

5 October 2012

Plain Packaging Consultation
Ministry of Health
PO Box 5013
Wellington 6145

Email to: tobacco@moh.govt.nz

Dear Sir/Madam

Re: Proposal to introduce plain packaging of tobacco products in New Zealand

Background

I am writing to you regarding the recently released consultation document entitled *Proposal to Introduce Plain Packaging of Tobacco Products in New Zealand* (referred to as 'the document').

First, BusinessNZ wishes to point out that in general, we support moves to improve the overall level of public health. Healthy citizens make an essential contribution to the well-being of any country.

Second, we are not questioning the adverse consequences of long-term tobacco use, nor government's role in reducing tobacco use. The Government is committed to further reducing the prevalence of smoking, with an aspirational long-term goal of making New Zealand effectively a smoke free nation by 2025. Given this commitment, we acknowledge that various policy options will be investigated to reach that goal.

However, despite these views, BusinessNZ is very concerned about the proposal to introduce the mandatory plain packaging of tobacco products. Our concerns centre on two specific issues that we would subsequently like to outline.

But initially, one overriding point that seems to be overlooked in the discussion of plain packaging for tobacco products, both in the consultation document and in the Regulatory Impact Statement (RIS), is that tobacco itself is not an illegal product or banned substance. As with alcohol, there is a restriction on the age at which it can be purchased, but any person over a certain age is allowed to buy tobacco, and in any quantity they wish. Therefore, proposals placing restrictions on the sale of tobacco and tobacco products should be conscious of this fact.

Unintended consequences beyond the tobacco industry

Part 7 of the document poses various questions for submitters to reply to, and question five asks whether plain packaging of tobacco products might have any unintended or undesirable consequences. While some examples are provided, there is no discussion or recognition of such consequences beyond those immediately involving the tobacco industry.

BusinessNZ is concerned that the introduction of mandatory plain packaging in New Zealand, even if targeted only at tobacco products, will create a dangerous precedent that will have far-reaching impacts for industries that have no association with tobacco.

In public policy analysis, the 'thin end of the wedge' argument, whereby a legislative change may open the floodgates to requests for further changes that would either hamper a particular group or sector, or could be applied to other areas not originally foreseen, is often raised as a concern. This argument can often be overused, yet in this instance we believe the issue is a real concern. In short, claims by certain groups to extend plain packaging to other products in New Zealand will not only be possible, but highly likely.

In New Zealand, we have already seen calls for heavy regulations to be placed on various food products, particularly alcohol and food/drink with high fat/sugar content. These calls have ranged from banning fast food ads during prime television viewing for children, through to complete bans on all forms of advertising no matter what the medium. In addition, in the last few months there have even been suggestions made by breastfeeding advocacy groups to the Ministry of Health that infant formula should be marketed in plain packs.

Internationally, the push to control branding is not limited to tobacco. Recently, the European Parliament announced a Health Working Group workshop on the '*Packaging of Unhealthy Products*'. This event will cover a number of areas of packaging, including tobacco, alcohol and high fat, salt and sugar foods and beverages. This workshop comes as the European Commission is considering including recommendations on the plain packaging of tobacco products as part of its proposed revisions of its tobacco products directive.

It is logical to assume that the introduction of mandatory plain packaging for the tobacco sector will be seized upon by opponents of food-related sectors where groups have already been formed to minimise selling techniques. As an example, while there are already Advertising Standards Authority (ASA) guidelines and principles for areas such as advertisements for food and beverages that might influence children, opponents of such products will see little difference in calling for mandatory plain packaging here as well.

Looking at the broad history of demands for regulatory controls over particular goods or services, it is a conundrum that advocates of harsher measures regularly insist their methods are effective, while simultaneously complaining that the situation is

getting worse. Despite the significant restrictions placed on tobacco, such groups are always advocating further action. The introduction of mandatory plain packaging would similarly exacerbate the situation for other legal goods.

International Trade

Part 2.6 of the document states that *“if New Zealand then decides to introduce plain packaging, in alignment with Australia, this would be consistent with the trans-Tasman mutual recognition arrangements (TTMRA)”*. While this may be the case, we are more concerned about New Zealand’s position on the global stage in terms of its economic arrangements.

As a small open economy, our overall policy settings need to be both outward and growth orientated. This has generally been the approach of successive governments, and the number of multilateral and bilateral international agreements New Zealand is part of is testimony to that fact. These agreements generally take into account trade, investment and the protection of intellectual property.

BusinessNZ is concerned that the mandatory plain packaging of tobacco could potentially infringe the intellectual property law set out in such agreements, including various World Trade Organisation (WTO) agreements.

Some supporters of mandatory plain packaging have noted that such laws and agreements are flexible enough to accommodate this situation. While we do not believe such concerns can be easily dismissed, given existing legal structures, we would also be concerned about New Zealand’s ability to protect future exports from similar labelling and brand expropriation policies by other countries. It could well be the case that other countries decide to implement similar oppressive rules on key exports from New Zealand that have no association with the tobacco trade (for instance, this may include requirements for plain labelling of selected New Zealand products that provide significant export receipts, or even emerging products as New Zealand looks to diversify its export base). Overall, there is every possibility that mandatory plain packaging would infringe on our international obligations, damage our strong and transparent trading reputation and almost certainly expose the country to legal challenges.

Counterfeit cigarettes

Last, BusinessNZ believes mandatory plain packaging could give rise to increased attempts to bring counterfeit tobacco products on to the New Zealand market. In 2006, it was estimated that 10.7% of worldwide sales, or around 600 billion cigarettes, were illegally trafficked, making it the most trafficked legal product in the world. From this, around 15% are estimated to be of counterfeit cigarettes¹.

The level of technology to reproduce packets has risen considerably over recent years, and although New Zealand is a relatively small player when it comes to total

¹ Illicit Tobacco trade – Illegal Profits and Public Peril, Campaign for Tobacco-Free Kids (Oct 2008)

tobacco consumption, the introduction of plain packaging could put us at the forefront of smuggling attempts. Given studies have shown that counterfeit tobacco products can contain anywhere between two to ten times the levels of heavy metals found in legitimate brands, this could exacerbate known problems.

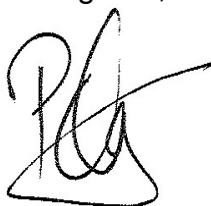
Summary

While BusinessNZ appreciates the intent of introducing mandatory plain packaging for all forms of tobacco sold in New Zealand, we believe this path could create significant repercussions beyond that of the tobacco industry for other sectors within this country. In addition, it could potentially jeopardise existing trade agreements, give rise to retaliatory actions and create a window of opportunity for significantly more hazardous counterfeit tobacco products².

Recommendation: That the proposal to introduce the plain packaging of tobacco products in New Zealand does not proceed.

Thank you for the opportunity to comment.

Kind regards,

A handwritten signature in black ink, appearing to read 'P. O'Reilly', with a stylized flourish extending to the right.

Phil O'Reilly
Chief Executive
BusinessNZ

² We wish to point out that both the Bank of New Zealand and Chorus, who are members of our Major Companies Group, do not support this submission.