

BUDGET –IN-CONFIDENCE

Legislation to require plain packaging for tobacco products Questions and Answers

What evidence is there that this will do anything?

- The Preventative Health Taskforce – which brought together Australia’s leading tobacco and public health experts – recommended plain packaging for tobacco products and concluded, based on an examination of all the research evidence, that there is sufficient evidence of the public health benefits.
- The Commonwealth considers there is sufficient evidence that plain packaging would:
 - reduce the attractiveness and appeal of tobacco products to consumers, particularly young people;
 - reduce the ability of the tobacco product to mislead consumers about the harms of smoking; and
 - increase the noticeability and effectiveness of mandated health warnings.

Studies cited by the Preventative Health Taskforce have shown that:

- Young adult smokers associate cigarette brand names and package design with personal characteristics, social identity and aspirations;
- Decreasing the number of design elements on the packet reduced its appeal and perceptions about the likely enjoyment and desirability of smoking;
- Plain packaging would increase the salience of health warnings: research subjects show an improved ability to recall health warnings on plain packs.

How can we legally do this in relation to copyright/trademarks/constitutionality?

How can we legally do this with our trade regulations?

Haven’t previous Governments said it was unconstitutional?

• 1

542

- Tobacco smoking is the single largest cause of preventable death and disease among Australians and is killing an estimated 15,000 Australians each year.
- The World Health Organisation Guidelines for implementation of Article 11 of the Framework Convention on Tobacco Control recommend that parties should consider adopting plain packaging measures.

How will people be able to pick the difference between the packets? Safety concerns while searching in small retailers?

- The brand name of the product will still be permitted on the package in a specified font style, size and location.
- Retailers’ and other handlers’ concerns will be considered as part of consultations on the regulatory impacts in the second half of 2010 before the legislation is finalised.

What is the regulatory impact? Have we done a RIS?

- A Preliminary Assessment and a draft Regulation Impact Statement (RIS) has been lodged with the Office of Best Practice Regulation.

BUDGET –IN-CONFIDENCE

- Clearly there will be impacts for manufacturers, distributors and retailers. However, the government considers the health benefits of the measure outweigh these impacts. It may be possible to respond to the concerns of distributors and retailers through thoughtful packaging design.
- The Government will be consulting with stakeholders and the community on the RIS in the second half of 2010 before the plain packaging legislation is finalised.

Why haven't any other countries done this?

- Many countries, unlike Australia, do not have basic tobacco advertising and promotion bans in place.
- Australia already has advertising bans in place and is considered a world leader in this area. Removing this last key remaining form of advertising is the next step.
- The evidence base around the public health benefits of plain packaging has developed significantly over the last ten years, strengthening the necessity for Governments to act to remove this form of tobacco advertising and promotion.
- The Framework Convention on Tobacco Control (FCTC) is an international tobacco control treaty to which Australia is a party and is bound by its obligations. Two FCTC Guidelines were adopted in November 2008 that contain provisions that Parties should consider plain packaging for tobacco products. While the Guidelines are not strictly binding, they are designed to assist Parties to meet their FCTC obligations.
- Australia is the first country to announce its intention to implement plain packaging following the adoption of these Guidelines. Australia's initiative in this area will likely be closely monitored by other countries and potentially followed.
- The risk of potential legal challenges from tobacco companies can intimidate smaller countries who wish to act on plain packaging. Australia's leadership in this area will be appreciated.

Won't this increase the risk of illegal trade in tobacco?

- Anti-counterfeiting measures will be considered in the design of plain packaging.
- Australia already has a strong legislative and regulatory framework to control illicit trade in tobacco products, however, the Australian Taxation Office and the Australian Customs and Border Protection Service (Customs and Border Protection) will continue to have a strong ongoing role in monitoring and enforcement activity against illicit tobacco production or importation after the increase in tobacco excise.
- Over the past three years Customs and Border Protection has seized 715 tonnes of tobacco and 217 million cigarette sticks in sea cargo and successfully prevented potential revenue evasion of approximately \$277 million. The activities of Customs and Border Protection have also disrupted organised tobacco smuggling operations through a number of successful prosecutions.
- Tobacco farming in Australia ceased from 2006 and the Australian Taxation Office has put considerable resources into pursuing illicit growers and distributors of tobacco.

BUDGET –IN-CONFIDENCE

- The Government is committed to its obligations under the World Health Organisation's *Framework Convention on Tobacco Control* (FCTC). Article 15 of the FCTC sets out a range of measures aimed at combating illicit trade in tobacco.
- Australia is actively involved in current negotiations to develop an international Protocol to Eliminate the Illicit Trade in Tobacco under the auspices of the FCTC.

What will the cost of implementation be? Particularly for small shops etc

- Costs cannot be quantified at this time.
- Clearly there will be regulatory impacts for manufacturers, distributors and retailers. However, the government considers the public health benefits of the measure outweigh these impacts.
- It may be possible to respond to the concerns of distributors and retailers through thoughtful design of the plain packaging.

What will the new packets look like?

- The legislation will restrict or prohibit the use of tobacco industry logos, colours, brand imagery or promotional text on tobacco product packaging other than brand names and product names in a standard colour, position, font style and size.
- Graphic health warnings will be retained and updated.
- The exact form of the packaging will be informed by research to be conducted as part of this measure to determine the optimal form of plain packaging in order to minimise pack appeal, prevent misleading information and increase the effectiveness of mandated health warnings.
- The design will also take into account the handling needs of distributors/retailers and possible anti-counterfeiting measures.

When will it happen, be implemented?

- The aim is to introduce legislation in 2011 to mandate plain packaging for tobacco products with a gazettal date of 1 January 2012.
- Packaging will be required to comply with the requirements within six months of gazettal – ie by 1 July 2012.

How does this differ from the Fielding Bill on plain packaging?

- The overarching spirit of the legislation is the same. However, there are a number of issues with the Fielding Bill:
 - the aims and objectives in the Fielding Bill make excessive claims that would leave the legislation open to challenge in the courts;
 - the Fielding Bill has not involved research about the optimum form of plain packaging - so might not be as effective as it could be and also might increase opportunity for challenge;
 - the Fielding Bill and regulations are inconsistent - one refers to all retail packages, the other to only tobacco (excluding pipes, cigars, cig papers, rollers etc);
 - the Fielding Bill does not take into account other regulatory requirements for tobacco - including new fire risk warnings that are now on cigarettes;

BUDGET -IN-CONFIDENCE

- the Fielding Bill does not amend the Tobacco Advertising Prohibition Act which currently states that advertising on tobacco packaging is allowed.
- The government will be carefully researching the optimal design for the plain packaging to maximize the public health benefits, as recommended by the Preventative Health Taskforce, and consulting on the regulatory impact, before finalizing the form of the packaging and the legislation to implement it.

What is the evidence from the introduction of warning labels?

- In 2008, a comprehensive evaluation of the graphic health warnings on tobacco product packaging was undertaken. The 2008 Evaluation showed, on a number of indicators, that the graphic health warnings have achieved their intended purpose, increasing consumer knowledge of the health effects related to smoking, encouraging cessation and discouraging smoking uptake and relapse.
- In addition to achieving their stated purpose, the graphic health warnings were strongly supported by stakeholders and consumers and the significance and dominance of including graphic images was reflected in the findings.
- Despite achieving their purpose, the evaluation clearly indicated areas for improvement, particularly in relation to the size of the warning on the front and information on the side of pack.
- The evaluation also indicated that tobacco industry branding and the use of colour on packaging overpowered the graphic health warnings, particularly on the front of the package.

Are we prepared to fight cigarette companies through the courts?

- If the tobacco industry challenges this initiative through the courts the Australian Government will defend this important public health measure.

542

Legislating to require plain packaging is going too far.

- There is no alternative measure available to prevent the industry using the package to advertise and market its product to smokers and potential smokers.
- The tobacco packaging is the last key media used to advertising and promote tobacco products in Australia with most other forms of tobacco advertising banned.
- Tobacco smoking is the single largest cause of preventable death and disease among Australians and is killing an estimated 15,000 Australians each year
- Smoking is estimated to cost the economy \$31.5 billion per year in social costs, including \$5.7 billion per year from absenteeism and a reduction in the workforce.
- Although prevalence rates are falling, almost three million Australians are still smoking including half of all Indigenous Australians.
- There is substantial evidence of the influence of tobacco advertising and promotion, particularly on young people. As most smokers commence smoking before the age of 18 years, it is important to remove the last key remaining form of tobacco advertising and promotion in Australia.

PROTECTED

HEALTH REFORM BRIEF
**Tobacco Excise and Government response to the Tobacco Recommendations
of the National Preventative Health Taskforce**

PROBLEM/ISSUE TO BE ADDRESSED

TOBACCO GENERALLY

- In Australia, smoking has been identified as the single largest preventable cause of disease and premature death, killing over 15,000 Australians each year.
- The number of daily smokers in Australia has reduced from 30.5 per cent of the population aged 14 and over in 1988 to 16.6 per cent in 2007.
- Smoking prevalence is higher among people from lower socioeconomic backgrounds, Indigenous Australians and other disadvantaged groups. 50 per cent of Indigenous people; 38 per cent of unemployed people; 34 per cent of people unable to work, 32 per cent of people with a mental illness and up to 78 per cent of prisoners are smoking either daily, weekly or less than weekly.
- Strong action is necessary given the human costs of smoking and the pressures it puts on our health system. The social costs of tobacco are estimated at \$31.5 billion per year. Higher tobacco costs are particularly important in motivating young people to give up smoking, as they are particularly price sensitive.
- The National Preventative Health Taskforce has presented the Government with 11 areas for action in regard to reducing the number of smoking Australians as part of their National Preventative Health Strategy.
- These recommendations included making tobacco products significantly more expensive, increasing the frequency, reach and intensity of social marketing campaigns and ending all forms of advertising and promotion of tobacco products.

522

PROTECTED

WHAT THE GOVERNMENT HAS ALREADY DONE

- The Government has made an \$872 investment in preventative health at COAG in 2008. This investment includes:
 - \$366 million for programs to address smoking, obesity and alcohol abuse in workplaces and local communities. The workplace program is being delivered through state governments (starting in 2011-12) and the communities program is being delivered through local governments (has already started in 12 pilot sites).
 - \$61 million for tobacco social marketing (starting from 2010-11);
 - \$15 million to undertake the Australian Health Survey (described below)
 - \$30.7 million to establish the Australian National Preventive Health Agency and its research fund (legislation to establish this has currently stalled before the Senate)
 - \$399 million for other programs including programs for children, social marketing for obesity and surveillance of the delivery of all programs.
- Through the National Partnership for Indigenous Health the Government has made a \$100 million commitment to reducing the rates of smoking for indigenous people.
- Through the Indigenous Tobacco Control Initiative, the Government has committed \$14.5 million for projects to reduce indigenous smoking with a particular emphasis on young people.
- The Government has invested \$13.1 million over three years in a reinvigoration of the National Tobacco Campaign '*When you smoke you inhale over 4,000 chemicals*' which was launched on 28 February 2010. This encourages people to ring the Quitline on 131 848.

PROPOSALS

- The Government's announcements today respond to key tobacco recommendations of the Preventative Health Taskforce.
- The Government is implementing measures in relation to eight of the 11 areas of action the Taskforce identified. Other matters that are matters primarily for states will be referred to them.
- The Government is taking action in regard to:
 - 1. Make tobacco products significantly more expensive
 - 2. Increase the frequency, reach and intensity of social marketing campaigns
 - 3. End all forms of advertising and promotion of tobacco products.
 - 5. Regulate manufacturing and further regulate packaging and supply of tobacco products.
 - 7. Work in partnership with indigenous groups to boost efforts to reduce smoking and exposure to passive smoking among Indigenous Australians
 - 8. Boost efforts to discourage smoking among people in other highly disadvantaged groups
 - 10. Ensure that the public, media, politicians and other opinion leaders remain aware of the need for sustained and vigorous action to discourage tobacco use.
 - 11. Measure progress against and towards targets.
- However this does not mean the Government is responding to all the sub-recommendations of these action items.

BUDGET –IN-CONFIDENCE

**Extract from World Health Organisation, Framework Convention on Tobacco Control,
Guidelines for Implementation Article 11**

Plain packaging

Parties should consider adopting measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in a standard colour and font style (plain packaging). This may increase the noticeability and effectiveness of health warnings and messages, prevent the package from detracting attention from them, and address industry package design techniques that may suggest that some products are less harmful than others.

PROTECTED

S22

PLAIN PAPER PACKAGING

- In a world first, the Government will remove one of the last remaining vehicles for tobacco advertising. Legislation to mandate plain packaging for tobacco products will be developed for gazettal by 1 January 2012 and full implementation by 1 July 2012.
- The laws will restrict or prohibit the use of tobacco industry logos, colours, brand imagery or promotional text on tobacco product packaging other than brand names and product names in a standard colour, font style and position. This will reduce the attractiveness and potential of packaging to mislead the public, particularly young people.
- The Government will develop and test package design that will make it less appealing, particularly to young people. This packaging will have basic product identification for retailers and to minimise risks of counterfeiting.
- Following consultation, legislation will then be finalised and introduced to eliminate this marketing tool.
- Guidelines under the WHO Framework Convention on Tobacco Control recommend that Parties consider introducing plain packaging.
- Implementation for the Government's policy will cost \$2.6 million over the forward estimates.

PROTECTED

S22

PROTECTED

S22

PROTECTED

S22

PROTECTED

S22

Is there any evidence that plain packaging will do anything?

- The limits on advertising and warning labels on cigarettes have contributed to the dramatic reduction in smoking levels over the past decades.
- Our expert Taskforce has recommended this as the next step as there is significant evidence that plain packaging would:
 - reduce the attractiveness and appeal of tobacco products to consumers, particularly young people;
 - reduce the ability of the tobacco product to mislead consumers about the harms of smoking; and
 - increase the noticeability and effectiveness of mandated health warnings.
- Insert more evidence here

S42

- The World Health Organisation Guidelines for implementation of Article 11 of the Framework Convention on Tobacco Control recommend that countries should consider adopting plain packaging measures.

Won't these measures increase the trade in illegal tobacco?

- Anti-counterfeiting measures will be considered in the design of plain packaging.
- Australia already has a strong legislative framework to control illicit trade in tobacco through the Australian Taxation Office and Customs and Border Protection. Over the past three years Customs and Border Protection has seized 715 tonnes of tobacco and 217 million cigarette sticks in sea cargo and successfully prevented potential revenue evasion of approximately \$277 million.
- Tobacco farming in Australia ceased from 2006 and the ATO has put considerable resources into pursuing illicit growers and distributors of illicit tobacco.
- The Government is committed to its obligations under the World Health Organisation's *Framework Convention on Tobacco Control* (FCTC) in regard to combating the illicit trade in tobacco. Australia is actively involved in current negotiations to develop an international Protocol to Eliminate the Illicit Trade in Tobacco under the auspices of the FCTC.

LIKELY THIRD PARTY REACTION

- Prevention groups are likely to be very supportive (Cancer Council, Heart Foundation, Preventative Health Association). Some have said privately that a tobacco excise increase is their highest priority. Some may want the Government's full response to the Preventative Health Taskforce.
- The Opposition is likely to oppose the plain packaging policy, and to try to find a way to criticise the excise increase as a sneaky tax increase, not a health measure. Opposition Spokesperson Peter Dutton has previously said:
"In my books, in the current debate, providing a ban to packaging and to branding on

PROTECTED

packaging is a bridge too far..." (Dutton, Lateline, 10 June 2009).

"But this is a Government that is desperate for revenue. They haven't done it for health reasons, they haven't suggested this measure for health outcomes, they've only suggested it because they are desperate for cash." (5 July 2009)

- Senator Fielding has introduced a Private Members Bill to implement plain packaging of tobacco. The Government does not support his Bill as there are flaws in the legal drafting and the details of the packaging which has been developed without detailed research and consultation.
- The tobacco industry will be particularly critical – mostly in regard to the plain packaging measure. They will regard this as a significant threat to their industry as such laws could be copied worldwide. They will threaten legal action. They will also complain that these measures will increase the risk of illicit tobacco entering the Australian market.
- The retail industry will be concerned about the measures due to the likely reduction in sales and inconvenience of having to navigate a plain packaging system. They will also claim that this will see an increase in illicit tobacco entering the market.

Next 36 pages

S22

