

**FCTC**WHO FRAMEWORK CONVENTION  
ON TOBACCO CONTROL

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**Submission by the Convention Secretariat  
WHO Framework Convention on Tobacco Control (FCTC)  
in respect of Australia's draft Tobacco Plain Packaging Bill 2011**

6 June 2011

The Convention Secretariat is pleased to provide this submission commenting on the draft Tobacco Plain Packaging Bill and Consultation Paper circulated by the Government of Australia. The Convention Secretariat would also like to note its support for and agreement with the submission of the World Health Organization.

The WHO Framework Convention on Tobacco Control (FCTC)<sup>1</sup> is the first international treaty negotiated under the auspices of the World Health Organization. The Convention was developed in response to the globalization of the tobacco epidemic and is an evidence-based treaty that reaffirms the right of all people to the highest standard of health. It was adopted by the World Health Assembly on 21 May 2003 and entered into force on 27 February 2005. It has since become one of the most rapidly and widely embraced treaties in United Nations history. The Convention currently has 173 Parties.

Australia signed and ratified the WHO FCTC as one of the first forty States; the obligations contained in the Convention therefore became binding for Australia on the first day of its entry into force (27 February 2005).

The Convention Secretariat fully supports Australia's legislative initiative. Implementation of the proposed legislation will represent another step on the way to better protecting people from the serious adverse health consequences of tobacco consumption and exposure to tobacco smoke.

It is the view of the Secretariat that Australia's proposed plain packaging legislation is in keeping with the obligations undertaken by Parties to the WHO FCTC as well as with the guidelines issued by the Conference of the Parties, as examined in greater detail below. This submission also reflects on the relevant input and experience of other Parties to the WHO FCTC as expressed in their reports on implementation if the Convention submitted in accordance with Article 21 of the Convention.

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<sup>1</sup> The text of the Convention is available in six languages, each of which is equally authentic, on the Convention Secretariat's website: [http://www.who.int/fctc/text\\_download/en/index.html](http://www.who.int/fctc/text_download/en/index.html).



### **Relevant WHO FCTC provisions**

The WHO FCTC contains a number of provisions that create legal obligations on Parties and are relevant to the draft Tobacco Plain Packaging Bill.

Article 3 of the WHO FCTC sets out the collective objectives of the Parties in negotiating the Convention in the following terms:

"to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke by providing a framework for tobacco control measures to be implemented by the Parties at the national, regional and international levels in order to reduce continually and substantially the prevalence of tobacco use and exposure to tobacco smoke."

The general obligations of the Parties to the WHO FCTC are set out in Article 5 of the Convention, and include the development and implementation of comprehensive multisectoral national tobacco control strategies, plans and programmes in keeping with the Convention and any future protocols. In addition, Article 5 makes clear in paragraph 2 (b) that each Party to the WHO FCTC has committed itself to adopting, implementing and periodically updating and reviewing effective legislative, executive, administrative and/or other measures aimed at *inter alia* preventing and reducing tobacco consumption.

In addition to these general obligations, the Parties to the WHO FCTC have committed themselves to certain specific obligations, including in respect of measures relating to the reduction of demand for tobacco products. Among these agreed measures are non-price measures to reduce demand for tobacco products, including the obligation on Parties to adopt and implement effective legislative, executive, administrative or other measures necessary to fulfill their obligations under Articles 8 to 13 of the Convention. Importantly, Article 7 also includes the Parties' obligation, through the Conference of the Parties, to propose appropriate guidelines for the implementation of Articles 8 to 13:

In terms of specific obligations, Article 11 of the Convention requires Parties to adopt and implement effective measures in respect of the packaging and labelling of tobacco products, including health warnings and other appropriate messages as follows:

#### ***Article 11***

##### ***Packaging and labelling of tobacco products***

1. Each Party shall, within a period of three years after entry into force of this Convention for that Party, adopt and implement, in accordance with its national law, effective measures to ensure that:

- (a) tobacco product packaging and labelling do 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, including any term, descriptor, trademark, figurative or any other sign that directly or indirectly creates the false impression that a particular tobacco product is less harmful than other tobacco products. These may include terms such as "low tar", "light", "ultra-light", or "mild"; ...

Article 13 of the WHO FCTC must be read in light of the broad definition of "tobacco advertising and promotion" contained in Article 1(c) of the Convention as follows: "tobacco advertising and promotion" means any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly." Article 13 of the Convention requires Parties to undertake a comprehensive ban of *all* tobacco advertising, promotion and sponsorship as follows:



### **Article 13**

#### *Tobacco advertising, promotion and sponsorship*

1. Parties recognize that a comprehensive ban on advertising, promotion and sponsorship would reduce the consumption of tobacco products.
2. Each Party shall, in accordance with its constitution or constitutional principles, undertake a comprehensive ban of all tobacco advertising, promotion and sponsorship. This shall include, subject to the legal environment and technical means available to that Party, a comprehensive ban on cross-border advertising, promotion and sponsorship originating from its territory. In this respect, within the period of five years after entry into force of this Convention for that Party, each Party shall undertake appropriate legislative, executive, administrative and/or other measures and report accordingly in conformity with Article 21. ...

#### **Guidelines for implementation of the WHO FCTC**

As noted above, in accordance with the obligation contained in Article 7 (*Non-price measures to reduce the demand for tobacco*) of the WHO FCTC, the Conference of the Parties - the Convention's governing body, which comprises all 173 Parties to the Convention - has adopted a number of guidelines for the implementation of obligations undertaken by the Parties to the Convention.

The preparation of guidelines is an intergovernmental process, in which the Parties to the Convention create working groups in which the text of the guidelines is elaborated by representatives nominated by the Parties before being sent to the Conference of the Parties for consideration and possible adoption. Of particular relevance to the draft Tobacco Plain Packaging Bill are the guidelines in respect of Article 11 (*Packaging and labelling of tobacco products*)<sup>2</sup> and Article 13 (*Tobacco advertising, promotion and sponsorship*)<sup>3</sup>. It should be noted that the Conference of the Parties has adopted all guidelines by consensus.

#### **Guidelines on Article 11 (*Packaging and labelling of tobacco products*)**

The guidelines for implementation of Article 11 state as their agreed purpose "to assist Parties in meeting their obligations under Article 11 of the Convention, and to propose measures that Parties can use to increase the effectiveness of their packaging and labelling measures."

The studies, research and other reference material used by Parties in the development of the guidelines for implementation of Article 11 are available on the Convention Secretariat's website<sup>4</sup>.

With regard to the specific issue of plain packaging of tobacco products, the guidelines on Article 11 make the following recommendations:

#### **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.

<sup>2</sup> Available at: [http://www.who.int/fctc/guidelines/article\\_11/en/index.html](http://www.who.int/fctc/guidelines/article_11/en/index.html).

<sup>3</sup> Available at: [http://www.who.int/fctc/guidelines/article\\_13/en/index.html](http://www.who.int/fctc/guidelines/article_13/en/index.html).

<sup>4</sup> <http://www.who.int/fctc/guidelines/eleven/en/index.html>.



### **Guidelines on Article 13 (*Tobacco advertising, promotion and sponsorship*)**

The stated purpose of the guidelines for implementation of Article 13 "is to assist Parties in meeting their obligations under Article 13 of the WHO Framework Convention on Tobacco Control. They draw on the best available evidence and the experience of Parties that have successfully implemented effective measures against tobacco advertising, promotion and sponsorship. They give Parties guidance for introducing and enforcing a comprehensive ban on tobacco advertising, promotion and sponsorship...".

Like the guidelines for the implementation of Article 11, the guidelines on Article 13 specifically address the issue of plain packaging as a way of implementing Party obligations to undertake a comprehensive ban of all tobacco advertising, promotion and sponsorship pursuant to Article 13:

#### **Packaging and product features**

Packaging is an important element of advertising and promotion. Tobacco pack or product features are used in various ways to attract consumers, to promote products and to cultivate and promote brand identity, for example by using logos, colours, fonts, pictures, shapes and materials on or in packs or on individual cigarettes or other tobacco products.

The effect of advertising or promotion on packaging can be eliminated by requiring plain packaging: black and white or two other contrasting colours, as prescribed by national authorities; nothing other than a brand name, a product name and/or manufacturer's name, contact details and the quantity of product in the packaging, without any logos or other features apart from health warnings, tax stamps and other government-mandated information or markings; prescribed font style and size; and standardized shape, size and materials. There should be no advertising or promotion inside or attached to the package or on individual cigarettes or other tobacco products.

If plain packaging is not yet mandated, the restriction should cover as many as possible of the design features that make tobacco products more attractive to consumers such as animal or other figures, "fun" phrases, coloured cigarette papers, attractive smells, novelty or seasonal packs.

#### ***Recommendation***

Packaging and product design are important elements of advertising and promotion. Parties should consider adopting plain packaging requirements to eliminate the effects of advertising or promotion on packaging. Packaging, individual cigarettes or other tobacco products should carry no advertising or promotion, including design features that make products attractive.

### **Relevant information contained in Parties' implementation reports**

While Australia is the first of the Parties to the WHO FCTC to prepare legislation requiring plain packaging for tobacco products, other Parties are considering further strengthening of packaging and labeling measures. The 2010 Global Progress Report compiles and analyses reports submitted by Parties to the Conference of the Parties through the Convention Secretariat on the status of the Parties' implementation of the WHO FCTC. Reference to the reports submitted by FCTC Parties to the Conference of the Parties indicates that further progress in packaging and labelling of tobacco products, including plain packaging, is noted as being among the top priorities of Parties for implementation of the WHO FCTC.<sup>5</sup>

<sup>5</sup> 2010 Global Progress Report on Implementation of the WHO Framework Convention on Tobacco Control, "9. Priorities and Challenges in Implementing the Convention", available on the WHO FCTC website at: [http://www.who.int/fctc/reporting/progress\\_report\\_final.pdf](http://www.who.int/fctc/reporting/progress_report_final.pdf).



### **Conclusion**

The Convention Secretariat has reviewed Australia's draft Tobacco Plain Packaging Bill in light of the relevant treaty obligations undertaken by Parties to the WHO FCTC and in light of the relevant guidelines adopted by the Conference of the Parties as outlined above. The WHO FCTC Secretariat supports Australia's draft legislation as consistent with its general and specific commitments as a Party to the WHO FCTC.

Moreover, the Convention Secretariat commends Australia on its leadership in preparing the draft Tobacco Plain Packaging Bill and shares the conclusion stated in Article 3 of the draft Bill that its implementation will improve public health and give effect to certain of the obligations that Australia has as a Party to the WHO FCTC.

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