

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S DEPARTMENT

Program 1.1

Question No. 63

Senator Williams asked the following question at the hearing on 18 October 2011:

I assume the Attorney-General's department has been involved in the provision of legal advice regarding the proposed Tobacco Plain Packaging Bill.

1. How much has been spent obtaining legal advice?
2. Who has been paid to provide legal advice?
3. What does that legal advice say?
4. How much was paid in 1995 to provide legal advice regarding plain packaging measures proposed by then Health Minister Carmen Lawrence?
5. How does current advice differ from the Attorney-General's department provided to Minister Lawrence?
6. As a result of the Attorney-General's advice at the time, Minister Lawrence reportedly dismissed the proposal, apparently saying "It is just not feasible. We would have to buy the tobacco companies trademarks and that would cost millions of dollars" In 1995, how much did your department estimate would have to be paid?
7. How much would the government have to pay today to tobacco companies if plain packaging is implemented?
8. Do you believe legal challenges might ensue as a result of the government's plain packaging legislation?
9. Have you seen the "robust legal advice" referred to by Health Minister Roxon?
10. Are you confident this legal advice would withstand a High Court challenge?
11. Has the department paid for legal opinions on whether the Plain Packaging proposal threatens not only domestic legal obligations, but international treaties and obligations as well?
12. If so, how much has been spent?
13. The Trade marks Amendment Act proposed by the government is contrary to the fundamental principles of trademarks law which protect and enshrine the rights of registered trademarks, their owners and authorised users. Are there plans to compensate owners of other trademarks besides tobacco in the future?

The answer to the honourable senator's question is as follows:

1. Legal advice concerning the Tobacco Plain Packaging Bill has been provided by the Office of International Law to the Department of Health and Ageing, as previously disclosed. Questions relating to expenditure on legal advice obtained by the Department of Health and Ageing are best directed to that department.
2. Questions concerning legal advice obtained by the Department of Health and Ageing regarding the Tobacco Plain Packaging Bill are best directed to that department.
3. Legal advice obtained by the Department of Health and Ageing is subject to Legal Professional Privilege. It would not be appropriate to disclose the content of legal advice provided on this matter. Questions regarding legal advice obtained by the Department of Health and Ageing are best directed to that department.
4. Questions concerning legal advice obtained by the Department of Health and Ageing are best directed to that department.
5. Questions concerning legal advice obtained by the Department of Health and Ageing are best directed to that department.
6. Questions concerning legal advice obtained by the Department of Health and Ageing are best directed to that department.
7. The Government has stated publicly that no compensation will be paid to tobacco manufacturers in connection with the Tobacco Plain Packaging measures.
8. Philip Morris (Asia) issued a Notice of Arbitration against the Government under the Australia-Hong Kong bilateral investment treaty on 21 November 2011, which formally commences arbitral proceedings. While a number of tobacco companies have indicated they will be challenging the legislation in the High Court, to date no action has been initiated. The possibility of other legal claims in the future cannot be ruled out.
9. Questions concerning legal advice obtained by the Department of Health and Ageing are best directed to that department.
10. Questions concerning legal advice obtained by the Department of Health and Ageing are best directed to that department.
11. The Attorney-General's Department has not paid for any such legal opinions.
12. Not applicable.
13. This matter falls outside of the portfolio responsibilities of this agency.