

Senate Community Affairs Committee

ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH PORTFOLIO

Supplementary Budget Estimates 2013-14, 20 November 2013

Question: E13-216

OUTCOME: 1 – Population Health

Topic: Tobacco Plain Packaging

Type of Question: Hansard Page 32, 20 November 2013

Senator: McLucas

Question:

Provide an update on the current status of FOI applications from 'big tobacco'.

Answer:

Please see Attachment.

List of all Tobacco Plain Packaging FOI requests made to the Department of Health and Ageing
as at 29 November 2013

Summary table

Status Category	Number of Requests
Completed	46
Processing	0
Negotiation	0
Withdrawn by applicant	15
Deemed withdrawal	5
Transferred	1
TOTAL	67

Note: *shading highlights those requests which have been completed or withdrawn.*

No	Terms of request	Date received	Applicant	Status
1	<p>All documents (hard or soft copy), including but not limited to policy discussion papers, legal advice, policy advice and communications originating in or sourced for the Department or another organisation within or external to the government, addressing or discussing proposals and/or legislation to introduce plain packaging and/or the removal of trademarks on consumer products, including but not limited to tobacco products and/or R18+ classified films.</p> <p>The Department accepted the partial transfer, in respect of the elements of this request that relate to plain packaging of tobacco products.</p> <p>Letter specifying estimate of charges was sent on 30 June 2010. No response was received from the applicant, and the request was deemed to have been withdrawn on 18 August 2010.</p>	<p>31 May 2010</p> <p>(Partial transfer from the Dept of Innovation, Industry, Science and Research)</p>	Institute of Public Affairs	Deemed withdrawal
2	<p>Same as request No. 1.</p> <p>The Department accepted the partial transfer of this second request, from IP Australia, in respect of the elements of this request that relate to plain packaging of tobacco products. This request was processed with the above request. Letter specifying estimate of charges was sent on 30 June 2010. No response was received from the applicant, and the request was deemed to have been withdrawn on 18 August 2010.</p>	<p>18 June 2010</p> <p>(Partial transfer from IP Australia)</p>	Institute of Public Affairs	Deemed withdrawal
3	<p>Documents created or received on or after 1 January 2005 to 24 June 2010 relating to plain packaging of tobacco products, according to 19 focus questions on plain packaging, smoking rates, product prices and competition, retailing of tobacco products, illicit trade, graphic health warnings, intellectual property rights, trade obligations, documents passing between specific organisations and departments, research and writing of the Preventative Health Task Force, tobacco control, the Anti-smoking Action, legal advice and other specified documents.</p>	<p>28 June 2010</p>	Philip Morris Limited (PML)	Completed

4	Documents created or received on or after 1 January 2005 to 24 June 2010 relating to plain packaging of tobacco products.	Transfer FOI Treasury	PML	Completed
5	Documents created or received on or after 1 January 2005 to 24 June 2010 relating to plain packaging of tobacco products.	Transfer FOI DFAT	PML	Completed
6	Documents created or received on or after 1 January 2005 to 24 June 2010 relating to plain packaging of tobacco products.	Transfer FOI DIISR	PML	Completed
7	Documents created or received on or after 1 January 2005 to 24 June 2010 relating to plain packaging of tobacco products.	Transfer FOI DOFD	PML	Completed
8	Documents created or received on or after 1 January 2005 to 24 June 2010 relating to plain packaging of tobacco products.	Transfer FOI AGD	PML	Completed
9	All documents used in decision making for Anti-Smoking Action of 29 April 2010.	1 July 2010	BATA	Completed
10	All advice, documents, information on generic packaging during Minister Dr Carmen Lawrence's time in office.	2 July 2010	BATA	Completed
11	All documents created within the period from 1 January 2008 to date 19 July 2010 referring or relating to: (a) the formulation and drafting of the "Tobacco Recommendations" contained in the report titled, "Taking Preventative Action" (at pages 61 to 85 inclusive) released by the Department on 11 May 2010; (b) the expected effect of the introduction of the plain packaging of tobacco, appeal and desirability of smoking; (c) any other expected effect of the introduction of the plain packaging of tobacco products; and (d) the use of packaging by the tobacco industry, including in relation to "brand image".	19 July 2010	BATA	Completed
12	All documents created within the period from 1 January 2008 to date 19 July 2010 referring or relating to: (a) the commission or conduct of a Regulatory Impact Statement in relation to the plain packaging of tobacco products; (b) any assessment of the impact, including costs, benefits and levels of risk, associated with the introduction of plain packaging of tobacco products on consumers, business, government and the community; (c) the optimal pack design to achieve the public health objectives associated with the plain packaging of tobacco products; and (d) concerns of retailers associated with the plain packaging of tobacco products.	23 July 2010	BATA	Completed
13	All documents that fall within the following categories "Technical Report 2: Tobacco control in Australia: making smoking history including addendum for October 2008 to June 2009" (G Report) where those documents refer or relate to any of the following matters: (a) the consideration, development and drafting of the "Action Proposed" that is recorded in the following terms at page 21 of the TWG Report;	23 July 2010	BATA	Completed

ACTION PROPOSED

Require all tobacco products to be sold in plain packaging, the exact appearance of which (precise colour, paper finish, shape of pack etc) could be prescribed in regulations under the Trade Practices Act 1974

Commission research to determine exactly how packs should be designed to minimise appeal to young people.

- (b) the consideration, development and drafting of the "Action Proposed" that is recorded in the following terms at page 22 of the TWG Report;

ACTION PROPOSED

Amend Schedule 2 to the Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 1974 to prescribe that health warnings must cover at least 90% of the front and 100% of the back of the pack.

- (c) the consideration, development and drafting of the "Action" that is recorded in the following terms at page 98 of the TWG Report:

Action 3.1

Legislate to eliminate all remaining forms of promotion, including promotion of price, public relations activities, payments to retailers and proprietors of hospitality venues, promotion through packaging and, as far as feasible, through new and emerging forms of media.

- (d) the consideration, development and drafting of the "Action" that is recorded in the following terms at page 99 of the TWG Report:

Action 3.3

Eliminate promotion of tobacco products through design of packaging.

14	<p>All documents that fall within the following categories documents refer or relate to any of the following matters:</p> <p>(a) the scope or terms of reference of the report by Professor Susan Hurley, Dr Matthew Spittal, Ms Michelle Scollo, Dr Sarah Durkin and Professor Melanie Wakefield commissioned by the NPHT and titled "Predicted impact of proposed tobacco control strategies" dated June 2009 (Report), including any consideration or decision in relation to whether the scope or terms of reference of that Report should include consideration of the impact of the plain packaging of tobacco products;</p> <p>(b) the preparation of the Report, including any drafts of the Report; and any other reports, papers or research commissioned by or on behalf of the Department, the NPHT or the TWG; or by</p> <p>(c) any other Commonwealth Department or agency, in relation to the impact of proposed tobacco control strategies including plain packaging.</p>	23 July 2010	BATA	Completed
15	<p>All documents created within the period from 1 January 2008 to date 19 July 2010:</p> <p>(a) records of the National Preventative Health Taskforce (NPHT) and the Tobacco Working Group of the NPHT (TWG), including records of communications between the Department and the NPHT and TWG;</p> <p>(b) research commissioned or considered by the Department, the NPHT or the TWG;</p> <p>where those documents refer or relate to any of the following matters:</p> <p>(a) anti-counterfeit measures, including any increased incidence of counterfeiting, associated with the plain packaging of tobacco products; and</p> <p>(b) the illicit trade of tobacco products, including any anticipated increase in illicit trade, associated with the plain packaging of tobacco products.</p>	23 July 2010	BATA	Completed
16	<p>All documents that comprise the following "major sources" used in the preparation of the report prepared by the Tobacco Working Group of the National Preventative Health Taskforce titled, "Technical Report 2: Tobacco control in Australia: making smoking history including addendum for October 2008 to June 2009" (as listed on page 51 of that report):</p> <ol style="list-style-type: none"> 1. Postings by members of the Inter-national Union Against Cancers "GLOBALink" network on 	23 July 2010	BATA	Completed

<p>proposals, legislative and regulatory reforms not currently in place in Australia.</p> <ol style="list-style-type: none"> 2. Recently published and soon to be published major reviews of scientific evidence conducted by intern - national scientific agencies. 3. Reviews and meta-analyses and studies in scientific journals. 4. Policy recommendations prepared by international health authorities. 5. Discussion papers prepared by expert groups. 6. Reviews of evidence by government agencies prepared as part of regulatory impact statements required prior to consideration by legislators. 7. Published and unpublished research on tobacco promotion and media education conducted by the Centre for Behavioural Research in Cancer. <p>Published and unpublished results of the Inter-national Tobacco Control Four Nations (ITC 4 Nations) study.</p>		
<p>17</p> <p>All documents that were created within the period 1 January 2008 to date 21 July 2010 referring or relating to:</p> <p>(a) the impact of the introduction of plain packaging of tobacco products on Australia's obligations under International law and International treaties, including but not limited to, Australia's obligations under:</p> <ul style="list-style-type: none"> • the agreement that is generally referred to as the GATT Agreement (General Agreement on Trade and Tariffs) • the agreement that is generally referred to as the TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights); • the agreement that is generally referred to as the TBT Agreement (Agreement on Technical Barriers to Trade); <p>(b) the impact of the introduction of plain packaging of tobacco products on Australia's obligations under any free trade agreement or free trade agreements generally; and</p>	<p>23 July 2010</p>	<p>BATA</p> <p>Completed</p>

	<p>(c) the impact of the introduction of plain packaging of tobacco products on Australia's obligations under any bilateral investment treaty or bilateral investment treaties generally.</p>	Completed
18	<p>All documents to do with:</p> <ul style="list-style-type: none"> (a) the meetings and other activities of the Framework Convention on Tobacco Control (FCTC) Working Group, including but not limited to any involvement by the Department or any other Commonwealth department or agency in those meetings and activities; (b) the meetings and other activities of the FCTC Inter-governmental Negotiating Body, including but not limited to any involvement by the Department or any other Commonwealth department or agency in those meetings and activities; (c) the meetings and other activities of the FCTC Open-Ended Inter-governmental Working Group, including but not limited to any involvement by the Department or any other Commonwealth department or agency in those meetings and activities; (d) the meetings and other activities of the FCTC Conference of the Parties, including but not limited to any involvement by the Department or any other Commonwealth department or agency in those meetings and activities; (e) the meetings and other activities of the FCTC Working Group for the development of guidelines on the implementation of Article 5.3, including, but not limited to any involvement by the Department or any other Commonwealth department or agency in those meetings and activities; (f) the meetings and other activities of the FCTC Working Group for the development of guidelines on the implementation of Article 11, including, but not limited to any involvement by the Department or any other Commonwealth department or agency in those meetings and activities; (g) the meetings and other activities of the FCTC Working Group for the development of guidelines on the implementation of Article 13, including, but not limited to any involvement by the Department or any other Commonwealth department or agency in those meetings and activities; (h) the meetings and other activities of any expert group associated with the FCTC, including any reports, guidelines or protocols developed by any such group. 	BATA
	23 July 2010	BATA
19	<p>All briefing papers and minutes prepared for the Minister, the Parliamentary Secretary or senior departmental officers in the period from 1 January 1996 to 31 December 1997 that referred or related to</p>	<p>23 July 2010</p> <p>BATA</p> <p>Withdrawn by applicant</p>

	<p>tobacco use or tobacco regulation.</p> <p>All inter-departmental and general correspondence and papers created in the period from 1 January 1996 to 31 December 1997 that referred or related to tobacco use or tobacco regulation.</p> <p>All records of internal departmental management meetings and teleconferences, including agendas and minutes created in the period from 1 January 1996 to 31 December 1997 that referred or related to tobacco use or tobacco regulation.</p>		
<p>20</p> <p>All documents referring or relating to:</p> <p>(a) advice received by the Department in or around December 1995, including legal advice received from the Attorney General's Department on 14 December 1995, in relation to the generic packaging of tobacco products (Advice);</p> <p>(b) any summary or other document that discloses the substance of the Advice that was prepared of, or in relation to, the Advice (Summary);</p> <p>(c) any request by the TWG that it be provided with a copy of the Advice or Summary, including any response to that request;</p> <p>(d) any request by the MTAG that it be provided with a copy of the Advice or Summary, including any response to that request;</p> <p>(e) consideration by the Department of any request by the TWG that it be provided with a copy of the Advice or Summary, including any decision, discussion or deliberation in relation to that request.</p>	<p>23 July 2010</p> <p>BATA</p> <p>Withdrawn by applicant</p>		
<p>21</p> <p>All documents created before 1 July 1993</p> <p>(a) the policy objectives or outcomes that were sought to be achieved through the introduction of the Tobacco Advertising Prohibition Act 1992 (Clth) (TAP Act) and any associated subordinate legislation;</p> <p>(b) the expected effect or impact of the introduction of the TAP Act and any associated subordinate legislation, including but not limited to any research or analysis in relation to the expected effect</p>	<p>4 August 2010</p> <p>BATA</p> <p>Withdrawn by applicant</p>		

	<p>or impact of that legislation; or</p> <p>(c) the role or significance of the TAP Act and any associated subordinate legislation in the context of the Department's long term strategy or goals in relation to tobacco control.</p>			Withdrawn by applicant
<p>22</p>	<p>All documents created in the period 1 January 1992 to 31 December 1995</p> <p>(a) the expected effect or impact of the new health warnings that were being considered by the NHMRC and Ministerial council during the period 1992 to 1994 (New Health Warnings);</p> <p>(b) research or analysis that was commissioned or considered by the NHMRC and Ministerial Council in relation to the New Health Warnings, including but not limited to research undertaken or overseen by the Centre for Behavioural Research in Cancer;</p> <p>(c) the policy objectives or outcomes that were sought to be achieved through the introduction of the New Health Warnings;</p> <p>(d) the role or significance of the New Health Warnings in the context of the Department's long term strategy or goals in relation to tobacco control;</p> <p>(e) the expected effect or impact of the introduction of the Trade Practices (Consumer Product Information Standards) (Tobacco Regulation Commonwealth) Regulations 1994 (Clth) (TPA Regulation), including any impact statements, cost benefit analysis or any other reassessment of the expected effect or impact of that legislation;</p> <p>(f) research or analysis that was commissioned or considered in relation to the introduction of the TPA Regulation, including but not limited to research undertaken or overseen by the Centre for Behavioural Research in Cancer and any research in relation to the design and development of the health warnings introduced by the TPA Regulation;</p> <p>(g) the policy objectives or outcomes that were sought to be achieved through the introduction of the TPA Regulation;</p> <p>(h) the role or significance of the TPA Regulation in the context of the Department's long term strategy or goals in relation to tobacco control;</p> <p>(i) research, analysis or consideration in relation to the introduction of health warnings on tobacco products containing photographs, pictures or other images; or</p>	4 Aug 2010	BATA	

23	<p>(j) research, analysis or consideration in relation to the introduction of generic or plain packaging of tobacco products.</p>		Withdrawn by applicant
24	<p>All documents created in the period 1 December 1995 to 31 December 1997 referring or relating to:</p> <p>(a) consideration of, or discussion in relation to, the recommendations made in the report presented in December 1995 by the Senate Community Affairs References Committee to the Commonwealth Parliament titled, "The Tobacco Industry and the Costs of Tobacco Related Illness" (Herron Report) in relation to;</p> <p>(A) generic or plain packaging of tobacco products;</p> <p>(B) mandatory health warnings on tobacco products.</p> <p>(b) the development of a formal response by the Commonwealth government to the Herron Report;</p> <p>(c) advice, including legal advice, sought in relation to the recommendations of the Herron Report, excluding the legal advice that is the subject of AAT proceedings no. 2009/4800, Phillip Morris Ltd v Department of Health and Ageing, to which the Applicant is a party;</p> <p>(d) advice, including legal advice, sought in relation to the introduction of generic or plain packaging of tobacco products, excluding the legal advice that is the subject of AAT proceedings no. 2009/4800, Phillip Morris Ltd v Department of Health and Ageing, to which the Applicant is party; or</p> <p>(e) any report, review or research commissioned or undertaken as a consequence of Recommendation 18 of the Herron Report; and</p> <p>(f) any independent research body or facility established as a consequence of Recommendation 18 of the Herron Report.</p>	4 Aug 2010	Withdrawn by applicant
24	<p>All documents created between 1 January 2000 and 31 December 2004 referring or relating to:</p> <p>(a) any report, review or research that was commissioned by or on behalf of the Department, or any agency of the Department, or was considered by the Department in relation to the effectiveness of graphic health warnings on tobacco products;</p> <p>(b) any report, review or research that was commissioned by or on behalf of the Department, or any</p>	4 Aug 2010	Withdrawn by applicant