

**Senate Community Affairs Committee**

**ANSWERS TO ESTIMATES QUESTIONS ON NOTICE**

**HEALTH PORTFOLIO**

**Additional Estimates 2014 - 2015, 25 February 2015**

**Ref No:** SQ15-000254

**OUTCOME:** 1 - Population Health

**Topic:** Tobacco Plain Packaging Act

**Type of Question:** Written Question on Notice

**Senator:** Leyonhjelm, David

**Question:**

Regarding the significant discrepancies between the following extract from the Tobacco Plain Packaging Act 2011 and the following testimony at Estimates on 25 February 2015:

- a) Why did the Health Department mislead the Committee regarding the objects of the Act? Was the Department confused about the contents of the Act vis-à-vis the contents of the Explanatory Memorandum?
- b) When did the Health Department become aware of the discrepancies? Why did the Health Department not correct the errors in the testimony as soon as it became aware of the discrepancies?
- c) Did the Department advise Siggins Miller of the objects of the Act in terms similar to those used in the testimony on 25 February 2015, including references to “attractiveness”, “young people”, “noticeability”, “long term”, “part of a comprehensive range of tobacco control measures” and “efforts”?
- d) Will Siggins Miller be advised of the actual objects of the Act, and advised to change its consultation documents and re-do its consultation processes to reflect the objects of the Act?
  - i. If not, how will a consultation process gathering information on one thing inform a post-implementation review on another thing?
- e) List the external bodies that have been advised by the Health Department of the objects of the Act in terms similar to the testimony on 25 February 2015, including references to “attractiveness”, “young people”, “noticeability”, “long term”, “part of a comprehensive range of tobacco control measures” and “efforts”?
  - i. Will the Department advise these bodies of the actual objects of the Act? If not, why not?
- f) Will the Department’s post-implementation review assess whether plain packaging improves public health, or assess whether plain packaging contributes to efforts to improve human health in the long term as part of a comprehensive range of tobacco control measures?

Extract from the Tobacco Plain Packaging Act 2011:

“3 Objects of this Act

(1) The objects of this Act are:

(a) to improve public health by:

- (i) discouraging people from taking up smoking, or using tobacco products; and
- (ii) encouraging people to give up smoking, and to stop using tobacco products; and
- (iii) discouraging people who have given up smoking, or who have stopped using tobacco products, from relapsing; and
- (iv) reducing people’s exposure to smoke from tobacco products; and

(b) to give effect to certain obligations that Australia has as a party to the Convention on Tobacco Control.

(2) It is the intention of the Parliament to contribute to achieving the objects in subsection (1) by regulating the retail packaging and appearance of tobacco products in order to:

(a) reduce the appeal of tobacco products to consumers; and

(b) increase the effectiveness of health warnings on the retail packaging of tobacco products; and

(c) reduce the ability of the retail packaging of tobacco products to mislead consumers about the harmful effects of smoking or using tobacco products.”

Testimony at Estimates on 25 February 2015:

“Senator LEYONHJELM: I understand that in its consultation document, Siggins Miller lists the objectives of the plain packaging measure and that this list includes reducing the attractiveness and appeal of tobacco products to consumers, particularly young people. Are you aware of this?

Mr Smyth: Absolutely. They are the objects of the act. There are a number of objects of the act. They are: to reduce the attractiveness and appeal of tobacco products to consumers, particularly young people; to increase the noticeability and effectiveness of mandated health warnings; to reduce the ability of retail packaging of tobacco products to mislead consumers about the harms of smoking; and, through the achievement of these aims in the long term—and I want to emphasise that—as part of a comprehensive range of tobacco control measures, to contribute to efforts to reduce smoking rates.

Senator LEYONHJELM: Yes, I understand that this case. Do you consider the guidance notes on the post-implementation review to be satisfied. They state that the review should assess how effective and efficient it has been in meeting its original objectives.

Mr Smyth: That is correct.

Senator LEYONHJELM: The guidance notes state that post-implementation should, where relevant, discuss the set of objectives stated in the act associated with the change.

Mr Smyth: Correct.

Senator LEYONHJELM: Does the objective section of the Tobacco Plain Packaging Act refer to an objective or an intention to reduce the attractiveness of tobacco products to consumers, particularly young people?

Mr Smyth: That is what I just read out to you, Senator.

Senator LEYONHJELM: I am understand the act does not say that—does it?

Mr Smyth: It is in the objects of the act.

Senator LEYONHJELM: Does it include the noticeability of health warnings?

Mr Smyth: Yes, it does. It increases the noticeability and effectiveness of mandated health warnings.”

#### **Answer:**

(a) The Department acknowledges that the wording of the testimony given at Estimates on 25 February 2015 differs from the wording of section 3 of the *Tobacco Plain Packaging Act 2011* (the Act). However, the Department did not intend to mislead the Committee regarding the objects of the Act. In responding to questions on the objects of the Act, the Department used wording from the Explanatory Memorandum to the Tobacco Plain Packaging Bill 2011. The purpose of an Explanatory Memorandum is, as a companion document to a Bill, to assist members of Parliament, officials and the public to understand the objectives and detailed operation of the clauses of the Bill<sup>1</sup>. The Department’s position is that the Explanatory Memorandum correctly describes the objectives of the tobacco plain packaging legislation. However, to the extent that Senator Leyonhjelm’s question was directed to the specific wording used in the Act to state its objects, the Department’s response was inadvertently inaccurate.

---

<sup>1</sup> Australian Government Legislation Handbook; pg 39. Department of the Prime Minister and Cabinet, Canberra. Available at: <http://www.dpmc.gov.au/pmc/publication/legislation-handbook>

- (b) The Department became aware of the discrepancies during the usual processes for considering the transcript of the hearing to assess the need for corrections. There is a formal process for correcting the record, and the Department is following this process.
- (c) The Department advised Siggins Miller of the objects of the Act, as worded in section 3 of the Act; as well as the additional context for the objects as consistent with the rationale for tobacco plain packaging in the Explanatory Memorandum.
- (d) Siggins Miller has already been advised of the objects of the Act. Siggins Miller will not be advised to change its consultation documentation or to re-do its consultation processes, as they already reflect the objects of the Act. The PIR consultation documentation includes questions for stakeholders about the tobacco plain packaging measure which specifically address the objects of the Act (see questions 1, 4, 7, 10, 12, 14, and 16 in the consultation documentation on Siggins Miller's website at <http://www.sigginsmiller.com/plainpackaging/>)
- (e) In its announcement emails to stakeholders about the commencement of the PIR consultations, the Department advised multiple external bodies of the objectives of the tobacco plain packaging measure, using words from section 3(1) and section 3(2) of the Act, and words from the Explanatory Memorandum. These external bodies included tobacco industry representatives, tobacco wholesalers and retailers, tobacco product packaging manufacturers, state and territory health departments, non-government tobacco control organisations, public health organisations, and various Australian Government agencies. The announcement emails did not include the words "attractiveness", "young people", or "noticeability", but did include the words "long term", "as part of a comprehensive range of tobacco control measures", and "efforts".
- i. Further to the response to (d) above, the PIR consultation documentation includes questions for stakeholders about the tobacco plain packaging measure which specifically address the objects of the Act. It is also important to note that the PIR consultation documentation provides links to key information and resources about the tobacco plain packaging measure on the Department's website, which includes links to the Act. Therefore, the external bodies have already been advised of the actual objects of the Act.
- (f) The PIR will assess the specific objects of the Act. Questions 10, 12, 14 and 16 of the consultation documentation address the objects as per subsection 3(1)(a) of the Act in relation to improving public health); and questions 1, 4, and 7 of the consultation documentation address the objects in subsection 3(2) of the Act, which are to contribute to achieving the objects in subsection 3(1).