



## Ministry of Health Aide Memoire

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**To: Hon Tariana Turia**

**Date: 3 April 2012**

### **'Plain packaging' of tobacco products - Cabinet paper for SOC 4 April**

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Outstanding issue raised between Ministers:

[withheld s6(a) & s 9(2)(j)]

General talking points:

This paper takes the next step in considering 'plain packaging' of tobacco products as an option for New Zealand, now that Australia's legislation has been passed and will come into force on 1 December 2012.

It seeks agreement-in-principle to introduce plain packaging in alignment with Australia, subject to a public consultation process to be undertaken around July-August this year.

The consultation document will come back to Cabinet for approval before it is released, and then the results of the consultation will be reported back by 30 November to enable final decisions to be taken. A decision to proceed would then lead to legislation in 2013.

This continues the careful and robust process of developing policy in this area,

[withheld s9(2)(h)]

Taking this step now (agreement-in-principle) maintains the momentum we have built since the Māori Affairs tobacco inquiry recommended alignment with Australia, and the Government's response agreed to consider it.

Cabinet last considered the issue in September 2011 and sought this report back now on regulatory impacts, trade and investment implications, and the options going forward.

The relationship accord between National and the Māori Party also agreed to work on plain packaging this year.

The paper and the attached regulatory impact statement summarise the strong case for plain packaging. The evidence base continues to be added to with new research literature, and this will be picked up during the consultation phase, along with any further information tobacco companies may supply about the direct business cost impacts on them.

### What is plain packaging:

The packs will not be so much 'plain', as standardised in every aspect of their appearance. Brand names will continue to be permitted, but may only be printed in a small, prescribed font. All other trade marks, logos, colours and graphics will be prohibited. Tobacco packaging will continue to carry health warning messages and graphic images. These will be increased to cover 75 per cent of the front of the pack. The health warnings and images will also be reviewed to make sure they are up-to-date..

There is good evidence that this will be an effective measure to reduce the appeal of tobacco products and strengthen the impact of mandatory pictorial health warnings.

### Alignment with Australia:

Plain packaging shifts the current position of tobacco product regulation being harmonised with Australia. Cabinet previously agreed New Zealand does not wish the Trans-Tasman Mutual Recognition Arrangement (TTMRA) to create any impediment to Australia's implementation of plain packaging. The path forward in this paper ensures TTMRA issues can be satisfactorily resolved, one way or the other.

### Litigation risks:

[withheld s9(2)(h)]

However, tobacco producing countries are still likely to use World Trade Organisation (WTO) processes to challenge plain packaging, as Ukraine has already done against Australia. This would lead to costs of the order of \$1.5-2m to defend each case.

To help prepare for any future challenge against us, and to continue our support for Australia, New Zealand has joined the Australia-Ukraine process as a 3<sup>rd</sup> party. This process is still at an early dispute consultation phase.

We could also possibly be open to challenge from tobacco companies using investor-state dispute resolution provisions in trade and investment agreements, as Australia has also already experienced with the claim brought by Philip Morris under their bilateral investment agreement with Hong Kong.

x [withheld s9(2)(h)]

However, tobacco companies have a track record of "treaty shopping" and taking any legal action that may be open to them. Defending such a case would cost more than a WTO process, estimated at \$3-6 million.

Internationally, the WHO and an increasing number of countries with strong tobacco control programmes are rallying behind Australia and seeking to expose the litigious practices of tobacco companies and reduce the opportunities for such "intimidation".

### Contact person:

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