

**Mogg, Daniel**

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**From:** Mogg, Daniel  
**Sent:** Thursday, 30 June 2011 10:49 AM  
**To:** Abel, Alexander  
**Subject:** Minor Policy Approval - Tobacco Plain Packaging Bill ~~[SEC=PROTECTED:CABINET-IN-CONFIDENCE]~~  
**Attachments:** Request for Policy Approval 270611.doc

**Security Classification:** ~~Cabinet-in-Confidence~~

Hi Alex,

As discussed, here is the table I've used to collate feedback for Government Division on the Request for Minor Policy Approval re tobacco plain packaging bill.

Happy to discuss.

Cheers,

**Daniel Mogg**

Advisor | Public Health Section | Health Programs, Ageing and Sport Branch  
Department of the Prime Minister and Cabinet

Phone: +61 (0)2 6271 6072 | Fax: +61 (0)2 6271 5415 | PO Box 6500 CANBERRA ACT 2600 Australia

**Request for Minor Policy Approval  
Tobacco Plain Packaging Bill**

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Prop	Minor?	Agree?	Sensitivity/complexity	Other Min approval?	Consulted
1	Yes	Yes <ul style="list-style-type: none"> <li>Maintains policy objective</li> <li>Reduce risk of objective being frustrated if regulations are disallowed</li> <li>Consistent with drafting best practice</li> </ul>	<ul style="list-style-type: none"> <li>Nil</li> </ul>	No	<div style="background-color: black; color: white; padding: 5px;">Exempt s 47C FOI Act</div> <ul style="list-style-type: none"> <li>Industry, Resources, Energy &amp; Tourism – Agree Minister Carr should be approached for ok to amendments to Trade Marks Act (proposal 6).</li> <li>Legal Policy – Nil comments</li> <li>Asia, Americas &amp; Trade – Nil comments</li> </ul>
2	Yes	Yes <ul style="list-style-type: none"> <li>Maintains policy objective</li> <li>Reduce unnecessary impact on business</li> </ul>	<ul style="list-style-type: none"> <li>Nil</li> </ul>	No	
3	Yes	Yes <ul style="list-style-type: none"> <li>Maintains policy objective</li> <li>Removes unintentional consequences (producing tobacco products for overseas)</li> </ul>	<ul style="list-style-type: none"> <li>Nil</li> </ul>	No	
4	Yes	Yes <ul style="list-style-type: none"> <li>Maintains policy objective</li> <li>Clarifies manufacturing offence to avoid misinterpretation</li> </ul>	<ul style="list-style-type: none"> <li>Nil</li> </ul>	No	
5	Yes	Yes <ul style="list-style-type: none"> <li>Maintains policy objective</li> <li>Ensures coverage for all tobacco product packaging (not just cigarettes).</li> </ul>	<ul style="list-style-type: none"> <li>Nil</li> </ul>	No	
6	Yes	Yes <ul style="list-style-type: none"> <li>Maintains policy objective</li> <li>Clarifies effect of Bill on the Trade Marks Act</li> </ul>	<ul style="list-style-type: none"> <li>PSPM should note in response: <ol style="list-style-type: none"> <li>Approve proposal to amend the section in the Tobacco Bill that clarifies the intended relationship between the Bill and the TM Act.</li> <li>Note that you are also seeking approval from Minister Carr to introduce the Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011 as a consequential</li> </ol> </li> </ul>	Min Roxon should seek Minister Carr's approval for changes to the Trade Marks Act	

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			amendment bill, in addition to the Tobacco Bill, and that this will amend the Trade Marks Act 1995 to allow regulations to be made in relation to the operation of the Tobacco Plain Packaging Act 2011 (including a power to deem conditions to be met, and to make regulations that are inconsistent with the Trade Marks Act 1995).		
7	Yes	Yes	<ul style="list-style-type: none"><li>• Maintains policy objective</li><li>• Clarifies that requirements other legislation (e.g. graphic health warnings) will prevail over this Act</li></ul>	<ul style="list-style-type: none"><li>• Nil</li></ul>	No

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**Mogg, Daniel**

**From:** Abel, Alexander  
**Sent:** Thursday, 30 June 2011 3:26 PM  
**To:** Mogg, Daniel  
**Subject:** RE: Request for minor policy approval - Tobacco Plain Packaging Bill  
~~[SEC=PROTECTED:CABINET-IN-CONFIDENCE]~~

**Security Classification:**

~~Cabinet-in-Confidence~~

Great. Can you submit to Joe for clearance (if you haven't done so already?)

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**From:** Mogg, Daniel  
**Sent:** Thursday, 30 June 2011 3:21 PM  
**To:** Abel, Alexander  
**Subject:** RE: Request for minor policy approval - Tobacco Plain Packaging Bill ~~[SEC=PROTECTED:CABINET-IN-CONFIDENCE]~~

I just spoke with Health and they have advised that Minister Roxon has already written to Minister Carr and he has in fact replied, advising of his agreement to amendments to the Trade Marks Act. They are going to try and send through a copy of his letter to me now (or at the very least, confirm this via email).

I have updated the comments below on this basis.

**Daniel Mogg**

Phone: +61 (0)2 6271 6072

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**From:** Abel, Alexander  
**Sent:** Thursday, 30 June 2011 2:43 PM  
**To:** Mogg, Daniel  
**Subject:** FW: Request for minor policy approval - Tobacco Plain Packaging Bill ~~[SEC=PROTECTED:CABINET-IN-CONFIDENCE]~~

Thanks Daniel,  
Happy with the below – have Health indicated that Roxon has written to Senator Carr or is that 'in the works'? If Roxon has written it would be good to state this in the advice.

Good work on this,  
Alex

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**From:** Mogg, Daniel  
**Sent:** Thursday, 30 June 2011 1:47 PM  
**To:** Abel, Alexander  
**Subject:** Request for minor policy approval - Tobacco Plain Packaging Bill ~~[SEC=PROTECTED:CABINET-IN-CONFIDENCE]~~

Hi Alex,

As discussed, here is the draft email to send through to Anne O'Connor regarding the minor policy approval for the tobacco plain packaging bill. Happy to discuss.

---

Hi Anne,

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Health Programs, Ageing and Sport Branch has considered the request for minor policy approval from Minister Roxon regarding the Tobacco Plain Packaging Bill and provide the following comments:

1. Agree that the proposals from Minister Roxon are minor. None of the proposals change the overarching policy objective.
2. Agree to the proposals. As noted, all the proposals maintain the policy objective. They seek to reduce the risk of this objective being frustrated, limit unintentional or unnecessary consequences and provide clarity to avoid misinterpretations.
3. Only proposal 6, "clarify the relationship between the Bill and the Trade Marks Act", has a particular complexity or sensitivity. That is, Minister Roxon's proposal could be open to interpretation. To avoid confusion, the effect of her proposal would actually be to amend the Trade Marks Act 1995 in relation to the effect of the operation of the *Tobacco Plain Packaging Bill 2011* on a provision of the *Trade Marks Act 1995* or of a regulation made under that Act. Minister Roxon's proposal would achieve the same policy intent, but by amending the regulation making power under the *Trade Marks Act 1995*, rather than by inserting the equivalent power in the *Tobacco Plain Packaging Bill 2011*.

Therefore, the Parliamentary Secretary's response should approve the proposal to amend the section in the Tobacco Bill that clarifies the intended relationship between the Bill and the TM Act and note that Minister Roxon has obtained approval from Minister Carr to introduce the Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011 as a consequential amendment bill, in addition to the Tobacco Bill, and that this will amend the Trade Marks Act 1995 to allow regulations to be made in relation to the operation of the Tobacco Plain Packaging Act 2011 (including a power to deem conditions to be met, and to make regulations that are inconsistent with the Trade Marks Act 1995).

4. Only proposal 6 requires another Minister's approval. As noted, Minister Roxon has obtained Minister Carr's approval to amend the Trade Marks Act.
5. The Infrastructure, Regulation and Competition Policy; Industry Resources, Energy and Tourism; Legal Policy; and Asia, Americas and Trade Branches were consulted in the preparation of these comments.

Exempt s 47C FOI Act

Hope this information helps.

Regards,

**Daniel Mogg**

Advisor | Public Health Section | Health Programs, Ageing and Sport Branch  
Department of the Prime Minister and Cabinet

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**Mogg, Daniel**

**From:** Mogg, Daniel  
**Sent:** Thursday, 30 June 2011 3:39 PM  
**To:** O'Connor, Anne  
**Cc:** Castellino, Joe; Abel, Alexander  
**Subject:** Request for Minor Policy Approval - Tobacco Plain Packaging Bill  
~~[SEC-PROTECTED: CABINET-IN-CONFIDENCE]~~

**Security Classification:**~~Cabinet-in-Confidence~~

Hi Anne,

Health Programs, Ageing and Sport Branch has considered the request for minor policy approval from Minister Roxon regarding the Tobacco Plain Packaging Bill and provide the following comments:

1. Agree that the proposals from Minister Roxon are minor. None of the proposals change the overarching policy objective.
2. Agree to the proposals. As noted, all the proposals maintain the policy objective. They seek to reduce the risk of this objective being frustrated, limit unintentional or unnecessary consequences and provide clarity to avoid misinterpretations.
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Therefore, the Parliamentary Secretary's response should "approve the proposal to amend the section in the Tobacco Bill that clarifies the intended relationship between the Bill and the Trade Marks Act" and "note that Minister Roxon has obtained approval from Minister Carr to introduce the Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011 as a consequential amendment bill, in addition to the Tobacco Bill, and that this will amend the Trade Marks Act 1995 to allow regulations to be made in relation to the operation of the Tobacco Plain Packaging Act 2011 (including a power to deem conditions to be met, and to make regulations that are inconsistent with the Trade Marks Act 1995)".

4. Only proposal 6 requires another Minister's approval. As noted, Minister Roxon has obtained Minister Carr's approval to amend the Trade Marks Act.
5. The Infrastructure, Regulation and Competition Policy; Industry Resources, Energy and Tourism; Legal Policy; and Asia, Americas and Trade Branches were consulted in the preparation of these comments.

Exempt s 47C FOI Act

Hope this information helps.

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Regards,

**Daniel Mogg**

Advisor | Public Health Section | Health Programs, Ageing and Sport Branch  
Department of the Prime Minister and Cabinet

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**Mogg, Daniel**

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**From:** O'Connor, Anne  
**Sent:** Thursday, 30 June 2011 4:10 PM  
**To:** Mogg, Daniel  
**Subject:** RE: Request for Minor Policy Approval - Tobacco Plain Packaging Bill  
~~[SEC=PROTECTED:CABINET-IN-CONFIDENCE]~~

**Security Classification:**  
~~-Cabinet-in-Confidence-~~

Thanks Daniel

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**Anne O'Connor**  
**Legislation Section**  
**Department of the Prime Minister and Cabinet**  
**Tel:** 02 6271 5762  
**Fax:** 02 6271 5664  
**email:** [anne.o'connor@pmc.gov.au](mailto:anne.o'connor@pmc.gov.au)

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**From:** Mogg, Daniel  
**Sent:** Thursday, 30 June 2011 4:09 PM  
**To:** O'Connor, Anne  
**Subject:** RE: Request for Minor Policy Approval - Tobacco Plain Packaging Bill ~~[SEC=PROTECTED:CABINET-IN-CONFIDENCE]~~

Hi Anne,

Attached is the response from Senator Carr agreeing to the amendments. DoHA is working on getting a copy of Minister Roxon's letter to me now.

Cheers,

**Daniel Mogg**  
Phone: +61 (0)2 6271 6072

---

**From:** O'Connor, Anne  
**Sent:** Thursday, 30 June 2011 4:04 PM  
**To:** Mogg, Daniel  
**Subject:** RE: Request for Minor Policy Approval - Tobacco Plain Packaging Bill ~~[SEC=PROTECTED:CABINET-IN-CONFIDENCE]~~

Hi Daniel

You've indicated that Senator Carr has agreed to the amendments to the *Trade Marks Act 1995*. Do you have, or are you able to get, a copy of Senator Carr's letter and, if possible, a copy of Ms Roxon's letter to Senator Carr? If that isn't easily done, just let me know and I'll call the Health LLO.

Thanks,

Anne

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**Anne O'Connor**  
**Legislation Section**  
**Department of the Prime Minister and Cabinet**  
**Tel:** 02 6271 5762



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Fax: 02 6271 5664  
email: [anne.o'connor@pmc.gov.au](mailto:anne.o'connor@pmc.gov.au)

---

**From:** Mogg, Daniel  
**Sent:** Thursday, 30 June 2011 3:39 PM  
**To:** O'Connor, Anne  
**Cc:** Castellino, Joe; Abel, Alexander  
**Subject:** Request for Minor Policy Approval - Tobacco Plain Packaging Bill ~~[SEC=PROTECTED:CABINET-IN-CONFIDENCE]~~

Hi Anne,

Health Programs, Ageing and Sport Branch has considered the request for minor policy approval from Minister Roxon regarding the Tobacco Plain Packaging Bill and provide the following comments:

1. Agree that the proposals from Minister Roxon are minor. None of the proposals change the overarching policy objective.
2. Agree to the proposals. As noted, all the proposals maintain the policy objective. They seek to reduce the risk of this objective being frustrated, limit unintentional or unnecessary consequences and provide clarity to avoid misinterpretations.
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Therefore, the Parliamentary Secretary's response should "approve the proposal to amend the section in the Tobacco Bill that clarifies the intended relationship between the Bill and the Trade Marks Act" and "note that Minister Roxon has obtained approval from Minister Carr to introduce the Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011 as a consequential amendment bill, in addition to the Tobacco Bill, and that this will amend the Trade Marks Act 1995 to allow regulations to be made in relation to the operation of the Tobacco Plain Packaging Act 2011 (including a power to deem conditions to be met, and to make regulations that are inconsistent with the Trade Marks Act 1995)".

4. Only proposal 6 requires another Minister's approval. As noted, Minister Roxon has obtained Minister Carr's approval to amend the Trade Marks Act.
5. The Infrastructure, Regulation and Competition Policy; Industry Resources, Energy and Tourism; Legal Policy; and Asia, Americas and Trade Branches were consulted in the preparation of these comments.

Exempt s 47C FOI Act



Hope this information helps.

Regards,

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**Daniel Mogg**

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Advisor | Public Health Section | Health Programs, Ageing and Sport Branch  
Department of the Prime Minister and Cabinet

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**Mogg, Daniel**

---

**From:** O'Connor, Anne  
**Sent:** Thursday, 30 June 2011 4:04 PM  
**To:** Mogg, Daniel  
**Subject:** RE: Request for Minor Policy Approval - Tobacco Plain Packaging Bill  
~~[SEC-PROTECTED:CABINET-IN-CONFIDENCE]~~

**Security Classification:**

~~Cabinet-in-Confidence~~

Hi Daniel

You've indicated that Senator Carr has agreed to the amendments to the *Trade Marks Act 1995*. Do you have, or are you able to get, a copy of Senator Carr's letter and, if possible, a copy of Ms Roxon's letter to Senator Carr? If that isn't easily done, just let me know and I'll call the Health LLO.

Thanks,

Anne

---

**Anne O'Connor**  
**Legislation Section**  
**Department of the Prime Minister and Cabinet**  
**Tel:** 02 6271 5762  
**Fax:** 02 6271 5664  
**email:** [anne.o'connor@pmc.gov.au](mailto:anne.o'connor@pmc.gov.au)

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**From:** Mogg, Daniel  
**Sent:** Thursday, 30 June 2011 3:39 PM  
**To:** O'Connor, Anne  
**Cc:** Castellino, Joe; Abel, Alexander  
**Subject:** Request for Minor Policy Approval - Tobacco Plain Packaging Bill ~~[SEC-PROTECTED:CABINET IN-CONFIDENCE]~~

Hi Anne,

Health Programs, Ageing and Sport Branch has considered the request for minor policy approval from Minister Roxon regarding the Tobacco Plain Packaging Bill and provide the following comments:

1. Agree that the proposals from Minister Roxon are minor. None of the proposals change the overarching policy objective.
2. Agree to the proposals. As noted, all the proposals maintain the policy objective. They seek to reduce the risk of this objective being frustrated, limit unintentional or unnecessary consequences and provide clarity to avoid misinterpretations.
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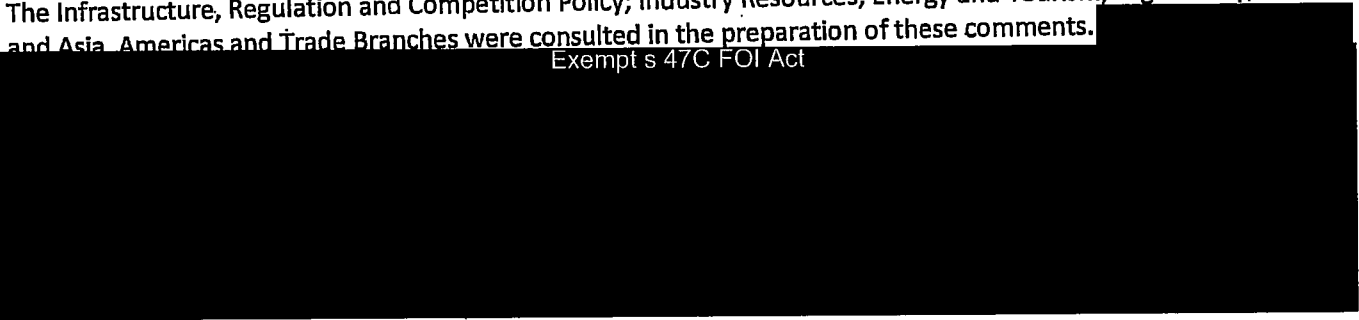
Therefore, the Parliamentary Secretary's response should "approve the proposal to amend the section in the

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Tobacco Bill that clarifies the intended relationship between the Bill and the Trade Marks Act” and “note that Minister Roxon has obtained approval from Minister Carr to introduce the Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011 as a consequential amendment bill, in addition to the Tobacco Bill, and that this will amend the Trade Marks Act 1995 to allow regulations to be made in relation to the operation of the Tobacco Plain Packaging Act 2011 (including a power to deem conditions to be met, and to make regulations that are inconsistent with the Trade Marks Act 1995)”.

4. Only proposal 6 requires another Minister’s approval. As noted, Minister Roxon has obtained Minister Carr’s approval to amend the Trade Marks Act.
5. The Infrastructure, Regulation and Competition Policy; Industry Resources, Energy and Tourism; Legal Policy; and Asia, Americas and Trade Branches were consulted in the preparation of these comments.

Exempt s 47C FOI Act



Hope this information helps.

Regards,

**Daniel Mogg**

Advisor | Public Health Section | Health Programs, Ageing and Sport Branch  
Department of the Prime Minister and Cabinet

Phone: +61 (0)2 6271 6072 | Fax: +61 (0)2 6271 5415 | PO Box 6500 CANBERRA ACT 2600 Australia

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**O'Connor, Anne**

**From:** Mogg, Daniel  
**Sent:** Friday, 1 July 2011 9:23 AM  
**To:** O'Connor, Anne  
**Subject:** RE: Slipstream CC - VIP Correspondence - C11/61979 [SEC=UNCLASSIFIED]

**Security Classification:** UNCLASSIFIED

Hi Anne,

I've had a read over the draft letter and it looks good to me -- covers off on all the issues noted in our feedback to you.

Regards,

**Daniel Mogg**

Phone: +61 (0)2 6271 6072

---

**From:** O'Connor, Anne  
**Sent:** Thursday, 30 June 2011 5:27 PM  
**To:** Mogg, Daniel  
**Subject:** Slipstream CC - VIP Correspondence - C11/61979 [SEC=UNCLASSIFIED:NO CAVEATS]

Hi Daniel

I've given you Slipstream access to the Tobacco Plain Packaging Bill correspondence. Grateful if you could review the proposed draft letter (I've fiddled a bit with the wording), and let me know if you have any comments.

Many thanks,  
Anne O'Connor  
x5762

VIP Correspondence C11/61979

Subject: seeking further policy approval for measures relating to the plain packaging of tobacco products in the Tobacco Plain Packaging Bill 2011

Originator: Nicola Roxon

Current Task: Accepted for drafting

Action Division: Government

This work item has been copied to you for your information and will appear in your Consultation Group key list in Slipstream,

To open and view this item:

1. If SlipStream is closed double-click on the Attachment icon
2. If SlipStream is open use the Search function from within the application

**O'Connor, Anne**

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**From:** Mogg, Daniel  
**Sent:** Friday, 1 July 2011 4:28 PM  
**To:** O'Connor, Anne  
**Cc:** Castellino, Joe; Abel, Alexander  
**Subject:** Draft legislation - plain packaging ~~[SEC-**IN-CONFIDENCE**]~~

**Security Classification:** ~~**IN-CONFIDENCE**~~

Hi Anne,

Apologies for the delay in getting back to you.

We've reviewed the drafts of the Tobacco Plain Packaging Bill and the Trade Marks Amendment (Tobacco Plain Packaging) Bill and are comfortable with both – we have no additional comments.

Regards,

**Daniel Mogg**

Advisor | Public Health Section | Health Programs, Ageing and Sport Branch  
Department of the Prime Minister and Cabinet

Phone: +61 (0)2 6271 6072 | Fax: +61 (0)2 6271 5415 | PO Box 6500 CANBERRA ACT 2600 Australia

~~CABINET-IN-CONFIDENCE~~

## DEPARTMENT OF THE PRIME MINISTER AND CABINET

Document 8

To: Parliamentary Secretary to the Prime Minister (for decision)

## LEGISLATION SUBMISSION W159 – TOBACCO PLAIN PACKAGING BILL AND TRADE MARKS AMENDMENT (TOBACCO PLAIN PACKAGING) BILL

Timing: ASAP - to allow the introduction of the above legislation in Winter Week 6

## Recommendation - that you:

1. sign the attached letter to the Minister for Health and Ageing agreeing to the outstanding policy; and

SIGNED/NOT SIGNED

2. approve the bills for introduction into the House of Representatives, subject to:
  - Caucus meeting clearance.

APPROVED/NOT APPROVED

Kate Lundy

Date: 4.7.11

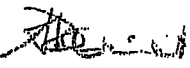
**Purpose:** To provide policy approval for certain measures in the bills; to provide approval for introduction of the bills; and to ensure introduction of the bills is subject to all necessary clearances being obtained.

**Description of Measures:**

1. The Tobacco Plain Packaging Bill regulates to prevent tobacco advertising and promotion on tobacco product packaging in order to: reduce the attractiveness and appeal of the product to consumers, particularly young people; reduce the ability of the tobacco package to mislead consumers about the harmful effects of smoking or using tobacco products; and increase the noticeability and effectiveness of health warnings.
2. The Trade Marks Amendment (Tobacco Plain Packaging) Bill clarifies the relationship between the Tobacco Plain Packaging Bill and the *Trade Marks Act 1995*.

**PM&C Advice:**

3. The memorandum provided by the Office of Parliamentary Counsel indicates that the bills have policy approval for some provisions, but require further approval for other provisions. The Minister sought policy approval in a letter dated 23 June 2011 to the Prime Minister.
  - a. Our relevant policy branches recommend agreement to the outstanding policy. A letter approving the minor policy matters is attached, for your signature on behalf of the Prime Minister if you agree.
  - b. While not specifically sought in the Minister's letter, the policy branches recommend that approval should also be provided for the proposed amendments to the *Trade Marks Act 1995* that would allow regulations to be made in relation to the operation of the *Tobacco Plain Packaging Act 2011* on the *Trade Marks Act 1995*.
4. The Minister for Innovation, Industry, Science and Research has approved the text of the Trade Marks Amendment (Tobacco Plain Packaging) Bill which amends the *Trade Marks Act 1995*.
5. The Minister for Health and Ageing has approved the bills and accompanying explanatory memoranda.

  
 Anne Dowd  
 Senior Adviser  
 Parliamentary and Government Branch  
 / July 2011

Contact Officer: Anne O'Connor  
 Phone no: 6271 5762

Consultation: Health Programs, Ageing & Sport Branch;  
 Infrastructure, Regulation & Competition Policy Branch;  
 Legal Policy Branch; Asia, Americas & Trade Branch

**ATTACHMENTS**

Incoming Letter and Draft Response  
 OPC Memorandum; Bills; Explanatory Memoranda

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~~CABINET-IN-CONFIDENCE~~

~~CABINET - IN - CONFIDENCE~~

Document 9



RELEASED UNDER FOI

**SENATOR THE HON KATE LUNDY**

PARLIAMENTARY SECRETARY TO THE PRIME MINISTER

PARLIAMENTARY SECRETARY FOR IMMIGRATION AND MULTICULTURAL AFFAIRS

SENATOR FOR THE A.C.T.

Reference no: C11/61979

The Hon Nicola Roxon MP  
Minister for Health and Ageing  
Parliament House  
CANBERRA ACT 2600

- 4 JUL 2011

Dear Minister *Nicola*

Thank you for your letter of 23 June 2011 to the Prime Minister seeking approval for measures to be included in the Tobacco Plain Packaging Bill (the bill). The Prime Minister has asked me to reply on her behalf.

I agree to the policy proposals set out in your letter and attachment.

The proposal to amend the *Trade Marks Act 1995* (the Act) to allow regulations to be made in relation to the operation of the *Tobacco Plain Packaging Act 2011* on the Act (including a power to deem conditions to be met, and to make regulations that are inconsistent with the Act) is also agreed. I understand that the Minister for Innovation, Industry, Science and Research, Senator the Hon Kim Carr, has agreed to the introduction of these amendments via the Trade Marks Amendment (Tobacco Plain Packaging) Bill which is to be introduced as part of the Government's plain packaging legislation.

Exempt s 47C FOI Act

A copy of our correspondence has been provided to Senator Carr.

Yours sincerely

Kate Lundy

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~~CABINET - IN - CONFIDENCE~~



**PARLIAMENTARY COUNSEL**

**MEMORANDUM FOR LEGISLATION APPROVAL PROCESS**

**Tobacco Plain Packaging Bill 2011**

**Trade Marks Amendment (Tobacco Plain Packaging)  
Bill 2011**

**Authority**

Exempt s 34(3) FOI Act

2 The Minister for Health and Ageing has sought further authority by letter to the Prime Minister dated 23 June 2011.

3 I understand that the Prime Minister will provide authority for the Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011, which amends the *Trade Marks Act 1995* to allow regulations to be made in relation to the operation of the *Tobacco Plain Packaging Act 2011* on the *Trade Marks Act 1995* (for which authority was not sought).

4 The Bills will have appropriate policy authority if:

- (a) the authority requested in the letter referred to in paragraph 2 is given; and
- (b) the authority mentioned in paragraph 3 is given.

**Ministerial approval**

5 I understand that the Minister for Health and Ageing will be asked to approve the text of the Bills.

6 I understand that the Minister for Innovation, Industry, Science and Research will be asked to approve the text of the Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011, which amends the *Trade Marks Act 1995*.

30 June 2011

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# DEPARTMENT OF THE PRIME MINISTER AND CABINET

~~CABINET-IN-CONFIDENCE~~

Document 11

Assistant Secretary  
Health Programs, Ageing & Sport Branch ✓

RELEASED UNDER FOI ✓

cc Assistant Secretary

Legal Policy Branch ✓

Infrastructure, Regulation & Competition Policy Branch ✓

Asia, Americas & Trade ✓

## REQUEST FOR MINOR POLICY APPROVAL

### Tobacco Plain Packaging Bill

The Minister for Health and Ageing is writing to the Prime Minister seeking approval for the above legislation (please see copy of letter attached).

Could you please provide advice on the proposals under the following headings:

1. **Are the proposals minor policy?** - i.e. can they receive a response signed by the Parliamentary Secretary on behalf of the Prime Minister (rather than being submitted to the Prime Minister or Cabinet for consideration)?
2. **If yes, should the proposals be agreed?** We shall prepare a reply in accordance with your advice, unless there are complications such that you ask us to transfer the letter to your Branch for action.
3. **In recommending agreement to the proposals, are there any sensitivities or complexities attached to the measures which should be drawn to the attention of the Parliamentary Secretary?**
4. **Should approval be contingent on the agreement of another Minister or other Ministers?** If other conditions should be added, please let us know.
5. **Which Branches have you consulted?**

As lead Branch you may need to consult with other areas in the Department. Copies of this request have been provided to the Branches listed above. Please let us know as soon as possible if any other Branches should also receive copies, or if another Branch should have been nominated as the lead Branch. Legal Policy Branch has an interest in a range of matters, including changes which involve offence and penalty provisions, administrative or judicial review, court or tribunal issues, PM&C legislation, constitutional matters or retrospectivity. Fiscal Policy Branch should be consulted if there are financial implications.

Please send your advice to Anne O'Connor who can be contacted on 5762, by **COB**  
**Thursday, 30 June 2011.**



Anne Dowd  
Senior Adviser  
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2010-2011

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

*Presented and read a first time*

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## **Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011**

**No. , 2011**

*(Innovation, Industry, Science and Research)*

**A Bill for an Act to amend the *Trade Marks Act 1995*, and for related purposes**

*B11ZA273.v11.docx 28/6/2011 3:38 PM*

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## Contents

1	Short title .....	1
2	Commencement .....	1
3	Schedule(s) .....	2
<b>Schedule 1—Trade Marks Act 1995</b>		<b>3</b>
<i>Trade Marks Act 1995</i>		3

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*i Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011 No. , 2011*  
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OPC drafter to complete	
1. Does this Bill need a message? (See H of R Practice, fifth ed, pp409-414, and OGC advice.) If yes: <ul style="list-style-type: none"><li>• List relevant clauses/items—</li><li>• Prepare message advice (see Drafting Direction 4.9)</li><li>• Give a copy of the message advice to the Legislation area.</li></ul>	No
2. Does this Bill need a notice? (See H of R Standing Order 178 and Drafting Direction 3.2.) If no list relevant clauses/items—	Yes
3. Is there any constitutional reason why this Bill should not be introduced in the Senate? (See Constitution sections 53 and 55 and Drafting Direction 3.2.)	No

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**A Bill for an Act to amend the *Trade Marks Act 1995*, and for related purposes**

11

The Parliament of Australia enacts:

12

**1 Short title**

13  
14

This Act may be cited as the *Trade Marks Amendment (Tobacco Plain Packaging) Act 2011*.

15

**2 Commencement**

16  
17

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with

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*Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011* No. , 2011 1  
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1 column 2 of the table. Any other statement in column 2 has effect  
2 according to its terms.  
3

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**Commencement information**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	At the same time as section 28 of the <i>Tobacco Plain Packaging Act 2011</i> commences. However, if that section does not commence, the provision(s) do not commence at all.	

4 Note: This table relates only to the provisions of this Act as originally  
5 enacted. It will not be amended to deal with any later amendments of  
6 this Act.

7 (2) Any information in column 3 of the table is not part of this Act.  
8 Information may be inserted in this column, or information in it  
9 may be edited, in any published version of this Act.

10 **3 Schedule(s)**

11 Each Act that is specified in a Schedule to this Act is amended or  
12 repealed as set out in the applicable items in the Schedule  
13 concerned, and any other item in a Schedule to this Act has effect  
14 according to its terms.  
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**Schedule 1—Trade Marks Act 1995**

***Trade Marks Act 1995***

**1 At the end of subsection 231(2)**

Add:

Note: Regulations can also be made in relation to the *Tobacco Plain Packaging Act 2011* under section 231A.

**2 At the end of Division 3 of Part 21**

Add:

**231A Regulations may make provision in relation to the *Tobacco Plain Packaging Act 2011***

(1) The regulations may make provision in relation to the effect of the operation of the *Tobacco Plain Packaging Act 2011*, and any regulations made under that Act, on:

(a) a provision of this Act; or

(b) a regulation made under this Act, including:

(i) a regulation that applies a provision of this Act; or

(ii) a regulation that applies a provision of this Act in modified form.

Note: Section 28 of the *Tobacco Plain Packaging Act 2011* also sets out the effect of the operation of that Act on certain provisions of, and regulations made under, this Act.

(2) Without limiting subsection (1), regulations made for the purposes of that subsection may clarify or state the effect of the operation of the *Tobacco Plain Packaging Act 2011*, and any regulations made under that Act, on a provision of this Act or a regulation made under this Act, including by taking or deeming:

(a) something to have (or not to have) happened; or

(b) something to be (or not to be) the case; or

(c) something to have (or not to have) a particular effect.

(3) Regulations made for the purposes of subsection (1):

(a) may be inconsistent with this Act; and

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Schedule 1 Trade Marks Act 1995

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(b) prevail over this Act (including any other regulations or other instruments made under this Act), to the extent of any inconsistency.

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