

Submission to public consultation on plain packaging of tobacco products

To:

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Attention: Tobacco Reform Section
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From:**Protecting Children from Tobacco coalition**

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The Protecting Children from Tobacco coalition

This is a media-advocacy partnership of the 42 non-government organisations listed below, seeking to protect children from tobacco smoke and promotion. The agreed aims of these organisations include "ending all forms of tobacco promotion to children, including via package design..."¹

Action on Smoking and Health Australia
 Alcohol and other Drugs Council of Australia
 Association for the Wellbeing of Children in Healthcare
 Association of Children's Welfare Agencies
 Australian and New Zealand Head and Neck Cancer Society
 Australian and New Zealand Society of Respiratory Science
 Australian Childhood Foundation
 Australian Council of Social Service
 Australian Council of State School Organisations
 Australian Council on Smoking and Health
 Australian Education Union
 Australian Foster Care Association
 Australian General Practice Network
 Australian Lions Drug Awareness Foundation
 Australian Lung Foundation
 Australian Medical Association (NSW)
 Australian National Council on Drugs
 Australian Parents' Council
 Australian Youth Affairs Coalition
 Baptist Union of NSW
 Cancer Council Australia
 Catholic Health Australia
 Centre for Excellence in Indigenous Tobacco Control
 Children's Cancer Institute Australia for Medical Research
 Cystic Fibrosis Australia
 Early Childhood Australia
 Families Australia
 Heart Foundation
 Murdoch Children's Research Institute
 National Association for Prevention of Child Abuse and Neglect
 National Asthma Council Australia
 NSW Council of Churches
 Public Affairs Commission of the Anglican Church of Australia
 Public Health Association of Australia
 Royal Australasian College of Physicians
 Royal Australian College of General Practitioners
 Rural Doctors Association of Australia
 Save the Children Australia
 SIDS and Kids
 Smarter than Smoking
 Telethon Institute for Child Health Research
 Thoracic Society of Australia and New Zealand

Note that some of the above organisations will also be making separate and different submissions to this consultation.

Introduction

Protecting Children from Tobacco partners (hereafter “PCT”) congratulate the government on this important public health initiative, which we see as a necessary step towards eliminating tobacco advertising and promotion to children.

Our comments on the case for plain packaging relate to the Consultation Paper at <http://yourhealth.gov.au/internet/yourhealth/publishing.nsf/Content/tpp-paper> and the Exposure Draft of the Bill at <http://yourhealth.gov.au/internet/yourhealth/publishing.nsf/Content/tpp-bill2011>.

PCT strongly supports the proposed legislation. A review of the independent evidence² from the past two decades shows mandatory plain packaging of tobacco products is likely to:

- increase effectiveness of tobacco packet health warnings;
- prevent use of misleading and deceptive packaging to create false beliefs of different strength and quality;
- reduce youth smoking and decrease youth uptake; and
- remove positive association with cigarette brands/image;

and that there is no legal or constitutional barrier to enacting this reform.

The policy is also consistent with expert health and legal advice; and with Australia’s international treaty commitments under the World Health Organisations Framework Convention on Tobacco Control (FCTC).

The focus of our submission is the benefit of this policy for children – in protecting them from tobacco promotion. The tobacco industry’s own internal documents show they have used a mix of marketing tactics to attract “new smokers” who are mostly children. In Australia, and even more so worldwide, the large majority of smokers start smoking before turning 18 years old. In Australia the average age of initiation is just under 16.³ Over 140,000 Australian schoolchildren are already weekly smokers.⁴

While making claims they “don’t want children to smoke” and “support youth smoking prevention”, tobacco companies continue to associate their deadly and addictive products – through promotional strategies including packaging - with pop music, sport, fashion, “cool” words and images and other associations they know are appealing to children.⁵

The case for plain packaging of tobacco

1. The draft legislation should be supported by all federal parliamentarians as a continuation of the bipartisan commitment to tobacco control that has led to substantial reductions in tobacco consumption in Australia over the past 35 years, including reduced child smoking rates.
2. Among all commercially available products, tobacco demands special consideration because:
 - a. it is the only consumer product that when used as intended, causes the death of a majority of its lifetime users;
 - b. it causes more preventable death and disease than all other drugs combined;
 - c. it is highly addictive, arguably the most addictive known drug; and
 - d. unlike other drugs such as alcohol, tobacco as well as harming users is an unacceptable hazard to others who are exposed to second-hand tobacco smoke – including children, who are especially vulnerable to its health impacts.
3. The dangers of tobacco smoking justify restrictions on its distribution and sale as well as the elimination of all forms of tobacco advertising and promotion including via package design.
4. With increasing restrictions on tobacco advertising, promotion and sponsorship, the tobacco industry relies increasingly on the pack itself to advertise its products – including to children.

5. The large majority of smokers start smoking before turning 18 years old; average age of initiation is just under 16.⁶ The tobacco industry's own internal documents show they have used a mix of marketing tactics to attract "new smokers" who are mostly children. The most recent survey shows over 140,000 Australian schoolchildren are already weekly smokers.⁷
6. Research⁸ shows plain packaging is likely to impact on teenagers aged 14-15 by:
 - increasing attention to the graphic warnings;
 - increasing overall perceptions of smoking harm; and
 - reducing the social appeal of smoking.
7. The tobacco industry's innovative use of colour, novelty packaging and other imagery enables it to target particular market segments and convey brand character. Colour and imagery are also used to misleadingly convey relative brand strength and quality. 20% of smokers wrongly believe some tobacco brands are safer than others, says a worldwide study including 2000 Australians. And over 40% still think "light" brands (suggested by pack colours) are less harmful.⁹
8. Mandatory plain tobacco packaging would eliminate the tobacco industry's ability to promote, including to children, smoking and brand personality via packs; would enhance effectiveness of pack health warnings; and would remove pack potential to mislead and deceive consumers as to quality and strength;¹⁰
9. Plain packaging is a key recommendation of the National Preventative Health Taskforce 2009 report concluding: "there can be no justification for allowing any form of promotion for this uniquely dangerous and addictive product which it is illegal to sell to children."¹¹
10. Without brand imagery, packs would become nothing more than "functional containers for cigarettes", rather than a medium for advertising.^{12, 13, 14, 15}
11. Plain packaging will remove the ability of tobacco companies to use packs as a vehicle of advertising to children - promoting an image, brand personality and quality and remove positive association with cigarette brands and image.¹⁶
12. Plain packaging will make health warning messages on packs more prominent and enable larger graphic health warnings and more information about cessation and the health effects of smoking to be printed on the pack.¹⁷
13. Plain packaging will remove packs' ability to deceptively influence consumers' – including children's - perceptions of tobacco quality and sensory appeal,¹⁸ and false implications that products have harm-reducing properties and/or different levels of health risks associated with each brand/product.¹⁹
14. Recent surveys show a majority of the Australian population support plain tobacco packaging.²⁰
15. Plain packaging is necessary to meet our commitment to Art. 13 of the Framework Convention on Tobacco Control (FCTC) - to implement a "comprehensive ban of *all* tobacco advertising, promotion and sponsorship". It would also maximise effectiveness of implementation of obligations under Art. 11 (packaging and labelling).²¹

Misleading tobacco industry arguments against plain packaging

The tobacco industry has sought to mislead the Australian Parliament and community using unfounded, inaccurate and exaggerated arguments against the proposed plain packaging law. The industry has used new micro-websites, pack inserts, front groups and allied think tanks²² to claim adverse consequences and threaten legal actions against the government to stop the policy. Most recently they have threatened to flood the country with cheap cigarettes and sue the government for billions over alleged trademark violations.

The industry's main claims, and the facts:²³

“It won’t work, no evidence it will reduce smoking”

Australia will be the first country to implement the policy, so direct evidence from elsewhere is not yet available. Published research²⁴ however, shows likely impact will include reducing youth appeal, focusing more attention on health warnings, and removing misleading colours and graphics. Industry documents confirm they see the packet’s main aim as “to create a desire to purchase and try.”²⁵ If the policy was not a threat to tobacco sales, would the industry be spending millions to oppose it?

“It will cost billions in payouts to tobacco companies for violating their rights”

Legislation will restrict, not acquire or profit from, existing trademarks - so compensation is not an issue. Plain packaging is justifiable and proportionate on public health grounds. According to legal experts, there is no constitutional or legal barrier and the industry case is “so weak it’s non-existent”.²⁶

“It will increase illicit trade, smuggling, counterfeiting”

The tobacco industry routinely exaggerates Australia’s illicit trade. The industry’s threat that illicit tobacco crime will flourish is based on one small survey with a low response rate. Global experts recommend controlling the tobacco supply chain as the main strategy to reduce smuggling.²⁷

“UK and Canada have rejected it”

Over 170 Parties, including the UK, Canada and Australia, have signed the FCTC treaty committing to plain packaging. It is currently under active consideration in both UK and Canada - despite BATA claiming the “UK government has put plain packaging on the back burner”.²⁸ In 2010 UK Health Secretary Andrew Lansley said it made sense to “look at less attractive packaging”, and the Government announced in March 2011 they would consult on plain packs for the UK by end-2011.²⁹

“It will cause confusion, inconvenience, security risks, costs to small business”

Packs will still carry clearly printed manufacturer and product variant names, easily readable by retail staff and normally stored in labelled rows as before.

“It’s already out of sight, so why do this?”

Tobacco is only out of sight by law in most shops – once purchased, it still works as a promotional tool. The tobacco industry describes the pack as its “silent salesman”,³⁰ promoting the brand including to children.

Graphic health warnings

PCT supports the increase in the size of the health warnings to 75% of the front of the pack surface and the proposal to refresh and rotate health warnings. A recent international review³¹ of the evidence on health warning messages on tobacco products indicates that comprehensive, large graphic warnings are effective among youth and help to prevent smoking initiation; pictorial health warnings that elicit strong emotional reactions are significantly more effective; health warnings on packages are among the most direct and prominent means of communicating with smokers; and larger graphic warnings are significantly more effective than smaller warnings.

Cost Recovery

PCT supports cost recovery through a comprehensive and nationally coordinated retailer licensing or registration scheme to cover costs including regulation of the products, monitoring and enforcement. The Consultation Paper (page 8) says the government is considering cost recovery options for the monitoring and enforcement of the bill and that a cost recovery impact statement will be prepared to form the basis of further consultation in middle of this year. The National Preventative Health Taskforce report 2009³² also recommends regulating manufacturing and further regulation of packaging and supply of tobacco products as a key action area.

References

- ¹ List of partner organisations and agreed aims at www.ashaust.org.au/lv4/ProtectChildrenEndorsements.htm
- ² Quit Victoria/Cancer Council Victoria (2011), *Plain Packaging of Tobacco Products: a Review of the Evidence* at www.cancer.org.au/File/PolicyPublications/Position_statements/TCUCCVBkgrndResrchPlainPak190511ReEnd_FINAL2.pdf
- ³ *National Drug Strategy Household Survey 2007: detailed findings* at www.aihw.gov.au/publication-detail/?id=6442468195
- ⁴ 2005 secondary schools survey at www.nationaldrugstrategy.gov.au/internet/drugstrategy/publishing.nsf/Content/mono59
- ⁵ See many examples at www.ashaust.org.au/lv4/MarketingPloys.htm - including "groovy horses", "muscular bulk promotion", Casey Stoner sponsorship and more.
- ⁶ *National Drug Strategy Household Survey 2007 (op. cit.)*
- ⁷ 2005 secondary schools survey (*op. cit.*)
- ⁸ Quit Victoria/Cancer Council Victoria (2011), *Plain Packaging of Tobacco Products: a Review of the Evidence (op. cit.)*
See also Webb L *et al* (2010) presented to APACT conference 2010 – media release at www.ashaust.org.au/pdfs/PlainPxWebbRels1010.pdf
- ⁹ Mutti S *et al* (2011), *Beyond light and mild: Cigarette brand descriptors and perceptions of risk in the International Tobacco Control (ITC) Four Country Survey*. *Addiction*, 106: doi:10.1111/j.1360-0443.2011.03402.x
- ¹⁰ Mutti S. *et al* (2001), *ibid.*
- ¹¹ *Australia: The Healthiest Country by 2020 – National Preventative Health Strategy – the roadmap for action*. July 2009, Commonwealth of Australia at [www.preventativehealth.org.au/internet/preventativehealth/publishing.nsf/Content/CCD7323311E358BECA2575FD000859E1/\\$File/nphs-roadmap.pdf](http://www.preventativehealth.org.au/internet/preventativehealth/publishing.nsf/Content/CCD7323311E358BECA2575FD000859E1/$File/nphs-roadmap.pdf)
- ¹² Wakefield M *et al* (2002), "The cigarette pack as image: new evidence from tobacco industry documents" in *Tobacco Control* 2002;11 Suppl I; i 73-i80.
- ¹³ Centre for Health Promotion (1993), "Effects of plain packaging on the image of tobacco products among youth", prepared for the Canadian Cancer Society, November 30, 1993.
Centre for Behavioural Research in Cancer (1992), "Adolescents reactions to cigarette packs modified to increase extent and impact of health warnings" in *Health Warning and Content Labelling on Tobacco Products*. Report prepared for the Ministerial Council on Drug Strategy Tobacco Task Force (Melbourne: Anti-Cancer Council of Victoria).
- ¹⁴ Centre for Health Promotion (1993), "Effects of plain packaging on the image of tobacco products among youth", *op. cit.*
Centre for Behavioural Research in Cancer (1992), "Adolescents reactions to cigarette packs... ", *op. cit.*
- ¹⁵ Begg S *et al* (2008), *The burden of disease and injury in Australia 2003-2007*. Canberra: Australian Institute for Health and Welfare.
Collins D & Lapsley H (2008), *The Costs of Tobacco, Alcohol and Illicit Drug Abuse to Australian Society in 2004/05*. Commonwealth of Australia.
- ¹⁶ Wakefield M *et al*, (2008), "How does increasingly plainer cigarette packaging influence adult smokers' perceptions about brand image? An experimental study" Centre for Behavioural Research in Cancer, Cancer Council Victoria, 30 September 2008, p 3.
Cunningham R, Kyle K. (1995), "The case for plain packaging" in *Tobacco Control* 1995;4:80-86
When packages can't speak: Possible impacts of plain and generic packaging of tobacco products. Expert Panel Report, prepared at the request of Health Canada, March 1995.
- ¹⁷ The International Tobacco Control Four Country Survey conducted in 2006 found large, graphic and detailed health warnings are more effective than text only and smaller warnings in communicating the health risks of smoking.
See Hammond D *et al* (2006), "Effectiveness of cigarette warning labels in informing smokers about the risks of smoking: finding from the International Tobacco Control (ITC) Four Country Survey" in *Tobacco Control* 2006;15(Suppl III):iii19-iii25.
Goldberg ME (1999), "The Effect of plain packaging on response to health warnings" in *American Journal of Public Health*.
- ¹⁸ Cunningham R, Kyle K. (1995), "The case for plain packaging" in *Tobacco Control* 1995;4:80-86.
- ¹⁹ Hammond D. *et al* (2010), "Cigarette pack design and perceptions of risk among UK adults and youth". *Eur J Public Health*. 2010 Feb;20(1):10-1. The study found that 75% of adult smokers incorrectly believed there was a difference in health benefits between brands. Similar findings were apparent from the children surveyed who have grown up during an era when most forms of tobacco advertising have been banned including the use of misleading health claims (such as 'light' and 'mild') since 2003. The study also found that adult smokers and children were much less likely to perceive any difference in terms of health risk when plain packs were used.
National Cancer Institute (2001), *Risks Associated with Smoking Cigarettes with Low Machine-Measured Yields of Tar and Nicotine*. Smoking and Tobacco Control Monograph No. 13. Bethesda, MD: U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute, NIH Pub. No. 02-5074, October 2001.
See also Wakefield M *et al* (2002), "The cigarette pack as image...", *op. cit.*
- ²⁰ A survey in April 2011 of 4,500 Victorians shows very strong support for the mandatory plain packaging of tobacco. 72% of all people approve of the policy - and 57% of smokers. See Quit Victoria media release 8/4/11.
A 2008 NSW survey showed slightly higher support: 78%. Walsh R *et al* (2008) *Aust N Z Public Health*. 32:482-8 doi: 10.1111/j.1753-6405.2008.00284.x
See also McCarthy, M, Centre for Behavioural Research in Cancer, Internal Memo (2009). Approval for a range of possible tobacco control initiatives: Findings from the "Talk with Australia" national online panel dated February 2009 (59.3 % approved, 20.4% neither approved or disapproved, 18.9% disapproved and 1.4% don't know).
Shanahan, P. and Elliott, D (2009), "Evaluation of the Effectiveness of the Graphic Health Warnings on Tobacco Product Packaging 2008", Australian Government Department of Health and Ageing, Canberra. 57% agreed that cigarettes should be sold in plain packaging to assist smokers to quit.

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- Quit Media Release, 3/5/07. More than half of regular smokers in Victoria give plain packaging on cigarettes the seal of approval. Available at www.quit.org.au/media.asp?ContentID=20847 .
- ²¹ WHO FCTC at www.who.int/fctc/text_download/en/index.html
- ²² For example, the Institute of Public Affairs (IPA) has made extensive public comment, while seldom acknowledging its compromised status as having received tobacco company funding and had tobacco representation on its Board: see *Sydney Morning Herald* 12/8/03 at www.smh.com.au/articles/2003/08/11/1060588322537.html
- ²³ QuitVic/Cancer Council Vic (2011) *Plain Packaging... Evidence (op.cit.)* and other detailed responses to these arguments available at www.ashaust.org.au/lv3/action_plainpack.htm
- ²⁴ Quit Vic/Cancer Council Vic (2011), *ibid.*
- ²⁵ Miller A, Arthur D Little Inc. (1963), "Development of Cigarette Packaging", Liggett and Myers, #194, p.17. October 14, 1963. In Roswell Park Youth and Marketing Collection linked through roswell.tobaccodocuments.org , document # 194
- ²⁶ See comment by trademark law expert Prof Mark Davison of Monash University in Melbourne *Age* (2010) at www.theage.com.au/opinion/society-and-culture/big-tobaccos-huff-and-puff-is-just-hot-air-20100503-u3p0.html and his summation of a very detailed analysis of the plain packs - intellectual property issue in a Melbourne University debate at <http://vimeo.com/12108576?source=cmailler>
- ²⁷ WHO/HSBC Finance report (2010) at www.informaworld.com/smpp/content-db=all~content=a901883029
- ²⁸ BATA media release 17/5/11 at www.plainpack.com/doris/media/plainpack/PDF/BATA_campaign_launch_press_release_17_May.pdf
- ²⁹ UK Health Dept 9/3/11 at www.dh.gov.uk/en/Aboutus/Features/DH_124977
- ³⁰ Many references to packs as "silent salesman" in tobacco industry documents – e.g. BAT (1987) at <http://legacy.library.ucsf.edu/tid/cab26a99/pdf?search=%22silent%20salesman%22>
- ³¹ Hammond D (2011), "Health warning messages on tobacco products: a review" in *British Medical Journal*, 23 May 2011
- ³² NPHT (2009), *Australia: the Healthiest Country... (op. cit.)*