

TOBACCO LABELLING

Existing requirements under the TPA 1974

Currently, section 65D of the TPA 1974 allows the Commonwealth to make regulations to prescribe a consumer product information standard for particular kinds of consumer goods. A consumer product information standard can consist of such requirements as to:

- the disclosure of information relating to the performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of the goods; and
- the form and manner in which that information is to be disclosed on or with the goods;

as are reasonably necessary to give persons using the goods information as to the quantity, quality, nature or value of the goods.

New requirements under the ACL

Section 134 of the ACL will allow the Commonwealth to publish a written notice on the internet to make an information standard for particular kinds of goods or services. The information standard may:

- make provision in relation to the content of information about goods or services of that kind; or
- require the provision of specified information about goods or services of that kind; or
- provide for the manner or form in which such information is to be provided; or
- provide that such information is not to be provided in a specified manner or form; or
- provide that information of a specified kind is not to be provided about goods or services of that kind; or
- assign a meaning to specified information about goods or services.

Differences between the current and the new requirements

- The ACL allows information standards to be made for both goods and services, as well as for non-consumer products. The information standard power is not located in the product safety part of the ACL – it has its own stand-alone part (Part 3-4).

- Currently, information standards can only be made for consumer related goods. The information standards power was also located in the product safety part of the TPA, which could be interpreted as only allowing for standards to be prescribed in relation to product-safety related matters.
- The ACL can require certain information to be provided by suppliers about a particular good as well as set out the content of such information.
 - Currently, information standards can only require suppliers to provide details about the construction, design, composition, performance or packaging of a good.
- The ACL can require suppliers to present certain information in a certain way. This already exists under the TPA.
- The ACL can prohibit suppliers from disclosing certain information about a particular good. Currently, information standards cannot prevent suppliers from providing certain information about a good.
- The ACL can prevent suppliers from disclosing certain information in a certain way. Currently, information standards cannot prevent suppliers from disclosing information about a good in a certain way.
- The ACL can assign a certain meaning to specified information about a good. Currently, there is no power to do so.

Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 2004

This Regulation was made in 2004 under section 65D of the TPA, and commenced on 1 September 2004.

The Regulations provide for a system of warnings, explanatory messages and graphic images to accompany tobacco products, to increase consumer knowledge of health effects relating to smoking, to encourage the cessation of smoking and to discourage uptake or relapse.

The Regulations, amongst other things, sets out labelling requirements for cigarette packages. The Regulations apply to tobacco that is manufactured in Australia or imported into Australia.

For a copy of the Regulations see **Attachment**.

Enforcement

The ACCC is responsible for advising the Commonwealth Minister in relation to making, amending and revoking information standards. It is also responsible for enforcing information standards.

Bans & standards harmonisation project

Officials from the ACCC and the State and Territory consumer agencies have formed a working party to harmonise all existing bans and standards in Australia to establish a single set that would apply nationally under the ACL from 1 January 2011. The working party agreed on certain criteria to determine which existing standards and bans would form part of this national set. It was agreed at the outset that all the standards and bans currently in place under the TPA would remain in force, including the tobacco information standard (along with information standards on cosmetic ingredients labelling and care labelling for clothes and textiles).

Process for amending information standards under the ACL

The ACL is subject to the *Intergovernmental Agreement for the Australian Consumer Law* (IGA), which was signed by COAG in July 2009. The IGA for the ACL provides a process for amending the ACL, including formal voting arrangements for proposing legislative change, including information standards. Under the IGA, all proposals for legislative change from 1 January 2011 require the support of the Commonwealth and four other jurisdictions, at least three of which must be States. Proposals to amend the ACL before 1 January 2011 require unanimous support of all jurisdictions.

In accordance with existing protocols, a regulatory impact analysis that accords with the Commonwealth best practice regulatory requirements, will need to be carried out prior to making or amending any information standards.

Plain packaging proposal

private member's bill

Senator [redacted] introduced a private member's bill in the Senate in 2009 – *the Plain Tobacco Packaging (Removing Branding from Cigarette Packs) Bill 2009*. The bill sought to amend the TPA and the Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 2004 to ban advertising, logos or trademarks and specify the appearance requirements for cigarette packaging.

For a copy of the bill see **Attachment**.

Senate inquiry

On 26 November 2009, the Senate, on the recommendation of the Selection of Bills Committee, referred the *Plain Tobacco Packaging (Removing Branding from Cigarette Packs) Bill 2009* to the Community Affairs Legislation Committee for inquiry and report by 17 March 2010. On 24 February 2010, the Senate granted an extension of time for reporting until 26 August 2010.

The inquiry invited submissions by 26 February 2010 and the Committee received a total of 58 submissions. On 19 July 2010, the Governor-General prorogued the 42nd Parliament and

dissolved the House of Representatives. After consideration, the Committee resolved not to continue its inquiry into the bill. If the bill is reintroduced in the new parliament, the Senate may again refer it to the committee for inquiry.

Government announcement

On 29 April 2010, the then _____ announced that tobacco companies would be required to use plain packaging from 1 July 2012.

Stakeholders' views

The moves have been welcomed by health advocates but tobacco companies are arguing the new packaging plan will damage their brand name and some already have plans to take legal action, including intellectual property rights, trademark legislation and remedies under international treaties.