

# **AUSTRALIAN SENATE SELECT COMMITTEE ON TOBACCO HARM REDUCTION**

## **RESPONSES TO QUESTIONS FROM SENATOR SHELDON**

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### **INTRODUCTION**

I have worked on public health issues for a very long time and testified a great many times before legislative committees in numerous countries. I have also regularly dealt with conflict of interest issues before such committees, as an author in academic journals, as an expert witness in court, and elsewhere. Yet I have never encountered such needlessly, confusingly and unanswerably broad questions. I appreciate that Senator Sheldon's office narrowed the time period to five years, but these questions still go well beyond a reasonable inquiry into potential conflicts of interest. My assumption is that whoever drafted them either does not understand the issue of conflicts or has some other agenda.

Out of respect for the Committee I have tried to answer the questions asked to the extent it is possible. But the real issue at stake with the committee is whether witnesses are aware of anything that would cause a reasonable person to believe testimony involved a conflict of interest. The answer for me is no.

It also appears that these questions come from someone who believes that efforts to provide Australians who smoke cigarettes with much less hazardous alternatives is somehow a plot by Big Tobacco. This is the point I explicitly addressed in my written and verbal testimony. To believe in this theory is a fundamental misunderstanding of the dynamics in play and risks a 'bootleggers and Baptists' scenario. A related relevant question is whether those seeking measures that protect the cigarette trade from lower risk alternatives might have important conflicts of interest.

Conflicts are an issue that are worth considering with all witnesses. Thus, I hope others have also been asked for disclosures. For instance, there is a very long history of moralistic attitudes from the United States, backed by large financial resources, impacting other nations' policies on alcohol, narcotics, women's reproductive rights, the acceptability of left wing political ideas, and now nicotine. The potential conflicts of those who promote an abstinence-only agenda on nicotine should be questioned. This is particularly so when Michael Bloomberg, an ardent prohibitionist with respect to lower risk alternatives to cigarettes, has put an extraordinary amount of money into implementing that vision globally. In addition, major US government funding bodies adhere to an abstinence-only 'tobacco free world' goal, just as they long adhered to a 'drug free world' one.

For the record, not only do I not accept funding from those with a commercial interest in nicotine products, but I also refuse funding from bodies that advocate for unscientific and inhumane abstinence-only policies that are at odds with public health principles and human rights.

With that as background, the following are my answers to the questions:

**QoN 01**

Are you aware of Australia's obligations under Article 5.3 of World Health Organisation's Framework Convention on Tobacco Control "*in setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law*"?

Yes.

**QoN 02**

Have you or your organisation received any support, whether financial or non-financial, direct or indirect, from any parties involved in the production, distribution or sale of tobacco, nicotine or vaping products?

Please provide details of that support, including:

- a. the nature of that support;
- b. the amount or value provided;
- c. the name of the entity or person providing it; and
- d. any other related information.

This question is incredibly broad and goes well beyond a reasonable test of conflict of interest, but in deference to the committee I will try to answer it as well as possible, and seek guidance on just how broad a request the committee has in mind.

I have received no significant financial support for my work from any source for several years (I am self-funded and see my public health work as part of my philanthropic activities), and nothing from commercial entities with business interests in nicotine.

The issues of indirect support is construed so broadly in this question as to require clarification. My most significant career income is from payments received for my role with legal teams that successfully sued cigarette companies. Very large payments were made by these companies to the clients of these firms, the firms received contingency fees and I was compensated from these fees. The last of these fees was within the past five years. While this money flowed indirectly from cigarette companies, I do not see it as a potential conflict of interest, other than perhaps causing someone to think I would be motivated to engage in further lawsuits against these companies. Please let me know if the committee feels a need for further details and provide an explanation for that reasoning.

I have also had associations throughout my career with various bodies that were funded via levies extracted from tobacco companies. In the past five years this has included expert panels, academic work and presentations for groups funded by the Master Settlement Agreement in the US (the companies agreed to fund anti-smoking initiatives as part of the settlement of state litigation) and with bodies such as the Food and Drug Administration and groups funded with the resources that body has received due to fees imposed on tobacco companies.

I also have an extensive personal investment portfolio and exercise control over family and philanthropic assets. There are no direct investments in any of the entities named in your

question but there will undoubtedly be innumerable indirect financial linkages. Such as such firms using the services of companies with which I hold an interest (finance, software, real estate, etc.). If the committee believes this is important to try to fully disclose, let me know.

I simply do not know what is meant by non-financial ‘support’. I am aware of nothing that would raise a concern of conflicts of interest. But I regularly benefit in my public health work from information accessed directly or indirectly from tobacco companies, such as SEC filings, analyst reports and investor presentations.

### **QoN 03**

Have you or your organisation, received any support, whether financial or non-financial, direct or indirect, from associated entities of tobacco companies?

If yes, please provide details of that support, including:

- a. the nature of that support;
- b. the amount or value provided;
- c. the name of the entity or person providing it; and
- d. any other related information.

This is again so very broad as to be unanswerable, “associated” meaning simply ‘connected to something else’. If the question is whether I have received benefits that could be reasonably seen as a concern in terms of a conflict of interest the answer is no.

If the committee is interested in tangential, de minimis, through intervening parties (such as government spending of taxes received), using the same international accounting firm, etc., please let me know, and please give clear directions on what is being sought.

### **QoN 04**

Have you received any assistance, or liaised or consulted with, any other person or organisation in the preparation of your evidence to this inquiry?

If yes, please provide the details of any persons and/or organisation that assisted, or with whom you liaised or consulted, in the preparation of your evidence to this inquiry, including:

- a. the name of the persons or organisation;
- b. the ABN or CAN, if applicable; and
- c. any other related information.

No.

**QoN 05**

Did you make inquiries as to whether the persons/organisations you consulted or liaised with receive any support, whether financial or non-financial, direct or indirect, from parties involved in the production, distribution or sale of tobacco, nicotine or vaping products?

If yes, please provide the details of those inquiries, including:

- a. what assurances were sought;
- b. dates of those inquiries; and
- c. whether they were made in written form or orally.

Given that my answer to the foregoing question was negative, this is not applicable.

However, when I do check for conflicts of interest, I ask questions directly related to whether there could be a reasonable apprehension of bias. I would not ask impossibly broad questions such as this one. As a lawyer, I would be embarrassed and likely humiliated if I were to ask a question this broad. Out of respect for your Committee and for parliamentary democracy in general I would be very pleased to liaise directly with the drafter of your questions to help develop a more coherent approach to the concept of conflicts for future Committee work.

**QoN 06**

Have you, or any organisation with which you are associated, received any support, whether financial or non-financial, direct or indirect, from the following organisations, or persons associated with, the following organisations:

- a. The Institute for Public Affairs;
- b. Centre for Independent Studies;
- c. The Sydney Institute;
- d. Australian Taxpayers Alliance;
- e. Australian Institute For Progress;
- f. Mannkal Economic Education Foundation;
- g. Legalise Vaping Australia; and
- h. any ATLAS network member organisation.

I do not think I have had contact with any of these groups, which I assume are domestic Australian civil society organisations. However, I am associated (again, meaning ‘connected with something else’) with many organisations. Several of them being large universities, for instance. Naturally I have no knowledge of whether, or the extent to which, any of the organisations with which I am associated has interacted with or received support from any such group or someone associated with it.

**QoN 07**

Please provide the details of support given by the organisations listed in question 4, including:

- a. name of the organisation;
- b. nature of the support;
- c. amount or value provided; and
- d. any other related information.

As the answer for me is 'no', this does not apply to me. As the answer to the broader question of any organization with which I am associated has crossed this apparent line of contact with one of these groups or anyone associated with them, I respectfully submit that the answer is both unknowable and irrelevant from the standpoint of conflicts of interest.

**QoN 08**

Have you consulted, or had any contact with the groups or persons associated with groups listed in question 4, regarding your submission to this inquiry, or regarding your policy on vaping, tobacco, nicotine or any related products?

If yes, please provide the details of the organisations listed in question 4 with which you had contact, including:

- a. name of the organisation; and
- b. what the nature of the contact was.

I have had no known contact with said groups and none influenced my testimony. As to the "or had any contact with the groups or persons associated with groups . . .", how would I know? I have a great many friends and colleagues in Australia and, as with my country of Canada, they are generally free to associate with whomever they wish. I also have a healthy respect for the Australian attachment to civil liberties. So if I were I to ask my Australian friends to disclose all their contacts with civil society groups as a condition of contact with me I would have decidedly fewer friends, and my life would be poorer for it.