:

1. The Big 3 tobacco companies: BAT, Philip Morris, Imperial.
2. Smaller tobacco companies, including Richland Express, Stuart Alexander, Swedish Match and smaller importers.
3. Tobacco company shareholders and interrelated companies, such as pension and superannuation funds which invest in tobacco companies.
4. Former tobacco company directors and executives - including Nick Greiner⁸, Rupert Murdoch and Carla Zampatti.
5. Tobacco retailers - including duty free shops – and numerous retailer organisations.
6. Associated hospitality and gaming interests – including Hotels and Licensed Clubs associations.
7. Front groups, such as BATA's Butt Free Australia (formerly Butt Littering Trust).
8. Lobbyists, such as Intermediary Consulting P/L (for BAT), Inside Out Strategic and Civic Group (for Philip Morris) and Jackson Wells P/L (for Imperial).
9. Legal advisers, including Clayton Utz and now Corrs Chambers Westgarth (who act for BAT); and Allens Arthur Robinson (who act for Philip Morris Australia).
10. Consultants: scientists sympathetic to the TI, and well-known companies like PriceWaterhouse Coopers and Deloitte - paid handsomely by the industry to produce reports for government and Members of Parliament (MPs), usually opposing tougher tobacco regulation.
11. Supporters in governments and political parties – with some parties accepting large political donations, not just from tobacco companies but from allied hospitality, gaming, retail and other interests.
12. Think tanks: e.g. the Institute of Public Affairs (IPA) and Centre for Independent Studies (CIS) – both of which have

accepted tobacco funding; the IPA has also had tobacco executives on its board.

13. Charities and educational institutions that accept tobacco dollars and are publicly associated with claims by the industry that they are “socially responsible”.
14. Governments that collect billions of dollars in tobacco excise duties, Goods and Services Tax from tobacco sales and from investment strategies that do not exclude tobacco companies on ethical grounds.

Why we need to counter the TI

While mandatory reporting of expenditures for all forms of tobacco promotion is required in the USA, there is no such reporting requirement in Australia, despite longstanding health group recommendations and a National Preventative Health Taskforce recommendation in 2009.⁹

Research into industry documents¹⁰ and litigation¹¹ leaves no doubt that the industry has engaged in a long history of misleading and deceptive conduct.

In a damning judgment¹² against the major US tobacco companies, US District Judge Gladys Kessler summarised the industry’s “unlawful, deceptive and lethal” history: they had violated civil racketeering laws, defrauded the public and lied for decades about their targeting of children and the health risks of smoking.

Defendants have known these facts for at least 50 years... [but] have consistently, repeatedly, and with enormous skill and sophistication, denied these facts to the public, to the Government... marketed and sold their lethal products with zeal, with deception, with a single-minded focus on their financial success, and without regard for the human tragedy or social costs that success exacted.

In Australia, the Australian Competition and Consumer Commission has found tobacco companies have engaged in “misleading and deceptive conduct”¹³; and a court has held BATA has risked reducing public confidence in the administration of justice by attempting to have a judge removed from a court case.¹⁴

7. Latest details at ASH Australia, www.ashaust.org.au/lv4/WhoAreTheTI.htm

8. See below, Identifying TI tactics: using prominent people 9. National Preventative Health Taskforce (2009), Australia: the healthiest country by 2020 – report, roadmap for action and government response at www.preventativehealth.org.au/internet/preventativehealth/publishing.nsf/Content/nphs-roadmap

10. University of Sydney’s “Tobacco Control Supersite”, tobacco document gateway at <http://old.tobacco.health.usyd.edu.au/site/gateway/docs/index.htm>

11. ASH Australia, tobacco litigation webpage at www.ashaust.org.au/lv3/Lv3resources_tobacco_litigation.htm 12. Tobacco Free Kids (US), summary at <http://tobaccofreekids.org/reports/doj/> and full judgment at <http://tobaccofreekids.org/reports/doj/FinalOpinion.pdf> 13. ACCC at www.accc.gov.au/content/index.phtml/itemId/683533/fromItemId/2332

14. Sydney Morning Herald report at www.smh.com.au/business/cancer-case-judge-stays-20091221-la1n.html

2. CONTEXT CONTINUED

The full spectrum of tobacco industry practices were exposed by the WHO in 2009¹⁵ - including manipulation of media to discredit scientific research and injecting large philanthropic contributions into social programs to create a positive public image of “corporate social responsibility”.

Despite its best image-polishing efforts, the TI was rated least reputable among the world’s 25 major industry categories in a Global Reputation Pulse independent survey in 2010 of over 80,000 consumer interviews in 32 countries.¹⁶



Funeral of Adam’s Dad

pic: Adam Ferrier

Where to find more information about TI tactics and activities

We know from several sources¹⁷ that multiple tactics are used by the TI, and that combinations of activities vary depending upon how comprehensive the legislation is and if it is effectively enforced. As TI tactics and activities can vary rapidly over time, a monthly monitoring report on activities is strongly recommended to raise awareness among stakeholders and improve advocacy strategies to counter false information.

The most common sources of information about TI activities include:

- The industry itself – company websites¹⁸;
- TI documents¹⁹;
- TI and related industry (retail, hospitality) publications;
- Court records²⁰;
- Freedom of Information requests;
- Mandatory filings with governments, e.g. under FCTC Article 5.3 transparency provisions;
- Monitoring of marketing tactics and activities²¹.

The WHO Framework Convention on Tobacco Control²²

So far 170 countries including Australia have ratified the World Health Organization’s Framework Convention for Tobacco Control (FCTC) – an international treaty that includes a specific obligation to protect public health policies from interference by the TI and related interests (Article 5.3 refers)²³. Article 5.3. states:

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.**

15. WHO (2009), Tobacco Industry Interference with Tobacco Control at www.who.int/tobacco/resources/publications/tob_ind_int_cover_150/en/index.html

16. Australian Health News Research Collaboration (2010), summary and results at <http://tobacco.health.usyd.edu.au/assets/pdfs/AHNR-Release/Global-industry-survey-16-June.pdf>

17. See below, Resources 18. ASH Australia, TI website links at www.ashaust.org.au/lv4/WhoAreTheTI.htm

19. See University of Sydney “Tobacco Control Supersite” tobacco document gateway at <http://old.tobacco.health.usyd.edu.au/site/gateway/docs/index.htm>

20. ASH Australia, www.ashaust.org.au/lv3/Lv3resources_tobacco_litigation.htm and www.ashaust.org.au/lv3/Lv3resources_TobIndNews.htm

21. See below, Monitoring TI tactics 22. WHO, FCTC at www.who.int/fctc/en/ 23. WHO, FCTC Article 5.3, *ibid*.

How to use the Treaty to protect health policies

Parties to the FCTC agree there is a “fundamental and irreconcilable conflict” between TI interests and public health policy interests²⁴. Article 5.3 Guidelines²⁵, developed to support Parties in implementing the FCTC, elaborate on effective measures for addressing TI influence and interference in public health. These are minimum requirements and treaty parties are urged to enact measures beyond the Guidelines, which apply to:

- Officials, representatives, and employees of any government or semi/quasi-public institution or body responsible for, or that contributes or could contribute, to developing or implementing tobacco control policies, and to any persons acting on their behalf. (Guidelines, para. 9-10)
- The TI (as defined by FCTC Art. 1), whether or not organisations are privately- or government-owned, and entities, associations, and individuals that represent it or work to further its interests. Government should do the following to implement Article 5.3:
 - Raise awareness that tobacco products are addictive, deadly and that tobacco smoke causes disease, disability and death. (Rec. 1.1)
 - Disseminate knowledge of the industry’s tactics of using individuals, front groups, and affiliated organisations to further the tobacco industry’s interests. (Rec. 1.2)
 - Limit interactions with the TI to only those necessary to effectively regulate the industry and its products. When TI interactions are necessary, they should be conducted transparently in public through hearings, notices of interactions, and disclosure of records. (Rec. 2.1, 2.2)
 - Reject any partnerships, non-binding or non-enforceable agreements and any voluntary arrangement put forth by the TI or its allies or where such agreements are offered as a substitute for legally enforceable measures. (Rec. 3.1, 3.3)
 - Reject any offer for assistance or proposed tobacco control legislation or policy drafted by or in collaboration with the TI. (Rec. 3.4)
- Prohibit TI involvement in any youth, public education, or other tobacco control initiative; prohibit involvement, in any manner, in initiatives directly or indirectly related to tobacco control. (Rec. 3.2)
- Avoid conflicts of interests for government officials and employees.
- Ban political contributions by the TI, or alternatively, require their full disclosure. (Rec. 4.11)
- Prohibit TI payments, contributions, gifts, and services to government institutions, officials, or employees (except payments mandated by law).
- Bar TI representatives, or any entity acting to further TI interests, from membership of any body, committee or advisory group that sets or implements public health policy. (Rec. 4.8)
- Require the TI to publicly report activities and practices, and impose mandatory penalties for providing false or misleading information: e.g. registration of lobbyists and payments to them for production, manufacture, market share, revenues, lobbying, philanthropy, political contributions, other activities not yet banned; and other specified activities and practices (e.g. payments to scientists/ researchers, journalists; for research, conferences, etc.). (Rec. 5.2-5.5)
- Denormalise and regulate purported “socially responsible” activities by the TI - e.g. no endorsement, support or formation of partnerships with the industry, and correction of any perceptions of partnerships created by it. (Guidelines, para. 20; Rec. 6.1-6.4)
- Do not provide incentives, privileges, benefits or exemptions for the TI. (Rec. 7.1-7.3)
- Monitor activities of the TI - by non-government organisations and other members of civil society not affiliated with the industry. (para. 32, 33)

24. WHO, FCTC Guidelines at www.who.int/fctc/guidelines/article_5_3/en/index.html - Principle 1
25. WHO, FCTC Guidelines, op. cit.

What actions have governments taken to implement Article 5.3 Guidelines?

When ASH wrote to all nine Ministers of Health in May 2009 seeking support for Article 5.3, the responses were not very encouraging. Most claimed that: they were already committed to tobacco control; consultation with stakeholders required them to occasionally meet with the tobacco industry representatives; and the recommendations of Article 5.3 had been noted or were under consideration. The federal government acted more positively by putting in place some measures to increase transparency including: a Lobbyist Register with a Lobbying Code of Conduct²⁶; and posting online notices of meetings that occur between the tobacco industry and officials in the Department of Health and Ageing and the Australian Tax Office. Although these are important steps to improve transparency, we expect there would be many meetings with other Ministers, Members of Parliament and departments that are not reported upon. Since governments need to do more to support Article 5.3, health advocates both inside and outside government have an important role to play in mobilising support for preventing TI interference in the development of health policies. For example, on World No Tobacco Day (May 31) each year a national scoreboard including the Dirty Ashtray Award is produced by the AMA and ACOSH rating government performance in tobacco control²⁷. As the Federal Government assessment includes a rating for its commitment to international obligations, there is an opportunity to monitor and publicise government commitment to Article 5.3.

26. Australia, Dept of Prime Minister and Cabinet at <http://lobbyists.pmc.gov.au>
27. Australian Medical Association website at <http://ama.com.au/node/5628>

3. IDENTIFYING TI TACTICS

Most TI tactics can be categorised under five main industry goals – reinventing the image, influencing friends in high places, “astro-turfing” or using third parties posing as ‘grass roots’ front groups, intimidation and TAPS - tobacco advertising, promotion and sponsorship. There are numerous examples and case studies to draw upon but examples below have been chosen to illustrate the most recent tactics occurring in Australia’s dark market.

Reinventing the image

TI aim: Enhance the industry’s image as respectable and improved

Public relations

Mould public opinion using media to promote positions favourable to the industry

Following the Australian Government’s announcement in April 2010 to mandate plain packaging of tobacco by mid-2012, the Institute of Public Affairs (IPA) think tank claimed that the policy violates international Trade Related Aspects of Intellectual Property Rights and that taxpayers would have to provide compensation of \$3.4 billion per year to film and tobacco companies for the loss of their trademarks. The IPA did not disclose its tobacco links or that it had accepted funding from the TI; and most media outlets did not point this out. The ABC’s Media Watch program commented that the IPA’s “ubiquitous spruiking about cigarette packaging was... a marriage made in media heaven.”²⁸

Philanthropy and “Corporate Social Responsibility”

Buy support and respectability from arts, sports, humanitarian and cultural groups; promote voluntary measures as effective tobacco control measures; create an illusion of the TI as “changed”; establish partnerships with health interests to neutralise opposition and buy political goodwill

BAT Australia made a large donation to the Victorian bushfire appeal after the 2009 Black Saturday fires - after earlier opposing mandatory reduced fire risk cigarette standards.

Via staff workplace giving programs, BAT also publicly claims that it sponsors several leading charities including Mission Australia, Conservation Volunteers Australia, The Surf Life Saver Rescue Helicopter, Lifeline, Northcott, Guide Dogs NSW/ACT, Barnardos and ACT for Kids. When ASH wrote and asked the charities to review their policy on tobacco donations, some felt it was a grey area and that they couldn’t reject individual donations from TI staff.



BATA sponsors Guide Dogs – perhaps because smoking causes blindness



BATA donates to Victorian Bushfire Appeal – after opposing a reduced fire risk cigarette standard

28. ABC Media Watch 15/5/10, transcript at www.abc.net.au/mediawatch/transcripts/s2895480.htm

3. IDENTIFYING TI TACTICS CONTINUED

Employment and recruiting strategies

Associate tobacco with established institutions and promote the TI in a positive light as a place for talented individuals

Tobacco companies, notably BATA, have adopted a high profile in recruiting young employees via appearances at university careers fairs, running special careers events and paying for company-badged newspaper employment supplements.

In 2004, health groups and academics protested at graduate careers fairs - at Macquarie University, the University of New South Wales and Wollongong University - at which BATA was recruiting. Tobacco's killing business was described as a "rewarding" place to work where one can make a "positive community and environmental impact". BATA's pitch for "building amazing talent" made no mention of cigarettes or tobacco.²⁹

Funding research, including university

Create impression of respectability by association with institutes of learning; create doubt about tobacco-health evidence by fostering studies supporting TI aims

The full extent of tobacco industry funding of research is largely unknown – although an ASH survey shows a growing trend for universities to reject TI funding. The survey of 39 Australian universities in 2009 found 21 universities had some specific policy limiting acceptance of TI research funding including 15 universities reporting a total ban.³⁰ See below, Countering TI Tactics: success stories (3) for summary of counter-strategy including a tobacco-free campus Guide.³¹

Influencing friends in high places

TI aim: Increase political influence to block, delay, weaken or undermine tobacco-free measures

Political support and funding

Use political donations and favours to win votes and legislative favours from politicians

Tobacco companies and their allies in gambling, hospitality and retail have donated millions of dollars over the past few years to gain access and influence as part of their strategy to interfere in health policies.

The Australian Labor Party (ALP) and the Australian Greens do not accept donations from tobacco companies on ethical grounds - but retailers have still been able to make donations to the ALP in the state of New South Wales (NSW), presumably because they sell other goods as well as tobacco. Federal Liberal Party leader Tony Abbott during the 2010 election campaign defended his party's acceptance of tobacco money on the grounds that "it's a legal product". Australia's campaign finance disclosure requirements mean that transparency is very weak – for example, disclosure of donations made to politicians just before the federal election in August 2010 will not be available for public scrutiny until February 2012.

In 2008-09, the Liberal Party accepted \$14,500 from BAT and the same from Philip Morris; BATA also gave \$61,000 to the NSW Liberal Party.³² TI-allied hotel, club, gambling and retail interests also donate heavily to both the ALP and Liberal/National coalition parties and are seen as very influential.

There have been many calls for reform, and ASH submissions to government and email campaigns have contributed to the growing demand to end or limit political donations³³. Parliamentary inquiries have been held and discussion papers have been developed over the past two years - but are yet to result in comprehensive reforms.

29. See below, Countering TI Tactics: success stories (3)

30. ASH Australia, survey of Australian universities' tobacco policies (2009) at www.ashaust.org.au/lv4/UniSurveySummary09.doc; see also below, Countering TI tactics: success stories (3)

31. ASH Australia (2009), Guide for a Tobacco-free Campus at www.ashaust.org.au/pdfs/TFcampusGuideAus09.pdf

32. Greens NSW "Democracy 4 Sale" website at www.democracy4sale.org 33. See ASH submission to Joint Standing Committee inquiry NSW (2009) at www.ashaust.org.au/publications/PolDonsASHsubmNSW0912.doc and to Federal Green Paper process (2009) at www.ashaust.org.au/lv4/PolDonsASHsubm09.doc

3. IDENTIFYING TI TACTICS CONTINUED

Lobbying

Make deals and influence political processes

The TI uses multiple lobbying strategies including engaging lobbying firms to act on their behalf to influence the political process: Jackson Wells P/L represents Imperial; Philip Morris uses both InsideOut Strategic and Civic Group; and Intermediary Consulting P/L represents BATA.³⁴ TI lawyers also appear as clients and related third parties including hotel and retailer associations also lobby governments for policies consistent with TI interests.

Using prominent people

Enhance image and political access by using high-profile figures, inside and outside political parties³⁵

Big tobacco buys up

Sunday Age Melbourne, 6 June 2010³⁶

TALK about gamekeepers turned poachers. Ozan Ibrism, adviser to Health Minister Daniel Andrews, has joined tobacco giant Philip Morris as manager of regulatory affairs. Ibrism, a one-time stalwart of the left, declined to discuss any ethical conflicts in his move, or if he would be lobbying his old boss to relax anti-smoking restrictions. The move follows a long tradition of big tobacco largesse towards state staffers — he works under Nerida White, former adviser to Jeff Kennett. Kennett's old staff still talk longingly of the fancy lunches and event invitations showered on them by White (she took a busload to see U2 at the MCG). Around that time Kennett embarked, to the surprise of many, on an action that would have delighted his former adviser, launching a one-man campaign against federal moves to increase the warnings on cigarette packaging.



tobacco control laws.

Nick Greiner, former Liberal Premier of NSW, and later Chairman of BAT Australia, has been able to use his influence to further BAT interests. Now Chairman of the Nuance Group of duty free stores, he has been reported lobbying for concessions under NSW

Voluntary agreements

Promote weaker agreements instead of legislation

Very few people – including smokers - are aware that the TI has a voluntary agreement with the Australia Government to provide lists of additives and emissions, which are made available online.³⁷ These lists are meaningless without information on health impacts. They do however serve one real purpose: allowing the TI to appear cooperative while delaying the inevitable prospect of regulation. In 2010 a government tender process was commenced to find an agency to develop options for regulation but was delayed due to no suitable tenderer.

Claiming “failure” of tobacco control policies in other countries

Deter tobacco control reforms by portraying them as unworkable, damaging or ineffective

In jurisdictions that have banned or are about to ban tobacco displays in retail outlets, tobacco retailers have flooded parliamentary inquiries and MP letterboxes with claims that, for example, Canadian evidence showed tobacco display bans “don’t work”.³⁸ These claims have been refuted by Canadian experts.³⁹

The TI commissioned a report from well known consultancy group Deloitte⁴⁰ threatening huge compliance costs for retailers of up to \$10,000 each to put tobacco displays out of sight. Professor Simon Chapman described the claims in the Deloitte’s report as having “more holes than a slab of Swiss cheese.”⁴¹ It is a well known “secret” that the TI subsidises the costs of display to maximise visibility and prime centre stage position in retail outlets.

34. Australian Government, Dept of PM and Cabinet at <http://lobbyists.pmc.gov.au/lobbyistsregister/index.cfm?event=wholsOnRegister> 35. ASH Australia has compiled a list from published sources of some tobacco linked personnel associated with Australia’s two major political parties at www.ashaust.org.au/lv4/TIpartyLinks.htm 36. Sunday Age, Melbourne 6/6/10 at www.theage.com.au 37. Australia, Department of Health and Ageing at www.health.gov.au/internet/main/publishing.nsf/Content/health-pubhlth-strateg-drugs-tobacco-ingredients.htm 38. e.g. Alliance of Australian Retailers at www.australianretailers.com.au/latestnews.html and NZ Association of Convenience Stores at www.nzacs.com/news/182 39. e.g. Coalition for Tobacco Reduction, Saskatchewan, Canada, submission to Scottish Parliament 6/4/09 at www.scottish.parliament.uk/S3/committees/hs/inquiries/TGPBill/documents/TGP25SaskatchewanCoalitionforTobaccoReduction.pdf 40. Deloitte for Australian Association of Convenience Stores (2009), Indicative regulatory cost analysis of proposed tobacco retail display ban for convenience store operators in New South Wales, Victoria and Western Australia at http://aacs.org.au/aacs/documents/AACS_Final_Report.pdf 41. Chapman S. (2010), “British American Tobacco report: more holes than a sieve” in Croakey 8/2/2010 at <http://blogs.crikey.com.au/croakey/2010/02/08/british-american-tobacco-report-more-holes-than-a-sieve/>

3. IDENTIFYING TI TACTICS CONTINUED

Business and investment links

Boost influence by a network of links with businesses

There is widespread inter-investment between tobacco and other companies. Millions of Australians invest in pension funds and many of these funds have major investments in tobacco companies. Fund managers have been criticised for being out of touch, after a survey of 1158 households found that most fund members opposed tobacco investments as unethical⁴². While some overseas funds are divesting tobacco shares on ethical grounds, the trend is yet to take off in Australia. However, the Australian Capital Territory (ACT) has adopted UN responsible investment principles and there has been debate on governments divesting in certain “unethical” industries.

“Astro-turfing”: using third parties

TI aim: Forge alliances to increase political clout and create impression of broad support

Wholly- or mostly-funded front groups

Fund trusts and other bodies to further TI aims

BATA founded and funds “Butt Free Australia (BFA)”⁴³ (formerly the “Butt Littering Trust”) that promotes tobacco-friendly “responsible disposal” programs in partnership with state and local governments. It has been used by BATA in campaigns against smokefree outdoor dining policies by local councils.⁴⁴ Although claiming to reduce butt litter, independent evidence does not support the BFA claims of achieving litter reduction.⁴⁵

Industry organisations

Fund associated industry groups opposing TC measures

Hospitality: Australian Hotels Association vs. smokefree hotels

BATA has been a sponsor of the AHA up to at least 2009, when it was a co-sponsor of the AHA’s Annual Convention⁴⁶ – an association criticised by the LHMU hospitality employees’ union as insensitive to the health harm they suffer from secondhand smoke exposure in smoking-permitted hotel working areas. The AHA has for many years acted to block, delay and undermine smokefree laws covering hotels, promoting discredited partial enclosure loopholes to allow smoking to continue, especially in areas close to gaming machines. Hotels and clubs have financial partnerships with the TI, especially BAT, in the provision of tobacco vending machines. Tobacco companies have been reported in the media as paying for the provision of smoking areas in licensed venues, contrary to workplace health and safety laws.

Retail: Alliance of Australian Retailers vs. plain packaging

See below under **Countering TI Tactics: Australian success stories - Mandating plain packaging**

Consultancies

Recruit “independent” experts critical of TC measures

The TI and its allies have paid “tame” scientists sympathetic to its interests, and high profile companies, such as PriceWaterhouse Coopers⁴⁷ and Deloittes⁴⁸ to produce reports for government and MPs, usually opposing tougher tobacco regulation. These reports, often criticised by academic researchers as lacking in evidence, are used to gain credibility and access to key decision-makers.

42. Walsh R et al (2008), “Australian pension funds and tobacco investments: promoting ill health and out of step with their members” at <http://heapro.oxfordjournals.org/cgi/content/abstract/23/1/35> 43. Butt Free Australia website www.butfree.org.au/ 44. ASH Australia media release 27/11/08 at www.ashaust.org.au/mediareleases/081127.htm with links to excerpts from BAT letter and ASH response 45. See NSW Dept of Environment, Extended Producer Responsibility report 2005-2006 p. 21: “impact of current activities funded by cigarette manufacturers has not delivered a reduction in butt littering.” 46. AHA website showing BAT sponsorship at www.aha.org.au/sponsors.html - viewed August 2010 47. BATA at [www.bata.com.au/group/sites/bat_7wykg8.nsf/vwPagesWebLive/DO7WZEX6/\\$FILE/medMD82D43K.pdf?openelement](http://www.bata.com.au/group/sites/bat_7wykg8.nsf/vwPagesWebLive/DO7WZEX6/$FILE/medMD82D43K.pdf?openelement) 48. Sydney Morning Herald report (23/5/09) at www.smh.com.au/national/tobacco-laws-are-too-costly-shopkeepers-20090523-bivj.html

Funding “think tanks”

Provide financial support to so-called “independent” influential commentators who will lend public support for TI positions

Both the Institute of Public Affairs (IPA)⁴⁹ and the Centre for Independent Studies (CIS)⁵⁰ have been aggressive opponents of tobacco control policies usually without disclosing their links to the TI. Reports confirm that both have accepted tobacco funding, and the IPA has had tobacco executives on its board. In recent times both have publicly thrown their support behind the TI in opposing tobacco tax increases and mandatory plain packaging.⁵¹

Intimidation

TI aim: Deter tobacco-free measures by threatening consequences and attacking opponents

Litigation and legal threats

Use the TI’s legal power to challenge, delay, weaken and undermine law; threaten legal action in order to harass and frighten opponents and/or decision-makers into opposing tobacco-free measures

As debate on mandatory plain packaging of tobacco intensified in Australia in early 2010, Philip Morris launched a single purpose website claiming plain packaging “infringes intellectual property rights” and is a “violation of trademark rights under international agreements.”⁵² Imperial Tobacco said it would “robustly challenge” the move and “will make every effort to protect its brands and associated intellectual property and including, if necessary, take legal action.”⁵³

The TI continues to use litigation as a means of furthering its interests and deterring those who would seek to make the industry accountable for its harms. Examples:

Delay of proceedings and destruction of evidence:

Rolah McCabe v British American Tobacco Australia Services Ltd

This case raised document destruction and routing of documents through lawyers for the purpose of “privileging” the documents.⁵⁶ The case began in 2002 and initially Ms McCabe was awarded \$700,000 before the landmark ruling was overturned on appeal. Ms McCabe died of lung cancer in October 2002 and the case continues.

“Document Retention” Policies: (Re Mowbray) Brambles Australia Ltd v British American Tobacco Australia Services Ltd [2006] NSWDDT 15

This case raised systematic destruction, privileging or “warehousing” of documents (placement in third party hands to hinder their being subpoenaed as evidence) – all dressed up as innocent internal housekeeping. Justice Curtis in the Dust Diseases Tribunal ruled that that the “Policy” was in furtherance of a fraud. Types of documents in this case included scientific and internal reports that would be damaging to BATA domestically and internationally.

Denial of causation

The TI has long promoted controversy about health effects of both active and passive tobacco smoking and has provided other possible explanations to avoid liability. Studies funded by tobacco companies have helped to downplay or create doubt around tobacco health harm without actually denying it.⁵⁷ Recent research has questioned TI interference in heart research (the Framingham Heart Study)⁵⁸ and in helping to slant research findings on tobacco’s link with Alzheimer’s Disease.⁵⁹

Creating a deadly cycle

The TI emphasises the idea of “free choice” in order to sell their products to adults. Many smokers use “free choice” as a justification for their decision to

49. Institute of Public Affairs at <http://ipa.org.au> 50. Centre for Independent Studies at www.cis.org.au 51. ABC-TV, Media Watch 15/5/10, transcript at www.abc.net.au/mediawatch/transcripts/s2895480.htm 52. PMI, Plain Packaging of Tobacco Products website at www.plain-packaging.com/TrademarkRights viewed July 2010

53. Imperial Tobacco news release “Imperial Tobacco to defend its trademarks”, 29/4/10. See below, Countering TI tactics: Success story 2 for more detail.

56. www.tobacco.org/articles/lawsuit/mccabe/

3. IDENTIFYING TI TACTICS CONTINUED

smoke, despite the evidence for nicotine dependency normally starting in teenage years.⁶⁰ However, to deter legal actions, the TI uses “free choice” arguments to absolve itself of liability and argues that smokers can quit if they have the “necessary motivation” and “self belief”.⁶¹

Attempt to influence legal system: *Laurie v British American Tobacco 2009*⁶²

A court has found that BAT sought to “manipulate” the legal system by trying to have a judge removed from a case. The judge in question had previously made a pre-trial finding of dishonesty by BAT for concealing why it destroyed documents about the toxicity of its products.⁶³ The NSW Supreme Court of Appeal denied this challenge, Justice Basten finding that [For BATA to demand the disqualification of the judge in the case being appealed] “tends to demonstrate lack of faith in the proper administration of justice... there is a real risk that [BATA] is seen to be manipulating the system... [to allow] such a result would undoubtedly undermine public confidence in the administration of justice.”

Economic threats

Use the TI’s economic power to harass and frighten opponents, businesses and/or decision-makers into opposing tobacco-free measures

A well-known TI tactic is to claim “doom and gloom” - that tobacco control policies would lead to job losses and a loss of economic “input”. These economic myths have been demolished by leading health economists in a detailed report showing how tobacco’s excise contribution is heavily outweighed by a \$31 billion-a-year drain on the Australian economy in health and other social costs. The report points out that “tobacco industry funded studies fail to take into account... that money saved by quitting or reducing will be spent on other goods and services” and concludes that the industry’s “balance of payments effects are largely negative.”⁶⁴

Philip Morris’ “No Tax Hike” website 2010⁶⁵ complains “A further tax grab is unfair and excessive” and “will hit working families hardest.” This is not supported by evidence.⁶⁶ The TI lobbying campaign co-ordinated protest letters to MPs in a bid to stop the tax increase recommended by the Australian government’s National Preventative Health Taskforce and adopted in April 2010.⁶⁷ Philip Morris’ website on plain packaging of tobacco⁶⁸ claims it will cause “confusion”, “inconvenience” and “security problems”.

BATA sought to scare local councils and businesses in NSW with unsubstantiated threats of “unintended consequences” of smokefree dining policies. These included claims that these policies would hurt small business and be difficult to enforce.⁶⁹

60. More than 80% of smokers become addicted to nicotine as teenagers according to the Australian Institute for Health and Welfare National Drug Strategy Household Survey (2004) at www.aihw.gov.au/publications/index.cfm/title/10122 61. BAT website at www.bat.com/group/sites/uk__3mnfen.nsf/vwPagesWebLive/DO53DEUE?opendocument&SKN=1 62. NSW Court of Appeal decision 17/12/09 in *British American Tobacco Australia Services Ltd vs Laurie & Ors* (2009) NSWCA 414, par 140 at <http://lawlink.nsw.gov.au/scjudgetments/2009nswca.nsf/09da2a0a2a27441dca2570e6001e144d/4ec7f7438a5c4663ca25768d00096c05?OpenDocument> 63. Sydney Morning Herald report at www.smh.com.au/business/cancer-case-judge-stays-20091221-la1n.html 64. Collins and Lapsley/ NDS report (2008), op.cit. 65. PMI, www.notaxhike.com.au viewed July 2010 66. Collins and Lapsley (2008, op. cit. and Tobacco Free Center, US at http://tobaccofreecenter.org/files/pdfs/en/TAX_countering_industry_claims_en.pdf 67. See ASH Australia at www.ashaust.org.au/lv3/action_funding.htm#TOBACCO_TAX 68. PMI, www.plain-packaging.com/ viewed July 2010 69. ASH Australia media release at www.ashaust.org.au/mediareleases/081127.htm and excerpt from BATA letter to Wagga Wagga (NSW) councillors with ASH Australia responses at www.ashaust.org.au/lv4/BATrebutWagga08.doc

Illicit trade threats

Seek to associate measures including tax rises, advertising (including display) bans and mandatory plain packaging, with increased illicit trade

Beating up the black market



Illicit tobacco haul (Australia Customs Service photo)

The TI has repeatedly raised illicit trade as an argument against tobacco reduction measures – including tax increases, retail display bans, and mandatory plain packaging. These arguments routinely seek common ground with government concerns by exaggerating the level of illicit tobacco trade in Australia. They also distract from expert recommendations for improved enforcement to reduce illicit trade.

For example, a 2010 report by PriceWaterhouse Coopers commissioned by BATA⁷⁰ claimed Australia's illicit tobacco sales were in the order of 12% of total tobacco sales, costing \$624m in lost tax revenue. However, analysis of the report⁷¹ raises serious methodological flaws, such as failing to give a sample size or to define how the study defined users of unbranded tobacco. The analysis shows the report's figure for illicit as a proportion of all tobacco trade is inconsistent with National Drug Survey findings and would give Australia a bigger proportion of illicit sales than the least-regulated countries in Africa and Eastern Europe. A worldwide

report on international tobacco smuggling puts the Australian figure at around 6.4%.⁷² The PwC/BATA report's figure of \$624m in lost revenue⁷³ is also regarded as an exaggeration - based on a consumption model on the usage patterns of illegal tobacco consumers, the preferred method of PwC because it captures purchases and use of all types of illegal tobacco. Statistics on smuggled tobacco seizures from the Australian Customs and Border Protection Service do not support this claim.

The Customs Service 2008-2009 report shows around 169 tonnes of tobacco leaf and 50 million cigarette sticks with potential revenue of \$70.5m were seized.⁷⁴ A 2010 government media release notes that over the past three years Customs has seized 715 tonnes of tobacco, preventing excise evasion of around \$277m⁷⁵.

Philip Morris' website on plain packaging⁷⁶ also claims it "will increase illicit trade", and tobacco-related think tanks have made similar claims.

In countering these TI tactics, an empirical analysis of global cigarette smuggling confirmed that the most effective way to increase government revenues while decreasing global consumption and smuggling of tobacco is to increase tobacco tax and improve anti-smuggling law enforcement.⁷⁷

70. PriceWaterhouse Coopers report for BATA (2010), "Australia's Illegal Tobacco Market: Counting the Cost of Australia's Black Market" at [www.bata.com.au/group/sites/bat_7wykg8.nsf/vwPagesWebLive/DO7WZEX6/\\$FILE/medMD82D43K.pdf?openelement](http://www.bata.com.au/group/sites/bat_7wykg8.nsf/vwPagesWebLive/DO7WZEX6/$FILE/medMD82D43K.pdf?openelement) 71. Chapman S. (2010), "British American Tobacco report: more holes than a sieve", op. cit.
72. Campaign for Tobacco-free Kids at http://tobaccofreecenter.org/files/pdfs/en/LLL_global_cig_trade_full_en.pdf 73. BATA at [www.bata.com.au/group/sites/bat_7wykg8.nsf/vwPagesWebLive/DO7WZEX6/\\$FILE/medMD82D43K.pdf?openelement](http://www.bata.com.au/group/sites/bat_7wykg8.nsf/vwPagesWebLive/DO7WZEX6/$FILE/medMD82D43K.pdf?openelement) -p.8 74. Australian Customs and Border Protection Service at www.customs.gov.au/webdata/minisites/annual-report0809/pages/page117.html 75. Australian Customs and Border Protection Service media release at www.customs.gov.au/site/103023mediarelease.asp
76. PMI, www.plain-packaging.com/ viewed July 2010 77. Yürekli, A. and Sayginsoy, Ö. (2010) 'Worldwide organized cigarette smuggling: an empirical analysis', *Applied Economics*, 42: 5, 545 — 561, First published 10 June 2008 (iFirst).

3. IDENTIFYING TI TACTICS CONTINUED

International treaties and other instruments

Use trade agreements to force entry into closed markets; challenge legality of proposed tobacco control laws.

Philip Morris's "Plain Packaging of Tobacco Products" website claims plain packaging is a "violation of trademark rights under international agreements⁷⁸." This claim has been dismissed by legal experts on trademark law⁷⁹; but the TI and its allies continue to put it forward.

Article 8 of Trade-Related Aspects of Intellectual Property Rights (TRIPS) says that members may "adopt measures necessary to protect public health and nutrition". Given this provision, the TI was advised in 1993 by their consultant⁸⁰ to steer away from TRIPS when seeking grounds to object to plain packaging, and instead to focus their argument on the World Intellectual Property Organisation (WIPO), which does not have the same provision⁸¹. However, while there is a right to register a trade mark, this does not grant the right to use the trademark, or object to regulation on its use. As early as 1995, interpretation was sought World Health Organization as to whether restriction of trademarks was a violation of rights. The TI was disappointed to find that international agreements do not prevent limitation of their trademark by authorities⁸².

Intelligence gathering

Monitor trends, opponents; harass officials

The TI uses Freedom of Information Laws to gather intelligence on policies that health advocates and policy makers are supporting or proposing. They have been known to flood a Health Department with applications that tie up the limited legal resources of the health authority for months. Such aggressive actions, although legal, can be an act of intimidation that may deter health agencies from engaging in tobacco control measures in the future.

Tobacco Advertising, Promotion and Sponsorship (TAPS): hooking and hiding

TI aim: Continue promoting tobacco products by skirting restrictions, hiding and downplaying harms; find new ways "under the radar" to associate product with glamour, pop culture, sport – to attract "new smokers" (mainly children)

TI marketing is still big business. Although Australia has had a Tobacco Advertising Prohibition Act since 1992, the TI has exploited loopholes and found many new creative ways of promoting tobacco products "under the radar". A major international review of evidence⁸³ shows partial advertising bans are not very effective, as they lead to a shift to other forms of TAPS that are yet to be banned.

The TI continues to defend TAPS and oppose its control – using many of the tactics outlined above in **Identifying TI Tactics**.

Some of the major myths put forward by the TI against measures to control TAPS – such as retail display bans - include:

- "It will hurt small business and cost jobs"
- "It's unnecessary"
- "It doesn't help reduce smoking"
- "It's an attack on freedom and choice of a legal product"
- "Tobacco is a legal product"
- "It will endanger/inconvenience staff"
- "It will inconvenience consumers"
- "It will boost illicit trade"

These arguments need to be countered by advocates using the evidence⁸⁴ and as part of communication strategies targeting politicians who are lobbied by the TI on a regular basis.

As conventional forms of TAPS have been banned, the TI focus has shifted towards point of sale promotions, internet promotion and innovative packaging. Every few weeks, a new packaging design or brand hits the shelves and retailers are primed by expert sales staff on how to maximise tobacco sales using some or all of the tactics below.

78. PMI, www.plain-packaging.com/TrademarkRights viewed 24/6/10 79. For example, see Prof Mark Davison (Monash University) presentation 2010 at <http://vimeo.com/12108576?source=cmailer> and Freeman B et al (2007), The case for plain packaging of tobacco products at www.ashaust.org.au/pdfs/GenerPackCase07.pdf 80. John Luik letter to Rothmans (31 Dec 1993) <http://legacy.library.ucsf.edu/tid/dyd28a99/pdf> 81. Physicians for Smoke-Free Canada (2009), Packaging Phoney Intellectual Property Claims at www.aph.gov.au/senate/committee/clac_ctte/plain_tobacco_packaging_09/submissions/Sub23a.pdf, 12 - viewed Aug. 2010 82. Extract of letter from Director-General of WIPO to Director-General of the World Health Organization 1995 – see www.globalink.org/tobacco/docs/eu-docs/9802faq.html 83. National Cancer Institute, US (2008), The role of media in promoting and reducing tobacco use at <http://cancercontrol.cancer.gov/tcrb/monographs/19/index.html> 84. e.g. Protecting Children from Tobacco factsheet (2010), Top 10 retailer myths against out-of-sight tobacco at www.ashaust.org.au/lv4/POSretailclaims.doc

3. IDENTIFYING TI TACTICS CONTINUED

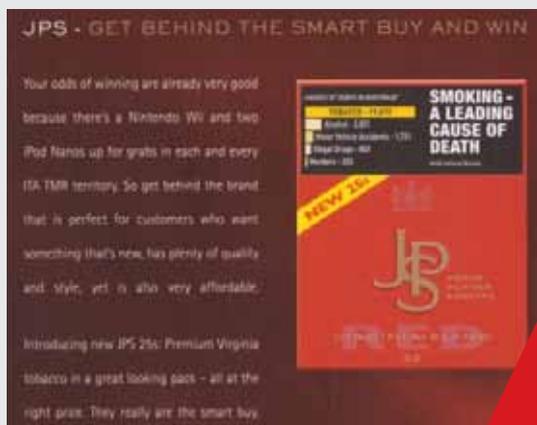
Point of Sale

Advertise and promote tobacco products, including to potential “new smokers” (mostly children)

In-store promotions are a key site for tobacco advertising and although all jurisdictions in Australia have set deadlines for “out of sight” tobacco displays, tobacco retailers successfully lobbied for extensions of time for specialist tobacconists⁸⁵.

Other effective in-store promotions that have not yet been banned include price discounting, promotions to encourage retailers to sell more tobacco and use of 2-pack and 4-pack sleeves as discount incentives. According to retail informants, these discount promotions “are walking out the door” as the recent 25% tobacco excise increase made tobacco products less affordable.

“Pushing to the pushers”: prize incentives to retailers to aggressively promote tobacco



“Pushing to the pushers”: tobacco prize promotion to retailers, 2009

Sport, entertainment and fashion promotion

Associate tobacco with youth, celebrity, glamour, success.

Tobacco sponsorship of sport is banned in Australia, but exemptions persist for “incidental” advertising. Marlboro-sponsored MotoGP motorcycle racing is the notable repeat offender.⁸⁶

Entertainment and youth music events have been a major TI target. After advocates exposed TI-sponsored smoking tents at the “Big Day Out” state ministers intervened to ban sales from temporary structures in some jurisdictions. Recently, ASH used a Facebook campaign to support international calls for American Idol singer Kelly Clarkson to dump tobacco sponsorship of a concert in Indonesia.⁸⁷

Imperial Tobacco wins the prize for interfering in fashion promotion - after it paid for its Stuyvesant brand to be stocked in upmarket fashion and hairstyle outlets in 2008. After objections and adverse publicity, the promotion was pulled.⁸⁸

Internet

Avoid advertising restrictions, continue to promote - especially to youth

There are several online cheap tobacco sales sites⁸⁹ that remain unregulated although the Australian Government has promised to amend the Tobacco Advertising Prohibition Act 1992 (TAP Act) in 2010 to clarify that advertisements published via the internet are prohibited by the TAP Act and to regulate retail sales on the internet on the same basis as other retail sales.

BAT employees have been exposed recently for energetically promoting BAT and BAT brands on Facebook through joining and administrating groups, joining pages as fans and posting photographs of BAT events, products and promotional items. The TI is increasingly turning to online networks such as Facebook, Twitter and MySpace to promote their products in violation of the FCTC.⁹⁰

85. See above, Identifying TI tactics 86. See below, Countering TI Tactics: success stories (5)

87. Summary in ASH Australia media release 23/4/10 at www.ashaust.org.au/mediareleases/100423.htm

88. Sunday Mail, Adelaide, 14/12/08; pictures at ASH Australia, www.ashaust.org.au/lv4/MarketingPloys.htm under “Putting cigs in the ‘hip’ pocket”

89. e.g. Cheap Cigarettes Australia at www.cheapcigarettes.com.au - viewed September 2010

90. Freeman B, Chapman S (2010), “British American Tobacco on Facebook: undermining...the FCTC” in Tobacco Control at <http://tobaccocontrol.bmj.com/content/early/2010/04/14/tc.2009.032847.abstract>

3. IDENTIFYING TI TACTICS CONTINUED

Films, DVD, computer games

Avoid advertising restrictions, continue to promote - especially to youth

Tobacco use continues at levels much higher than real life in youth-rated films. Industry documents reveal how the TI has used the film industry to glamourise smoking and exploit product placement. A worldwide research review⁹¹ has found smoking depiction is “pervasive” and “indicates a causal relationship between exposure to depictions of smoking in movies and youth smoking initiation.” Health groups have responded by developing counter-strategies - including screening of anti-smoking ads before films depicting smoking, and a requirement that films certify that there have been no TI payoffs.⁹²

Computer games are very popular with young audiences and are therefore potential target for TI interference - as illustrated below by a SIMS game where children can create their own smoking character.



Make your own smoker:

SIMS computer game⁹³ allows children to create this cool young smoking rebel

Packaging/design

Use tobacco packet as “silent salesman” to encourage purchase and re-purchase

The TI’s marketing experts almost monthly make creative and appealing changes to pack designs to attract new users and keep existing customers hooked. As displays move out of sight and packaging becomes less visible, retail industry “insider” sources of information on pack developments assume greater importance. Other sources can include TI and marketing websites, and observational reports from advocates. Some recent examples are shown following.⁹⁴

91. National Cancer Institute, US (2008), The role of media in promoting and reducing tobacco use at <http://cancercontrol.cancer.gov/tcrb/monographs/19/docs/M19MajorConclusions-FactSheet.pdf> 92. Cancer Council NSW webpage “Smoking in Movies” at www.cancercouncil.com.au/editorial.asp?pageid=1409 93. The SIMS at <http://thesims.ea.com/> 94. ASH Australia “Packwatch” at www.ashaust.org.au/lv4/MarketingPloys.htm has latest examples

3. IDENTIFYING TI TACTICS CONTINUED



Muscular bulk promotion

Macho speed-associated packaging for 200-cigarette (10x20) cartons.

NSW, August 2010



Rich, Smooth advertising

'Limited edition' packs with creative descriptors.

NSW, August 2010



Inside Story

Companies using every nook and cranny of the packet for advertising slogans and catchphrases

Australia, August 2010



Dinky-di disease

These 'True (blue) Aussie originals' continue tobacco's long tradition of exploiting nationalism. The industry 'truly' cares about Australia - enough to kill 15,000 Aussies a year and suck \$31b from our economy.

NSW, July 2010



Sun ripened cancer

Pall Mall has issued these cheerful, healthy looking packs.

Sydney, May 2010



Groovy horses target youth

'Limited edition' packs featuring horses playing musical instruments with the slogan 'Feel the Groove'.

Sydney 2009

4. MONITORING TI TACTICS

Once TI tactics are identified, monitoring on a regular basis is the next step as tactics change or increase in intensity depending on the TI's goal. TI tactics can be aimed at promoting tobacco or may be part of a strategy to weaken a government plan to improve or amend tobacco control legislation. TI interference can occur at several stages and often in the lead up to the development and approval of legislation. To effectively counter tactics, health advocates need to know what, where and how the tactics are occurring.

Monthly monitoring reports can be prepared by a lead agency for distribution to stakeholders. We know from experience that monitoring is often a 'hit and miss' activity but if conducted in a systematic way, advocacy strategies can be improved. Monitoring is also an FCTC requirement that helps to fulfil Partners' obligations under Articles 5.3, 11 and 13.

“It is said that if you know your enemies and know yourself, you will not be imperilled in a hundred battles”
– Sun Tzu, *The Art of War*

A model for reporting TI tactics

ASH's monthly monitoring report is an example of systematic monitoring of the TI tactics we know about – as many will be hidden. Reports include type of tactic, source of information, activities and counter strategies. These monthly reports are shared with stakeholders to improve advocacy strategies. A shorter version that does not include counter actions is available online to raise general public awareness of TI interference in health policies.⁹⁵

95. ASH Australia, www.ashaust.org.au/lv3/action_accountability.htm under “What are they up to lately?”

Tobacco industry tactics and interference: MONITORING REPORT

JURISDICTION	Australia (national)	TEL	+61 (0)2 93341876
PERIOD	1-31 August 2010		Mobile +61 (0)417227879
REPORTER	Action on Smoking and Health (ASH) Australia	EMAIL	annej@ashaust.org.au
ADDRESS	153 Dowling St, Woolloomooloo 2011	WEBSITE	www.ashaust.org.au

REINVENTING THE IMAGE	AIM:	ENHANCE INDUSTRY'S IMAGE AS IMPROVED, RESPECTABLE
TACTIC - TI goal	SOURCE OF INFORMATION	ACTIVITIES – WHAT, WHEN, HOW NEW/CHANGED ACTIVITIES
Public relations <i>Mould public opinion and use media to promote TI positions</i>	TI media releases, submissions, annual returns at Big 3 sites: www.bata.com.au/ ; www.pmi.com/ ; www.imperial-tobacco.com/ Financial reports on latest profits, media announcements, submissions to government. BATA provides more information than other two companies	Active engagement and \$5m funding of retailer pre-election campaign against plain packs (see Front Groups below). PMI responds to the study Connecting world youth with tobacco brands: YouTube and the internet policy vacuum on Web 2.0, August 26, 2010: PMI:... does not market or promote tobacco products on YouTube nor do we condone or in any way authorize the posting of materials related to our brands. We have asked YouTube several times to remove content related to our products and will contact YouTube again following the release of the study Imperial: ...we have made cigarette share gains with JPS in Australia. We believe [plain packaging] measures of this kind are unreasonable and unjustified and we will robustly contest them. BAT online business principles and human rights position at www.bat.com - claims to adhere to an International Marketing Standard (IMS): Central to the IMS is our long held commitment to ensuring that no marketing activity is directed at, or particularly appeals to, youths.
	Financial Reports	BATA latest report with transcript mentions Australia at http://sites.cantos.com/british-american-tobacco/10/interim-results-2010/public/ On plain packaging: We disagree with regulation that we think is disproportionate, that probably won't achieve the health gains... and could encourage illicit trade and dampen competition....And we do have concern that it might lead to increased illicit trade in Australia, which up to now has been pretty good.
Corporate Social Responsibility (CSR) <i>Reinvent image, improve reputation and buy new friends</i>	TI websites above; charities	BATA donates to charities (Mission Aust, Conservation Volunteers Aust, Surf Life Saver Rescue Helicopter, Lifeline, Northcott, Guide Dogs NSW/ACT, Barnardos, ACT for Kids) and Victorian bushfire disaster relief PM donates to three charities (Aussie Helpers, Red Cross Appeal, Habitat for Humanity Aust SA). and at global level supports poverty and disaster relief, environmental projects, domestic violence Imperial donates to Freedom from Hunger
"Youth smoking prevention" <i>Depict smoking as an adult choice and appear to be protecting children from tobacco</i>	TI websites above BATA claims to follows International Marketing Standards - ensuring no marketing activity aimed at youths	BATA says regulators could achieve public health gains through highly targeted education campaigns aimed specifically at youth via their mediums, in appealing ways (2009 media, www.bata.com.au). Imperial says most campaigns involve working with retailers to train them on min age of sales, providing material to ensure min age clearly displayed PMI says it supports regulations that will help prevent youth smoking - min age laws, licensing retailers, retail access laws; and funding educational programs
Recruiting strategies <i>Enhance TI image as place for talented individuals</i>	Online TI website recruitment (plus graduate career events in capital cities, full page media ads at different times of year)	BAT recruiting for R&D in UK at www.bat-science.com/ PMI recruiting sales mgs in Australia at www.pmi.com
Funding research incl. universities <i>Enhance image of respectability, create doubt over health evidence</i>	University policies, proceedings – some online; direct enquiry with unis	ASH survey of uni tobacco policies 2009 at www.ashaust.org.au/lv4/campus.htm

Tobacco industry tactics and interference: MONITORING REPORT

JURISDICTION	Australia (national)	TEL	+61 (0)2 93341876
PERIOD	1-31 August 2010		Mobile +61 (0)417227879
REPORTER	Action on Smoking and Health (ASH) Australia	EMAIL	annej@ashaust.org.au
ADDRESS	153 Dowling St, Woolloomooloo 2011	WEBSITE	www.ashaust.org.au

FRIENDS IN HIGH PLACES AIM: BOOST POLITICAL INFLUENCE TO BLOCK, DELAY, WEAKEN, UNDERMINE TC MEASURES

TACTIC - <i>Tl goal</i>	SOURCE OF INFORMATION	ACTIVITIES – WHAT, WHEN, HOW NEW/CHANGED ACTIVITIES
Political support and funding <i>Donate to gain favours from politicians</i>	Refer to links at www.democracy4sale.org/	Current donations for 2010 election not available until Feb 2011 for donations before June 2010; donation disclosures July-Aug not public until Feb 2012. Fed Liberal leader Tony Abbott on ABCTV “Q&A” 16/8/10 defended Liberals accepting TI donations since tobacco was “legal”. Abbott also declined to commit to July 2012 deadline for plain packaging.
Lobbying <i>Make deals and influence the political process</i>	Former political advisers working for TI (and lobby groups used by TI listed at www.ashaust.org.au under Industry watch	BATA made 11 submissions to govt inquiries in 2009 at www.bata.com.au Nuance Group chaired by Nick Greiner (ex-BATA chair) owns duty free outlets at www.thenuancegroup.com/ Reports of lobbying of NSW Ministers (2010) for POS display ban concessions.
Voluntary agreements <i>Promote weaker agreements instead of legislation</i>	TI promotes their view of regulation on TI websites	DOHA tender process for options on regulation under review as terminated due to no suitable agency
False claims of “failure” of TC policy overseas <i>Deter TC reforms by portraying as unworkable, damaging, ineffective</i>	Online submissions to Govt Inquiries on TI websites; and/or in list of subs to Parliamentary Inquiry; media releases, TI websites See also Front Groups, Think Tanks below	30+ anti plain pack submissions to Senate Inquiry at www.aph.gov.au/senate/committee/clac_ctte/plain_tobacco_packaging_09/submissions/sublist.htm More TI subs: to PHT consultation 2009 at www.health.gov.au/internet/preventivehealth/publishing.nsf/Content/submissions-11p and to NSW Inquiry into smoking in 2006 www.parliament.nsw.gov.au/prod/parlment/committee.nsf/V3ListSubmissions?open&ParentUNID=2F32130E883C2232CA25712C001925B8

Tobacco industry tactics and interference: MONITORING REPORT

JURISDICTION	Australia (national)	TEL	+61 (0)2 93341876
PERIOD	1-31 August 2010		Mobile +61 (0)417227879
REPORTER	Action on Smoking and Health (ASH) Australia	EMAIL	annej@ashaust.org.au
ADDRESS	153 Dowling St, Woolloomooloo 2011	WEBSITE	www.ashaust.org.au

“ASTRO-TURFING”	AIM	FORGE ALLIANCES, INCREASE POLITICAL CLOUT, CREATE IMAGE OF BROAD SUPPORT
TACTIC - Tl goal	SOURCE OF INFORMATION	ACTIVITIES – WHAT, WHEN, HOW NEW/CHANGED ACTIVITIES
<p>Front groups and alliances (fully/partly funded)</p> <p><i>Mobilise partners with funds to influence and delay legislation/ regulation</i></p>	<p>Butt Free Australia www.buttfree.org.au</p> <p>- formerly “Butt Littering Trust”</p> <p>Australian Hotels Assoc website, annual returns</p> <p>Tobacco retailers and retailer groups</p>	<p>BFA founded and funded by BATA, partners with local govt and undermines smokefree measures.</p> <p>BFA “No Butts on Our Beach” campaign, Airlie Beach Qld, launched 15/8/10 at www.buttfree.org.au/images/stories/7.2_Butt_Free_Bulletin/no-butts-on-beach.jpg; “Not a good look” campaign with Keep Aust Beautiful Week 23-29/8/10 www.buttfree.org.au/images/stories/4.3.1_Project_Archives/Butt_Free_City/buttfreecity2010_nationalreport_final.pdf - both encouraging “responsible disposal”</p> <p>BATA longtime AHA sponsor e.g. annual convention 2009. AHA has strongly opposed smokefree laws.</p> <p>Australian Assoc of Convenience Stores (AACS), Nat Assoc of Tobacco Retailers (NATR), Nat Assoc of Retail Grocers Aust (NARGA), Aust Retailers Assoc (ARA), Alliance of Aust Retailers (AAR), Aust Newsagents’ Fed, Council of Small Business, Free Choice Stores, Master Grocers Aust, Tobacco Station Group, Independent Retailers Assoc, Retail Confectionery & Mixed Business Assoc, Service Station Assoc; supermarket chains (Coles, IGA)</p> <p>Aug 2010: AAR at www.australianretailers.com.au ran election-period mass media ads vs plain packs. Funded by \$5m from BAT, PMI & Imperial. Campaign chiefs reportedly included ex-Liberal figures. AAR had sole shareholder, address a one-bedroom flat. Saturation ads, media coverage, site above. Summary, counter actions: www.ashaust.org.au/lv3/action_plainpack.htm</p> <p>Woolworths and Coles withdrew from Alliance - see www.news.com.au/business/coles-pulls-out-of-pro-cigarette-campaign/story-e6frfm1i-1225903660384</p> <p>Campaign appeared in confusion with apparent “hacking” of AAR website – see report www.crikey.com.au/2010/08/30/smoking-kills-says-big-tobacco-on-hacked-plain-packaging-campaign-site/; but Liberal Party would not repudiate campaign or commit to plain pack policy</p>
<p>Consultancies, think tanks</p> <p><i>As above</i></p>	<p>Public Affairs Institute (right wing think tank) at www.ipa.org.au/;</p> <p>Consultants: Deloittes, PriceWaterhouse Coopers</p>	<p>PAI spokesperson Tim Wilson heads campaign against plain packaging with several articles, releases in media and online.</p> <p>See www.ashaust.org.au/lv3/action_plainpack.htm</p> <p>PwC staff reported as presenting paper on illicit tobacco to ATO’s Tobacco Forum below</p>
<p>Smokers rights groups</p> <p><i>Create image of grassroots support</i></p>	<p>www.smokersrights.com.au</p>	<p>One person website?</p>

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REPORTER	Action on Smoking and Health (ASH) Australia	EMAIL	annej@ashaust.org.au
ADDRESS	153 Dowling St, Woolloomooloo 2011	WEBSITE	www.ashaust.org.au

INTIMIDATION	AIM:	THREATEN NEGATIVE CONSEQUENCES, ATTACK OPPONENTS, DETER HEALTH MEASURES
TACTIC - TI goal	SOURCE OF INFORMATION	ACTIVITIES – WHAT, WHEN, HOW NEW/CHANGED ACTIVITIES
Litigation and legal threats <i>Challenge laws and intimidate opponents</i>	Legal threats vs plain packs by TI, fronts Fed Govt response to NPHT: leave options open on legal action against TI	See threats over intellectual property rights by IPA (above, Front Groups) at www.ipa.org.au Rolah McCabe ongoing – update at www.ashaust.org.au/lv3/Lv3resources_tobacco_litigation.htm
Economic threats <i>Gain concessions by playing on economic fears</i>	See above, Front Groups	Claims further regulation = confusion, inconvenience, security problems, lost revenue to illicit trade. August 2010 AAR campaign vs plain packs: See above, Front Groups Global group submissions v plain packs, 2010 Aust Senate Inquiry incl. American Legislative Exchange Council; Washington Legal Foundatn; Internat Trade Mark Assoc; Property Rights Council; US-ASEAN Business Council; Nat Foreign Trade Council; Internat & US Chambers of Commerce; Democracy Inst; Nat Assoc of Manufacturers; Economiesuisse; arm of Indonesian Trade Ministry
Illicit tobacco claims <i>Undermine tobacco tax policies and bans on TAPS</i>	Philip Morris websites www.plain-packaging.com/ www.notaxhike.com.au ATO TI Forum – minutes www.ato.gov.au/businesses/content.asp?doc=/content/00251020.htm&page=8&H8	Online campaign by Philip Morris and as issue for ATO's Tobacco Forum. 10/2/10 minutes of meeting not online till Aug - at www.ato.gov.au/businesses/content.asp?doc=/content/00251020.htm&page=1&H1 Refs in mins to members attending Asian Tax Forum (funding links to TI), expanding members to include state/territories and reports on illicit trade from TI consultant PwC
Intelligence gathering <i>Monitor trends, opponents; harass officials</i>	TI using FOI in 2009 to gather intelligence from health departments	TBC

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TAPS (TOBACCO ADVERTISING, PROMOTION, SPONSORSHIP) AIM: ATTRACT “NEW SMOKERS” (MAINLY CHILDREN), MAINTAIN CURRENT USE, ENCOURAGE RELAPSE; AVOID RESTRICTIONS, DOWNPLAY HARMS; GET “UNDER RADAR” TO ASSOCIATE WITH YOUTH, GLAMOUR, SUCCESS

TACTIC - <i>Tl goal</i>	SOURCE OF INFORMATION	ACTIVITIES – WHAT, WHEN, HOW NEW/CHANGED ACTIVITIES
POS discounting, retailer incentives <i>Encourage aggressive retail promotion</i>	Informants working in retail, trade magazines	Packs of 2, 4 discounted, “walking out the door”; Coles sells new range of cheap brands (Deal, Tradition, Ashford). All in colour-coded range of 3 implying light, med, strong. Possible increase in Chinese budget brands. Also retailer prize competitions for pushing tobacco. Tobacco Reporter (Aug) reports on Aust discounting for Winfield - supermarkets offer lowest price http://tobaccoreporter.com/home.php?id=498&art=3675
Sport, entertainment, fashion promotion <i>Associate with youth, celebrity, glamour, success</i>	Media, TC networks	Marlboro (PMI) sponsorship of Casey Stoner in MotoGP – still current 2010 and pics with logos occasionally appear in Aust newspapers; Marlboro logos appear in televised simulated Mark Webber “trial run” around computerised Monaco F1 GP circuit (2010) at http://media.smh.com.au/sport/sports-hq/webber-previews-monaco-grand-prix-1447224.html and www.youtube.com/watch?v=3Bl6snkUcgy
Internet <i>Avoid TAPS restrictions, continue to promote esp. to youth</i>	Tl sites above; several cheap cig sites still at www.cheapcigarettes.com.au ; www.cheap-cigarettes-here.com/ ; www.tobacco.net.au/	Lots of TAPS on popular social networking sites - continues to be used to promote tobacco brands and use (Freeman, Chapman).
Phone marketing <i>“Research”, push brand awareness</i>	Mostly from complaints	No current information
Films, DVD, computer games <i>Market esp. youth</i>	Research, complaints	Research: US Centres for Disease Control and Prevention released a report on smoking in films showing high level of smoking – reported in media PG-rated computer game SIMS shows character as smoker
Pack design, retail display <i>Use packet to advertise</i>	General observation of packets; informants in retail outlets	Needs frequent monitoring as old brands often updated/ relaunched regularly -e.g. Marlboro launched nationally 4/10, featured in Apr. ed Australian Bartender (distributed to 6000). June ed features Winfield “New Pack same taste”. Latest pack moves at www.ashaust.org.au/lv4/MarketingPloys.htm New packs including macho cartons, “rich/smooth” descriptors, inside-lid slogans
Print, radio, TV exemptions	Media observation	Tobacco advertising continues in limited edition and trade magazines as exempt under TAP Act.
Brand marketing, stretching, sharing	Media observation, TC networks	Davidoff advert for perfume in women's magazine at time of Davidoff Swiss Tennis Open.

5. EXPOSING TI TACTICS TO GOVERNMENT, PARTNERS AND THE PUBLIC

Monitoring reports need to be shared on a regular basis with stakeholders and policy makers. The reports can be used to raise awareness, provide evidence for briefings and the media and to better inform advocacy campaigns for preventing TI interference in health policies.

TI tactics can be assessed and reported to government inquiries, presented to inform legislative reviews and used in media releases to expose conduct. A version of a monitoring report can also be publicly available online to increase public awareness of TI interference in policies aimed at protecting children from tobacco and improving public health.

The monitoring of TI tactics can be used as an advocacy tool within a broader communication strategy in several ways:

1. To build capacity among partners and civil society to challenge the TI and prevent interference in health policies

- Via coalitions and alliances
- Via information networks

2. To generate media attention and alert the public to interference and need for change

By unpaid or earned media coverage including

- Media releases
- Media events with alerts
- Targeted media liaison
- Media interviews

By internet

- Organisation/campaign websites
 - Action email pages
 - Member updates
- Online networks and social networking sites

3. To mobilise Members of Parliament (MPs), advisers and policy makers in government by providing strong evidence on TI interference and the need to protect health policies

Position statements and Factsheets

Targeted position statements and two page factsheets can bring TI tactics to the attention of MPs and decision-makers in a way that allows them to quickly grasp the essence of a problem and take action to address it.⁹⁶

Letters, emails and face-to-face meetings

Writing directly to governments and their agencies and to MPs with requests for meetings with a delegation of up to three well briefed representatives can be an effective way of bringing TI tactics to their attention.⁹⁷

Submissions

Making submissions to government or parliamentary reviews of legislation is an important counter-strategy. Inclusion of monitored TI tactics can strengthen these submissions. The TI, including its related entities and individuals, frequently makes submissions to such reviews, often under the guise of “protecting small businesses” from “over-regulation”. Governments and parliaments must be shown that these views are not shared by the wider community and often include false claims. In some cases, a large number of individual submissions can have more impact than a single co-ordinated submission - though these are also effective if they can demonstrate a strong evidence base and a breadth of support beyond the public health groups.⁹⁸

96. ASH Australia, examples at www.ashaust.org.au/lv3/Lv3informationMPs.htm

97. ASH Australia, tips for writing action letters, and Australian MPs' contacts, at www.ashaust.org.au/lv3/Lv3services_action.htm

98. e.g. Protecting Children from Tobacco coalition - below, Challenging TI Tactics – three steps – alliances...

6. CHALLENGING TI TACTICS

Using the Framework Convention on Tobacco Control

The WHO FCTC's Article 5.3 and the Guidelines⁹⁹ developed to support Parties' implementation of Article 5.3 need to be applied to the TI, to those working on its behalf, and in all areas of policy related to tobacco control - not only to interactions between the TI and government health agencies, but also to TI interactions with other agencies such as those dealing with tax, trade, industry, youth, consumer protection or the environment.

The guidelines specify that governments should:

- **... be vigilant about industry tactics** that seek to obstruct, delay, or circumvent development and/or implementation of public health legislation. To avoid playing catch-up with the industry, governments should set up a systematic process of conducting TI surveillance to constantly monitor the industry's compliance with laws and FCTC requirements. Civil society should be recognised as a key partner in conducting TI surveillance. Governments should act on the evidence and not allow the TI to interfere in the implementation of strong and effective tobacco control measures.
- **... limit their interactions with the TI.** Governments should interact with the industry only when, and to the extent, strictly necessary to enable them to effectively regulate the TI and tobacco products. The industry should not be involved in the development of tobacco control measures.
- **... ensure transparency of interactions that do occur.** Where interactions with the TI are necessary for effective regulation, governments should ensure the transparency of such interactions, e.g. through public hearings and publicly available records (see example immediately below).
- **... not enter into any partnerships or non-enforceable agreements with the TI.** There should be no partnerships or non-enforceable agreements between governments and the TI, and no voluntary

codes/self-regulation as substitutes for legislation/regulation of the industry. Legal language should be tightened up to plug loopholes that may be exploited by the industry. The TI should not be involved in any youth, public education or similar initiatives.

In recognition of the guiding principles of Article 5.3, two Australian government authorities have improved transparency by posting meetings with the TI online:

- The Department of Health and Ageing lists most meeting dates, attendees, issues raised such as retail display bans, the FCTC and guidelines, price and plain packaging.¹⁰⁰
- The Australian Tax Office as the convener of the Tobacco Industry Forum lists attendees from the TI, Tax, Customs and Health. It provides summaries of minutes, updates and current issues including illicit trade.¹⁰¹

At least one Health Minister (the ACT) has a policy of not meeting with the TI, although they can make written submissions.¹⁰²

Since governments overall have been slow to take action, civil society needs to raise awareness by monitoring TI tactics to challenge the lack of transparency and highlight the need to limit interactions with the industry.

99. WHO, FCTC Art. 5.3 implementation guidelines at www.who.int/fctc/guidelines/article_5_3/en/index.html

100. Australia, Dept of Health and Ageing, www.health.gov.au/internet/main/publishing.nsf/Content/tobacco-conv

101. Australian Tax Office at www.ato.gov.au/businesses/content.asp?doc=/content/00251020.htm&page=8&H8

102. Gallagher, Katy MLA, Minister for Health ACT, letter to ASH Australia 14/6/09

6. CHALLENGING TI TACTICS CONTINUED

Three steps to winning political support

Public health advocacy is a skill that can be learned and used strategically to mobilise support for health policies with the potential to make smoking history¹⁰³. Although our resources are only a fraction of those the TI uses to block health policies, health groups have a strong history of working together with minimal resources to achieve common goals in tobacco control. In a nutshell, there are three important steps to consider in winning political support for tobacco control.

Step 1: Develop and strengthen tobacco control alliances, coalitions and networks

Health groups have developed wider coalitions involving other NGOs, some not specifically health-related, finding shared purposes and demonstrating broader community endorsement to win greater political support. These coalitions have included:

Protecting Children from Tobacco¹⁰⁴

Formed by ASH Australia in 2006, national media-advocacy coalition of 41 NGOs (with variants in individual Australian jurisdictions) representing health, medical, child welfare, parent/carer, teacher, disability, church, social equity, research and other interests. Co-ordinated by ASH, the coalition has campaigned extensively in all jurisdictions for:

- removing tobacco products from view in all retail outlets;
- ensuring that only adults are permitted to sell tobacco;
- implementing a comprehensive licensing scheme for tobacco sellers;
- banning the sale of tobacco products targeted at youth;
- banning the sale of tobacco from temporary outlets and vending machines;
- strengthening laws against the sale of tobacco to children and increasing penalties for breaking them;
- making cars carrying children smokefree by law; and
- making public places highly frequented by children, such as playgrounds, public swimming pools and food service areas, smokefree.

Many of these aims were achieved between 2006 and 2010 - for example, all jurisdictions legislated or committed to legislation to put tobacco out of sight in almost all retail outlets (some special tobacconists were partly exempted or were allowed longer deadlines); and to making cars carrying children smokefree. There were major advances in making child-accessible public places smokefree, by state, territory and local laws.¹⁰⁵

SmokeFree Australia¹⁰⁶

Initiated by ASH Australia in 2002 as six-member national coalition "SmokeFree '03", later renamed "SmokeFree Australia" and increasing to eleven NGOs – including health groups plus the Australian Council of Trade Unions and key trade unions. Co-ordinated by ASH, it has campaigned extensively in all jurisdictions for making all workplaces of whatever enclosure, especially drinking, eating, gambling and entertainment areas, 100% smokefree to protect people from secondhand smoke harm in their workplaces.

Between 2002 and 2010, all jurisdictions made totally enclosed areas of licensed venues smokefree by law, except for a number of gambling exemptions in some jurisdictions. Many government departments, authorities and private employers also made indoor and partly-enclosed areas smokefree. There were major advances in making partly-enclosed and outdoor workplaces smokefree, under state, territory and local laws.¹⁰⁷

Smoke Free Outdoor Areas Working Party (NSW)¹⁰⁸

This was formed in 2006 from a NSW TobNet (network of tobacco control professionals) workshop. This coalition of health and local government groups campaigned within NSW to encourage local councils to extend smokefree outdoor areas under council control – including alfresco dining areas, children's playgrounds, transport shelters, public swimming pools, beaches and waterways, and council structures and events. From 2006-2010, the number of councils adopting such policies increased significantly.¹⁰⁹

Step 2: Develop clear objectives and policy positions to ensure united front on tobacco issues

Health groups and advocates working in tobacco control have successfully collaborated in national committees of the Cancer Council Australia and

103. Chapman, S (2007), Public Health Advocacy and Tobacco Control: Making Smoking History – Wiley at <http://au.wiley.com/WileyCDA/WileyTitle/productCd-1405161639.html>

104. Protecting Children from Tobacco coalition webpages at www.ashaust.org.au/lv3/action_POS.htm

105. See below under Countering TI tactics: Australian success stories

106. SmokeFree Australia coalition webpages at www.ashaust.org.au/SF'03

107. Heart Foundation, report and resources at www.heartfoundation.org.au/Healthy_Living/Smoking/Prevention_Activities/Smoke_Free_Outdoor_Areas/Pages/default.aspx

108. Smoke Free Outdoor Areas Working Party activities and resources at www.ashaust.org.au/lv3/lv3informa-tionLG.htm

109. See below under Countering TI tactics: Australian success stories

6. CHALLENGING TI TACTICS CONTINUED

Heart Foundation to reach joint positions on the rationale and how best to achieve for example, plain packaging and tobacco tax increases for inclusion in budget submissions and advocacy campaigns. It is important for advocates to agree first before taking on opponents in a public arena.

Health groups and others in the tobacco control community (government advisers, universities and researchers) have developed close relationships using online communication networks such as the Tobacco Control Network managed by the Cancer Council Victoria to build capacity, share information and reach agreement on positions and strategies. In NSW, health groups, government health workers and researchers have met and communicated for several years under the “TobNet” network.

Step 3: Mobilise support through targeted advocacy and communication strategies

A key strategy of health groups and coalitions has been to attract “unpaid or earned media” by framing and distributing newsworthy releases and online resources on tobacco and health issues. Newsworthy stories can include the latest TI dirty tricks targeting youth, what the industry’s internal documents reveal about their tactics, new research on tobacco diseases and harm, and actions by health groups to counter TI tactics.¹¹⁰

Political advocacy¹¹¹ is about building support through a range of actions - including writing letters and seeking meetings with ministers, party leaders, parliamentary committees and potential champions who can help to win support for policy improvements. Political mapping is a useful tool - to identify the decision makers you need to reach as well as the strengths and weaknesses of your own team. Knowing the opposition and what the arguments will be are critical - so identifying TI tactics is an important step to take before fronting up to the door of politicians. Be aware that the TI will normally have door-knocked politicians and used experienced lobbyists and well-resourced front groups to put their case, probably long before health groups arrive at the doorstep.

Key advocacy challenges¹¹²

Some of the common challenges for successful advocacy include:

- Developing a shared advocacy plan with key partners;
- Remaining vigilant;
- Framing issues to resonate with journalists;
- Maintaining party-political neutrality; and
- Maximising impact of strategies on a limited budget.



Combination of advocacy strategies from **Advocacy in Action**¹¹³

110. See above, Exposing TI Tactics 111. See above, Exposing TI Tactics 112. See Public Health Advocacy Institute of Western Australia (2009), *Advocacy in Action: a toolkit for public health professionals* at [www.phaa.net.au/documents/100114PHAIAdvocac Toolkit%202ndedition.pdf](http://www.phaa.net.au/documents/100114PHAIAdvocacToolkit%202ndedition.pdf) 113. *Ibid.*

7. COUNTERING TI TACTICS: SUCCESS STORIES

Even though TI opposition is aggressive, well resourced and executed by highly paid executives and marketing experts, there are many success stories in tobacco control. Australia has a national jurisdiction plus eight sub-national jurisdictions (states and territories) with a history of incremental tobacco control legislation that often is approved in one jurisdiction and then spreads to others in a “domino effect” with further improvements over time. To date, no one jurisdiction has yet comprehensively banned TI tactics or TAPS, or implemented Article 5.3 Guidelines.

Getting tobacco out of sight in retail outlets or shops, below, is a good example of the benefits to be gained from the coordinated efforts and the “domino effect”.

Success story 1:

Getting tobacco out of sight in retail outlets¹¹⁴

The issue

Tobacco advertising at point of sale was identified in the 1990s as a very powerful form of advertising that attracted young people and weakened the resolve of smokers to quit. The TI used and funded tobacco retailers as the front line to aggressively oppose any restrictions at point of sale (POS), to falsely claim displays were not advertising and to expand the tobacco display area by increasing the number of variants for display. The expansion of advertising at POS followed soon after the banning of tobacco advertising from mainstream media of TV, Radio, print media and billboards.

The TI in its own documents admitted that the pack is a powerful “silent salesman” whose aim was “to stimulate trial purchase and re-purchase”.¹¹⁵ Health research¹¹⁶ showed that retail displays of tobacco products were having a major impact on youth attitudes to smoking and on undermining quit attempts.

Partners

A broad coalition¹¹⁷ of health, medical, parent, teacher, child welfare and protection, church, social equity and other NGOs were brought together by ASH Australia from 2007 onwards as the Protecting Children from Tobacco coalition. These and other allied groups in the various jurisdictions, as well as

academics and researchers, have been key players in advocating for these reforms.

Strategies

- The Protecting Children from Tobacco Coalition was formed with clear goals, responsibilities and a communication plan to raise public awareness and win political support.
- Media releases¹¹⁸ and advocacy kits were developed including factsheets,¹¹⁹ DVDs and photographs; key research papers were promoted and distributed.
- The coalition and its member bodies organised political advocacy including meetings with governments and MPs and their advisers – while retail display bans were opposed by persistent lobbying by tobacco companies and associated retailer groups.
- Several submissions to parliamentary committees and legislative reviews were coordinated and made available online.

Outcomes

All Australian states and territories have legislated for, or committed to legislate for, ending tobacco display in retail outlets by January 2012. Following successful lobbying by retailer groups, most governments caved in to the pressure and granted longer timeframes for, or provided exemptions for, specialist tobacconists. Details as at August 2010 are:

- ACT: IN FORCE in all shops except tobacconists (end-2009); tobacconists by end - 2010.
- NSW: IN FORCE in large shops (end-2009), smaller shops (July 2010); tobacconists by mid - 2013.
- WA: IN FORCE in all outlets (Sept. 2010) except one tobacconist, no tobacco visible outside shop.
- NT: all outlets by Jan. 2011 (legislation introduced).
- QLD: all outlets by mid-2011 (legislation pending).
- VIC: all outlets by Jan. 2011 except tobacconists and airport duty-frees (no

114. Protecting Children from Tobacco coalition – campaigns and resources at www.ashaust.org.au/lv3/action_POS.htm

115. BAT marketing guidelines (1979), p.11 at www.library.ucsf.edu/tobacco/batco/html/14100/14109

116. Relevant research updated at ASH Australia, Protecting Children from Tobacco webpage at www.ashaust.org.au/lv3/action_POS.htm

117. Op. cit. 118. e.g. ASH/PCT coalition, 21/7/08 re NSW developments at www.ashaust.org.au/mediareleases/080721.htm ; 18/3/08 re ACT developments at www.ashaust.org.au/mediareleases/080318.htm 119. ASH / PCT coalition factsheets at www.ashaust.org.au/lv3/action_POS.htm#RESOURCES

7. COUNTERING TI TACTICS: SUCCESS STORIES

deadline for these).

- TAS: all outlets by Feb. 2011 except small number of tobacconists (no deadline under review).
- SA: all outlets (possibly exempting tobacconists) by January 2012 (legislation pending).



The power of partner advocacy:

From this....

Supermarket NSW 2006 with wall of tobacco in full view

... to this!



NSW supermarket 2010 with tobacco out of sight

Success story 2:

Fighting off the Plain Pack Attack¹²⁰

The issue

The TI relies heavily on the pack as a powerful advertising tool for reinforcing product identity and image, targeting poor smokers, for example, in a different way from upmarket smokers. The overwhelming concern of the TI is that if plain packaging cannot be stopped in Australia, it will “domino” to the rest of the world and reduce industry profits in markets much larger than Australia’s three million smokers

Partners

Health groups including ASH, along with researchers¹²¹ and academics, collaborated for many years to get plain packaging onto the Australian political agenda as a key health reform. They recommended it to the National Preventative Health Taskforce which in turn recommended it to government. Key politicians including Health Minister Nicola Roxon were supportive, seeing its potential to contribute to the government’s national health goal of reducing chronic disease. Eight Australians of the Year later wrote a letter to political leaders¹²² defending the policy against TI attack and urging recommitment.

Strategies

- Communication strategy by health groups including letters to MPs, a united position statement, fact sheet and a kit on plain packaging, media releases/liaison including “Open Letter” by former Australians of the Year.
- Political advocacy both before the government decision and afterwards to defend it against TI-funded retailer group attack during the 2010 federal election campaign.
- Coordinated submissions and presentations by health groups to the National Preventative Health Taskforce round table forum with Health Minister.
- Countering the misleading TI-funded retailers’ attack with paid advertising and media comments.

120. More details: ASH webpage at www.ashaust.org.au/lv3/action_plainpack.htm and Cancer Council Australia at www.cancer.org.au/Newsmedia/Cigarette_plain_packaging_materials.htm

121. e.g. Freeman B et al (2007), The case for plain packaging of tobacco products, op. cit.

122. University of Sydney, Six Australians of the year media release 11/8/10 at <http://tobacco.health.usyd.edu.au/assets/pdfs/Australians-of-Year-Plain-Packs.pdf>

7. COUNTERING TI TACTICS: SUCCESS STORIES

Outcomes

In 2009 mandatory plain packaging of tobacco was recommended by the Australian Government's National Preventative Health Taskforce.¹²³ On April 29, 2010, the Australian government announced¹²⁴ that plain packaging of tobacco products would be mandatory, commencing in January 2012, to reach full implementation by July 1, 2012. Australia was the first country in the world to set such a deadline. Health groups hailed the decision as a major step in the fight against tobacco.¹²⁵



Health Minister Nicola Roxon and then Prime Minister Kevin Rudd announce the decision, 29/4/10

– and what the new packs should look like



The TI fought back with threats and a multi-million dollar media and lobbying campaign.¹²⁶ PMI's "Plain Packaging of Tobacco Products" website claimed plain packaging would be a "violation of trademark rights under international agreements."¹²⁷ This claim was dismissed by legal experts on trademark law,¹²⁸ and in writing fifteen years ago by international

123. National Preventative Health Taskforce (2009), Australia: the Healthiest Country by 2020, Chapter 3 on tobacco, op. cit. See Action Area 5, pp. 181-5

124. Prime Minister's media release 29/4/10 at <http://pmrudd.archive.dpnc.gov.au/node/6720> 125. ASH media release 29/4/10 at www.ashaust.org.au/mediareleases/100429.htm

126. See above, Identifying TI Tactics: Astro-turfing – Industry associations 127. PMI site www.plain-packaging.com/TrademarkRights viewed 24/6/10 128. e.g. see Prof Mark Davison (Monash University) presentation 2010 at <http://vimeo.com/12108576?source=cmail> and Freeman B et al (2007), The case for plain packaging of tobacco products at www.ashaust.org.au/pdfs/GenerPackCase07.pdf 129. Extract of letter from Director-General of WIPO to Director-General of the World Health Organization 1995 – see www.globalink.org/tobacco/docs/eu-docs/9802faq.html 130. Section 51 (xxxii) Australian Constitution: acquisition of property must be on "just terms" 131. For example, Commonwealth v Tasmania (1983) 158 CLR 1 (Tasmanian Dam Case) Deane J; Australian Tape Manufacturers Assn v Commonwealth (1993) 176 CLR 480; Mutual Pools & Staff Pty Ltd v Commonwealth (1994) 179 CLR 155; Newcrest Mining (WA) Ltd v Commonwealth (1997) 190 CLR 513; Nintendo Co Ltd v Centronic Systems Pty Ltd (1994) 181 CLR 284; Commonwealth v WMC Resources Ltd (1988) 194 CLR 1. 132. Sydney Morning Herald report 5/8/10 at news.smh.com.au/breaking-news-national/no-butts-on-tobacco-scare-campaign-20100804-11fdv.html 133. ASH webpage www.ashaust.org.au/lv3/action_plainpack.htm has summary of this campaign and the counter-campaign, with examples of ads and counter-ads.

agreement administrators, the World International Property Organization¹²⁹:

...countries party to the Paris Convention remain free to regulate the sale of certain types of goods and the fact that a mark has been registered for such goods does not give the right to the holder of the registration to be exempted from any limitation of using the mark which may be decided by the competent authority of the country where the mark is registered...

The TI argued that the government must compensate them for "acquisition" of their property "on just terms" according to the Australian Constitution¹³⁰; but numerous High Court judgments have confirmed that mere restraint in relation to property does not involve acquisition¹³¹, so the concept of "just terms" is not applicable.

In August 2010, in the leadup to the Australian Federal election, a hastily-formed front group called the Alliance of Australian Retailers (AAR) launched a media campaign against mandating plain packs – funded with \$5m from Philip Morris, BATA and Imperial. Health groups including ASH Australia, and six former Australians of the Year, urged major parties to repudiate the campaign and support the reform.¹³² While the ALP Government pledged to go ahead with the move if re-elected, the Liberal/National Coalition would only "consider" honouring the commitment.

The AAR campaign split the retailer groups, with major supermarkets Coles and Woolworths repudiating the campaign and the Australian Association of Convenience Stores withdrawing from it. Meanwhile health groups launched a counter-campaign under the banner "Guess who's pulling the strings?"¹³³



Health groups' counter-ad in Australian press, August 2010

7. COUNTERING TI TACTICS: SUCCESS STORIES

On August 21, 2010, the ALP was narrowly returned to government and remains committed to the 2012 plain packaging deadline. Amidst public outrage and calls for the Australian Consumer and Competition Commission to shut down the TI campaign as dishonest, TI documents leaked to the media revealed that Philip Morris is indeed “pulling the strings” and that a further \$4 million will be spent to try to stop the plain packaging legislation from being enacted when it goes before Federal Parliament.

Success story 3:

Breaking tobacco’s campus connections

The issue

The TI has for many years sought to boost its image and undermine independent research on tobacco by forging close associations with universities using research funding, personnel links, campus graduate recruiting and on-campus promotion.¹³⁴

Former BATA chairman Nick Greiner¹³⁵, ex-State Premier of NSW, was appointed in 2003 at the University of Sydney as inaugural Head of its Graduate School of Government, leading to strong protests.

In 2004, academics, students and health advocates joined forces and protested at graduate careers fairs - at Macquarie University, the University of New South Wales and Wollongong University - at which BATA was recruiting.

Partners

Supportive academics, university workplace safety staff, students, ASH and other health groups.

Strategies

- Public demonstrations and associated media against the Greiner appointment at the University of Sydney (2003). Opponents of the appointment argued that as a former tobacco chief his business credentials could not be separated from his financial relationship with an industry that for decades denied medical and scientific evidence and promoted products that killed people.
- Letters and other approaches to the University of Sydney Senate arguing for rejection of the Greiner appointment.
- Public demonstrations and associated media against TI on-campus recruitment (2004) featuring sympathetic academics and students and life-sized cigarette “Sigi Butt” satirising tobacco industry interference in educational institutions.
- Letters to various universities arguing against allowing tobacco companies’ involvement in on-campus recruitment events.
- ASH conducted two surveys of Australian university tobacco-related policies in 2007 and 2009, with results published¹³⁶, a media release¹³⁷ and certificates of achievement awarded to best-practice universities. Survey questions covered financial and personnel links with the TI; tobacco sales and promotion on-campus; smokefree areas; and smoking cessation assistance provided to staff and students. The surveys were conducted with the assistance of university student interns working at ASH. The second survey was sent to all Australian universities with a copy of ASH’s Guide for a Tobacco-free Campus, which was also published online¹³⁸ and sent to TAFE (Technical and Further Education) authorities.

134. See above, Identifying TI tactics 135. See above, Identifying TI Tactics: using prominent people

136. ASH Australia, university tobacco policy survey summary 2007 at www.ashaust.org.au/lv4/UniSurvey07.doc ;

2009 summary and table at www.ashaust.org.au/lv4/UniSurveySummary09.doc 137. ASH Australia media release www.ashaust.org.au/mediareleases/090811.htm

138. ASH Australia (2009), Guide for a Tobacco-free Campus at www.ashaust.org.au/pdfs/TFcampusGuideAus09.pdf

7. COUNTERING TI TACTICS: SUCCESS STORIES

Tobacco protesters tell BAT to butt out of uni

By LISA SEWELL

ANTI-SMOKING protesters called on corporate giant British American Tobacco to butt out of the University of Wollongong's careers fair yesterday.

The world's second-largest tobacco company was among more than 40 national and international organisations on campus to talk to students about their graduate recruitment programs.

Sigi Butt, the mascot for the national Action on Smoking and Health (ASH) group, joined protesters from the Illawarra Tobacco Control Coalition in asking students to boycott the company's stand.

The Illawarra group chairman and NSW Heart Foundation employee - Andy Marks said the company's presence at the fair did not send a positive message to students.

"We would encourage the university to follow the lead of several other universities and develop a policy which prevents organisations like British American Tobacco (BAT) from attending careers fairs or other

student events in the future," Mr Mark said.

"It sends the wrong message to students and it undermines the effort the health industry puts into encouraging people to stop smoking and the burden of disease and illness caused by tobacco."

NSW Cancer Council regional programs coordinator Noreen Byrne handed out information to students attending the fair.

"BAT is marketing a product that causes cancer and the deaths of over 19,000 Australians each year," she said.

ASH spokesman Stafford Sanders said the university should not be associated with a company that "not only has a record of selling a product which is deadly and addictive but a long history of downplaying the harm caused by the product".

BAT is one of five companies in the United States due to face court on allegations that they suppressed evidence on the addictive nature of nicotine, made false and misleading

statements about health risks, failed to warn consumers and targeted children.

A university spokesman said the tobacco giant had been a participant in its fair and those of other universities for some years now. "We justify BAT's presence on the basis that it is a legitimate company and that adult students are able to make their own career choices," he said.

University careers service manager Martin Smith said more than 1000 students attended the annual fair, now in its eighth year, which attracted national and international organisations.

"The fairs provide students with the opportunity to meet with employers and discuss how their discipline can be applied in the Australian workplace," he said.

Today, students will be able to talk to organisations from across the region at the Illawarra Graduate Careers Fair.



Illawarra Mercury report, 6 April 2004

Outcomes

- University of Sydney Senate voted not to endorse Greiner as head of the Graduate School of Government.¹³⁹
- Some universities changed their policies to prevent or limit tobacco industry involvement in campus careers events.
- Significant advances in university policies occurred between the two surveys in 2007 and 2009. By 2009 more than twenty universities had policies banning or limiting acceptance of research funding from tobacco companies, and many had extended their smokefree areas. Further reforms have followed since the 2009 survey including Macquarie University ending sales of tobacco on campus.

Success story 4:

Reduced fire risk (RFR) cigarettes mandated after decades of delay

The issue

Evidence was collected and published in Australia in 2003 showing that cigarette-caused fires were killing at least fourteen people a year and costing around \$80m in damage.¹⁴⁰ Lit cigarettes thrown from car windows start bushfires, and cigarettes also initiate fires in cars, homes and workplaces – causing more deaths.

From at least the 1980s, fire prevention in Australia had included standards covering the combustibility of various products.¹⁴¹ Smoking materials had long been identified by fire authorities as a major cause of fires, and penalties were imposed on discarding lit matches and butts.

However, tobacco manufacturers put chemicals in cigarette paper to make them smoulder longer. Cigarettes could easily be made more self-extinguishing by removing or reducing these chemicals. Tobacco companies have known for years that this was scientifically and commercially feasible but have covered it up.¹⁴²

As early as 1992, Philip Morris has expressed concern at the possible impact of RFR standards on costs and competitiveness. The tobacco industry lobbied against a sensible standard for Reduced Fire Risk (RFR)¹⁴³ cigarettes - raising bogus health concerns. RFR cigarette standards became law in Canada and several US states from 1980-2005.¹⁴⁴ This did not stop British American Tobacco telling a NSW Parliament tobacco inquiry in 2006 that such standards "don't work in the real world."¹⁴⁵

Partners

Academics and researchers; fire commissioners and authorities; some supportive politicians and advisers; ASH and other health advocates.

139. Sydney Morning Herald report 8/7/03 at www.smh.com.au/articles/2003/07/08/1057430182579.html 140. Chapman S and Balmain A (2004), "Time to legislate for fire-safe cigarettes in Australia" in MJA 181(6):292-293. This report was backed by Australia country and metropolitan fire commissioners and their brigades. 141. See detailed history and background on the RFR issue in Chapman & Balmain (2004), op. cit. 142. Gunja M et al (2002), "The case for fire safe cigarettes made through industry documents" in Tobacco Control 11: 346- 53; and more history of TI's opposition to RFR in Chapman & Balmain (2004), op. cit. 143. Sometimes referred to as Reduced Ignition Propensity (RIP) cigarettes. Another term used early in the debate, "fire-safe", has been rejected by experts - as no cigarette can be made fully fire-safe. 144. Coalition for Fire-safe Cigarettes at www.firesafecigarettes.org 145. BATA submission to NSW inquiry (2006) at p. 17, www.parliament.nsw.gov.au/prod/parliament/committee.nsf/0/2b14b998dda58536ca2571620017ecd2?FILE/Sub%2046%20BATA.pdf

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Strategies

The strategy to achieve a national RFR standard included:

- Using strategic, published research to highlight tobacco-caused fires, resulting deaths and damage.
- Advocacy by key advocates directed at Australian state and federal authorities to put the issue on their agenda.
- A published Open Letter from ASH and other health advocates, health and environment professionals and fire control officers.¹⁴⁶
- Continued follow up advocacy after adoption in principle to ensure satisfactory compliance deadlines.

Outcomes

A lengthy advocacy campaign over two decades finally won Australian government support to nationally mandate a standard banning high fire risk cigarettes. National government authority Standards Australia developed a draft standard for the testing of RFR cigarettes - requiring that 70% of each variety of cigarette must self-extinguish before burning their full length.

The Trade Practices (Consumer Product Safety Standard) (Reduced Fire Risk Cigarettes) Regulations 2008¹⁴⁷ came into operation on September 23, 2008 – covering performance, testing, packaging and marking requirements for cigarettes manufactured or imported into Australia from March 2010. The eighteen-month deadline given to comply was disappointing as there had been many examples of the TI making changes in shorter time frames, to suit their own marketing purposes. After the devastating Black Saturday bushfires in Victoria in February 2009, ASH and a coalition of 40 organisations called for the RFR standard to be fast-tracked - to come into effect from September 2009, before the next potentially disastrous fire season.¹⁴⁸ The government instead reduced the period during which suppliers of non-complying cigarettes could dispose of their stock.¹⁴⁹

On March 23, 2010, Australia's ban on importation and production of high fire risk cigarettes took effect, tobacco retailers having until September 23 to clear existing non-compliant stock.¹⁵⁰

New Zealand has now adopted the Australian standard.¹⁵¹

Success story 5:

Outing “high speed drug pushing” in motor sport

The issue

Tobacco sponsorship of sporting champions is a powerful form of advertising to recruit “new smokers” – the TI’s euphemism for mostly children. 35 million teenagers are already using tobacco worldwide; the TI has targeted young people for decades.

In Australia, mainstream media coverage of tobacco sponsorship of international sport has been banned since 2006; but some other countries hosting MotoGP motorcycle races are yet to close the powerful advertising loopholes, in line with FCTC commitments. As a result, tobacco sponsorship of some world champions continues to be accepted, broadcast and featured prominently in world media.

With a successful rider like Australia’s Casey Stoner carrying its logos on his bike and racing gear, Philip Morris International’s top brand Marlboro receives massive penetration of direct hits on target audiences of young people – estimated in the hundreds of millions. Even in countries where tobacco sponsorship is banned, “incidental” tobacco advertising is beamed in – for example, by satellite television - and generally seen by authorities as too difficult to stop. In Australia, images of former Young Australian of the Year Stoner festooned with Marlboro logos have continued to appear in mainstream newspapers, with complaints to authorities resulting in little action because of “incidental” sports coverage loopholes.

Partners

ASH Australia; Smarter Than Smoking (WA Healthway, Heart Foundation); Australian Network on Young People and Tobacco (ANYPAT).

Strategies

- Letters and emails: before going public with criticisms, health partners sent letters and emails in March and July 2008 to Casey Stoner and his Ducati team outlining concerns and seeking their support to drop the PMI sponsorship. Ducati rejected the suggestion; Stoner’s naïve response was that he agreed children should not smoke, and that he believed “Philip Morris shares this view”.

146. ASH Australia media release 16/11/06 with attached Open Letter at www.ashaust.org.au/mediareleases/061116.htm 147. Australia, Commonwealth, [www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/0/3FE64581813B093ECA2574C900006E8A/\\$file/0817073A080829Z.pdf](http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/0/3FE64581813B093ECA2574C900006E8A/$file/0817073A080829Z.pdf) 148. ASH and 40-group Protecting Children from Tobacco media release 20/2/09 at www.ashaust.org.au/mediareleases/090220.htm 149. Australia, Commonwealth, amended regulation at [www.frl.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/0/3FA83C4E97D6DE1DCA257598000FE6F4/\\$file/0908157A090331EV.pdf](http://www.frl.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/0/3FA83C4E97D6DE1DCA257598000FE6F4/$file/0908157A090331EV.pdf) 150. NSW Government, Minister’s release 18/3/10 featuring ASH comment at www.ashaust.org.au/pdfs/RFRaus-tRels1003.pdf 151. Standards NZ, details at www.standards.co.nz/touchstone/Issue+09/Fire+Protection/Determination+of+the+extinction+propensity+of+cigarettes+new+adopted+Standard.htm?print=true

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- A complaint was sent from ASH Australia to the Young Australian of the Year organisers expressing concern.
- Media release: August 2008, naming and shaming Stoner as “the new Marlboro Man” and a “high-speed drug pusher” for PMI, expressing concern about likely impact on youth smoking, and calling on him to drop PMI sponsorship and find less harmful replacement sponsors.¹⁵²
- ASH continued to email to Ducati after the release, seeking their response.
- ASH in September 2008 wrote to another Australian MotoGP rider, Chris Vermeulen, asking him to reconsider his sponsorship by Rizla cigarette papers.

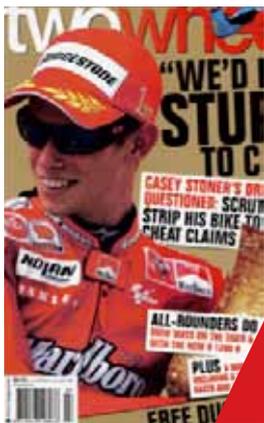
Outcome

The “high speed drug pusher” release attracted extensive media coverage and ASH was bombarded with hate mail from motorbike fans describing us as “gutless”, “zealous hippies”, “media whores” and “condescending do-gooders”.

Stoner, however, was more positive about the bad publicity - overnight hundreds of Marlboro logos on his Australian website turned into red and white bar codes. Tobacco logos also disappeared from

the official MotoGP website around the same time.

However, Stoner’s PMI sponsorship continued as does controversy surrounding the bar codes – regarded by many as subliminal Marlboro advertising. In 2009 further pictures of Stoner with Marlboro logos appeared in mainstream Australian newspapers.¹⁵³



Stoner in *Two Wheels* magazine promotion, 2007
Stoner website 2010¹⁵⁴ - after the negative publicity



152. ASH, Smarter Than Smoking and ANYPAT media release 29/8/08 at www.ashaust.org.au/mediareleases/080829.htm

153. Newcastle Herald, 15/4/09; Sydney Morning Herald sport section 28/8/09

154. Casey Stoner website www.caseystoner.com.au/

8. KEY LESSONS LEARNED AND NEXT STEPS

Lesson 1

The TI and allies use similar arguments and myths to interfere in health policies as part of a multi million dollar global strategy. Advocates need to:

- Identify and monitor these tactics and be ready to counter their arguments;
- Learn from other countries that have successfully countered the TI tactics and arguments; and
- Build support among current and potential tobacco control allies to advocate for policies and actions to prevent TI interference in health policies.

Lesson 2

Health advocates can help win political support by using advocacy skills and a strong evidence base that includes systematic monitoring of TI tactics as part of their research and advocacy agenda. Monitoring and countering TI tactics needs to be permanently built into advocacy and communication strategies to protect health policies at all levels of government.

Lesson 3

Governments need to strengthen political will and commitment by:

- Being vigilant about TI tactics;
- Limiting interactions with tobacco interest groups and ensuring transparency;
- Rejecting any partnerships or non-enforceable agreements with tobacco interest groups;
- Increasing resources to ensure compliance with WHO FCTC Article 5.3 Guidelines as a minimum to protect the health of their population.

Lesson 4

Health advocates need to be proactive and anticipate TI tactics for routinely including tobacco “myths and facts” in briefings, submissions and other advocacy tools for members of government. The active watchdog role of NGOs is critical as governments have been slow to progress Article 5.3 Guidelines.

Lesson 5

There are many shorter term benefits to be gained from exposing TI tactics including tarnishing the industry’s attempts to reinvent itself as “socially responsible” and denormalising tobacco. Naming and shaming agents who benefit from promoting tobacco products and calling them to account for undermining health policies can act as a deterrent and help to reduce the level of interference by industry supporters.

Next steps

This resource has been created to provide guidance for tobacco control advocates working to improve public health in any jurisdiction. The priority for action is high because unlike other areas of disease prevention, everything we do in tobacco control is opposed by a powerful industry group and its allies. Fortunately, health advocates in Australia are united on tobacco control priorities and have a policy wish list that has been included in the Preventative Health Taskforce’s roadmap for action report to the Australian Government.

Although the inclusion of specific strategies for countering TI tactics is not yet commonplace in strategic plans of health groups, advocates know from bitter experience that health policies are regularly undermined by TI opposition tactics.

8. KEY LESSONS LEARNED AND NEXT STEPS CONTINUED

Evaluation

It is important to be clear about the goals, objectives and methods for preventing TI interference. Evaluation can take many forms and experts agree that an evaluation plan should be developed at the beginning of a project or strategy by answering three key questions:

What do I want to do? (goals and outcomes)

How am I going to do it? (strategies) and

How do I measure success? (process and outcome indicators)

The chart below includes examples of how to measure some of the steps recommended in this Guide.

Conclusion

This Guide is a work in progress. TI tactics and promotions are very active and evolving almost monthly in contrast to the slow progress by governments in preventing industry interference in health policies. There are very few examples of best practices to draw upon and the lack of formal government policy on preventing interference should be a major concern for all health advocates inside and outside government. Relying on past successes and progress in tobacco control is not a strategy. It is now a matter of priority for health advocates to mobilize support among partners and stakeholders for a major policy change in line with Article 5.3. We would appreciate receiving your feedback on TI tactics that may have been missed, as we intend to update this Guide as a permanent online resource - and as our contribution towards ending the misleading and deceptive industry conduct.

What do I want to do?	How am I going to do it?	How do I measure progress?
Policy change <ul style="list-style-type: none"> Strengthen surveillance and monitoring of TI tactics 	<ul style="list-style-type: none"> Establish taskforce/lead agency to coordinate policy advocacy Develop and implement reporting mechanism to identify, monitor, expose and counter TI tactics Develop advocacy and communication plan (including kits, fact sheets, online materials, submissions for government, Ministers) 	Process Indicators <ul style="list-style-type: none"> Taskforce/coordinator established Regular reports produced and distributed to stakeholders Outcome Indicators <ul style="list-style-type: none"> Evidence of policy support in line with Art 5.3
Build partnerships with stakeholders in public health	<ul style="list-style-type: none"> Use political mapping to identify key decision and policy makers) Build coalition for tobacco control including Art 5.3 with terms of reference, responsibilities, resources Maintain coalition with updates, reports, alerts Identify and recruit champions 	Process Indicators <ul style="list-style-type: none"> Increase in partners, resources, collaboration Improved partnerships Outcome Indicators <ul style="list-style-type: none"> Partners informed, united and active on policy and media monitoring count
Strengthen support base for policy change	<ul style="list-style-type: none"> Media advocacy to raise public awareness (media releases, alerts, submissions) Frame issues to build support from policy and decision makers Engage champions Lobby politicians to improve policy Call for and engage in parliamentary inquiries 	Process Indicators <ul style="list-style-type: none"> Increase in media releases and media monitoring counts Increase in number and use of advocacy tools (submissions, letter writing campaigns, meetings with policy makers, politicians, presentations at inquiries) Outcome Indicators <ul style="list-style-type: none"> Positive changes in public opinion Positive changes in awareness and opinions of partners, govt decision makers, politicians Evidence of increase in policy support and legislative/policy change

International

World Health Organisation (WHO), Framework Convention on Tobacco Control (FCTC)

www.who.int/fctc/text_download/en/index.html

WHO treaty. Parties' obligations include protecting all against secondhand smoke (Art. 8), comprehensively banning all tobacco advertising and promotion through all media (Art. 12), and resisting tobacco industry interference in health policy (Art. 5.3). See also implementation guidelines at www.who.int/fctc/guidelines/en/

WHO (2009), Tobacco Industry Interference with Tobacco Control

www.who.int/tobacco/resources/publications/tob_ind_int_cover_150/en/index.html

Comprehensive report on what the industry is doing to block, delay, weaken and undermine public health policy - and how it can be stopped.

Corporate Accountability International (2008), Protecting Against Tobacco Industry Interference: 2008 Global Tobacco Treaty Action Guide

www.stopcorporateabuse.org/sites/default/files/GTTAG_English.pdf

Comprehensive guide to identifying and protecting against tobacco industry interference using the FCTC treaty.

Global Smokefree Partnership (2009), Rebutting the Tobacco Industry, Winning Smokefree Air

www.globalsmokefree.com/gsp/index.php?section=artigo&id=109

Status report on TI interference to delay and undermine public health reforms. Details the industry's worldwide tactics of fear and misinformation, countered by the positive impact of governments, organisations and individuals taking them on – backed by the FCTC.

Freeman B, Chapman S (2009), "British American Tobacco on Facebook: undermining article 13 of the global World Health Organization Framework Convention on Tobacco Control"

<http://tobaccocontrol.bmj.com/content/early/2010/04/14/tc.2009.032847.abstract>

Article in Tobacco Control journal outlining tactics of BAT tobacco company employees in using online messaging network to promote company products and events.

Chapman, S (2007), Public Health Advocacy and Tobacco Control: Making Smoking History

Wiley, ISBN: 978-1-4051-6163-3

Overview, orders: <http://au.wiley.com/WileyCDA/WileyTitle/productCd-1405161639.html>

History and issues in tobacco control.

Campaign for Tobacco Free Kids

http://tobaccofreecenter.org/industry_watch

US-based NGO's Tobacco Industry Watch resources.

Asia-Pacific Region

South East Asia Tobacco Control Alliance (SEATCA) (2009),

Tobacco Industry Interference in Health Policy in ASEAN Countries

www.who.int/tobacco/resources/publications/tob_ind_int_cover_150/en/index.html

SEATCA guide on identifying and countering TI tactics in the region, with case studies and resources.

Other SEATCA online resources at www.seatca.org/

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Cancer Council Victoria (2008), Tobacco in Australia: Facts and Issues at <http://tobaccoinaustralia.org.au>

Comprehensive review of the major issues in smoking and health in Australia.

ASH Australia website www.ashaust.org.au

Includes many pages on the TI, its tactics and history with links to resources

Public Health Advocacy Institute of Western Australia (2009), Advocacy in Action: a toolkit for public health professionals

at www.phaa.net.au/documents/100114PHAIAdvocacyToolkit%202ndedition.pdf

Practical health advocacy guide including preparation, strategies, evaluation and advocacy tools.

Tobacco industry documents

University of Sydney's Tobacco Industry Document Gateway

<http://old.tobacco.health.usyd.edu.au/site/gateway/docs/>

The Tobacco Control Supersite has this Tobacco Documents System database including tobacco industry documents and other materials showing the industry's history of deceptive and misleading tactics and marketing to children.

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