

# **Submission to the Inquiry into the Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011**

## **Inadequacy of the Inquiry into the Tobacco Plain Packaging Bill 2011**

I would like to take this opportunity to comment on the inadequacy of the inquiry held on the Tobacco Plain Packaging Bill 2011. This inquiry was limited in scope and was unable to review a number of key issues relating to the proposed Bill raised by producers, wholesalers, retailers and individual consumers. In particular, the inquiry largely ignored concerns relating to natural law in general, and the Australian Government's illegitimate attempt to regulate the personal consumption choices of individuals in particular.

## **Violation of individual rights and freedoms**

The Tobacco Plain Packaging Bill 2011 and the related Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011 are a violation of inalienable individual rights and freedoms.

The Australian Government consists of those persons to whom certain powers held by the body of citizens in common are delegated, to act as agents for the citizens, exercising only such powers as are delegated to them. These powers have been enumerated within the Australian Constitution. A delegation of powers is not a transfer or assignment, and ultimately these powers rest with the body of citizens.

However, the Australian Government has relied on various delegated powers, such as Section 51 (xx) to impose illegitimate restrictions on the inalienable rights of Australian citizens, the plain packaging measure being a case in point. It is my view that this measure is:

- a) a violation of natural law (which supersedes any constitutional or statutory law); and
- b) a perversion of the intent of the Australian Constitution.

Natural law tells us that we are all free and equal individuals and that as long as our actions (in this case consuming tobacco) do not violate the rights or freedoms of other individuals specifically or the natural law generally (for example, to adversely affect the health of others), then there is no legitimate reason to impose restrictions on such actions. Doing so is a violation of individual natural rights and freedoms. In this case, the violation is the state interfering with individuals' ability to freely choose the products that they consume.

Further, the enumerated powers delegated to the Australian Government in the Constitution by the body of citizens are not intended for the purposes of violating our inalienable rights and freedoms. Rather, they are delegated with the intention that the government protect these rights and freedoms.

## **Effective Ban on Premium Handmade Cigars**

Under the proposed Tobacco Plain Packaging Bill 2011, premium handmade cigars, such as those imported from Cuba, will effectively be banned. The reason for this is that all such

cigars have individual ring bands with their brand logo printed on them. Premium cigar producers will not produce cigars without these ring bands just for the Australian market, nor are wholesalers and/or retailers able to remove these bands as doing so will damage the cigar. This band can only be removed once the cigar is lighted and the heat dissolves the vegetable-based glue holding the band together. As such, an unintended consequence of the Bill will be a ban on imported premium handmade cigars, which I understood, was not the intention of this Bill.

### **Concluding Remarks**

The Australian Government should refrain from abusing powers delegated to it under the Constitution and micro-managing the lives of individuals by withdrawing the Tobacco Plain Packaging Bill 2011 and the related Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011.

Failing this, the Australian Government should amend the Bills to allow the continued importation, sale and consumption of premium handmade cigars so as to avoid any unintended consequences.

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