

Senate Community Affairs Committee

ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Additional Estimates 2011-2012, 15 February 2012

Question: E12-310

OUTCOME 1: Population Health

Topic: TOBACCO

Written Question on Notice

Senator Fierravanti-Wells asked:

Further to the debate in the Senate on 10 November 2011 and the refusal by Senator McLucas to respond to my question as to how much the government budgeted for legal costs as part of potential legal claims against the Commonwealth asserting it was a hypothetical question, please advise:

- a) When did the Commonwealth first become aware of potential legal claims from the tobacco industry?
- b) When was the Commonwealth notified of any legal claim from the tobacco industry?
- c) Provide details of such claims.

Answer:

- a) Before initiating legal action, the tobacco industry made a number of public statements indicating their intention to take legal steps to challenge the Government's plain packaging reforms. The Commonwealth was not aware of any specific legal claim until formally notified of this.

b) and c)

Philip Morris Asia – Hong Kong Bilateral Investment Treaty

The Government received a Notice of Claim from Philip Morris Asia Limited under the Australia-Hong Kong Bilateral Investment Treaty on 27 June 2011. The Government received a Notice of Arbitration, formally commencing arbitration proceedings, from Philip Morris Asia on 21 November 2011.

The Government formally responded to Philip Morris Asia's claim on 21 December 2011. In its response to the Notice of Arbitration, the Government rejects the claims made by Philip Morris Asia and outlines the arguments which the Government will make in defending its right to implement the plain packaging measures. The documents relating to this matter are available at <http://www.ag.gov.au/tobaccoplainpackaging>

Constitutional cases

British American Tobacco Australasia Limited, (with British American Tobacco (Investments) Limited and British American Tobacco Australia Limited), Van Nelle Tabak Nederland BV (with Imperial Tobacco Australia Limited), JT International SA and Philip Morris Limited, have each filed writs in the High Court of Australia challenging the plain packaging measure. The Commonwealth became aware of these writs on:

- for British American Tobacco Australasia Limited, British American Tobacco (Investments) Limited and British American Tobacco Australia Limited – 1 December 2011;
- for Van Nelle Tabak Nederland BV and Imperial Tobacco Australia Limited – 6 December 2011;
- for JT International SA - 15 December 2011; and
- for Philip Morris Limited - 20 December 2011.