

Welcome to the fifth edition of *Tobacco Facts for MPs*, a regular newsletter to highlight the latest in tobacco legislation, research and litigation.

Focus

A summary of the latest legal actions against the tobacco industry, in Australia and overseas.



States explore tobacco law suits

Congratulations to the NSW Attorney-General Jeff Shaw for setting up a task force to investigate the costs of smoking and the potential for cost recovery from the tobacco companies. Other states considering legal action include the governments of Queensland, Western Australia, South Australia and Tasmania.

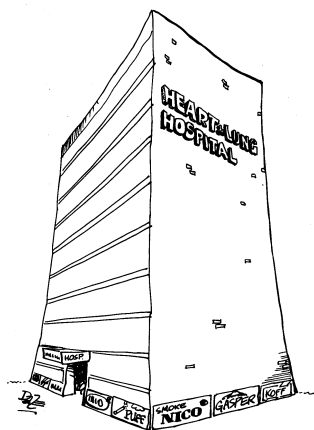


Tobacco companies in denial

Thumbs down to tobacco companies for claiming that they already pay a lot of tax and therefore shouldn't have to cough up more money for damages caused by tobacco products. Health groups reject this flawed argument for three reasons: firstly, it is smokers, not tobacco companies, who pay the \$5B tax bill each year; secondly, state governments no longer collect revenue from tobacco; and since when has paying tax been insurance against damages?

For more industry denials see

<http://www.health.usyd.edu.au/tobacco/>



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Graeme Dazeley

Tobacco litigation revolution

- Tobacco litigation is transforming prospects for tobacco control worldwide, according to a new article in the *British Medical Journal*. Tobacco litigation, which began in the US, is spreading fast to include countries such as, Argentina, UK, Ireland, Israel, Finland, France, Japan, Norway and Australia.
- Litigation has developed on several fronts: class actions; individual cases; third party reimbursements and passive smoking cases.
- Australia, well known for a successful landmark passive smoking action in the 1990s, now has two class actions against the tobacco groups currently before the Federal Court.

(Refer: Daynard A, Bates C, Francey N Tobacco litigation worldwide. *British Medical Journal* 2000, 320:111-113) <http://www.bmj.com/cgi/content/full/320/7227/111>

Coalition to combat smoking

A coalition of health organisations has sought a Federal Court ruling to establish a \$500 million a year fund to prevent and reduce smoking. The case **Tobacco Control Coalition Inc v Philip Morris (Australia Ltd) & Ors** filed last September, claims that Philip Morris, WD&HO Wills and Rothmans have engaged in misleading and deceptive conduct. Declarations and injunctions are being sought against such behaviour.

Big win for disability discrimination

A woman with asthma won a landmark case against a major Sydney hotel for failing to offer a smoke-free area in a nightclub. The 1997 case, **Meeuwissen v Hilton Hotels of Australia Pty Ltd, Human Rights and Equal Opportunity Commission** was the first brought under the Disability Discrimination Act for unlawful discrimination against a person with a respiratory disability (c. 2 million Australians are asthmatic). Commissioner Innes is still considering further orders.

Smoking clogs arteries & hospitals

Of the nearly one billion dollars a year that smoking related illness costs us as a nation in health care, NSW bears nearly a third of the costs. As NSW has failed to reach its smoking rate targets for 2000, elevated rates for adult men (28%) and women (21%) are putting avoidable strain on health services. In 1997, active smoking alone resulted in nearly 54000 hospital episodes. Refer <http://www.health.nsw.gov.au>

Comment:

There are two actions afoot in Australia against the tobacco industry, both invoking the Trade Practices Act in the Federal Court. **Nixon v PM & Ors**, run by the class action specialist law firm, Slater and Gordon, seeks to recover damages on behalf of smokers who have suffered smoking related disorders such as lung cancer.

The second, **Tobacco Control Coalition Inc. v PM & Ors**, is on behalf of two groups. The first group is health and medical groups who have, or continue to incur expenses in tobacco control or tobacco related illnesses. The second group is smokers who have not yet developed tobacco-related disease. Although currently well, half of these people will develop a tobacco related disease, and the TCC believes that relief should be granted to fund quit smoking services and other effective measures that reduce smoking.

It is the latter class that sets this action apart. If successful, adequate funding could be obtained to provide Australia with a realistic prospect of ending the tobacco epidemic in this country within two decades of the new millennium. Such an action is now possible because of the trail blazing precedents in other jurisdictions, and the wealth of information now on the public record about the industry's conduct. Government has a clear interest in this action, as author of the NSW Tobacco and Health Strategy, now under review, and as the chief funder of health services. In the latter capacity, State Health Services could benefit from any relief as a member of the first class.

The TCC welcomes the interest displayed by the State Attorney General in this important public health initiative.

Dr Andrew Penman, Convenor, TCC

International News

Clinton's Justice Department sues tobacco companies

The Department of Justice filed a civil lawsuit against the largest cigarette companies last September to recover the billions of dollars the federal government spends each year on smoking-related health care costs. The complaint alleged that the cigarette companies have conspired since the 1950's to defraud and mislead the American public and conceal information about the effects of smoking.

<http://www.usdoj.gov/opa/pr/1999/September/428civ.htm>

Jury finds fraud, conspiracy and negligence

The first class action on behalf of smokers to go to trial in the United States **Engle et al. v R.J.Reynolds Tobacco, et al** was brought on behalf of Florida residents injured as a result of smoking cigarettes. The jury found that the companies had committed fraud, conspiracy and negligence. Last October, Florida's Appeal Court ruled against the tobacco defendants setting the stage for a massive punitive damages verdict on behalf of all injured Florida smokers that could exceed \$10 billion. The case is still continuing.

http://www.tobacco.neu.edu/tot/July%2099/engle_verdict_form.htm

WHO supports litigation efforts

The World Health Organisation is urging developing countries to reduce the tobacco epidemic by filing lawsuits against multinational tobacco companies. Tobacco companies are targeting poorer less regulated markets, such as PNG and the Pacific Islands, following the introduction of tougher restrictions in traditional markets.

"The tobacco industry (must) be held publicly accountable at the national and international level through legislation, litigation and other means," said the New Delhi declaration issued at the end of the WHO International Conference on Global Tobacco Control.

<http://www.who.int/toh/fctc/delhi/delhi.html>

Tobacco smuggling

The world's second biggest tobacco company BAT encouraged the smuggling of billions of black market cigarettes to increase market share, analysis of more than 11,000 corporate documents has revealed. The latest revelations may lead to further multi-million-dollar damages claims to recoup the costs of health treatment stemming from contraband products, as well as other legal action. *Source: The Age, Feb 1, 2000 and full report at*

<http://www.public-i.org>

Movie Review:

Don't miss Russell Crowe and Al Pacino in the movie *The Insider* – the true story of a tobacco industry whistleblower, who exposed a major cover up by a US tobacco company with links in Australia.

Parliamentary Questions Service

If you would like assistance with a tobacco-related question please contact ASH on 02 93341876

Visit www.ashaust.org.au for copies of newsletters, links to references, tobacco industry documents, fact sheets, media releases, tobacco and health policies and links to international, national and state organisations committed to tobacco control.

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