

**HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON
HEALTH AND AGEING**

Submission No. 54 (Plain Packaging Bill) A.O.C. Date: 26/07/2011

**INQUIRY INTO:
TOBACCO PLAIN PACKAGING**

**SUBMISSION OF THE
DEPARTMENT OF HEALTH AND AGEING
JULY 2011**

House of Representatives Health and Ageing Committee Inquiry into Plain Packaging of Tobacco Products

Submission of the Department of Health and Ageing

Current situation

Tobacco smoking remains one of Australia's leading causes of preventable death and disease and kills over 15,000 Australians each year¹. The economic and social costs of smoking in Australia are estimated at \$31.5 billion each year². Almost three million Australians continue to smoke,³ including almost half of Aboriginal and Torres Strait Islander people aged 15 years and over⁴. As the effects are so long-term and so far-reaching, the personal and social costs of smoking will continue to be high for many years⁵.

As a result of concerted and comprehensive public policy efforts from Commonwealth, State and Territory Governments and action from public health organisations, over a long period, the proportion of Australians aged 14 years and over smoking daily has fallen from 30.5 per cent in 1988 to 16.6 per cent in 2007⁶. This reduction has been brought about by tobacco control measures including social marketing campaigns, health warnings on packaging, workplace and broader indoor smoking bans, support for smoking cessation through Quitlines, the availability of Nicotine Replacement Therapies on the Pharmaceutical Benefits Scheme for some people, increases in tobacco excise and implementation of advertising bans.

The adoption of such measures demonstrates the long standing efforts of successive Australian governments to strengthen the regulatory regime for tobacco products in order to achieve fundamental public health objectives.

The Australian Government, with states and territories, has agreed to COAG targets of reducing the national adult smoking rate to 10 per cent and halving the Aboriginal and Torres Strait Islander smoking rate by 2018. However, modeling undertaken in 2009 showed that a continuation of then current smoking cessation and initiation patterns would see around 14 per cent of adults still smoking in 2020, well above the COAG target. It indicated smoking cessation rates would need to double if the COAG targets are to be reached⁷.

Plain packaging is being implemented in Australia as part of a comprehensive suite of reforms to reduce the prevalence of tobacco use. Other measures being implemented include the 25 per cent increase in the tobacco excise in April 2010; legislation currently before the Senate to restrict internet advertising of tobacco products in Australia; more than \$85 million in anti-smoking social campaigns, including \$27.8 million for campaigns targeted at high-risk and highly disadvantaged groups who are hard to reach through mainstream campaigns; and increased investment in quit smoking aids through the Pharmaceutical Benefits Scheme.

Under the COAG National Partnership Agreement on Preventative Health, the Australian Government has also contributed to the establishment of the Australian National Preventative Health Agency; workplace smoking cessation programs under the Healthy Workers initiative; and increased social marketing activities under the Social Marketing initiative.

¹Begg S, Vos T, Barker B, Stevenson C, Stanley L and Lopez A, *The burden of disease and injury in Australia 2003*. Section 4.3. PHE 82. Canberra: Australian Institute of Health and Welfare, 2007.

²Collins D and Lapsley H. *The costs of tobacco, alcohol and illicit drug abuse to Australian society in 2004/05*. Executive Summary xi. P3 2625. Canberra: Department of Health and Ageing, 2008.

³Australian Institute of Health and Welfare, 2007 *National Drug Strategy Household Survey: detailed findings*. pp 23-29. Drug Statistics Series, Number 22. Canberra: Australian Institute of Health and Welfare, 2008.

⁴Australian Bureau of Statistics 2009, *National Aboriginal and Torres Strait Islander Social Survey 2008*, cat. No. 4714.0, ABS, Canberra 2009.

⁵National Preventive Health Taskforce 2009, *Australia: the healthiest country by 2020, Technical Report 2 – Tobacco control in Australia: making smoking history*. p1. Prepared for the National Preventive Health Taskforce by the Tobacco Working Group.

⁶Australian Market Research, 1988 *National Campaign Against Drug Abuse social issues survey*, Canberra 1988; and Australian Institute of Health and Welfare, 2007 *National Drug Strategy Household Survey: detailed findings*. Drug Statistics Series, Number 22. Canberra: Australian Institute of Health and Welfare, 2008.

⁷Gartner CE, Barendregt JJ, Hall WD. Predicting the future prevalence of cigarette smoking in Australia: how low can we go and by when? *Tob Control*. 2009 Jun;18(3):183-9. Epub 2009 Jan 29.

House of Representatives Health and Ageing Committee Inquiry into Plain Packaging of Tobacco Products

Submission of the Department of Health and Ageing

The objective of plain packaging

In 2009 the Preventative Health Taskforce, an expert group established by the Government to examine the evidence on tobacco, alcohol and obesity, recommended that the Government “eliminate the promotion of tobacco products through design of packaging.”⁸ In response to this recommendation, the Government announced in April 2010 that legislation to implement plain packaging of tobacco products would be implemented.

The Tobacco Plain Packaging Bill 2011 aims to prevent tobacco advertising and/or promotion on tobacco product packaging in order to:

- reduce the attractiveness and appeal of tobacco products to consumers, particularly young people;
- increase the noticeability and effectiveness of mandated health warnings;
- reduce the ability of the tobacco product packaging to mislead consumers about the harms of smoking; and
- through the achievement of these aims in the long term, as part of a comprehensive suite of tobacco control measures, contribute to efforts to reduce smoking rates.

Plain packaging is primarily expected to impact individuals considering initiation of tobacco use, contemplating cessation, and to help those who have already quit smoking to avoid restarting. Requiring cigarettes to be sold in plain packaging will also reinforce the idea that tobacco products are not ordinary consumer items⁹.

Alongside the plain packaging measure, the Department is currently developing updated and expanded graphic health warnings to appear on the packaging of tobacco products.

The evidence for plain packaging

The research evidence in support of plain packaging to June 2009 is set out in detail in the reports of the Preventative Health Taskforce available at www.preventativehealth.org.au.

Since the publication of the Preventative Health Taskforce reports, the evidence base in support of plain and standardised packaging of tobacco products has continued to grow. More recent peer-reviewed studies showing how branding on packaging influences smoking choices and that plain packaging increases the effectiveness of health warnings, reduces false health beliefs about cigarettes, and reduces brand appeal among smokers, were set out in the Consultation Paper on the Tobacco Plain Packaging Bill 2011 Exposure Draft¹⁰.

Since the Consultation Paper, additional peer-reviewed studies have provided further evidence that removing colours and design elements from packs may reduce brand appeal and thereby susceptibility to smoking among young women¹¹.

⁸ National Preventive Health Taskforce 2009, *Australia: the healthiest country by 2020, National Preventative Health Strategy – the roadmap for action*. p 182, 30 June 2009.

⁹ Ibid. p 181

¹⁰ Available at <http://www.yourhealth.gov.au/internet/yourhealth/publishing.nsf/Content/plainpack-tobacco>.

¹¹ Doxey J and Hammond D. Deadly in pink: the impact of cigarette packaging among young women. *Tobacco Control* 2011 Available from: <http://tobaccocontrol.bmj.com/content/early/2011/03/25/tc.2010.038315.abstract> and Hammond D, Doxey J, Daniel S and Bansal-Travers M. Impact of female-oriented cigarette packaging in the United States. *Nicotine & Tobacco Research* 2011; Advance publication 12 April 2011 Available from: <http://www.smoke-free.ca/plain-packaging/documents/2011/2011%20USA%20Female%20Packs%20-%20NTR.pdf>

**House of Representatives Health and Ageing Committee
Inquiry into Plain Packaging of Tobacco Products**

Submission of the Department of Health and Ageing

World Health Organization Framework Convention on Tobacco Control

The implementation of plain packaging is consistent with Australia's obligations under the World Health Organization *Framework Convention on Tobacco Control* (FCTC). Article 11 of the FCTC requires Parties to implement effective measures to ensure that tobacco packaging does not promote a tobacco product by any means that are false, misleading or deceptive, and Article 13 requires Parties to implement comprehensive bans on tobacco advertising, promotion and sponsorship. Guidelines adopted by the Conference of the Parties to the FCTC for Article 11 and Article 13 recommend that Parties consider introducing plain packaging.

Public consultation on plain packaging

As a result of targeted consultations with representatives of the tobacco and retail industries from late 2010, and a 60 day public consultation period on the Exposure Draft of the Tobacco Plain Packaging Bill 2011 from 7 April 2011 to 6 June 2011, a number of amendments were made to the legislative proposals for plain packaging:

- design features of packaging took into account retailers' concerns about handling of packaging, and allow some anti-counterfeiting measures in order to address tobacco industry concerns;
- offences for importing non-compliant products were removed, to ensure that importers, can arrange for products to be shipped to Australia prior to repacking. Offences for supply will still apply from the first sale onward;
- an exemption was inserted, to provide that non-compliant tobacco products and packaging can continue to be manufactured and packaged in Australia if they are for export to a foreign market; and
- the provisions relating to the interaction of the Tobacco Plain Packaging Bill and the *Trade Marks Act 1995* were revised, to ensure they achieved the intended effect along with the drafting of the Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011.

The development of the packaging design and related legislation was also informed by the assistance of an Expert Advisory Group on Plain Packaging, and research on the optimal design for plain packaging of cigarette products. Images of the proposed design for cigarette packaging are at Appendix A.

The plain packaging legislation

The Tobacco Plain Packaging Bill creates a regulatory scheme to prevent tobacco advertising and promotion on tobacco product packaging.

The Trade Marks Amendment (Tobacco Plain Packaging) Bill complements the Tobacco Plain Packaging Bill by creating a power for regulations to be made to clarify the interaction between the Bill and the *Trade Marks Act 1995*.

Detailed explanations of how each of these Bills are intended to operate, and the outcomes of public consultations on the plain packaging measure, are set out in the relevant explanatory memoranda.

**House of Representatives Health and Ageing Committee
Inquiry into Plain Packaging of Tobacco Products**

Submission of the Department of Health and Ageing

Other matters

Concerns have been expressed that the introduction of plain packaging legislation may make it easier for illicit tobacco supplies (often known as ‘chop chop’) to penetrate the Australian tobacco market. The Australian Tax Office (ATO) and Customs advise that they do not consider that plain packaging of tobacco products will have a significant impact on the illicit trade in tobacco products, because products may be counterfeited, whether branded or not. These agencies also advise that counterfeit products comprise only a small proportion of the illicit trade in Australia, which is dominated by ‘chop chop’ or unbranded/unpackaged cigarettes and loose leaf tobacco. Nevertheless, certain markings to distinguish the origin of tobacco products will be allowed to be used on the packaging provided those markings are not linked to tobacco marketing or promotions and do not interfere with graphic health warnings. The Department will continue to liaise with the ATO and Customs to monitor these issues closely, and take further action, if required.

Further concerns have been expressed as to the effect of the legislative package on the existing abilities of tobacco manufacturers and suppliers to protect and use the intellectual property they own in relation to trade marks, brand names and the like. While the plain packaging measures will regulate the use of intellectual property for retail packaging of tobacco products, tobacco manufacturers and suppliers will remain free to use their intellectual property, for example on letterhead, business documents, trade communications and non-retail packaging. Moreover, no other person or corporation will be entitled to use that intellectual property, so tobacco manufacturers and suppliers will retain their existing legal capacity to prevent the unauthorised use of their trade marks, brand names and other intellectual property by others.

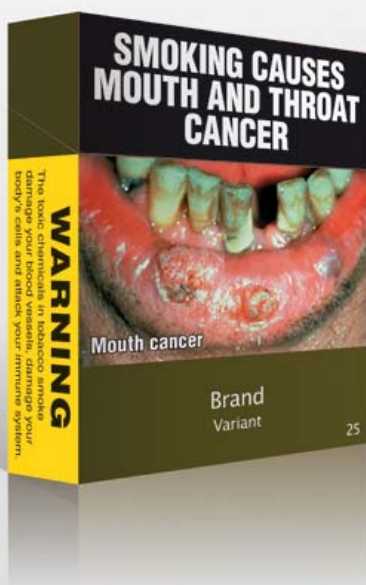
Conclusion

Plain packaging is one of a number of interventions being implemented by the Australian Government as part of a comprehensive suite of tobacco control measures. Consistent with the recommendations of the National Preventative Health Taskforce, the Department of Health and Ageing is of the view that the evidence in support of plain packaging demonstrates that plain packaging, accompanied by updated graphic health warnings, will contribute to delivering the public health policy outcomes.

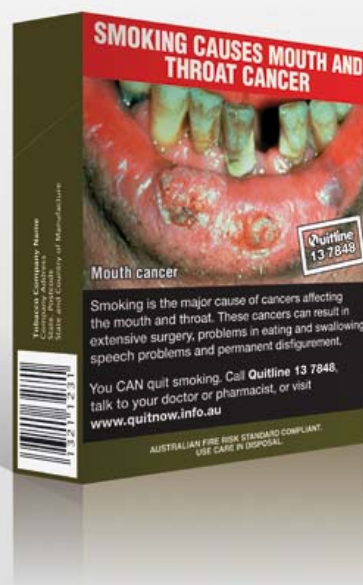
House of Representatives Health and Ageing Committee
Inquiry into Plain Packaging of Tobacco Products

Submission of the Department of Health and Ageing

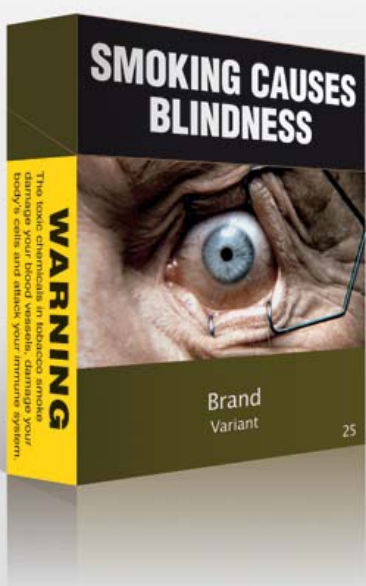
Appendix A



Front of Pack Image



Back of Pack Image



Front of Pack Image



Back of Pack Image

**House of Representatives Health and Ageing Committee
Inquiry into Plain Packaging of Tobacco Products**

Submission of the Department of Health and Ageing



The colour viewed in these images may change depending on print quality and screen settings, and is therefore indicative only. Plain packaging regulations will prescribe a specific dark drab brown colour for print purposes.