



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON ENVIRONMENT, CLIMATE CHANGE AND BIODIVERSITY
Dr Marisa Paterson MLA (Chair), Ms Jo Clay MLA (Deputy Chair), Mr Ed Cocks MLA

Submission Cover Sheet

Inquiry into Environment Protection (Fossil Fuel Company Advertising) Amendment Bill 2024

Submission Number: 9

Date Authorised for Publication: 12 March

2024

**THE ACT LEGISLATIVE ASSEMBLY
STANDING COMMITTEE ON ENVIRONMENT,
CLIMATE CHANGE, AND BIODIVERSITY**

**A SUBMISSION ON
THE *ENVIRONMENT PROTECTION (FOSSIL FUEL COMPANY
ADVERTISING) AMENDMENT BILL 2024 (ACT)***



Ethos, ACT Legislative Assembly

(Nick-D, Wikimedia Commons, Creative Commons Attribution-Share Alike 4.0)

DR MATTHEW RIMMER
PROFESSOR OF INTELLECTUAL PROPERTY AND INNOVATION LAW
FACULTY OF BUSINESS AND LAW
QUEENSLAND UNIVERSITY OF TECHNOLOGY

Queensland University of Technology
2 George Street GPO Box 2434
Brisbane Queensland 4001 Australia

EXECUTIVE SUMMARY

This submission provides an overview of recent policy developments in respect of restrictions and prohibitions on fossil fuel advertising. It explores the efforts of a number of local councils – most notably, the City of Sydney – to implement fossil fuel advertising bans. It considers the proposal from Australian Greens’ MLC Sue Higginson in the New South Wales Parliament to pass a *Public Health and Safety (Fossil Fuel Advertising) Bill 2022* (NSW). It investigates the initiative of Australian Greens’ MLA Jo Clay to pass the *Environment Protection (Fossil Fuel Company Advertising) Amendment Bill 2024* (ACT) to ban fossil fuel advertising in major sporting stadiums in the Australian Capital Territory. The submission highlights the recent Australian Senate inquiry into greenwashing. It discusses debate within the Federal Parliament as to whether there should be a comprehensive ban on fossil fuel advertising (much like there is for tobacco advertising). It also investigates public campaigns to ban fossil fuel sponsorship and promotions (also echoing the ban on tobacco sponsorship and promotions). It explores whether the ban on tobacco advertising, sponsorship, and promotions may provide a blueprint for the regulation of fossil fuel advertising, sponsorship, and promotions.

This researcher has long been interested in greenwashing¹ – as part of a larger body of work looking at intellectual property, the environment, and climate change.² In

¹ Matthew Rimmer, 'Sorting out the Green from the Greenwash', *WME - Water, Materials, Energy - Environment Business Magazine*, March 2012, http://works.bepress.com/matthew_rimmer/110/

² See for instance Matthew Rimmer, *Intellectual Property and Climate Change: Inventing Clean Technologies*, Cheltenham (UK) and Northampton (Mass.): Edward Elgar, September 2011; and Matthew Rimmer (ed.), *Intellectual Property and Clean Energy: The Paris Agreement and Climate Justice*, Singapore: Springer, 2018.

particular, the author has looked at how various regulatory regimes have sought to deal with the problem of greenwashing. He has looked at the responses to greenwashing across various regulatory regimes – including advertising standards, consumer law and competition law, trademark law, corporations law, clean energy law, and climate litigation.³ The author has also taken a keen interest in the adjoining field of intellectual property and sustainable development⁴ – with a focus on the right to repair.⁵ The researcher has a broader interest in how international trade law deals with the environment, climate change, and sustainable development as well.⁶ The author is interested in how regulatory systems deal with fakes and frauds.

³ Matthew Rimmer, ‘A Submission on Greenwashing to the Senate Environment and Communications References Committee’, Australian Senate, Australian Parliament, June 2023, QUT ePrints: <https://eprints.qut.edu.au/241582/>

⁴ Matthew Rimmer, ‘A Submission on Intellectual Property and the United Nations Sustainable Development Goals’, Senate Foreign Affairs, Defence and Trade References Committee’, September 2018, QUT ePrints: <https://eprints.qut.edu.au/121459/>; Matthew Rimmer, ‘The UNDP Accelerator Lab Network: Intellectual Property, Innovation Policy, Sustainable Development, and the COVID-19 Recovery’, in Taina Pihlajarinne, Jukka Mahonen, and Pratyush Upreti (ed.), *Rethinking the Role of Intellectual Property Rights in the Post Pandemic World: An Integrated Framework of Sustainability, Innovation and Global Justice*, Cheltenham and Northampton (Ma.): Edward Elgar, 2023; and Bitu Amani, Caroline Ncube, and Matthew Rimmer (ed.) *The Elgar Companion to Intellectual Property and the Sustainable Development Goals*, Cheltenham (UK) and Northampton (Mass.): Edward Elgar, 2023.

⁵ Matthew Rimmer, ‘A Submission to the Productivity Commission Inquiry on the Right to Repair’. Melbourne: Productivity Commission, 23 July 2021, <https://eprints.qut.edu.au/212034/>; Matthew Rimmer, ‘The Right to Repair: Patent Law, and 3D Printing in Australia’ (2023) 20 (1) *Scripted – A Journal of Law, Technology, and Society* 130-202; and Matthew Rimmer, ‘Shane Rattenbury, The Productivity Commission, and The Right To Repair: Intellectual Property, Consumer Rights, and Sustainable Development in Australia’, (2023) 37 *Berkeley Technology Law Journal* (forthcoming).

⁶ Matthew Rimmer, ‘Greenwashing the Trans-Pacific Partnership: Fossil Fuels, the Environment, and Climate Change’ (2016) 14 (2) *Santa Clara Journal of International Law* 488-542; Matthew Rimmer, ‘The Trans-Pacific Partnership and Sustainable Development: Access to Genetic Resources, Informed Consent, and Benefit-Sharing’, in Charles Lawson and Kamalesh Adhikari (ed.), *Biodiversity, Genetic Resources and Intellectual Property: Developments in Access and Benefit Sharing*, Abingdon (Oxon) and New York: Routledge, 2018, 151-184; and Matthew Rimmer, *The Trans-Pacific*

This researcher is also concerned with the parallel field of tobacco control.⁷ The *WHO Framework Convention on Tobacco Control* 2003 has provided for a raft of measures to address the global tobacco epidemic.⁸ There have been various efforts to ban tobacco advertising, promotions, and sponsorships in mass media in Australia.⁹ The Department of Health and Aged Care comments: ‘Tobacco advertising laws are part of Australia’s tobacco control activities – policies and programs that aim to reduce smoking rates and tobacco-related harm in our community.’¹⁰ There have also been subsequent efforts to extend such a ban on tobacco advertising, sponsorship, and promotion to the digital environment.¹¹ Australia has used graphic health warnings on labelling and packaging.¹² Australia has been a pioneer in the development of plain packaging of tobacco products.¹³ There has been recent efforts to further consolidate and extend Australia’s

Partnership: Intellectual Property and Trade in the Pacific Rim, Cheltenham (UK) and Northampton (Mass.): Edward Elgar, December 2020.

⁷ Matthew Rimmer (ed.), *The Plain Packaging of Tobacco Products, Special edition of QUT Law Review* (Vol. 17 (2)), Brisbane: QUT, 2017, <https://lr.law.qut.edu.au/issue/view/55> QUT ePrints: <https://eprints.qut.edu.au/198758/>

⁸ *WHO Framework Convention on Tobacco Control* 2003, opened for signature 21 May 2003, 2302 UNTS 166 (entered into force 27 February 2005) (FCTC).

⁹ Tobacco Advertising Prohibition Act 1992 (Cth)

¹⁰ Department of Health and Aged Care, ‘Tobacco Advertising Bans’, <https://www.health.gov.au/topics/smoking-vaping-and-tobacco/tobacco-control/advertising-bans>

¹¹ Fifth Report of Committee B, Specific guidelines to address cross-border tobacco advertising, promotion and sponsorship and the depiction of tobacco in entertainment media for implementation of Article 13 (Tobacco advertising, promotion and sponsorship) of the WHO FCTC, Conference of the Parties to the WHO Framework Convention on Tobacco Control, Panama, 5-10 February 2024, FCTC/COP/10/B/R/5.

¹² Matthew Rimmer, ‘The Chilling Effect: Investor-State Dispute Settlement, Graphic Health Warnings, the Plain Packaging of Tobacco Products and the Trans-Pacific Partnership’, (2017) 7 (1) *Victoria University Law and Justice Journal* 76-93.

¹³ Becky Freeman, Simon Chapman, and Matthew Rimmer, ‘The Case for the Plain Packaging of Tobacco Products’ (2008) 103 (4) *Addiction* 580-590; Matthew Rimmer, ‘The High Court of Australia

regime for tobacco control.¹⁴ There has been consideration of tobacco endgame strategies.¹⁵ There have also been new regulatory initiatives to address the public health threats of vaping, e-cigarettes, and other new emerging tobacco products.¹⁶ This collection of regulatory strategies to ban tobacco-related advertising, sponsorship, and promotion has been an inspiration for environmental defenders and climate advocates concerned with the problem of greenwashing.

and the Marlboro Man: The Battle Over The Plain Packaging of Tobacco Products', in Tania Voon, Andrew Mitchell, and Jonathan Liberman (Ed.) *Regulating Tobacco, Alcohol and Unhealthy Foods: The Legal Issues*, London and New York: Routledge, 2014, 337-360; Matthew Rimmer, 'Plain Packaging for the Pacific Rim: the Trans-Pacific Partnership and Tobacco Control', in Tania Voon (ed.), *Trade Liberalisation and International Co-operation: A Legal Analysis of the Trans-Pacific Partnership Agreement*, Cheltenham (UK) and Northampton (Mass.): Edward Elgar, 2013, 75-105; and Matthew Rimmer, 'The Global Tobacco Epidemic, the Plain Packaging of Tobacco Products, and the World Trade Organization' (2017) 17 (2) *QUT Law Review* 131-160

¹⁴ Matthew Rimmer, 'A Submission on the *Public Health (Tobacco and Other Products) Bill 2023* (Cth) and Accompanying Regulations: Senate Standing Committee on Community Affairs - Legislation Committee', Canberra: Australian Parliament, November 2023, QUT ePrints <https://eprints.qut.edu.au/244497/>

¹⁵ Matthew Rimmer, 'The Tobacco Endgame Avengers: Strategies for a Smokefree Future in Australia' in Belinda Bennett and Ian Freckelton (ed.), *Australian Public Health Law*, Sydney: Federation Press, 2023, 361-385; and Matthew Rimmer, 'The Tobacco Endgame: Intellectual Property, Human Rights, and Sustainable Development' in Bitu Amani, Caroline B. Ncube, and Matthew Rimmer (ed.) *The Elgar Companion to Intellectual Property and the Sustainable Development Goals*, Cheltenham (UK) and Northampton (Mass.): Edward Elgar, 2024, 74-106.

¹⁶ Matthew Rimmer, 'A Submission on Vaping and Reducing Rates of E-Cigarette Use in Queensland', Health and Environment Committee, Queensland Parliament, May 2023, <https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=169&id=4242> QUT ePrints: <https://eprints.qut.edu.au/239457/>

RECOMMENDATIONS

Recommendation 1

A number of local councils in Australia – including the City of Sydney – have sought to restrict and prohibit fossil fuel advertising. Moreover, leading European cities – most notably, Amsterdam – have banned fossil fuel advertising. Such initiatives provide an example for the City of Canberra – as the ACT Government considers a proposal to restrict and prohibit fossil fuel advertising.

Recommendation 2

The *Environment Protection (Fossil Fuel Company Advertising) Amendment Bill 2024* (ACT) seeks to prohibit fossil fuel advertising at key sporting venues in Canberra. This bill will build upon the strict regulation of advertising in the ACT. This regime will support the ACT Government’s pursuit of clean energy and climate action. This legislative bill will promote human rights – including the incipient right to a healthy environment.

Recommendation 3

The New South Wales Parliament has discussed the *Public Health and Safety (Fossil Fuel Advertising) Bill 2022* (NSW), which frames a ban on fossil fuel advertising in terms of public health.

Recommendation 4

The Federal Parliament has been investigating the problem of greenwashing in a Senate Inquiry. There has been concern that existing models of regulation and enforcement have been ineffective at dealing with greenwashing. Independent MP Zali Steggall, Independent Senator David

Pocock, and the Australian Greens have mooted a ban on fossil fuel advertising.

Recommendation 5

There has also been broader community debate in Australia over whether there should be restrictions or a ban on fossil fuel promotion and sponsorship – particularly in respect of sport and culture.

Recommendation 6

The comprehensive ban on tobacco advertising, promotion and sponsorship provides a model and a blueprint for efforts to regulate fossil fuel advertising, promotion, and sponsorship.

Recommendation 7

The ACT initiative is also in keeping with comparative models. Notably, France has implemented a nation-wide prohibition on advertising for fossil fuels under climate law. There have also been proposals in the European Parliament for a ban on fossil fuel advertising. Health advocates, environmental defenders, and civil society groups have pushed for health warnings, restrictions, and prohibitions on fossil fuel advertising in Canada.

Recommendation 8

The United Nations Secretary-General Antonio Guterres has called for there to be ‘zero tolerance’ for greenwashing. The ACT initiative would follow the best practice of the Fossil Fuel Non-Proliferation Treaty, which calls for a ban on fossil fuel advertising, sponsorship, and promotion.

1. Local Councils

The civil society organisation Comms Declare is a group made up of 300 marketing, public relations, advertising and media professionals, and organisations. Comms Declare chief executive Belinda Noble observed: ‘We founded in recognition that, famously, marketing and PR has been used for decades to help polluting companies. We want that to stop.’¹⁷ Comms Declare in partnership with the media agency Alchemy One have put up billboards in Australia’s capital cities, calling for a ban on fossil fuel advertising (see illustration above).¹⁸ Comms Declare has pushed for a ban on fossil fuel advertising at a local level, a regional level, and a national level.

Comms Declare has lobbied local councils and local governments to adopt a fossil fuel advertising ban.

Under the leadership of Clover Moore, the City of Sydney has taken a strong interest in climate action by local government. It has previously for instance supported fossil fuel divestment,¹⁹ and the recognition of a climate emergency.

¹⁷ Angus Dalton, ‘“Worse than Tobacco’: Climate Activists Push for Ban on Fossil Fuel Ads’, *The Sydney Morning Herald*, 24 July 2022, <https://www.smh.com.au/environment/climate-change/worse-than-tobacco-climate-activists-push-for-ban-on-fossil-fuel-ads-20220716-p5b24e.html>

¹⁸ Mediaweek, ‘Comms Declare and Alchemy One Fossil Ad Ban Billboards put the heat on Albanese’, *Mediaweek*, 23 January 2024, <https://www.mediaweek.com.au/comms-declare-alchemy-one-fossil-ad-ban-billboard/>

¹⁹ Charlotte Wood and Matthew Rimmer, ‘Think Global, Act Local: The Role for Councils in Climate Change’, *Crikey*, 30 January 2014, <http://www.crikey.com.au/2014/01/30/think-global-act-local-the-role-for-councils-in-climate-change/>

Deputy Lord Mayor Jess Scully has been a key advocate for climate action in the City of Sydney.²⁰ She is conscious that the local community has been ‘angry at governments willfully blind to the connection between the poisoned air, the burning country and our outsized environmental footprint.’²¹ In the City of Sydney, Scully moved a motion for a fossil fuel advertising ban, noting: ‘I think this is the moment we can draw a line in the sand and say ‘not here’ and ‘no more’ because we know that the people of the City of Sydney do want climate action, they do want us to move away from a fossil-fuel dependent economy and they do know that to do that we need to get rid of the whitewashing, get rid of the self-promotion that the sector is doing’.²² Lord mayor Clover Moore supported the initiative: ‘This is a really important action that we’re taking here.’²³

Jess Scully later resigned her post because of family commitments, and a lack of adequate parental leave.²⁴ Lord Clover Moore paid tribute to her contributions – including in the field of renewable energy, climate action, and sustainable development.²⁵

²⁰ Jess Scully, *Glimpses of Utopia: Real Ideas for a Fairer World*, Sydney Pantera Press, 2020.

²¹ *Ibid.*, 353.

²² Chris Pash, ‘City of Sydney Votes to End Fossil Fuel Advertising’, *AdNews*, 23 August 2022, <https://www.adnews.com.au/news/city-of-sydney-votes-to-end-fossil-fuel-advertising> See also Rosemary Bolger, ‘City of Sydney to Consider Ban on Fossil Fuel Advertising to Fight Climate Change, Pollution’, *ABC News*, 20 August 2022, <https://www.abc.net.au/news/2022-08-20/sydney-council-considers-coal-gas-oil-advertising-ban-motion/101352790>

²³ *Ibid.*

²⁴ Declan Bowring, ‘City of Sydney councillor Jess Scully resigns citing lack of maternity leave’, *ABC News*, 31 March 2023, <https://www.abc.net.au/news/2023-03-31/councillor-jess-scully-resigns-city-of-sydney-no-parental-leave/102169996>

²⁵ Clover Moore, ‘Resignation of Councillor Jess Scully’, File No. S051491, Council, City of Sydney, 3 April 2023.

In 2022, the City of Sydney made a resolution on ‘Fossil Fuel Advertising in the City’.²⁶ The resolution referred to precedent on banning ‘advertising of tobacco products because smoking was harmful to the health of people.’²⁷ The resolution observed that coal, oil, and gas have been adversely affecting ‘our health, environment and climate.’²⁸ The resolution noted ‘the launch of the ‘Fossil Ad Ban’ community campaign, calls for a tobacco-style ban on advertisements and sponsorships for fossil fuels including coal, oil and gas’.²⁹ The resolution observed: ‘The City of Sydney endorsed a declaration of climate emergency in June 2019, firmly stating that the people of Sydney are at risk of climate change.’³⁰ The resolution commented: ‘Advertising fossil fuels on Council property or facilities is inconsistent with this adopted Council position.’³¹

The resolution concluded that ‘the City of Sydney commits to work to support the community campaign for a ban on advertising by companies involved in the production or supply of fossil fuels, including at Council sponsored events and on council-managed property.’³² The resolution noted that ‘Victoria’s Yarra and Moreland (Merri-bek) councils have voted for a staff report on how to restrict fossil fuel promotions on council-managed land’.³³ The resolution also requested the NSW Government to

²⁶ City of Sydney, ‘Fossil Fuel Advertising in the City’, 22 August 2022, <https://meetings.cityofsydney.nsw.gov.au/ieDecisionDetails.aspx?AIId=13628>

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ Ibid.

‘impose restrictions on fossil fuel advertising’.³⁴ The resolution also asked ‘the Federal Minister for Communications, The Hon Michelle Rowland MP, to ask the Federal Government to pass national laws that restrict fossil fuel advertising.’³⁵

The resolution also noted that ‘restrictions on fossil fuel advertising are in place in France, and at least seven local government areas in the UK and the Netherlands’ and ‘Similar laws are being debated in the European Union, Germany, Sweden and Canada.’³⁶

The motion was carried in the City of Sydney by seven votes to three – with one abstention.³⁷

Comms Declare founder Belinda Noble was delighted by the outcome: ‘Congratulations to the people of Sydney, your streets and events will soon be free of the insidious promotion of toxic fossil fuels.’³⁸ She commented: ‘While we transition to cleaner energy it's imperative that legacy industries are not allowed to greenwash their businesses or delay emissions reduction efforts.’³⁹ Noble observed: ‘I look forward to working with the City of Sydney to help implement these restrictions and hope other

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Chris Pash, ‘City of Sydney Votes to End Fossil Fuel Advertising’, *AdNews*, 23 August 2022, <https://www.adnews.com.au/news/city-of-sydney-votes-to-end-fossil-fuel-advertising>

³⁹ Ibid.

Australian cities and councils will similarly prioritise the health and wellbeing of their communities by preventing the promotion of pollution.’⁴⁰

A number of other Australian councils have already signed up for a fossil fuel advertising ban: including the Blue Mountains, Byron Bay,⁴¹ Charles Sturt, Darebin, Fremantle, Glen Eira, Inner West, Lane Cove, Maribyrnong, Melbourne’s Merri-bek,⁴² Mitchum, Sydney, Waratah-Wynyard, Wingecarribee and Yarra.⁴³

The City of Brisbane has been urged to ban advertising from climate disaster firms.⁴⁴ A giant billboard created by Comms Declare has been posted in Stanley Street, near the Gabba, highlighting the greenwashing of coal, oil and gas advertisements. Jo Dodds, President, Bushfire Survivors for Climate Action, commented:

We don't need science to tell us things are getting rapidly more dangerous. You can just look out your kitchen window and see things getting worse. Climate disasters are hitting more and more Australians, more frequently. Communities are still reeling from bushfires when there's suddenly a record-breaking flood or a cyclone. With fossil fuel ads all over Brisbane it's like

⁴⁰ Ibid.

⁴¹ Comms Declare, ‘2022 Ends with a Ban!: Byron Bay is the 10th Council to Vote for a Fossil Ad Ban’, Press Release, 15 December 2022, <https://fossiladban.org/2022-ends-with-a-ban/>

⁴² Comms Declare, ‘Merri-Bek Implements a Complete Fossil Ad Ban’, Press Release, 9 November 2023, <https://fossiladban.org/merri-bek-implements-a-ban/>

⁴³ Comms Declare, ‘Yarra Implements a Fossil Ad Ban’, Press Release, 19 July 2023, <https://fossiladban.org/yarra-implements-a-fossil-ad-ban/>

⁴⁴ Comms Declare, ‘Brisbane Council Urged to Ban Ads from Climate Disaster Firms’, Press Release, *Mirage News*, 20 December 2023, <https://www.miragenews.com/brisbane-council-urged-to-ban-ads-from-climate-1147376/>

the big companies and the council are both making money while we pay for the disasters they're causing. Is that fair?⁴⁵

Comms Declare Founder, Belinda Noble, commented: ‘Worsening weather is plaguing Brisbane, yet the council allows its 800 bus shelters, 1200 buses, more than 100 digital screens and some CityCats to promote the main culprit - coal, petroleum and gas companies.’⁴⁶ She was critical of the Brisbane City Council led by a Liberal Leader: ‘It is hypocritical for the council to claim to be carbon neutral, yet still be promoting fossil fuel companies on its property.’⁴⁷ She commented: ‘How can we hold a “climate positive” Olympics with ads for coal and gas all around the city?’⁴⁸ Comms Declare also highlighted how Brisbane had been adversely affected by climate disasters, such as floods, bushfires, and storms.

Recommendation 1

A number of local councils in Australia – including the City of Sydney – have sought to restrict and prohibit fossil fuel advertising. Moreover, leading European cities – most notably, Amsterdam – have banned fossil fuel advertising. Such initiatives provide an example for the City of Canberra – as the ACT Government considers a proposal to restrict and prohibit fossil fuel advertising.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

2. The Australian Capital Territory

The Australian Capital Territory has traditionally had a high level of regulation of advertising in its environment. The ACT Government has sought to ‘ensure that the products and messages that are promoted on our ACTION buses are suitable and appropriate for the broader population and in line with the values of the Canberra community and ACT Government objectives.’⁴⁹ Specific categories of prohibited advertising subject matter cover tobacco, alcohol, junk food, unhealthy drinks, gambling, weapons, and fossil fuels. The ACT Government has more broadly investigated the regulation of billboards and outdoor advertising signage.⁵⁰

The ACT branch of the Australian Greens have campaigned for an ‘ad-free city’ to keep ‘public space for the public.’⁵¹

In this context, the Australian Greens member Jo Clay MLA has sought to table legislation – the *Environment Protection (Fossil Fuel Company Advertising) Amendment Bill 2024 (ACT)* - to ban fossil fuel advertising at key sporting venues in

⁴⁹ Transport Canberra and ACT Government, ‘Advertising on an Action Bus’, <https://www.transport.act.gov.au/?a=885316>

⁵⁰ ACT Government Response to the Standing Committee on Planning and Urban Renewal Report No. 2 2017 – Inquiry into Billboard, https://www.parliament.act.gov.au/_data/assets/pdf_file/0010/1169497/9th-PUR-02-Billboards-GR-tabled-2018-02-22.PDF

⁵¹ Australian Greens, ‘Public Space for the Public – Ad-Free Canberra’, <https://greens.org.au/act/ad-free-canberra>

the Australian Capital Territory.⁵² She commented: ‘The ACT needs to be an activist government when it comes to taking action on climate change.’⁵³ Clay was critical of the Greens’ Government Coalition Partner, the Australian Labor Party: ‘Labor is being timid at a time when the urgency of the crisis requires us to be bold.’⁵⁴ Clay questioned: ‘How much longer are we going to let these companies that fuel climate change use our favourite sports to buy social licence and keep profiting off boiling the planet?’⁵⁵ She was pleased by the response to her bill: ‘I’ve been delighted to see so much positive feedback and detailed consideration of the proposal from activists pushing for this, to climate scientists, to athletes, sports groups and many more.’⁵⁶

It is worthwhile considering the legislative model of the *Environment Protection (Fossil Fuel Company Advertising) Amendment Bill 2024* (ACT) – as it is an early example of such a bill in Australia. New Part 9B concerns fossil fuel company advertising. S 92AA provides a definition of the meaning of fossil fuel – including coal, petroleum, methane gas, and any other hydrocarbon-based fuel derived from material formed in the geological past from the remains of living organisms.⁵⁷ S 92AB provides for the meaning of a ‘fossil fuel company’ – which includes ‘a corporation that carries out

⁵² Australian Greens, ‘You Don’t Make Friends with Fossil Fuel Sponsorships’, Press Release, 5 January 2024, <https://greens.org.au/act/news/media-release/you-dont-make-friends-fossil-fuel-sponsorships>

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ S 92AA of the *Environment Protection (Fossil Fuel Company Advertising) Amendment Bill 2024* (ACT).

fossil fuel extraction or processing.’⁵⁸ Moreover, under the provision, the Minister may declare a corporation to be a fossil fuel company. S 92AC defines a fossil fuel advertisement as meaning ‘writing, sound or a picture, symbol, light or other visible device, object or sign (or a combination of 2 or more of these) that publicises, or otherwise promotes, all or part of a trademark, trading name or brand name of a fossil fuel company.’⁵⁹ This definition seeks to cover a wide array of media forms related to advertising. S 92AD provides that fossil fuel company advertisements are prohibited at certain sports venues.⁶⁰ The sports venues where fossil fuel company advertisements are prohibited include the Australian Institute of Sport Arena, the Canberra Tennis Centre, GIO Stadium, Manuka Oval, and the MIT Narrabundah Ballpark. So, rather than being a full ban on fossil fuel company advertising, it is a ban on fossil fuel company advertising at specific Canberra venues.

The explanatory memorandum observed that ‘Stopping fossil fuel advertising is also an action suggested under the ‘Fossil Fuel Non-Proliferation Treaty.’⁶¹ It commented: ‘The ACT signed up to this treaty in 2021 and was the highest level jurisdiction in the world to do so.’⁶² The explanatory memorandum suggested that ‘the bill supports the right to freedom of expression (s16 of the HRA) by exempting personal use

⁵⁸ S 92AB of the *Environment Protection (Fossil Fuel Company Advertising) Amendment Bill 2024* (ACT).

⁵⁹ S 92AC of the *Environment Protection (Fossil Fuel Company Advertising) Amendment Bill 2024* (ACT).

⁶⁰ S 92AD of the *Environment Protection (Fossil Fuel Company Advertising) Amendment Bill 2024* (ACT).

⁶¹ Explanatory Memorandum of the *Environment Protection (Fossil Fuel Company Advertising) Amendment Bill 2024* (ACT), 1.

⁶² Explanatory Memorandum of the *Environment Protection (Fossil Fuel Company Advertising) Amendment Bill 2024* (ACT), 1.

advertisements.’⁶³ Moreover, it noted that the ACT would implement a right to a healthy environment: ‘Government has tabled a bill that will introduce a new right to a healthy environment and, should that pass into law, this bill will support the new human right to a healthy environment.’⁶⁴

Belinda Noble, Founder of Comms Declare, observed: ‘Stopping fossil fuels begins with stopping fossil fuel ads.’⁶⁵ She stressed: ‘We cannot meet our net zero goals while allowing rampant and unregulated promotions of the companies that are undermining our clean energy transition.’⁶⁶ Nobel noted: ‘Fifteen councils in Australia and capital cities around the world including Sydney, Amsterdam and Stockholm have already voted for fossil fuel advertising restrictions and being the first state-level jurisdiction to act will further cement the ACT’s status as a global clean energy leader.’⁶⁷

Recommendation 2

The *Environment Protection (Fossil Fuel Company Advertising) Amendment Bill 2024 (ACT)* seeks to prohibit fossil fuel advertising at key sporting venues in Canberra. This bill will build upon the strict regulation of advertising in the ACT. This regime will support the ACT Government’s

⁶³ Explanatory Memorandum of the *Environment Protection (Fossil Fuel Company Advertising) Amendment Bill 2024 (ACT)*, 2.

⁶⁴ Explanatory Memorandum of the *Environment Protection (Fossil Fuel Company Advertising) Amendment Bill 2024 (ACT)*, 2-3.

⁶⁵ Australian Greens, ‘You Don’t Make Friends with Fossil Fuel Sponsorships’, Press Release, 5 January 2024, <https://greens.org.au/act/news/media-release/you-dont-make-friends-fossil-fuel-sponsorships>

⁶⁶ Ibid.

⁶⁷ Ibid.

pursuit of clean energy and climate action. This legislative bill will promote human rights – including the incipient right to a healthy environment.

3. New South Wales

At a state level, Australian Greens member Sue Higginson introduced the *Public Health and Safety (Fossil Fuel Advertising) Bill 2022 (NSW)*.⁶⁸ According to the Australian Greens, the bill ‘aims to introduce a tobacco-style ban for fossil fuel companies, citing public health concerns as a key reason that fossil fuel companies should be prevented from being able to advertise.’⁶⁹ The bill was inspired by ‘an ongoing community campaign by Comms Declare, “Fossil Ad Ban” that calls for an end to greenwashing ad campaigns and social licence purchase of fossil fuel companies through sponsorship of sports teams.’⁷⁰

Higginson argued: ‘Climate change is the biggest public health crisis we’re facing and this bill recognises the huge and destructive contribution fossil fuel companies make to this crisis.’⁷¹ She commented: ‘It’s wrong that these companies that are causing so much damage and who are behind the terrible climate disasters we’re now continually facing are able to run public advertising campaigns showing wind turbines and solar panels or to have their names on the uniforms of our children’s sports teams.’⁷² Higginson commented: ‘We need to remove that opportunity for these companies to influence our

⁶⁸ *Public Health and Safety (Fossil Fuel Advertising) Bill 2022 (NSW)*
<https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=4014>

⁶⁹ Australian Greens, ‘Greens Introduce Bill to Ban Fossil Fuel Advertising’, Press Release, 20 September 2022, <https://greens.org.au/nsw/news/media-release/greens-introduce-bill-ban-fossil-fuel-advertising>

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.

communities and I commend Comms Declare for their commitment to making this happen.’⁷³

In a media interview, Higginson has explained that the bill had its origins in conversations with Comms Declare.⁷⁴ She noted: ‘My role as a Greens MP is to bring into parliament what good campaigns are happening within the community, and so I saw this as a perfect opportunity to introduce the idea of the fossil fuel ban into law in New South Wales.’⁷⁵ Higginson commented: ‘So that was the Genesis, and of course, the campaign is a very sensible campaign, a necessary campaign, and of course has enormous support from the public health sector.’⁷⁶

Belinda Noble, Founder, Comms Declare, commented: ‘Fossil fuel marketing only exists to stimulate demand for toxic coal, petrol and methane gas, polluting our air, accelerating climate change and delaying the transition to clean energy.’⁷⁷ She observed: ‘Advertising self-regulation has failed to protect the public, and a ban on fossil fuel advertising is the only way we can effectively and quickly stamp out greenwashing and misinformation’.⁷⁸ Nobel concluded: ‘I thank Sue Higginson for

⁷³ Ibid.

⁷⁴ Calum Jaspan, ‘Bill to Ban Fossil Fuel Advertising in NSW Introduced into Parliament’, *Mumbrella*, 21 September 2022, <https://mumbrella.com.au/bill-to-ban-fossil-fuel-advertising-in-nsw-introduced-into-parliament-757206>

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Australian Greens, ‘Greens Introduce Bill to Ban Fossil Fuel Advertising’, Press Release, 20 September 2022, <https://greens.org.au/nsw/news/media-release/greens-introduce-bill-ban-fossil-fuel-advertising>

⁷⁸ Ibid.

making this move to protect public health and I hope other states and the federal government will soon follow.’⁷⁹

The initiative was also supported by public health leaders. Child and adolescent psychiatrist and paediatrician, and co-chair of Doctors for the Environment, Dr Cybele Dey, commented: ‘Mining coal, oil and gas threatens the health and wellbeing of all Australians and everyone on this planet and I hope all NSW MPs and Senators act to protect health by ending fossil fuel advertising.’⁸⁰ She insisted: ‘Health professionals support stopping fossil fuel advertising because they witness the human toll from burning fossil fuels via air pollution and climate change.’⁸¹ Dey reflected: ‘As a child and adolescent psychiatrist and paediatrician, I’m especially concerned about our children and young people, over 50% of whom feel betrayed by governments over climate change.’⁸² She noted: ‘We are already seeing more children coming to hospital with self-harm during extreme heat and depression following climate-fuelled disasters.’⁸³ Dey concluded: ‘Leadership by NSW MPs and Senators to stop fossil fuel advertising would provide realistic hope for young people and protect health into the future.’⁸⁴

However, the Conservative Government of the day was not keen on the bill. NSW Treasurer Matt Kean – who is a Liberal member committed to climate action - argued

79 Ibid.

80 Ibid.

81 Ibid.

82 Ibid.

83 Ibid.

84 Ibid.

that the bill was ‘virtue signalling’.⁸⁵ He maintained: We're focused on real things that can make a difference whilst growing our economy.’⁸⁶ There also seemed to be resistance from national sporting leagues and their teams who were loathe to give up on fossil fuel sponsorship. Notably, the Wallabies received sponsorship from a fossil fuel company, Santos; the AFL has Shell as a partner; the Super Netball league has Origin Energy; and Cricket Australia was associated with Alinta Energy.

This proposal did not progress far – as the New South Wales Parliament was dissolved for an election. The bill lapsed because Parliament was prorogued.⁸⁷ The Australian Labor Party won the subsequent New South Wales election against the conservative coalition of the Liberal Party and the National Party. Sue Higginson remained a member of the Legislative Council – her term of service expires in 2027. She will no doubt contemplate reintroducing the bill to ban fossil fuel advertising.

Recommendation 3

The New South Wales Parliament has discussed the *Public Health and Safety (Fossil Fuel Advertising) Bill 2022 (NSW)*, which frames a ban on fossil fuel advertising in terms of public health.

⁸⁵ AAP, ‘Why a Proposal to Ban Fossil Fuel Advertising in NSW could face Pushback from Sporting Codes’, *SBS News*, 20 September 2022, <https://www.sbs.com.au/news/article/why-a-proposal-to-ban-fossil-fuel-advertising-in-nsw-could-face-pushback-from-sporting-codes/1yv3zr0a>

⁸⁶ Ibid.

⁸⁷ *Public Health and Safety (Fossil Fuel Advertising) Bill 2022 (NSW)* <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=4014>

4. Federal Parliament

In 2023, Australian Senate has established ‘an inquiry into greenwashing, particularly claims made by companies, the impact of these claims on consumers, regulatory examples, advertising standards, and legislative options to protect consumers.’⁸⁸ The terms of reference observe that the inquiry on greenwashing will focus on (a) the environmental and sustainability claims made by companies in industries including energy, vehicles, household products and appliances, food and drink packaging, cosmetics, clothing and footwear; (b) the impact of misleading environmental and sustainability claims on consumers; (c) domestic and international examples of regulating companies' environmental and sustainability claims; (d) advertising standards in relation to environmental and sustainability claims; (e) legislative options to protect consumers from green washing in Australia; and (f) any other related matters. The Australian Senate Environment and Communications Reference Committee is investigating the topic of greenwashing – with a view to publishing a report in 28 June 2024.⁸⁹ The inquiry has thus far received 127 submissions – and is holding its first public hearing on the 6 March 2024.

The inquiry has raised questions as to whether existing regulations in respect of greenwashing are adequate and sufficient – given the scale of the problem. The self-regulatory body of Ad Standards has not proven to be an effective forum at dealing with greenwashing. The Australian Competition and Consumer Commission has warned that

⁸⁸ Australian Senate Environment and Communications Reference Committee, ‘Greenwashing’, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Greenwashing

⁸⁹ Ibid.

greenwashing has become a pervasive problem in Australian advertising.⁹⁰ After issuing guidelines on green claims, the Australian Competition and Consumer Commission has taken action in respect of greenwashing under Australian Consumer Law – but with mixed results in the courts. The Australian Securities and Investment Commission has belatedly taken action over greenwashing by companies under corporations law. The Clean Energy Regulator has also had to deal with concerns about greenwashing. There has been discussion of the use of climate litigation to deal with greenwashing by fossil fuel companies. In this context, a number of environment groups, public health advocates, and communications expert have questioned whether tinkering and reforming with existing laws will be sufficient. A number of civil society organisations have pushed for a fossil fuel advertising ban in Australia.

In Australia, Comms Declare have discussed the use of warning labels and emissions information as regulatory options in respect of fossil fuel advertising.⁹¹ Policy Action 1 is a legislated prohibition on fossil fuel advertising. Policy Action 2 calls for mandatory information standards. The mandatory information standards on product labels and advertisements would be issued under existing regime in Part 3-4 of the *Australian Consumer Law, Competition and Consumer Act 2010 (Cth)*, Schedule 2. Broad options would include prescribing information to include with ‘carbon neutral’ and ‘net zero’ claims, and eco warnings on claims or products, emissions labelling for certain products. Such measures can be introduced at the Federal Australian Treasurer’s

⁹⁰ Australian Competition and Consumer Commission, ‘Greenwashing by Australian Businesses in Australia – Findings of ACCC’s Internet Sweep’, 2 March 2023, <https://www.accc.gov.au/about-us/publications/greenwashing-by-businesses-in-australia-findings-of-acccs-internet-sweep>

⁹¹ Comms Declare, ‘Fossil Ad Ban: Federal MP Toolkit’, 2023, <https://fossiladban.org/wp-content/uploads/2023/06/FAB023-FAB-Federal-Toolkit-.pdf>

discretion. Policy Action 3 would relate to emissions information labels. This proposal would extend existing determination for minimum energy performance standards and energy rating labels on appliances and whitegoods to include greenhouse gas emissions. Policy Action 4 is to introduce and strengthen industry codes. Industry self-regulation under a voluntary code could be mandated under section 51AE of the *Competition and Consumer Act* 2010 (Cth). It would involve an agreement on minimum standards in emissions advertising.

Comms Declare made a submission to the Federal Inquiry into Greenwashing.⁹² This submission by Comms Declare had three main recommendations. First, Comms Declare asked for ‘the introduction of new federal legislation banning advertising and sponsorships for coal, petroleum and gas products, similar to tobacco advertising bans.’⁹³ Comms Declare elaborated on its argument:

One approach would be for Australia to legislate a tobacco-style ban on fossil fuel advertising and sponsorships. This would apply to ‘advertising’ which directly or indirectly promotes the production or supply of coal, petroleum and gas, and would focus on fossil fuel products rather than a ban on advertising by fossil fuel companies. This would introduce specific up-front (ex ante) obligations under a new federal legislation to complement existing misleading conduct laws (where enforcement action is retrospective). This would be a strong market signal, reduce the visibility and social licence of fossil fuels, and reduce the burden on regulators to police greenwashing.⁹⁴

⁹² Comms Declare, ‘Greenwashing Senate Inquiry: Submission’, July 2023, <https://commsdeclare.org/2023/07/12/submission-senate-greenwashing-inquiry/>

⁹³ Ibid., 2.

⁹⁴ Ibid., 13.

Second, Comms Declare argued ‘that “net zero” or “carbon neutral” claims cannot be based solely on offsets and must be backed by detailed plans modelled on Paris Agreement targets’.⁹⁵ Comms Declare noted: ‘The Australian Consumer Law carries an existing regime which would allow for the introduction of mandatory information standards for environmental claims like these.’⁹⁶ Third, Comms Declare asked ‘that advertising for high emissions products carry government-mandated eco labels.’⁹⁷ It suggested that this initiative ‘might be achieved without legislative reform, utilising determinations under the *Greenhouse Gas and Energy Minimum Standards Act 2012* (Cth).’⁹⁸

In June 2023, Doctors for the Environment released a position statement on fossil fuel advertising and sponsorship.⁹⁹ The statement noted: ‘In recognition of the inextricable link between the extraction and consumption of fossil fuels and global warming, air and plastic pollution and the climate health emergency, Doctors for the Environment Australia (DEA) commits to work to support the community campaign for a ban on advertising by companies involved in the production or supply of fossil fuels.’¹⁰⁰ Doctors for the Environment wanted a prohibition on the advertising of fossil fuels; a prohibition on fossil fuel industry sponsorship; and prohibition of fossil fuel sponsorship of the health sector. Doctors for the Environment provided this rationale

⁹⁵ Ibid., 2.

⁹⁶ Ibid., 2.

⁹⁷ Ibid., 2.

⁹⁸ Ibid., 2.

⁹⁹ Doctors for the Environment, ‘Position Statement – Fossil Fuel Advertising and Sponsorship’, June 2023, <https://dea.org.au/wp-content/uploads/2023/06/Fossil-fuel-advert-and-sponsorship-ban.pdf>

¹⁰⁰ Ibid.

for its position: ‘Banning fossil fuel advertising encourages the shift in social and political attitudes that is urgently required to transition to safer, cleaner energy.’¹⁰¹

Under the Albanese Government, Federal Communications Minister Michelle Rowland has previously rejected the need for a tobacco-style ban on fossil fuel ads.¹⁰² She told the *Sydney Morning Herald* in July 2022 that advertising regulation in Australia ‘strike a balance between legitimate commercial interests and appropriate community safeguards’.¹⁰³

At a national level, independent ACT Senator, and Wallabies champion, David Pocock has been supportive of a fossil ad ban.¹⁰⁴ He has previously said that fossil fuel advertising in sport is akin to tobacco advertising: ‘I really think fossil fuel sponsorship is the new cigarette sponsorship, where they are advertising a product that we now know is destroying our home planet and our futures’.¹⁰⁵

¹⁰¹ Ibid.

¹⁰² Rosemary Bolger, ‘City of Sydney to Consider Ban on Fossil Fuel Advertising to Fight Climate Change, Pollution’, *ABC News*, 20 August 2022, <https://www.abc.net.au/news/2022-08-20/sydney-council-considers-coal-gas-oil-advertising-ban-motion/101352790>

¹⁰³ Angus Dalton, “Worse than Tobacco”: Climate Activists Push for Ban on Fossil Fuel Ads’, *The Sydney Morning Herald*, 24 July 2022, <https://www.smh.com.au/environment/climate-change/worse-than-tobacco-climate-activists-push-for-ban-on-fossil-fuel-ads-20220716-p5b24e.html>

¹⁰⁴ Chris Dutton, ‘Labor is Timid’: Greens, Pocock Ramp up Bid to Ban Canberra Sport Fossil Fuel Ads’, *The Canberra Times*, 6 February 2024, <https://www.canberratimes.com.au/story/8510676/act-greens-jo-clay-david-pocock-keen-to-ban-fossil-fuel-ads/>

¹⁰⁵ Royce Kurlmelvos, ‘Fossil Fuel Advertising in Sport “The New Cigarette Sponsorship”, ex-Wallabies Captain David Pocock Says’, *The Guardian*, 10 November 2021, <https://www.theguardian.com/business/2021/nov/10/fossil-fuel-advertising-in-sport-the-new-cigarette-sponsorship-says-ex-wallabies-captain-david-pocock>

Senator Scott Ludlam of the Australian Greens has raised the problem of information pollution by fossil fuel companies in parliament and community events.¹⁰⁶

In the House of Representatives, Teal Independent Zali Steggall MP has argued that Australia should ban fossil fuel advertising – much like it has prohibited the advertising of tobacco products.¹⁰⁷ Steggall commented:

Greenwashing is a deceptive marketing tactic that has become a powerful weapon of the fossil fuel industry's arsenal, hindering climate action while millions pay the price. There are over eight million deaths per year associated with the effect of burning fossil fuels, and no regulation. Straight from the tobacco, alcohol and gambling industry's handbook, fossil fuel companies seek social licence by greenwashing their activities through advertising and sponsorship. Frequently, fossil fuel companies will spend more time and money on marketing themselves as environmentally or climate conscious than they do on genuinely minimising their environmental impact.¹⁰⁸

Steggall commented: ‘Greenwashing by the fossil fuel industry has seriously delayed action and is harmful to Australians’.¹⁰⁹ She lamented that ‘these companies exert huge influence, and through greenwashed advertising use phrases like “net zero future” and “boosting renewables” without providing any information on concrete action they are

¹⁰⁶ Scott Ludlam, *Full Circle: A Search for the World That Comes Next*, Melbourne: Black Inc., 2021.

¹⁰⁷ Hon. Zali Steggall, ‘Advertising: Harmful Products’, the House of Representatives, Australian Parliament, 31 May 2023, 3955, <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F26701%2F0137%22>

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

taking.’¹¹⁰ Steggall has discussed the problem of greenwashing in a number of other speeches in the Federal Parliament.

Steggall argued that Parliament ‘should also introduce mandatory information on emission standards on information labels, in advertising and on products’ in order to ‘help people to be informed and will direct their consumer habits and practices.’¹¹¹ She maintained: ‘We know that greenwashing, with all other kinds of advertising of harmful products, should be appropriately regulated by the government.’¹¹² She strongly urged the government to pursue action on these issues and reduce the influence of fossil fuel companies and climate disinformation.

Recommendation 4

The Federal Parliament has been investigating the problem of greenwashing in a Senate Inquiry. There has been concern that existing models of regulation and enforcement have been ineffective at dealing with greenwashing. Independent MP Zali Steggall, Independent Senator David Pocock, and the Australian Greens have mooted a ban on fossil fuel advertising.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Ibid.

5. Fossil Fuel Sponsorship and Promotion

In Australia, the Climate Council has launched a Fossil Fuel Free Sponsorship Code as part of a national campaign to get fossil fuel sponsorship out of our events.¹¹³ The Climate Council warned: ‘From flooded music festivals and concerts cancelled by bushfire threats, to extreme heat disrupting play at the cricket, climate change – driven by the burning of coal, oil and gas, is putting the sports, arts and events we love at risk.’¹¹⁴ The Climate Council was alarmed by greenwashing by fossil fuel companies – particularly through sponsorship: ‘Even in the midst of the climate crisis, giant fossil fuel companies like Woodside, Santos, Chevron and Glencore are greenwashing their image by sponsoring hundreds of Australian teams, arts institutions and community events.’¹¹⁵ The Climate Council called for an end to fossil fuel sponsorships: ‘No amount of cheerful corporate branding can cover up the fact that these companies are fuelling harmful climate change, and as the climate crisis worsens around us, it’s time for major sporting codes, arts bodies and event organisers to #CallTime, and end fossil fuel sponsorships for good.’¹¹⁶

¹¹³ Climate Council, *Fossil Free Sponsorship Code - Calling Time: How to Remove Fossil Fuel Sponsorships from Sport, Art, and Events*, 2023, <https://www.climatecouncil.org.au/resources/call-time-fossil-fuel-sponsorship/> and https://www.climatecouncil.org.au/wp-content/uploads/2023/06/CC_MVSA0356-CC-Report-Fossil-Fuel-Free-Sponsorship-Code_V5-FA-Screen-Single.pdf

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

There has been controversy over sponsorship of sporting and cultural events by fossil fuel companies (much like there was concern about tobacco sponsorship of sport and the arts in the past).

Guy Pearse, David McKnight, and Bob Burton have written about how fossil fuel companies seek to boost their social legitimacy and moral licence through soft power means – such as sponsorship and promotion of sport, education, and culture.¹¹⁷ The writers related: ‘Sponsorship of sports is one the more conspicuous vehicles used by coal companies to ingratiate themselves with Australians.’¹¹⁸ The critics noted: ‘Educational institutions are another pillar of Australian society increasingly being hooked up to coal industry funding in a range of ways, but most obviously at our universities.’¹¹⁹ The authors observed: ‘Cultural heritage is becoming another attractive target for the coal industry’s permeation in Australian life.’¹²⁰

Gina Reinhart’s Hancock Prospecting was a sponsor of netball. There was criticism in some quarters as to whether this appropriate given the role of mining companies in climate change.¹²¹ There had also been criticism of the mining company’s approach to Indigenous issues. In the end, Gina Reinhart’s Hancock Prospecting pulled multi-

¹¹⁷ Guy Pearse, David McKnight, and Bob Burton, *Big Coal: Australia’s Dirtiest Habit*, Sydney: New South, 1 August 2013.

¹¹⁸ Ibid., 116.

¹¹⁹ Ibid., 118.

¹²⁰ Ibid., 122.

¹²¹ Megan Maurice, ‘Gina Rinehart’s foray into Australian netball an Exercise in Climate Exchange’, *The Guardian*, 30 September 2022, <https://www.theguardian.com/sport/2022/sep/30/gina-rineharts-foray-into-australian-netball-an-exercise-in-climate-exchange>

million funding for the Netball Diamonds.¹²² Netball Australia received a new sponsorship deal after Hancock Prospecting withdrew its sponsorship.¹²³ Hancock Prospecting has continued to sponsor elite sports – such as Rowing Australia, Volleyball Australia, and Swimming Queensland.¹²⁴

Australian Cricket captain Pat Cummins is a member of the Cricket for Climate organization. He has expressed the view that cricketers should be climate leaders – especially given the impact of climate change upon the sport:

Like millions of other Australians, I grew up with cricket. From playing and watching the sport, to volunteering and being part of a local club, cricket is part of Australian culture. That gives cricket an opportunity to lead the way in creating economic, social and environmental change that benefits everyone. So the next generation can continue experiencing the same joys of cricket and community I have – including my son, Albie. In just a short time, Cricket for Climate has inspired tremendous progress. Let’s continue to make an impact together.¹²⁵

¹²² Australian Associated Press, ‘Diamonds “Wanted to Support” Hancock sponsorship but no regrets over stand taken’, *The Guardian*, 24 October 2022, <https://www.theguardian.com/sport/2022/oct/24/diamonds-wanted-to-support-hancock-sponsorship-but-no-regrets-over-stand-taken>

¹²³ Mile Hytner, ‘Victoria to sponsor Australian Diamonds Netball Team after Hancock Prospecting Exit’, *The Guardian*, 31 October 2022, <https://www.theguardian.com/sport/2022/oct/31/victorian-government-to-sponsor-australian-diamonds-netball-team-after-hancock-prospecting-exit>

¹²⁴ Mike Hytner, ‘Australian Olympic Committee among sporting bodies backing their Hancock Prospecting sponsorships’, *The Guardian*, 25 October 2022, <https://www.theguardian.com/sport/2022/oct/25/australian-olympic-committee-among-sports-bodies-backing-their-hancock-prospecting-sponsorships>

¹²⁵ Climate for Cricket, <https://cricketforclimate.org/>

In 2022, Pat Cummins decided that he would not appear in any more advertising of sponsor, Alinta Energy.¹²⁶ He commented: ‘Every organisation has a responsibility to do what’s right for the sport and what they think is right for the organisation and, I hope, society when it moves forward’.¹²⁷ In July 2023, Alinta Energy concluded its partnership with Cricket Australia.¹²⁸ Environment Victoria CEO Jono La Nauze, commented: ‘Sporting codes must be more proactive in seeking sponsors that meet community expectations for positive environmental and social impacts, rather than simply opting for the highest bidder from companies with damaging social and environmental modus operandi.’¹²⁹

There has been criticism of the sponsorship of the AFL Team The Fremantle Dockers by Woodside. A number of high profile Fremantle Dockers members and supporters called on their team to cut its ties with the oil and gas giant.¹³⁰ The group included former Dockers player Dale Kickett, author Tim Winton, and former West Australian

¹²⁶ Mike Hytner, ‘Pat Cummins says he will not appear in any more Ads for Cricket Australia Energy Company Sponsor’, *The Guardian*, 18 October 2022, <https://www.theguardian.com/sport/2022/oct/18/pat-cummins-says-he-will-not-appear-in-any-more-ads-for-cricket-australia-energy-company-sponsor>

¹²⁷ Ibid.

¹²⁸ Jack Mahony, ‘Alinta Energy's Major Sponsorship Deal with Cricket Australia ends after Pat Cummins storm over “Ethical Objections”’, *Sky News*, 17 July 2023, <https://www.skynews.com.au/australia-news/sport/alinta-energys-major-sponsorship-deal-with-cricket-australia-ends-after-pat-cummins-storm-over-ethical-objections/news-story/a49caa067bd84dad33b35bcda50b84ca>

¹²⁹ Mike Hytner, ‘Pat Cummins says he will not appear in any more Ads for Cricket Australia Energy Company Sponsor’, *The Guardian*, 18 October 2022, <https://www.theguardian.com/sport/2022/oct/18/pat-cummins-says-he-will-not-appear-in-any-more-ads-for-cricket-australia-energy-company-sponsor>

¹³⁰ Andrea Mayes, ‘High-profile Fremantle Dockers Supporters Call on Club to End Woodside Sponsorship Deal’, *ABC News*, 19 October 2022, <https://www.abc.net.au/news/2022-10-19/fremantle-dockers-members-urge-club-to-end-woodside-sponsorship/101550430>

Premier, Carmen Lawrence. The group wrote in a letter: ‘Despite claims it is trying to decarbonise, Woodside has doubled down on fossil fuels in the last year; purchasing BHP's oil and gas assets and becoming one of the top ten largest fossil fuel companies in the world.’¹³¹ Nonetheless, Fremantle and Woodside Energy have extended their partnership in 2023 for its 15th year.¹³² Climate scientist Bill Hare expressed his disappointment at the decision: ‘“This year, we've seen such an awful array of really extreme climate events, really extreme heat, massive wildfires, extreme flooding.’¹³³ He lamented: ‘I would have thought the club would see it's way to getting out of fossil fuels sponsorship because of that.’¹³⁴

Leading Australian literary figure Tim Winton was highly critical of the fossil fuel sponsorship of the Perth Festival.¹³⁵ He maintained that the ‘arts-washing’ of fossil fuel companies was ‘straight out of the big tobacco playbook.’¹³⁶ In 2022, at the Perth Writer’s Festival, Australian author Tim Winton expressed his concerns about fossil fuel sponsorship of culture and the arts: ‘Our democracy has been so bewitched, and so thoroughly gaslit, that the nation is now terrified at the prospect of leaving what’s

¹³¹ Ibid.

¹³² Fremantle FC, ‘Fremantle and Woodside Energy extend Partnership: The Partnership between the Fremantle Dockers and Woodside will Enter its 15th Year’, Press Release, 27 September 2023, <https://www.fremantlefc.com.au/news/1441287/fremantle-and-woodside-energy-extend-partnership>

¹³³ Tom Wildie and Herlyn Kaur, ‘Fremantle Dockers slammed for signing new sponsorship deal with Woodside Energy’, *ABC News*, 28 September 2023, <https://www.abc.net.au/news/2023-09-28/fremantle-dockers-criticised-over-woodside-sponsorship-deal-afl/102909870>

¹³⁴ Ibid.

¹³⁵ Kelly Burke, ‘“It Makes us Chumps”’: Tim Winton speaks out against Fossil Fuel Sponsorship of Perth Festival’, *The Guardian*, 28 February 2022, <https://www.theguardian.com/culture/2022/feb/28/it-makes-us-chumps-tim-winton-speaks-out-against-fossil-fuel-sponsorship-of-perth-festival>

¹³⁶ Ibid.

clearly a toxic relationship.’¹³⁷ He highlighted how fossil fuel companies had engaged in climate denial and disinformation, as well as greenwashing and gaslighting:

The big fossils want to kick on while they still can, while the trade is still legal. They’ve known about the dangers for decades. They’ve spent fortunes to obscure the data and confuse the public with the kind of spin and misinformation that’d make an autocrat blush. Some of them have more resources and more power than nation states. Steve Coll, Rachel Maddow and the Union of Concerned Scientists have documented their long, sleazy war on climate science and public accountability. And their propaganda blitz continues unabated. It’s straight out of the Big Tobacco playbook. And it’s been enormously successful. Marian Wilkinson and Rebecca Huntley have written very well about how the big fossils have secured such an extraordinary, disproportionate and enduring influence over every aspect of our culture and polity.¹³⁸

Winton reflected that ‘financial institutions, superfunds, shareholder groups and banks are withdrawing their patronage of the fossil fuel industry’ because ‘it’s seen as an increasingly bad bet, and in their view, it no longer passes the ethics test’.¹³⁹ Winton wondered why the cultural sector was slow to divest from fossil fuels: ‘So how is it that the arts community, should show less creativity and moral imagination than bankers?’¹⁴⁰

¹³⁷ Tim Winton, ‘Closing Address at the Perth Writers Festival’, *Australian Marine Conservation Society*, 27 February 2022, <https://www.marineconservation.org.au/gaslit-edited-excerpt-from-our-patron-tim-wintons-closing-address-at-the-perth-writers-festival-27-2-22/>

¹³⁸ Ibid.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

In 2024, Woodside cut its ties with Perth’s Fringe Festival after environmental protests.¹⁴¹ Fossil Free Arts’ spokesperson, Anthony Collins, commented: ‘It is a credit to the WA arts scene that festival season is no longer promoting the destruction being caused by the state’s two biggest polluters.’¹⁴² He observed: ‘It is now a matter of time before other institutions either cut ties with big polluters or face negative consequences due to their support of an LNG industry which is betting against a liveable climate.’¹⁴³

There have been protests about the Santos sponsorship of the Darwin Festival.¹⁴⁴ Fossil Free Arts NT described Santos’s decision to end its sponsorship out as a ‘huge win’ for traditional owners and local communities impacted.¹⁴⁵ Anna Weekes of Fossil Free Arts NT commented: ‘[This is] a clear acknowledgement that its attempts to greenwash its gas projects no longer wash with artists, audiences or the wider community.’¹⁴⁶ She observed: ‘It’s now time for Darwin festival to show leadership and make a clear commitment to end all ties with fossil fuel money and develop an ethical sponsorship policy to avoid these controversies in the future and set an example that prioritises first nations culture, local communities and a safe climate in the territory.’¹⁴⁷ Weekes commented: ‘It’s also time for a shake up of the current board which has allowed these

¹⁴¹ Kelly Burke, ‘Woodside cuts all ties with Perth’s Fringe World festival after years of environmental protests’, *The Guardian*, 3 January 2024, <https://www.theguardian.com/culture/2024/jan/03/woodside-cuts-all-ties-with-perths-fringe-world-festival-after-years-of-environmental-protests>

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ Kelly Burke, ‘Santos to End Darwin Festival Sponsorship as Anti-Fossil Fuel Backers Emerge’, *The Guardian*, 19 October 2022, <https://www.theguardian.com/culture/2022/oct/18/santos-to-end-darwin-festival-sponsorship-as-anti-fossil-fuel-backers-emerge>

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

risks to our festival to persist for so long, with more artists and cultural workers appointed to engage and listen to our communities and our sector.’¹⁴⁸

In the United Kingdom, there has been various cultural protests against fossil fuel sponsorship of galleries, museums, and performing arts companies.¹⁴⁹ Actor Emma Thompson has argued that, if we can ban tobacco advertising and sponsorship, we can ban fossil fuel propaganda.¹⁵⁰ She has despaired of the insidious problem of greenwashing:

‘Delay and deceive’ is the new denial. Fossil fuel companies are pumping millions into greenwashing while making meaningless net zero promises and introducing false ‘solutions’, in order to gloss over their decades of destruction. They are falsely painting themselves as allies and extending the deadline of their obsolete business.¹⁵¹

Thompson observed: ‘Oil and gas companies buy prestige by sponsoring museums, influencing the sphere of knowledge by putting money into universities, and gaining popularity when their logos are associated with sport.’¹⁵² She reflected that fossil fuel companies ‘invest a lot in buying a social licence to continue with business as usual by creeping into our everyday lives and disguising the damage.’¹⁵³

¹⁴⁸ Ibid.

¹⁴⁹ Mel Evans, *Artwash: Big Oil and the Arts*, London: Pluto Books, 2015.

¹⁵⁰ Emma Thompson, ‘Greenwashing is Driving Our Descent into Climate Catastrophe. But We Can Stop It’, *The Guardian*, 2 August 2022, <https://www.theguardian.com/commentisfree/2022/aug/02/emma-thompson-greenwashing-climate-catastrophe-activism-fossil-fuel-advertising-sponsorship>

¹⁵¹ Ibid.

¹⁵² Ibid.

¹⁵³ Ibid.

Recommendation 5

There has also been broader community debate in Australia over whether there should be restrictions or a ban on fossil fuel promotion and sponsorship – particularly in respect of sport and culture.

6. The Precedent of Tobacco Control

Clemens Kaupa has noted that ‘important parallels between tobacco and fossil fuel advertising can be identified.’¹⁵⁴ He argues: ‘This suggests that the tobacco advertising ban may serve as a plausible model for a fossil fuel advertising ban and also that the case law on the former is relevant for evaluating the legality of the latter’.¹⁵⁵ Kaupa comments that the *WHO Framework Convention on Tobacco Control 2003* offers a useful model or template for a comprehensive ban and prohibition on fossil fuel advertising, sponsorship, and promotion.

There are a number of dimensions of the *WHO Framework Convention on Tobacco Control 2003* which could provide a blueprint for an international agreement on the regulation of greenwashing by fossil fuel companies.

¹⁵⁴ Clemens Kaupa, ‘Promoting the Apocalypse? The Legality of a Ban on Advertising for Fossil Fuels and Other Carbon-Intensive Products under European Law’ (2023) *European Journal of Risk Regulation* 1-23.

¹⁵⁵ Ibid.

The *WHO Framework Convention on Tobacco Control* 2003 provides for a comprehensive ban and prohibition on tobacco advertising, sponsorship, and promotion.¹⁵⁶ Article 13 (1) provides: ‘Parties recognize that a comprehensive ban on advertising, promotion and sponsorship would reduce the consumption of tobacco products.’¹⁵⁷ Article 13 (2) stipulates: ‘Each Party shall, in accordance with its constitution or constitutional principles, undertake a comprehensive ban of all tobacco advertising, promotion and sponsorship.’¹⁵⁸ This shall include, subject to the legal environment and technical means available to that Party, a comprehensive ban on cross-border advertising, promotion and sponsorship originating from its territory’.¹⁵⁹ Furthermore: ‘In this respect, within the period of five years after entry into force of this Convention for that Party, each Party shall undertake appropriate legislative, executive, administrative and/or other measures and report accordingly in conformity with Article 21.’¹⁶⁰ Article 13 (3) provides: ‘A Party that is not in a position to undertake a comprehensive ban due to its constitution or constitutional principles shall apply restrictions on all tobacco advertising, promotion and sponsorship.’¹⁶¹ Article 13 (4) provides that each Part shall:

¹⁵⁶ *WHO Framework Convention on Tobacco Control* 2003, opened for signature 21 May 2003, 2302 UNTS 166 (entered into force 27 February 2005) (FCTC)..

¹⁵⁷ Article 13 (1) of the *WHO Framework Convention on Tobacco Control* 2003, opened for signature 21 May 2003, 2302 UNTS 166 (entered into force 27 February 2005) (FCTC).

¹⁵⁸ Article 13 (2) of the *WHO Framework Convention on Tobacco Control* 2003, opened for signature 21 May 2003, 2302 UNTS 166 (entered into force 27 February 2005) (FCTC).

¹⁵⁹ Article 13 (2) of the *WHO Framework Convention on Tobacco Control* 2003, opened for signature 21 May 2003, 2302 UNTS 166 (entered into force 27 February 2005) (FCTC).

¹⁶⁰ Article 13 (2) of the *WHO Framework Convention on Tobacco Control* 2003, opened for signature 21 May 2003, 2302 UNTS 166 (entered into force 27 February 2005) (FCTC).

¹⁶¹ Article 13 (3) of the *WHO Framework Convention on Tobacco Control* 2003, opened for signature 21 May 2003, 2302 UNTS 166 (entered into force 27 February 2005) (FCTC).

- (a) prohibit all forms of tobacco advertising, promotion and sponsorship that promote a tobacco product by any means that are false, misleading or deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions;
- (b) require that health or other appropriate warnings or messages accompany all tobacco advertising and, as appropriate, promotion and sponsorship;
- (c) restrict the use of direct or indirect incentives that encourage the purchase of tobacco products by the public;
- (d) require, if it does not have a comprehensive ban, the disclosure to relevant governmental authorities of expenditures by the tobacco industry on advertising, promotion and sponsorship not yet prohibited. Those authorities may decide to make those figures available, subject to national law, to the public and to the Conference of the Parties, pursuant to Article 21;
- (e) undertake a comprehensive ban or, in the case of a Party that is not in a position to undertake a comprehensive ban due to its constitution or constitutional principles, restrict tobacco advertising, promotion and sponsorship on radio, television, print media and, as appropriate, other media, such as the internet, within a period of five years; and
- (f) prohibit, or in the case of a Party that is not in a position to prohibit due to its constitution or constitutional principles restrict, tobacco sponsorship of international events, activities and/or participants therein.¹⁶²

Article 13 (5) provides that ‘parties are encouraged to implement measures beyond the obligations set out in paragraph 4.’¹⁶³

Article 13 (6) emphasizes that ‘parties shall cooperate in the development of technologies and other means necessary to facilitate the elimination of cross-border advertising.’¹⁶⁴ Article 13 (7) provides: ‘Parties which have a ban on certain forms of tobacco advertising, promotion and sponsorship have the sovereign right to ban those forms of cross-border tobacco advertising, promotion and sponsorship entering their

¹⁶² Article 13 (4) of the *WHO Framework Convention on Tobacco Control 2003*, opened for signature 21 May 2003, 2302 UNTS 166 (entered into force 27 February 2005) (FCTC).

¹⁶³ Article 13 (5) of the *WHO Framework Convention on Tobacco Control 2003*, opened for signature 21 May 2003, 2302 UNTS 166 (entered into force 27 February 2005) (FCTC).

¹⁶⁴ Article 13 (6) of the *WHO Framework Convention on Tobacco Control 2003*, opened for signature 21 May 2003, 2302 UNTS 166 (entered into force 27 February 2005) (FCTC).

territory and to impose equal penalties as those applicable to domestic advertising, promotion and sponsorship originating from their territory in accordance with their national law.’¹⁶⁵ Article 13 (8) observes: ‘Parties shall consider the elaboration of a protocol setting out appropriate measures that require international collaboration for a comprehensive ban on cross-border advertising, promotion and sponsorship.’¹⁶⁶ The Conference of the Parties in 2024 have put forward specific guidelines to address cross-border tobacco advertising, promotion and sponsorship and the depiction of tobacco in entertainment media for implementation of Article 13.¹⁶⁷

The World Health Organization have developed guidelines for nation states in terms of the implementation of such a ban and a prohibition.¹⁶⁸ The guidelines note: ‘A ban on tobacco advertising, promotion and sponsorship is effective only if it has a broad scope.’¹⁶⁹ The guidelines observe: ‘Contemporary marketing communication involves an integrated approach to advertising and promoting the purchase and sale of goods, including direct marketing, public relations, sales promotion, personal selling and online interactive marketing methods.’¹⁷⁰ The guidelines comment: ‘If only certain

¹⁶⁵ Article 13 (7) of the *WHO Framework Convention on Tobacco Control* 2003, opened for signature 21 May 2003, 2302 UNTS 166 (entered into force 27 February 2005) (FCTC).

¹⁶⁶ Article 13 (8) of the *WHO Framework Convention on Tobacco Control* 2003, opened for signature 21 May 2003, 2302 UNTS 166 (entered into force 27 February 2005) (FCTC).

¹⁶⁷ Fifth Report of Committee B, Specific guidelines to address cross-border tobacco advertising, promotion and sponsorship and the depiction of tobacco in entertainment media for implementation of Article 13 (Tobacco advertising, promotion and sponsorship) of the WHO FCTC, Conference of the Parties to the WHO Framework Convention on Tobacco Control, Panama, 5-10 February 2024, FCTC/COP/10/B/R/5.

¹⁶⁸ World Health Organization, ‘Guidelines for Implementation of Article 13’, WHO Framework Convention on Tobacco Control, 1 January 2013, <https://fctc.who.int/publications/m/item/tobacco-advertising-promotion-and-sponsorship>

¹⁶⁹ *Ibid.*, 3.

¹⁷⁰ *Ibid.*, 3.

forms of direct tobacco advertising are prohibited, the tobacco industry inevitably shifts its expenditure to other advertising, promotion and sponsorship strategies, using creative, indirect ways to promote tobacco products and tobacco use, especially among young people.’¹⁷¹

The *WHO Framework Convention on Tobacco Control* 2003 also encourages nation states to use graphic health warnings, and plain packaging of tobacco products. The *WHO Framework Convention on Tobacco Control* 2003 provides a framework for civil liability and criminal liability for tobacco companies. This model may be of interest to those focused on climate litigation, and criminal action over ecocide. The *WHO Framework Convention on Tobacco Control* 2003 establishes rules against tobacco companies engaging in interference in public policy-making processes. That model has often been cited in the context of the need to free public policy-making in respect of climate change from interference by fossil fuel companies.

There has been a call for a parallel ban and prohibition on fossil fuel advertising, sponsorship, and promotion, as part of a Fossil Fuel Non-Proliferation Treaty.¹⁷² The main elements of such a Treaty would focus on non-proliferation; a fair phase-out and a just transition. A key action to implement the Fossil Fuel Non-Proliferation Treaty is stopping ‘ads spurring climate breakdown.’¹⁷³ The toolkit for cities commented:

Fossil fuel companies and heavy industry polluters use advertising to expand their social license to operate, amplify demand for a fossil fuel economy, and stall a just energy transition.

¹⁷¹ Ibid., 3.

¹⁷² Fossil Fuel Non-Proliferation Treaty, <https://fossilfueltreaty.org/>

¹⁷³ Fossil Fuel Non-Proliferation Treaty, *Cities: Toolkit*, <https://fossilfueltreaty.org/cities-toolkit>

Campaign to stop fossil fuel advertising in your city, including marketing, greenwashing, branding and sponsoring by fossil fuel companies. This means an end to advertising for the fossil fuel industry (oil, coal, gas), air travel, petrol and diesel vehicles (e.g. cheap flights, SUVs).¹⁷⁴

The guidance observed: ‘There are plenty of precedents to stop harmful marketing such as bans on advertising for tobacco, junk food and weapons, and the same can be done to stop advertising fuelling climate breakdown.’¹⁷⁵ The cities toolkit pointed to resources such as Reclame Fossilvrij, Badvertising, the Fossil Ad Ban, the Drilled podcast, and the influence map.

The Intergovernmental Panel on Climate Change has highlighted the role of advertising and public relations in delaying climate action: ‘Who dominates the debate on media, and how open the debate can be, varies significantly across countries based on participants’ material and technological power.’¹⁷⁶ The Intergovernmental Panel on Climate Change concluded in its full report: ‘Fossil fuel industries have unique access

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

¹⁷⁶ Emma Thompson, ‘Greenwashing is Driving Our Descent into Climate Catastrophe. But We Can Stop It’, *The Guardian*, 2 August 2022, <https://www.theguardian.com/commentisfree/2022/aug/02/emma-thompson-greenwashing-climate-catastrophe-activism-fossil-fuel-advertising-sponsorship> See also Duncan Meisel, ‘Why the IPCC Shone a Spotlight on Ad Agencies Still Working With Fossil Fuel Clients’, *The Drum*, 7 April 2022, <https://www.thedrum.com/opinion/2022/04/07/why-the-ipcc-shone-spotlight-ad-agencies-still-working-with-fossil-fuel-clients>

to mainstream media via advertisements, shaping narratives of media reports, and exerting political influence in countries like Australia and the USA.¹⁷⁷

It should be noted that the tobacco industry has sought to delay and block the introduction of tobacco control measures through trade disputes, and investor actions.¹⁷⁸ There could be similar challenges by fossil fuel companies to fossil fuel health warnings, and bans on fossil fuel advertising, promotion, and sponsorship. Resource companies have been active users of investor-state dispute settlement against government regulations in the past.¹⁷⁹

Recommendation 6

The comprehensive ban on tobacco advertising, promotion and sponsorship provides a model and a blueprint for efforts to regulate fossil fuel advertising, promotion, and sponsorship.

Recommendation 7

The ACT initiative is also in keeping with comparative models. Notably, France has implemented a nation-wide prohibition on advertising for fossil fuels under climate law. There have also been proposals in the European Parliament for a ban on fossil fuel advertising. Health advocates,

¹⁷⁷ Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2022: Mitigation of Climate Change*, Sixth Assessment Report, Geneva: Intergovernmental Panel on Climate Change, 2022, Chapter 13, 1378.

¹⁷⁸ Matthew Rimmer, 'The Chilling Effect: Investor-State Dispute Settlement, Graphic Health Warnings, the Plain Packaging of Tobacco Products and the Trans-Pacific Partnership', (2017) 7 (1) *Victoria University Law and Justice Journal* 76-93.

¹⁷⁹ Matthew Rimmer, 'The Empire Strikes Back: Fossil Fuel Companies, Investor-State Dispute Settlement, International Trade, and Accountable Climate Governance', in Elizabeth Edmondson and Stuart Levy (ed.), *Transformative Climates and Accountable Governance*, London: Palgrave, 2018, 75-117.

environmental defenders, and civil society groups have pushed for health warnings, restrictions, and prohibitions on fossil fuel advertising in Canada.

Recommendation 8

The United Nations Secretary-General Antonio Guterres has called for there to be ‘zero tolerance’ for greenwashing. The ACT initiative would follow the best practice of the Fossil Fuel Non-Proliferation Treaty, which calls for a ban on fossil fuel advertising, sponsorship, and promotion.

BIOGRAPHY

Dr Matthew Rimmer is a Professor in Intellectual Property and Innovation Law at the Faculty of Business and Law, at the Queensland University of Technology (QUT). He has published widely on copyright law and information technology, patent law and biotechnology, access to medicines, plain packaging of tobacco products, intellectual property and climate change, Indigenous Intellectual Property, and intellectual property and trade. He is undertaking research on intellectual property and 3D printing; the regulation of robotics and artificial intelligence; and intellectual property and public health (particularly looking at the coronavirus COVID-19). His work is archived at QUT ePrints, SSRN Abstracts, Bepress Selected Works, and Open Science Framework.

Rimmer has published four major research monographs. Rimmer is the author of a research monograph, *The Trans-Pacific Partnership: Intellectual Property and Trade in the Pacific Rim* (Edward Elgar, 2020), *Intellectual Property and Climate Change: Inventing Clean Technologies* (Edward Elgar, 2011), *Intellectual Property and Biotechnology: Biological Inventions* (Edward Elgar, 2008), and *Digital Copyright and the Consumer Revolution: Hands off my iPod* (Edward Elgar, 2007). His *PhD Dissertation* is on *The Pirate Bazaar: The Social Life of Copyright Law* (UNSW, 2001).

Rimmer has also edited a number of collections. With co-editors Bitu Amani and Caroline Ncube, Rimmer is currently working on an edited collection, the *Elgar Companion to Intellectual Property and the Sustainable Development Goals* (Edward Elgar, 2023/ 2024). Along with Dinusha Mendis and Mark Lemley, Rimmer is the editor of the collection, *3D Printing and Beyond: Intellectual Property and Regulation*

(Edward Elgar, 2019). Rimmer is the editor of the collection, *Intellectual Property and Clean Energy: The Paris Agreement and Climate Justice* (Springer, 2018). Rimmer has edited a special issue of the QUT Law Review on the topic, *The Plain Packaging of Tobacco Products* (2017) - which featured a foreword by former Minister for Health and Attorney-General Nicola Roxon. Rimmer is the editor of the collection, *Indigenous Intellectual Property: A Handbook of Contemporary Research* (Edward Elgar, 2015). Rimmer is also a co-editor of *Intellectual Property and Emerging Technologies: The New Biology* (Edward Elgar, 2012), and *Incentives for Global Public Health: Patent Law and Access to Essential Medicines* (Cambridge University Press, 2010). Rimmer edited the thematic issue of Law in Context, entitled *Patent Law and Biological Inventions* (Federation Press, 2006).

Over the past two decades, Rimmer's research has been supported by a number of nationally competitive research grant applications. Rimmer has been a chief investigator in an Australian Research Council Discovery Project, 'Gene Patents In Australia: Options For Reform' (2003-2005), an Australian Research Council Linkage Grant, 'The Protection of Botanical Inventions' (2003); an Australian Research Council Linkage Grant, 'Unlocking IP' (2006-2008) and an Australian Research Council Discovery Project, 'Promoting Plant Innovation in Australia' (2009-2011). He was an Australian Research Council Future Fellow, working on Intellectual Property and Climate Change from 2011 to 2015. Rimmer was a Chief Investigator on an ARC Discovery Project on 'Inventing The Future: Intellectual Property and 3D Printing' (2017-2021). He is a chief investigator of the NHMRC Centre of Research Excellence on Achieving the Tobacco Endgame (CREATE) (2020-2025). He is a co-director of the

legal project of the research network. Rimmer has experience in directing large-scale collaborative research projects on intellectual property and global challenges.

Rimmer is a chief investigator in the QUT Centre for Behavioural Economics, Society, and Technology (QUT BEST); and the QUT Australian Centre for Health Law Research (QUT ACHLR). He is a member of the QUT Centre for Justice, the QUT Digital Media Research Centre (QUT DMRC), and the QUT Centre for Clean Energy Technologies and Processes. Rimmer is a chief investigator, and co-director of the legal program in the NHMRC Centre of Research Excellence on Achieving the Tobacco Endgame (CREATE) (2020-2025) - a transnational research network. Rimmer was previously the leader of the QUT Intellectual Property and Innovation Law Research Program from 2015-2020 (QUT IPIL).

Dr Matthew Rimmer holds a BA (Hons) and a University Medal in literature (1995), and a LLB (Hons) (1997) from the Australian National University. He received a PhD in law from the University of New South Wales for his dissertation on *The Pirate Bazaar: The Social Life of Copyright Law* (1998-2001). Dr Matthew Rimmer was a lecturer, senior lecturer, and an associate professor at the ANU College of Law, and a research fellow and an associate director of the Australian Centre for Intellectual Property in Agriculture (ACIPA) (2001 to 2015). He was an Australian Research Council Future Fellow, working on Intellectual Property and Climate Change from 2011 to 2015. He was a member of the ANU Climate Change Institute.

THE AUSTRALIAN CENTRE FOR HEALTH LAW RESEARCH (ACHLR)

The Australian Centre for Health Law Research (ACHLR) is a research centre based at the Faculty of Business and Law at the Queensland University of Technology (QUT).

ACHLR is celebrating ten years of making a difference to health law. Health law is critical to support and regulate health systems, the delivery of health services and positive health outcomes for individuals and society. ACHLR is internationally recognised as a leading health law research centre, with 38 academic members, 20 PhD students and 20 esteemed Adjunct Professors in the field of health law from across the globe. ACHLR researchers undertake innovative interdisciplinary research into current and emerging health law challenges in Australia and globally to produce an evidence base to properly address complex problems in the field of health and inform reforms to health law, policy and practice in the context of constant societal change.

ACHLR's research critically evaluates the legal, ethical, policy and regulatory frameworks, both conceptual and practical, which support and regulate the delivery of health services in diverse contexts. It distils the links between historical and current law, and its informing ethical and social realities and principles. We employ a range of research methods, including doctrinal, ethical, and empirical approaches. Our research explains for academic, professional and community audiences why the law takes its current form, how it can be critiqued, and how it might be reformed.

During its ten year history, ACHLR researchers have published 784 articles and book chapters; 25 books or edited collections; produced 82 reports/policy briefings and

submissions to government enquiries or royal commissions; and graduated 30 PhD students. ACHLR researchers have been awarded \$56million in grant funding during this time.

ACHLR's health law researchers draw on disciplines including ethics, philosophy, medicine, nursing, psychology, economics, sociology and social work to address practical problems that arise in the health context. Our researchers have a strong track record of undertaking high impact research in health law, policy, ethics, and regulation. Our focus is not only on quality scholarship, but generating new knowledge, evidence, and insights to enhance health and legal policy and practice, and to improve health outcomes. This research serves the interests of the individuals, communities, and institutions that deliver and benefit from health services and other interventions that aim to improve health locally and globally.

Our research has had significant impact: our recommendations have been adopted by parliaments, courts and tribunals, and law reform commissions. Our work has also influenced state and national policy, prompting changes to clinical education in universities, hospitals and health departments. ACHLR has a strong international focus and presence. We actively continue to build and maintain relationships with external partners to facilitate opportunities for research collaborations, funded and unfunded, and to build and maintain our profile as a leading health law centre globally.

BEST CENTRE

The Centre for Behavioural Economics, Society and Technology (BEST) is university-wide research centre and an international leader in applied behavioural insights and research. The Centre connects the real world with researchers and amplifies QUT's expertise in health, science, technology and creative industries. We are a federation of researchers interested in applying Behavioural Insights to address real world problems in close collaboration with government, industry and the not-for profit sector.

By embracing a spirit of fearlessness and intellectual curiosity, we strive to challenge the status quo and boldly explore uncharted territories in pursuit of innovative solutions to society's most pressing challenges. Our ultimate goal is to inspire and drive positive change, leaving a lasting impact on individuals, communities, and society as a whole. When external organisations work with us, they engage in an immersive research experience where we co-design solutions WITH rather than FOR them. We compete on the basis of providing an immersive transformative research experience. We blend theory with practice to provide the actionable insights for consultancy with depth of science.