

## House of Representatives Standing Committee on Health and Ageing inquiry into:

- **Tobacco Plain Packaging Bill 2011**
- **Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011**

Submission from Cancer Council Australia, National Heart Foundation of Australia, Quit Victoria, and the 16 endorsing organisations (see page 7)

**Cancer Council Australia** is the nation's largest non-government cancer control organisation, representing the national interests of the eight state and territory Cancer Councils in reducing the impact of cancer in Australia.



**The National Heart Foundation of Australia** is the peak body dedicated to reducing the suffering and death from heart, stroke and blood vessel disease in Australia.



**Quit Victoria**, a joint initiative of Cancer Council Victoria, the Victorian Department of Health, the National Heart Foundation (Victoria) and VicHealth, is dedicated to eliminating the pain, illness and suffering caused by tobacco



Responsibility for the content of this submission is taken by the Chief Executive Officer of Cancer Council Australia, Professor Ian Olver AM, the Chief Executive Officer of the National Heart Foundation of Australia, Dr Lyn Roberts AM, and the Executive Director of Quit Victoria, Ms Fiona Sharkie.

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## Overview

The Tobacco Plain Packaging legislation is a groundbreaking public health initiative.

Plain packaging is an advertising restriction applied to a deadly consumer product. Restricting tobacco advertising has been a crucial part of Australia's comprehensive and effective approach to reducing tobacco-caused harm. The decline in smoking in Australia between 1975 and 1995 alone prevented 400,000 premature Australian deaths.

As explained in our submission to the public consultation, the bills are in our view appropriate legal instruments for restricting the use of tobacco packaging as an advertising tool.

This submission summarises the case for plain packaging and debunks myths against the initiative, propagated by a tobacco industry apparently concerned that plain packaging will reduce tobacco take-up and consumption – as it is intended to do.

## **Will plain packaging help to reduce smoking?**

Cigarette packaging is a powerful advertising tool. Young people in particular are affected by the look and feel of the pack.

A detailed review of the evidence collected over more than 20 years, prepared by Cancer Council Victoria and published in May 2011 (updated July 2011), makes a compelling case for the likely public health benefits of plain packaging.

The review makes reference to and wherever possible includes links to more than 150 reports relevant to the question of plain packaging, including more than 25 studies that have empirically tested the likely impact of the initiative, most of these using simulated packs.

Key findings in the review include:

- The tobacco industry uses cigarette pack technologies and innovations in design to communicate particular attributes about each brand and by extension the personality and social status of its users;
- Current pack colours and imagery can dilute the impact of graphic health warnings introduced in Australia in 2006;
- Unregulated package colouring and imagery contribute to consumers' misperceptions that certain brands are safer than others. Removing colours and misleading terms such as 'smooth', 'gold' and 'silver' from packs would reduce false beliefs about the harmfulness of cigarettes;
- Adults and adolescents perceive cigarettes in plain packs to be less appealing, less palatable, less satisfying and of lower quality compared to cigarettes in current packaging. Plain packaging would also affect young people's perceptions about the characteristics and status of the people who smoke particular brands.

As the number of design elements on cigarette packs decrease, so do people's positive perceptions about smoking. Research concludes plain packaging is likely to:

- reduce the appeal of cigarettes to teenagers and adults;
- make health warning messages on packs more prominent; and
- stop smokers incorrectly believing that some brands of cigarettes are less harmful than others.

In summary, there is strong evidence that plain packaging will reduce the appeal of smoking, particularly among young people. It will help consumers to more clearly perceive health risks and, in these ways, contribute to further reducing rates of smoking, particularly among young people in Australia.

## **Who supports plain packaging?**

The introduction of plain packaging for tobacco products was a key recommendation of the National Preventative Health Taskforce. The initiative is also supported by Australia's leading independent public health organisations, colleges and other peak health and medical bodies, including the Australian Medical Association and professional dental groups. A number of these supporters have endorsed this submission; many more have lodged separate submissions.

The Conference of the Parties to the WHO's Framework Convention on Tobacco Control, which has been ratified by 174 countries including Australia, has recommended plain packaging be considered by all Parties as a strategy for reducing tobacco consumption.

Importantly, plain packaging is supported by all of Australia's major federal political parties. This multi-partisan support is a continuation of Australia's long and proud history of both Labor and Coalition governments, with respective Opposition support, introducing public policies that put community health before tobacco industry interests.

## **Who opposes plain packaging?**

The most vocal opponents of plain packaging are the multinational tobacco companies. The tobacco industry's vehement and desperate opposition to the initiative is further evidence of how important packaging is as an advertising tool, particularly for luring young smokers. (Young smokers represent long-term sustainability for the industry.)

Among a number of unfounded and contradictory industry arguments are the claims that plain packaging will do nothing to reduce tobacco consumption, yet at the same time be financially detrimental to tobacco retailers.

The tobacco industry has also sought to mobilise convenience stores and independent retailers in a front group to push its case against plain packaging. The following sections address some of the key issues relating to impacts on retailers – without the tobacco industry spin.

## **How will plain packaging affect small business?**

A number of critical factors must be included in considerations of the possible impact of plain packaging on retailers large and small.

- The tobacco industry has invested in multimillion dollar campaigns to raise alarm about the impact of plain packaging on retailers. This includes support from British American Tobacco Australia Limited, Philip Morris Limited and Imperial Tobacco Australia Limited for the "Alliance of Australian Retailers", a group expressly "formed to fight the Federal Government's plans to introduce plain packaging of tobacco products". The motives of the tobacco industry – whose profits and sustainability in Australia rely on attracting new smokers – in supporting this single-issue alliance should be questioned, along with the associated misinformation, contradictory claims and fear-mongering.
- As reported on 11 July 2011 by WA Nationals MP Tony Cook, the Alliance is coaching and pressuring retailers to advocate the tobacco industry point of view.[1] Significant sections of the retail sector in Australia do not support the Alliance;
- The retail sector, as a matter of core business, continually accommodates changes to packaging, storage and display of a multiplicity of products. While the impact of adapting to plain-packaged tobacco products on the sector remains unclear (and should not be confused by the tobacco industry's intensive campaign to oppose plain packaging), the potential for plain packaging to make smoking less attractive to young people must be the public policy priority;
- While tobacco is a profitable product line for many retailers, it is only one of thousands of consumer items regularly sold in retail each day – and the only one that

kills more than half its long-term consumers when used as directed by the manufacturers.

- Presently, more than 50 cigarette brands are on the market in Australia, 35 of which are sold in multiple variants, making a total of more than 260 variants that could be stocked by a retailer. Many of these are in multiple colours and styles, designed by the tobacco industry to communicate a misleading message about the contents and strength of the product and, as shown in research, to connect with the identity of the smoker. Each different brand uses a different system of colour coding to indicate different variants, with brand and variant names on a different position on the pack, thus making the task of choosing the correct variant a perceptually demanding one. Plain packaging may lead to a rationalisation of these multiple variants, once the industry's capacity to use the pack for advertising is restricted. Retailers may then need to manage fewer product variants. All packs will be clearly labelled in large generic font in the same place on the base of the pack. Plain packaging may therefore make the task of pack selection less demanding.
- Historically, tobacco industry attempts to oppose public policy initiatives aimed at reducing tobacco consumption have included unfounded predictions that retail, advertising, broadcasting and other commercial sectors would suffer as well as the industry's own profits. The record shows none of these predictions has been fulfilled; we expect the fear-mongering about plain packaging and its impact on the retail sector will also prove unfounded.

The tobacco industry has engaged consulting firm Deloitte to produce a suite of five reports raising concern about various aspects. One questions the efficacy of proposed legislation,[2] two raise concerns about illicit trade (see following),[3] [4] one purports to quantify the impacts on small retailers[5] and the fifth report quantifies estimated loss of trade from small business to supermarkets.[6]

It should be noted that, while there are 35,000 retailers currently operating in Australia, the Deloitte report released in February 2011 appears to be based on feedback from only two retailers in each of three retail categories (service stations/convenience stores, tobacconists and newsagents) [5] p6. On the basis of information collected from this handful of negatively pre-disposed operators, Deloitte declared that plain packaging would result in stock management taking an extra 10 to 45 minutes per day and each transaction with a tobacco-buying customer taking an extra 10 to 45 seconds. These assumptions have been made without any proper analysis. The report also concluded that transaction errors would increase by 5%, resulting in additional transactions and replacement of already-opened stock – an arbitrary conclusion looking at the report's unscientific methodology. Estimates of large delays for customers resulting from plain packaging lack both validity and plausibility—see [evidence review](#) for a more detailed discussion.

Australian retailers have adapted as tobacco sales have declined substantially over the past 50 years and as restrictions to how tobacco products are marketed and displayed have been introduced. It is a vibrant, efficient sector that is expected to also adapt to plain packaging, irrespective of the tobacco industry's vested-interest claims, attempts to manufacture concern and tailor-made, unscientific assumptions.

We can assume that the 400,000 Australians saved from a premature tobacco-related death by public health policies between 1975 and 1995 have been valued retail customers, purchasing products other than tobacco, throughout the additional years of life gained through effective tobacco control.

## **Will plain packaging make cigarettes easier to counterfeit?**

**Opponents of the legislation have been promoting inflated estimates of the current quantity of untaxed tobacco products being used in Australia.**

Based on a small tobacco industry survey (sample 949) conducted in 2010 (and updated in 2011) consulting company Deloitte has estimated that the total amount of unbranded tobacco products (cigarettes (contraband and counterfeit) and unbranded tobacco) used in Australia is 15.9% of the size of the legal market.[3] The Deloitte estimate is highly inflated; a more accurate estimate of usage based on the government's 2007 National Drug Strategy Household Survey (sample >23,000) is about 3%. But even within Deloitte's own analysis, contraband and counterfeit cigarettes constitute less than 10% of the quantity of illicit tobacco products used: most of the illicit tobacco used in Australia is "chop chop" (loose-leaf or roughly processed, unbranded tobacco sold illegally).

Plain packaging has little relevance to the problem of unbranded tobacco. Deloitte's estimate of amount of contraband and counterfeit cigarettes being used in Australia is very small, but even this is likely to be a highly inflated estimate.

Apparently people were asked in the survey whether they used such products: the exact question has not been disclosed so it is difficult to judge how leading it may have been. Contraband cigarettes are identical to cigarettes on which duty has been paid and counterfeit cigarettes are very difficult to distinguish from genuine ones. So, how would anyone know if the products they bought are untaxed if they look identical to packs on which tax has been paid? If they *are* cheaper, how do they know that retailers aren't just trying to move stock? Perceived taste of cigarettes is quite a subjective matter.

People would be more likely to agree that their cigarettes taste slightly different to usual if they have been persuaded (through months of media advertising and commentary) that counterfeit packs are now common on the market. Deloitte reports that in 2010 that 5% of respondents were found to have used counterfeit cigarettes at least once in the previous year (and 6.9% in 2011), but—apart from doubts about the validity of people's assessments and the likelihood of people's perceptions being influenced by extensive industry-generated media stories and advertising about availability—the surveys were so small that the error margin for these estimates is +/- 3.1%.

Opponents of the legislation who claim that cigarettes will now be easier to counterfeit speak as though the packs will be plain white boxes. The legislation will be introduced at the same time as requiring large new full-colour health warnings that will occupy 75% of the front of the pack (in addition to the explanatory panel of information on the back).

New packs will pose much the same challenges to counterfeiters as the old. The plain packaging legislation will allow tobacco companies to use anti-counterfeit markings on their products.

## **If companies can no longer compete on image, will they slash prices?**

Tobacco companies point to the experience in the US of generic cigarettes introduced onto the market in the mid-1990s, at a time when declines in smoking had stalled in the United States. This has little relevance to the question of plain packaging. Subsequent research has shown that packs packaged in white are associated with perceptions of reduced harmfulness and US packs at that time had barely visible health warnings. Plain packaging in Australia would look nothing like generic packs in the US.

Discounting is already common in the tobacco market in Australia.

Cigarettes sold in cartons by supermarkets and tobacconists are already around 20% cheaper than those sold in single packs in convenience outlets—[see evidence review](#) for more detailed analysis.

Opinions among market analysts are mixed as to whether further discounting and price slashing will occur after the introduction of plain packaging. It could be in the interests of international tobacco companies to cut margins to a bare minimum (or even run at a loss) to maintain customers. The ability of companies and retailers to engage in 'specialling' and other forms of discounting is limited by legislation at both state and federal levels which prohibits advertising at point of sale. If price slashing started to be a problem in the Australian market, then the Government could quickly and easily mitigate the effects through a combination of one or more of the following:

- Amend the *Tobacco Advertising Prohibition Act 1992 (Cth)* to make it an offence to draw attention in any way to the price of any one brand compared with others or compared with prices at earlier times.
- Make it an offence to promote tobacco products by selling them at a price lower than a certain level. This might be at a level 'below cost', or, perhaps easier to enforce, at an amount equal to 'the current rate of tobacco excise and customs duty applicable to that pack (33.63 cents *per stick* in July 2011), plus an additional amount, say 60, 70 or 80%.' While such a measure would not eliminate discounting completely it would prevent deep price slashing. The minimum could be set at a level that would prevent a widening of the current differential between prices in supermarkets and convenience stores and that would allow reasonable margins for the latter.
- Periodically increase excise and customs duty on tobacco products by amounts over and above CPI, sufficient to at least maintain average (inflation-adjusted) prices paid.

## Other myths and facts about plain packaging

### Myth

This is the tip of the iceberg and pretty soon public health organisations will be calling for the plain packaging of other consumer products.

### Fact

Tobacco advertising was banned in Australia in 1976. In 35 years, no other product category has been banned from advertising in Australia. The reason tobacco has been targeted in this way is because it is unlike any other product on the market. It kills half of all long-term users and 15,000 people in Australia every year, and there is no safe level of consumption.

### Myth

Every state in Australia has already moved to make it illegal to have cigarettes on display. Given you can't see them, plain packaging isn't going to make any difference.

### Fact

Both display bans and plain packaging are important at the point of sale in reducing avenues for tobacco industry promotion and the recruitment of new smokers. Once out of the store, cigarette packs act as mobile advertising for the brand. Smokers display the pack

approximately ten to fifteen times a day as they light up, often leaving them out in social situations where others will see them, and sometimes offering their pack to others. Plain packaging will end this form of promotion.

## References

1. Tony Crook MP. Big tobacco accused of sneak plain pack campaign. ABC News, 2011:11 July. Available from: <http://www.abc.net.au/news/2011-07-11/big-tobacco-accused-of-sneak-plain-pack-campaign/2789752>
2. Deloitte. Tobacco packaging regulation: an international assessment of the intended and unintended consequences. London: 2011. Available from: [http://www.bat.com/group/sites/uk\\_\\_3mnfen.nsf/vwPagesWebLive/DO8GHFEN/\\$FILE/medMD8GHFFW.pdf?openelement](http://www.bat.com/group/sites/uk__3mnfen.nsf/vwPagesWebLive/DO8GHFEN/$FILE/medMD8GHFFW.pdf?openelement)
3. Deloitte. Illicit trade of tobacco in Australia. April 2011. Sydney: Prepared for British American Tobacco Australia Limited, Philip Morris Limited and Imperial Tobacco Australia Limited, 2011. Available from: [http://www.bata.com.au/group/sites/BAT\\_7WYKG8.nsf/vwPagesWebLive/DO7WZEX6?opendocument&SKN=1](http://www.bata.com.au/group/sites/BAT_7WYKG8.nsf/vwPagesWebLive/DO7WZEX6?opendocument&SKN=1)
4. Deloitte. Illicit trade of tobacco in Australia: an update. June 2011. Sydney: Prepared for British American Tobacco Australia Limited, Philip Morris Limited and Imperial Tobacco Australia Limited, 2011.
5. Deloitte. Potential impact on retailers from the introduction of plain tobacco packaging. February 2011. Sydney: Alliance of Australian Retailers, 2011. Available from: [https://www.australianretailers.com.au/downloads/pdf/deloitte/2011\\_01\\_31\\_AAR\\_Plain\\_Pack\\_aging2.pdf](https://www.australianretailers.com.au/downloads/pdf/deloitte/2011_01_31_AAR_Plain_Pack_aging2.pdf)
6. Deloitte. Plain packaging and channel shift. June. Sydney: Alliance of Australian Retailers, 2011. Available from: [https://www.australianretailers.com.au/downloads/pdf/deloitte/Potential\\_impact\\_of\\_channel\\_shift.pdf](https://www.australianretailers.com.au/downloads/pdf/deloitte/Potential_impact_of_channel_shift.pdf)

## **Other organisations endorsing this submission:**

- Clinical Oncological Society of Australia
- VicHealth
- Action on Smoking and Health
- Australian Medical Association (WA)
- National Stroke Foundation of Australia
- Diabetes Australia
- Kidney Health Australia
- Asthma Australia
- Smokefree Tasmania
- Asthma Foundation of Western Australia
- Asthma Foundation of Tasmania
- Centre for Behavioural Research in Cancer Control
- Public Health Advocacy Institute of Western Australia
- Public Health Association of Australia
- Australia Council on Smoking and Health
- Telethon Institute for Child Health Research