

DEPARTMENT OF HEALTH AND AGEING

CONSULTATION PAPER

**Tobacco Plain Packaging:
Proposed approach to non-cigarette tobacco products**

30 September 2011

Contents

INTRODUCTION 3

DATES AND PROCESS FOR SUBMISSIONS 3

PROPOSED APPROACH TO PLAIN PACKAGING OF NON-CIGARETTE
TOBACCO PRODUCTS..... 4

DETAILS OF GENERAL REQUIREMENTS 6

PRODUCT-SPECIFIC REQUIREMENTS..... 9

APPENDIX A – HEALTH IMPACTS OF USE OF NON-CIGARETTE TOBACCO
PRODUCTS..... 11

APPENDIX B – ADDITIONAL BACKGROUND..... 13

APPENDIX C – IMAGES OF PROPOSED DESIGN FOR NON-CIGARETTE
TOBACCO PACKAGING..... 20

TOBACCO PLAIN PACKAGING: PROPOSED APPROACH TO NON-CIGARETTE TOBACCO PRODUCTS

Consultation Paper

INTRODUCTION

The Australian Government is implementing a comprehensive suite of reforms to reduce smoking and its harmful effects. As part of these reforms and as a world first, the Government has introduced legislation mandating that all tobacco products sold in Australia be sold in plain packaging by 1 July 2012. This will remove one of the last remaining forms of tobacco advertising.

The Tobacco Plain Packaging Bill 2011 and Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011 were introduced into Parliament on 6 July 2011, passed the House of Representatives on 24 August 2011 and are currently before the Senate.

On 7 April 2011 the Government released an Exposure Draft of the Tobacco Plain Packaging Bill 2011 and an accompanying Consultation Paper for a 60 day consultation period. The Consultation Paper, available together with submissions received at www.yourhealth.gov.au, noted that the Government would conduct a further consultation on the detail of the proposed design features for the plain packaging of non-cigarette tobacco products in the second half of 2011.

This Consultation Paper, *Tobacco Plain Packaging: Proposed approach to non-cigarette tobacco products*, outlines for public comment the Government's proposed approach to implementing plain packaging for non-cigarette tobacco products.

Following the completion of this consultation process, the regulations for non-cigarette tobacco products will be finalised before the commencement of the Tobacco Plain Packaging Bill 2011 on 1 January 2012.

DATES AND PROCESS FOR SUBMISSIONS

Interested parties and individuals are invited to provide written submissions commenting on this Consultation Paper by Friday 28 October 2011. To be considered, submissions must be received by the Department of Health and Ageing by 5.00pm on that date.

Submissions should be addressed to:

Mail:

Assistant Secretary, Tobacco Control Taskforce
Attention: Tobacco Reform Section
Department of Health and Ageing
MDP 701
GPO Box 9848
CANBERRA ACT 2601

Email:

tobaccoplainpackaging@health.gov.au

This Consultation Paper is available at www.yourhealth.gov.au

PROPOSED APPROACH TO PLAIN PACKAGING OF NON-CIGARETTE TOBACCO PRODUCTS

Principles

1. The Government's Tobacco Plain Packaging Bill 2011 (the Bill) and the proposed approach to the plain packaging of non-cigarette products set out in this Consultation Paper recognise that all tobacco products are harmful and addictive. This is consistent with the approach taken in the World Health Organization Framework Convention on Tobacco Control (FCTC), to which Australia is a party. The harms to human health from the consumption of non-cigarette tobacco products have been well documented. A list of key references is at [Appendix A](#) to this Consultation Paper.
2. The Government proposes to take an approach to the plain packaging requirements for non-cigarette tobacco products that is as close as possible to the plain packaging requirements for cigarettes and addresses the objectives of the Bill. That is, non-cigarette tobacco products should be packaged in retail packaging that:
 - is the same specific drab dark brown colour in matt finish as cigarette products;
 - does not carry tobacco industry branding, logos, symbols or other images;
 - carries only the brand name and variant name in a standardised font, colour and location on the package; and
 - carries the mandated health warnings.
3. While some of these requirements are set out in the Bill, they will be specified to a greater level of detail in the Tobacco Plain Packaging Regulations 2011 and in the *Trade Practices (Consumer Protection Information Standards) (Tobacco) Regulations 2004* (or any future standard) under the *Australian Consumer Law*. The specific requirements proposed to be included in the Tobacco Plain Packaging Regulations 2011 are set out later in this Consultation Paper. Other specific requirements for retail packaging of tobacco products are set out in the separate consultation paper on the new and expanded graphic health warnings (see paragraph 27 and [Appendix B](#) to this Consultation Paper).
4. Additional background material covered in the first Consultation Paper on Tobacco Plain Packaging, including information on Australia's other tobacco control measures, the rationale for plain packaging, and issues relating to trademarks, is included at [Appendix B](#) to this Consultation Paper.

Response to earlier representations: repackaging

5. The most desirable approach, from the Government's perspective, would be for all tobacco products, whether manufactured in Australia or imported, to comply with the plain packaging design requirements when they are manufactured. However, in the consultation process to date on the development of the Bill, the Government has taken into account the views of a broad range of stakeholders, including from retailers, tobacco industry representatives and from developed and developing

countries with commercial and policy interests in tobacco matters. This has resulted in a number of changes to the measure as earlier foreshadowed.

6. For example, stakeholders have advised that because many of these products have only a small market in Australia, packaging of these products specifically for the Australian market at the point of manufacture may be impracticable. The Bill, therefore, does not prohibit the importation of products into Australia in branded packaging. They may be imported and repackaged for retail sale once in Australia.
7. Some stakeholders have expressed concerns about the practicality of repackaging some products, particularly specialty products. The approach that is currently used for many of these products to ensure compliance with the existing health warning requirements is the use of adhesive stickers on the outside of packaging bearing those warnings. The Government is proposing that the use of adhesive stickers continue to be one acceptable solution for compliance with the plain packaging requirements. To be compliant, the adhesive stickers would need to effectively cover all surfaces of the retail packaging that do not otherwise comply with the plain packaging requirements, including the underlying tobacco industry branding, symbols and other images on the packaging.
8. Some stakeholders have indicated that they routinely repackage some products – for example in lock-sealed or vacuum-sealed bags, or in the case of cigars, in tubes – to help maintain freshness. The Government proposes that the regulations would allow the use of:
 - purpose-made lock-sealed or vacuum-sealed bags that comply with the plain packaging, health warnings and other statutory requirements; or
 - purpose-made cigar tubes that comply with the plain packaging, health warnings and other statutory requirements; or
 - other purpose-made containers that comply with the plain packaging, health warnings and other statutory requirements.
9. Recognising the practicalities of labelling retail packaging with brand and variant information in the context of repackaging, the Government is proposing that the regulations allow the following options (in addition to printing directly on the retail packaging in the specified font style, size and colour):
 - pre-printed adhesive labels bearing the brand name and variant that meet the font style, size, colour and background colour requirements applied to cigarette packs and repeated later in this Consultation Paper; or
 - rectangular white labels with dimensions no larger than 50mm by 20mm, on which the brand name and variant could be hand written in black ink; or
 - a rectangular white space with dimensions no larger than 50mm by 20mm printed on the purpose-made packaging for this purpose, on which the brand name and variant could be hand written in black ink.
10. Certain restrictions would apply to the purpose-made packaging set out at paragraph 8 above:
 - the two largest dimensions for all containers except for cigar tubes must not be smaller than 85mm by 55mm, the same minimum dimensions specified for cigarette packs;

- cigar tubes must be cylindrical and rigid, and may have a tapered or rounded end, but must not be smaller than 15mm in diameter at the opening of the tube.
11. Stakeholders have raised concerns about the applicability of plain packaging to cigar bands. The Government is proposing to provide choices in relation to the management of cigar bands. Under the Government’s proposed approach, after import but before being offered for sale in Australia, cigar bands could be:
- removed; or
 - replaced with a drab dark brown band with the brand name and variant and country of origin printed in a standard font style, size and colour; or
 - fully covered with an adhesive drab dark brown band with the brand name and variant and country of origin printed in a standard font style, size and colour; or
 - fully covered with an adhesive white or drab dark brown band on which the brand name and variant and country of origin could be hand written in black ink.

DETAILS OF GENERAL REQUIREMENTS

Colour of packaging: Drab dark brown (Pantone 448C) in matt finish

12. All retail packaging, regardless of the shape, format and materials used, will be required to be a specified drab dark brown colour (Pantone 448C) in a matt finish. Earlier consumer research commissioned by the Department tested a range of colours based on colours used in previous studies that demonstrated the effectiveness of plain packaging. A particular shade of drab dark brown in a matt finish was found to be optimal in terms of decreasing the appeal and attractiveness of tobacco packaging, decreasing the potential of the pack to mislead consumers about the harms of tobacco use and increasing the impact of graphic health warnings.
13. For consistency with the approach to cigarette packaging, it is proposed that the regulations will allow for the inside of the packaging (including any lining) to be one of a limited range of colours: white, a standard metallic colour if the container is metallic, a standard wooden colour if the container is wooden, or transparent if the container is glass or plastic.

Text used on packaging: ‘Lucida Sans’

14. Earlier research commissioned by the Department determined the optimal font style and font size that would assist retailers in handling of tobacco products while maintaining the public health objectives of the measure. Legibility of brand names was tested at a distance of 1 metre to simulate identification in a retail setting. All participants in the research could read the brand name in font Lucida Sans at 14 point size.
15. In recognition of the wide variety of non-cigarette tobacco products available and the potential difficulties in producing pre-printed retail packaging for each individual product line, it is proposed that tobacco product brand and variant

names will be allowed to appear on retail packaging in several different ways, outlined below.

Pre-printed

16. Tobacco product brand and variant names will be allowed to be pre-printed either directly on the retail packaging or on an adhesive label affixed to the packaging. The brand name must be in Lucida Sans font at a maximum of 14 point size in the colour Pantone Cool Grey 2C. The variant name must be in Lucida Sans font at a maximum of 10 point font size in the colour Pantone Cool Grey 2C.
17. Where an adhesive label with pre-printed brand name and variant is used, the adhesive label must be the colour Pantone 448C and must not be significantly larger than necessary to print the brand and variant name in the specified font and size. It must not cover any part of the mandatory health warnings or other statutory markings on the packaging.

Hand written

18. The brand and variant name may be hand written in black ink either directly on the retail packaging in a rectangular space allocated for this purpose or on a rectangular adhesive label affixed to the packaging. Any adhesive label or space on the packaging for this purpose must be white.
19. The Government's policy intent is to allow the label or space on the packaging to be large enough to accommodate typical brand names and variant names to be hand written, whilst avoiding the space or label detracting from the drab dark brown packaging. For that reason, the Government is proposing that any adhesive label or space on the packaging for this purpose must not be larger than 50 mm by 20 mm.

Format of packaging

20. Retail packaging will not be allowed to contain a window feature or cut out which allows the product inside the packaging to be visible.
21. Tobacco products must generally be placed directly into retail packaging that complies with the plain packaging requirements. However, exceptions may include where tobacco products are wrapped in transparent wrappers and then placed inside compliant packaging. Lining of packaging that complies with certain specifications (eg white paper or paper-backed foil) may also be permitted.
22. The retail packaging of tobacco products must not have any inserts (things placed in tobacco packaging) or onserts (things that are affixed or otherwise attached to packaging) other than those specifically permitted in the regulations made under the Bill.

Bar codes and manufacturing and importing information

23. Bar codes may appear on packaging in a style, format and location that will be specified in the regulations. Information required under the *National Trade Measurement Regulations 2009* and the *Commerce (Imports) Regulations 1940* will also be required to appear on packaging in a specified style, format and location unless otherwise required in the relevant regulations.
24. The packaging may bear a 'Made in Australia' marking in a specified style, format and location, where the product is made in Australia.

Other symbols and logos

25. To ensure that no other design features detract from the impact of the plain packaging measure, no other symbols or logos, apart from those required under the *Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 2004* under the *Australian Consumer Law*, or other regulations, are to appear on retail packaging of tobacco products.

Health warnings

26. Health warnings on retail packaging of tobacco products are currently required under the *Trade Practices (Consumer Protection Information Standards) (Tobacco) Regulations 2004* under the *Australian Consumer Law*. The current regime does not apply to cigars offered for single sale.
27. Consultation on the proposed updated and expanded health warnings, including warnings for cigars offered for single sale, is currently being undertaken by the Australian Competition and Consumer Commission (ACCC). To access information on the proposed changes and/or lodge a submission please see information at the website below:
<http://www.productsafety.gov.au/content/index.phtml/itemId/989093>
28. Additional information on health warnings is included at Appendix B to this Consultation Paper.

Anti-counterfeiting measures

29. In relation to anti-counterfeiting measures, the Government is proposing that the plain packaging legislation and regulations:
 - permit the use of unique alphanumeric code markings on the retail packaging in a specified place and format on a voluntary basis on condition that these codes are not linked to tobacco marketing or promotion and do not interfere with graphic health warnings;
 - permit the continued use of covert markings in compliance with all other aspects of the Bill; and
 - not specify the packaging material to be used for non-cigarette tobacco product retail packaging.

30. The Government does not endorse tobacco products. The Government will therefore not be providing supporting infrastructure in the form of Government endorsed or licensed machines for the production of the codes, nor consumer phone lines or websites.

Sample images

31. Sample images of the non-cigarette package designs are available at [Appendix C](#) to this Consultation Paper.

PRODUCT-SPECIFIC REQUIREMENTS

32. In addition to the above general requirements that apply to all tobacco products, some additional requirements apply to specific categories of tobacco products and their packaging.

Loose leaf tobacco (roll your own (RYO) tobacco and pipe tobacco)

33. Loose leaf tobacco (including roll your own (RYO) tobacco and pipe tobacco) is usually sold in pouches or tins. The Government is not proposing to prohibit any of these packaging formats.
34. Brand and variant names will be limited to appearing once only on the front surface of packaging and once only on the back surface of packaging (or, where the packaging does not have a clear front and back surface, the equivalent surfaces of the packaging, eg top and bottom).

Cigars and other like products

Appearance of retail packaging

35. Cigars and other similarly shaped products (including cigarillos, little cigars and bidis) are presently sold in a range of different packaging formats, including tins, wooden and cardboard boxes and packs, lock-seal bags, and tubes. The Government is not proposing to prohibit any of these packaging formats. However, like all other tobacco products, all these products must be packaged in retail packaging that complies with the requirements for plain packaging, whether they are sold in multiples or singly.
36. For example, cigars sold in wooden or cardboard boxes may continue to be sold in boxes made of those materials, if the boxes meet the general plain packaging requirements outlined above. Alternatively, cigars may be sold in plain packaged lock-seal plastic bags or tubes.
37. The proposed requirements for purpose-made plain packaged containers are set out at paragraphs 8 and 10 above.
38. For all cigar packaging except cigars sold singly in tubes, brand and variant names will be limited to appearing once only on the front surface of packaging and once

only on the back surface of packaging (or, where the packaging does not have a clear front and back surface, the equivalent surfaces of the packaging).

39. For cigars sold singly in tubes, the brand and variant name may be displayed once only on the tube.

Appearance of cigars

40. There are currently no restrictions on how cigars and cigarillos themselves are to appear. Cigars and cigarillos have a range of decorative elements often included on a band around the product including brand names, logos, use of colour and other embellishments. Research shows that inclusion of brand names and other design embellishments is strongly associated with level of appeal and perceived brand personalities. Guidelines for the implementation of Article 13 (Tobacco advertising, promotion and sponsorship) of the FCTC identify product design features as a form of tobacco advertising and promotion.

41. The proposed plain packaging requirements for cigar bands are set out at paragraph 11 above.

Smokeless tobacco

42. The definition of ‘tobacco product’ in the Bill is intended to encompass all tobacco products designed for human consumption. The broad definition of ‘tobacco products’ may encompass some tobacco products which are unlawful, under Commonwealth, State or Territory laws that regulate the use and sale of tobacco. The Bill is not intended to interfere with a ban on any form of tobacco product whether or not that product would fall within the definition of tobacco product for the purposes of the Bill.
43. One such product is smokeless tobacco, which is a tobacco product intended to be sucked, chewed or inhaled by the user, rather than burned. Some forms of smokeless tobacco products (being oral snuff, paste and/or powders and chewing tobacco) are banned through the *Trade Practices Act 1974 – Consumer Protection Notice No. 10 of 1991 – Permanent Ban on Goods*.
44. In line with the definition of tobacco product, all smokeless tobacco products that are legal for retail sale will be required to comply with the plain packaging requirements. If banned smokeless tobacco products are sold and do not comply with the plain packaging requirements, offences will be committed under both the legislation that forbids the sale of the product and the Bill.

APPENDIX A – HEALTH IMPACTS OF USE OF NON-CIGARETTE TOBACCO PRODUCTS

The Tobacco Plain Packaging Bill 2011 and associated regulations are intended to encompass all tobacco products designed for human consumption. Non-cigarette tobacco products include loose leaf tobacco, cigars, cigarillos, bidis and smokeless tobacco products. Different types of tobacco products are associated with different health effects however, all tobacco products are harmful to human health.¹

Research evidence underpinning the health impacts of non-cigarette products is set out at:

1. World Health Organization, 2009, *Report on the Scientific Basis of Tobacco Product Regulation: Third Report of a WHO Study Group*, WHO Technical Report Series 955.
2. World Health Organization, 2008, *Report on the Scientific Basis of Tobacco Product Regulation: Second Report of a WHO Study Group*, WHO Technical Report Series 951.
3. World Health Organization, 2006, *Tobacco: deadly in any form or disguise*. Geneva.
4. IARC, 2007, *IARC Monographs on the Evaluation of Carcinogenic Risks to Humans, Volume 89, Smokeless Tobacco and Some Tobacco-specific N-Nitrosamines*. International Agency for Research on Cancer. Lyon, France.
5. IARC. 2004, *IARC Monographs on the Evaluation of Carcinogenic Risks to Humans, Volume 83, Tobacco Smoke and Involuntary Smoking*. International Agency for Research on Cancer. Lyon, France.
6. IARC. 1998, *IARC Monographs on the Evaluation of Carcinogenic Risks to Humans, Volume 38, Tobacco smoking. Summary of data reported and evaluation*. International Agency for Research on Cancer. Lyon, France.
7. U.S. Department of Health and Human Services. 2010. *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health.
8. U.S. Department of Health and Human Services. 2004. *The health consequences of smoking: a report of the Surgeon General, What it means to you*. U.S. Department of Health and Human Services
9. National Cancer Institute. Cigars: Health effects and trends, Smoking and Tobacco Control Monograph No 9; 1998.

¹World Health Organization. Tobacco: deadly in any form or disguise. Geneva: WHO; 2006.

10. National Cancer Institute (US). Cigar smoking and cancer factsheet <http://www.cancer.gov/cancertopics/factsheet/Tobacco/cigars>
11. Cancer Research UK, 2010 'Treating Mouth and Oropharyngeal cancer' - A Quick guide' <http://cancerhelp.cancerresearchuk.org/type/mouth-cancer/>
12. Cancer Research UK, 2010 Treatment options for mouth cancer at <http://www.cancerhelp.org.uk/type/mouth-cancer/treatment/types/treatment-options-for-mouth-cancer#surg>
13. Australian Institute of Health and Welfare, 2010 Cancer in Australia 2010: in Brief. www.aihw.gov.au
14. Action on Smoking and Health (UK) January 2010. Pipe and Cigar Smoking fact sheet http://www.ash.org.uk/files/documents/ASH_118.pdf
15. Gupta PC and Asma S (Eds), 2008. Bidi smoking and public health. New Delhi: Ministry of Health and family welfare. Government of India.
16. Baker F, Ainsworth SR, Dye JT et al, 2000 Health Risks associated with Cigar Smoking. *Journal of American Medical Association*. August 9, 2000 Vol 284, No 6 p 735-740.
17. Sharper AG, Wannamethee SG, Walker M, 2003 Pipe and cigar smoking and major cardiovascular events, cancer incidence and all cause mortality in middle-aged British men. *International Journal of Epidemiology* 32.
18. Albander JM, Streckfus CF, Adesanya MR et al, 2000 Cigar, pipe and cigarette smoking as risk factors for periodontal disease and tooth loss. *Journal of Periodontology*, 71.
19. Krall EA, Garvey AJ, Garcia RI, 1999 Alveolar bone loss and tooth loss in male cigar and pipe smokers, *Journal of American Dental Association*, 130. <http://jada.ada.org/content/130/1/57.full.pdf+html>
20. Iribaren C, Tewaka IS and Sidney S et al, 1999, Effect of cigar smoking on the risk of cardiovascular disease, chronic obstructive pulmonary disease and cancer in men. *The New England Journal of Medicine*, 340.
21. Shapiro JA, Jacobs EJ, Thun MJ, 2000 Cigar smoking in men and risk of death from tobacco-related cancers, *Journal of the National Cancer Institute*, 92.

APPENDIX B – ADDITIONAL BACKGROUND

Smoking in Australia

The prevalence of smoking in Australia has fallen steadily over a long period, in response to concerted and comprehensive public policy efforts from Commonwealth, State and Territory Governments and action from public health organisations. These have included social marketing campaigns, health warnings on packaging, workplace and broader indoor smoking bans, support for smoking cessation through Quitlines and public funding for pharmaceuticals, restrictions on sales to minors, tobacco excise increases and advertising bans. As a result of this comprehensive approach, the proportion of Australians aged 14 years and over smoking daily has fallen from 30.5 per cent in 1988 to 15.1 per cent in 2010².

Nonetheless, almost 3 million Australians continue to smoke³, including almost half of Aboriginal and Torres Strait Islander people aged 15 years and over⁴. Tobacco smoking remains one of Australia's leading causes of preventable death and disease and kills an estimated 15,000 Australians each year⁵. The economic and social costs of smoking are estimated at \$31.5 billion each year⁶. As the effects are so long-term and so far-reaching, the personal and social costs of smoking will continue to be high for many years⁷.

That is why the Council of Australian Governments (COAG) agreed in the 2008 National Healthcare Agreement to a target of reducing the national adult smoking rate to 10 per cent and halving the Aboriginal and Torres Strait Islander smoking rate by 2018.

Australia has made significant gains in reducing smoking over the past 30 years. However, the COAG targets will not be achieved without additional action. A continuation of current smoking cessation and initiation patterns would see around 14 per cent of adults still smoking in 2020, well above the COAG target. Smoking cessation rates will need to double if we are to reach the COAG target of 10 per cent by 2018⁸.

Australian Government Initiatives

The Government has taken a number of important steps towards achieving the COAG goal under the Australian Government Action on Smoking as outlined below. As part of this comprehensive suite of reforms and as a world first, the Government has

² Australian Institute of Health and Welfare, 2010 *National Drug Strategy Household Survey report*. Drug Statistics Series, Number 25. Canberra: Australian Institute of Health and Welfare, 2011.

³ Ibid.

⁴ Australian Bureau of Statistics 2009, *National Aboriginal and Torres Strait Islander Social Survey 2008*, cat. no. 4714.0, ABS, Canberra 2009.

⁵ Begg S, Vos T, Barker B, Stevenson C, Stanley L and Lopez A, *The burden of disease and injury in Australia 2003*. PHE 82. Canberra: Australian Institute of Health and Welfare, 2007.

⁶ Collins D and Lapsley H. *The costs of tobacco, alcohol and illicit drug abuse to Australian society in 2004/05*. P3 2625. Canberra: Department of Health and Ageing, 2008.

⁷ National Preventive Health Taskforce 2009, *Australia: the healthiest country by 2020, Technical Report 2 - Tobacco control in Australia: making smoking history*. Prepared for the National Preventive Health Taskforce by the Tobacco Working Group.

⁸ Gartner CE, Barendregt JJ, Hall WD. Predicting the future prevalence of cigarette smoking in Australia: how low can we go and by when? *Tob Control*. 2009 Jun;18(3):183-9. Epub 2009 Jan 29.

committed to introduce legislation mandating that all tobacco products sold in Australia be sold in plain packaging.

Australian Government Action on Smoking

The Council of Australian Governments (COAG) has agreed a target of reducing the smoking rate among the Australian population to 10 per cent by 2018, and halving the smoking rate among Aboriginal and Torres Strait Islander people.

Comprehensive reforms initiated by the Australian Government to meet this target include:

- a 25% increase in tobacco excise in April 2010, the first increase above inflation for more than a decade;
- the introduction of plain packaging for tobacco products;
- the introduction of legislation to bring restrictions on internet advertising of tobacco products into line with advertising in other media;
- record investments in anti-smoking social marketing campaigns, including the '4,000 Chemicals' campaign in 2010, and the new \$61 million National Tobacco Campaign 'Every cigarette brings cancer closer' in 2011;
- a further \$27.8 million over four years for social marketing campaigns targeted to high-risk and hard to reach groups;
- investment of \$14.5 million in the Indigenous Tobacco Control Initiative which is funding 18 innovative pilot projects in Indigenous communities around Australia;
- the \$100.6 million COAG Closing the Gap in Indigenous Health National Partnership, Tackling Smoking measure which will employ a tobacco action workforce in 57 regions across Australia by 2012-13;
- the first ever Aboriginal and Torres Strait Islander-specific national anti-smoking television campaign 'Break the Chain' launched in March 2011;
- \$5 million in one-off funding for Quitlines in 2009-10; and
- \$102.4 million to support extended listings on the Pharmaceutical Benefits Scheme for nicotine replacement therapies and other quit smoking supports.

Why is Plain Packaging Necessary?

Australian context

The Commonwealth is responsible for legislation banning almost all forms of tobacco advertising and promotion through the *Tobacco Advertising Prohibition Act 1992* (the *TAP Act*). The *TAP Act* and associated regulations, including the new amendment to explicitly restrict internet advertising of tobacco products, provide the existing legislative basis for the Australian Government to limit the exposure of the public to messages and images that may persuade people to start or continue smoking or using tobacco products.

Words, signs or symbols that appear on a tobacco product or its packaging are currently a key exception to the definition of 'tobacco advertisement' in the *TAP Act*. The introduction of plain packaging for tobacco products will have the practical effect of limiting the extent to which the exception can be used.

The Preventative Health Taskforce, an expert group established by the Government to examine the evidence on tobacco, alcohol and obesity, found that:

- young adult smokers associate cigarette brand names and package design with positive personal characteristics, social identity and aspirations;

- packaging can create misperceptions about the relative strength, level of tar and health risks of tobacco products;
- plain packaging would increase the salience of health warnings: research subjects show an improved ability to recall health warnings on plain packs; and
- decreasing the number of design elements on cigarette packs reduces their appeal and perceptions about the likely enjoyment and desirability of smoking.

The research evidence to June 2009 is set out in detail in the reports of the Preventative Health Taskforce available at www.preventativehealth.org.au

On 24 May 2011 the Cancer Council Australia released a further review of the evidence for plain packaging of tobacco products. The review presents findings from research over two decades across five countries and includes peer reviewed results of 24 experimental studies. The review can be accessed at:

http://www.cancer.org.au/File/PolicyPublications/Position_statements/TCUCCVBkgrndResrchPlainPak270511ReEnd_FINAL_May27.pdf

International framework

In taking action to implement plain packaging, Australia is acting consistently with its obligations under the World Health Organization *Framework Convention on Tobacco Control* (FCTC).

Article 5 of the FCTC requires each Party to develop and implement comprehensive national tobacco control strategies, plans and programs, and to take effective legislative and other measures for preventing and reducing tobacco consumption, nicotine addiction and exposure to tobacco smoke.

Article 11 of the FCTC requires Parties to implement effective measures to ensure that tobacco packaging does not promote a tobacco product by any means that are false, misleading, deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions.

Article 13 of the FCTC requires Parties to implement comprehensive bans on tobacco advertising, promotion and sponsorship.

Guidelines adopted by the Conference of the Parties to the FCTC for Article 11 and Article 13 recommend that Parties consider introducing plain packaging.

Plain packaging is being introduced as a necessary measure to protect public health, and will be applied in a way that is consistent with Australia's obligations under international trade and other agreements, including without discriminating between local and imported products.

Objectives of Plain Packaging of Tobacco Products

The Government's legislative proposal on plain packaging aims to prevent tobacco advertising and/or promotion on tobacco product packaging in order to:

- reduce the attractiveness and appeal of tobacco products to consumers, particularly young people;

- increase the noticeability and effectiveness of mandated health warnings;
- reduce the ability of the tobacco product packaging to mislead consumers about the harms of smoking; and
- through the achievement of these aims in the long term, as part of a comprehensive suite of tobacco control measures, contribute to efforts to reduce smoking rates.

Tobacco Plain Packaging Bill 2011

On 6 July 2011, the Minister for Health and Ageing, the Hon Nicola Roxon MP, introduced the Tobacco Plain Packaging Bill 2011 (the Bill), together with the Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011 (the TM Bill), into the House of Representatives.

Both bills were referred to the House of Representatives Standing Committee on Health and Ageing (Health Committee) on 7 July 2011. The Health Committee tabled its Advisory Report on the bills on 22 August 2011, with recommendations that both bills be passed. The House of Representatives passed both bills on 24 August 2011.

On 18 August 2011, the Senate referred the provisions of the TM Bill to the Senate Legal and Constitutional Affairs Legislation Committee (Legal Committee) for inquiry and report by 19 September 2011. The Legal Committee recommended that the Senate should pass the TM Bill. Both bills are currently before the Senate.

The Bill will commence on 1 January 2012 and all tobacco products sold at retail level in Australia from 1 July 2012 will need to be sold in plain packaging.

The Bill and its Explanatory Memorandum can be accessed at:

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4613%22>

Health Warnings

Alongside the plain packaging measure, the Government announced that it would be moving to update and expand the graphic health warnings on the packaging of tobacco products.

Graphic health warnings on tobacco packaging are currently mandated through the *Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 2004*⁹ under the *Australian Consumer Law* in Schedule 2 of the *Competition and Consumer Act 2010*¹⁰ (formerly the *Trade Practices Act 1974*). Since 1 March 2006, there has been a requirement that most Australian-manufactured and imported tobacco product packaging be printed with graphic health warnings.

⁹ *Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 2004*, available at: <http://www.comlaw.gov.au/Details/F2007C00131/Download>.

¹⁰ The *Trade Practices Act 1974* was renamed the *Competition and Consumer Act 2010* on 1 January 2011. Legislative instruments made under the *Trade Practices Act 1974*, including the *Trade Practices (Consumer Protection Information Standards) (Tobacco) Regulations 2004*, continue to apply under the *Competition and Consumer Act 2010*, available at: <http://www.comlaw.gov.au/Details/C2011C00003/Download> (see Volume 3).

In 2008, a comprehensive evaluation of the effectiveness of the graphic health warnings was undertaken¹¹. The evaluation demonstrated that the graphic health warnings had achieved their intended purpose by increasing consumer knowledge of the health effects related to smoking, encouraging cessation of smoking and discouraging smoking uptake or relapse.

However, areas for improvement were identified. The image and text on the front of packs was described by some as ‘too small’. The importance of regularly updating and refreshing the health warnings to maintain effectiveness was also identified with some indications that their impact may have been beginning to wear out. The tobacco industry branding and use of colour was also thought to overpower the warning on the front of packs.

The Government has been developing and testing new graphic health warnings for introduction at the same time as plain packaging. As part of this, graphic health warnings will be expanded to cover 75 per cent of the front of cigarette packaging. Warnings covering 90 per cent of the back of cigarette packaging and the qualitative side message will remain. A comparable change will apply to other tobacco products. In addition, the current exemption for single sale cigar products will be removed.

A consultation process on the new graphic health warnings commenced on 17 September 2011. To access the consultation paper on graphic health warnings and/or lodge a submission please see information at the website below:
<http://www.productsafety.gov.au/content/index.phtml/itemId/989093>

Trade Mark and Design Issues

The Bill prevents a trade mark from being placed on tobacco products or their retail packaging. However, section 28 preserves a trade mark owner’s ability to protect a trade mark, and to register and maintain registration of a trade mark. To this end, section 28 provides for the way various provisions of the *Trade Marks Act 1995* and the *Trade Marks Regulations 1995* will operate in relation to the provisions of the Bill.

Section 29 of the Bill prevents an order being made requiring a licence to be granted in relation to a registered design, or revoking registration of a design under the *Designs Act 2003*, as a result of the provisions of the Bill preventing the use of a registered design.

In addition, the Government has also introduced the Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011, to ensure that the Government can quickly remedy any unintended interaction between the Tobacco Plain Packaging Bill 2011 and the *Trade Marks Act 1995*, and thereby ensure that applicants for trade mark registration and registered owners of trade marks are not disadvantaged by the practical operation of the Tobacco Plain Packaging Bill 2011.

¹¹ <http://www.health.gov.au/internet/main/publishing.nsf/content/tobacco-warn-eval08>.

Other Regulation of Packaging and Tobacco Products

There is no intention that the Bill will override the various forms of regulation of tobacco products that already exist, including but not limited to:

- requirements for graphic health warnings to appear on packaging, under the *Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 2004*; and for performance standards and labelling of cigarettes, under the *Trade Practices (Consumer Product Safety Standard) (Reduced Fire Risk Cigarettes) Regulations 2008*;
- bans on advertising of tobacco products through the *Tobacco Advertising Prohibition Act 1992*;
- requirements for payment of excise on tobacco products through the *Excise Act 1901*, *Excise Regulations 1925* and the *Excise Tariff Act 1921*, and through the *Customs Act 1901*, *Customs Regulations 1926* and the *Customs Tariff Act 1995* for imported tobacco; and
- bans on smokeless tobacco products through the *Trade Practices Act 1974 – Consumer Protection Notice No. 10 of 1991 – Permanent Ban on Goods*.

Nor is there any intention to override the requirements that exist for the packaging of products generally, and are applicable to tobacco products, including the:

- *National Trade Measurement Regulations 2009*; and
- *Commerce (Imports) Regulations 1940*.

The Bill will operate alongside other regulatory mechanisms for tobacco products, and packaging generally. Although the Bill regulates information that may appear, and the ways in which certain required information may appear, the Bill is not intended to interfere with other regulation of tobacco products, including any regulation creating a requirement for packaging generally that is applicable to retail packaging for tobacco products. Nor is the Bill intended to interfere with a ban on any form of tobacco product whether or not that product would fall within the definition of ‘tobacco product’ for the purposes of the Bill. The Bill is also not intended to detract from any form of regulation of advertising of tobacco products, but is intended to support existing advertising restrictions in so far as it creates requirements to restrict advertising on tobacco products themselves or their packaging.

Expert Advisory Group

In September 2010, the Department of Health and Ageing established an Expert Advisory Group of leading experts in tobacco control (see box) to advise on plain packaging design, including overseeing consumer research on optimal design and design features that take into account concerns expressed by retailers about handling of packages.

The Expert Advisory Group oversaw testing of non-cigarette pack designs in July and August 2011. Testing was undertaken with roll-your-own tobacco, cigarillo/little cigar and premium cigar smokers.

Members of the Expert Advisory Group

- Professor Ron Borland PhD
Nigel Gray Distinguished Fellow in Cancer Prevention
VicHealth Centre for Tobacco Control
Cancer Council Victoria
- Professor Mike Daube
Professor of Health Policy
Curtin University
- Professor Mark Davison
Professor of Intellectual Property
Monash University
- Assistant Professor David Hammond
Department of Health Studies
University of Waterloo, Canada
- Professor Janet Hoek
Department of Marketing
School of Business, University of Otago,
New Zealand
- Mr Jonathan Liberman
Senior Adviser, International Legal Policy
Cancer Council Victoria
- Ms Caroline Miller
General Manager Cancer Control
Cancer Council South Australia
- Associate Professor Andrew D Mitchell
Melbourne Law School
The University of Melbourne
- Professor Melanie Wakefield PhD
Director & NHMRC Principal Research Fellow
Centre for Behavioural Research in Cancer
Cancer Council Victoria

APPENDIX C – IMAGES OF PROPOSED DESIGN FOR NON-CIGARETTE TOBACCO PACKAGING

These images have been created using a selection of images from existing graphic health warnings.

These images are indicative only. The requirements for the size, format and location of the text and health warnings may be different to how they appear in these images.

The colour viewed in these images may change depending on print quality and screen settings, and is therefore indicative only.



Figure 1. Cigarillo / little cigar tin

**CIGAR SMOKING CAUSES
LUNG CANCER**

Figure 2. Cigar tube

**SMOKING CIGARS
CAUSES LUNG
CANCER**



LUNG CANCER

**Quitline
13 7848**

Figure 3. Cigar bag



Figure 4. Roll your own tobacco pouch