



Cabinet Social Policy Committee

SOC Min (13) 19/6

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Minute of Decision

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Tobacco Plain Packaging: Approval for Drafting

Portfolio: Associate Health (Hon Tariana Turia)

On 28 August 2013, the Cabinet Social Policy Committee (SOC):

- 1 **noted** that on 18 February 2013, Cabinet:
 - 1.1 agreed to introduce a plain packaging regime for tobacco products and packaging in New Zealand which is in alignment with Australia;
 - 1.2 noted that plain packaging of tobacco products will require the introduction of enabling legislation providing for a plain packaging regime and subsequent development of regulations to implement the regime;
 - 1.3 invited the Associate Minister of Health (Hon Tariana Turia) to report to SOC with detailed proposals for a plain packaging regime and associated health warnings, including proposals for legislative amendment;
 - 1.4 noted that the risk of international legal proceedings being brought against New Zealand under trade and investment agreements remains, but that greater legal certainty may be evident by the time that legislation is enacted in New Zealand if World Trade Organisation (WTO) disputes against Australia advance in good time;
 - 1.5 noted that, if necessary, the enactment of the legislation or the making of regulations could be delayed until the Australian cases conclude and certainty regarding WTO legal implications is obtained;

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Policy objectives for tobacco plain packaging legislation

- 2 **noted** that the policy objectives for plain packaging have been previously set out in the paper under SOC (12) 20 and in the July 2012 consultation document: *Proposal to introduce plain packaging of tobacco products in New Zealand*;
- 3 **confirmed** that the specific policy objectives for tobacco plain packaging are to:
 - 3.1 reduce the appeal of tobacco products and smoking, particularly for young people;

- 3.2 further reduce any wider social acceptance and approval of smoking and tobacco products;
 - 3.3 increase the noticeability and effectiveness of mandated health warning messages and images;
 - 3.4 reduce the likelihood that consumers might acquire false perceptions about the harms of tobacco products;
- 4 **confirmed** that the wider policy objective for tobacco plain packaging is to improve public health by contributing, in combination with the other elements of New Zealand's comprehensive package of tobacco control measures, to:
- 4.1 discourage people from taking up smoking or using tobacco products;
 - 4.2 encourage people to give up smoking and to stop using tobacco products;
 - 4.3 discourage people who have stopped smoking, or no longer use tobacco products, from resuming smoking or tobacco use;
 - 4.4 reduce people's exposure to smoke from tobacco products;
 - 4.5 support New Zealand to meet its international commitments and obligations under the WHO Framework Convention on Tobacco Control (the FCTC);

Protection of intellectual property

- 5 **noted** that tobacco plain packaging legislation is not intended to have any detrimental impact on intellectual property rights other than to the extent necessary and warranted to achieve the health purposes set out in paragraphs 2 to 4 above;
- 6 **agreed** that the legislation may include a provision to clarify that a person may continue to be able to own, register and enforce trade marks and copyright in designs applied to tobacco products and packaging, even if their use is restricted or prohibited by tobacco plain packaging;

Proposals for tobacco plain packaging legislation

- 7 **agreed** that the purpose statements of the tobacco plain packaging legislation need to clearly set out the established policy objectives in paragraphs 2 to 4 above;
- 8 **agreed** that the legislation needs to include wide regulation-making powers of both a restrictive and a permissive nature to ensure that every aspect of the appearance and all other designed features and sensory impacts of tobacco products and tobacco product packaging can be controlled (including how approved anti-counterfeiting measures, brand names and other legitimate manufacturer information may be printed);
- 9 **agreed** that the enabling provisions for the regulations relating to health warnings be amended to allow warnings that relate to wider social and economic impacts of smoking to be used, as well as warnings of specific health effects;

10 **agreed** to the creation of new offences for tobacco plain packaging that deter and punish:

10.1 manufacturing, distributing, possessing for sale, selling, or supplying tobacco products or retail packaging for tobacco products that does not comply with the tobacco plain packaging requirements;

10.2 packaging tobacco products in non-compliant retail packaging or arranging for tobacco products to be packaged in non-compliant retail packaging;

11 **agreed** that tobacco products that are exported from New Zealand in commercial quantities may be exempt from the offences in paragraph 10 above, but that all the offences should still apply in respect of tobacco products that are sold at retail in New Zealand, even if these are subsequently exported;

12 **agreed** that the new tobacco plain packaging offences should be created as both fault-based criminal offences with strict liability elements, and also as strict liability offences incorporated into the infringement notice scheme already provided for by the Smoke-free Environments Act 1990 (the Act) to deal with low-level offending;

13 **agreed** that maximum penalties for the new offences be set at:

Manufacturers and distributors	\$600,000
Large retailers	\$200,000
Otherwise (ie. small retailers and individuals)	\$50,000

14 **agreed** that existing penalties under the Act for breaches of tobacco advertising offences that currently attract maximum penalties of \$50,000 be raised to the same levels as in the table in paragraph 13 above, and that penalties for breaches of health warning requirements also be raised to the same levels;

15 **agreed** that authorised officers should have sufficient powers to investigate suspected breaches and obtain evidence, together with appropriate safeguards and obligations to adhere to when exercising their powers;

16 **agreed** that the transitional provisions in the tobacco plain packaging legislation should set a staged timetable for bringing different aspects into effect, including by subsequent Order in Council where appropriate, to manage timing matters such as legal risk;

17 **agreed** that the transitional provisions in the tobacco plain packaging legislation should also ensure that matters such as 'wash through' of non-compliant product are adequately addressed;

Authorisation of drafting instructions

18 **invited** the Associate Minister of Health (Hon Tariana Turia) to issue drafting instructions to the Parliamentary Counsel Office to amend the Act to introduce a tobacco plain packaging regime in alignment with Australia, and to give effect to the proposals in paragraphs 1 to 17 above;

19 **noted** that the tobacco plain packaging Amendment Bill will be submitted to Cabinet Legislative Committee in time for it to be introduced and referred to a select committee in 2013;

Release of Cabinet paper

- 20 **noted** that the Associate Minister of Health (Hon Tariana Turia) intends to authorise the proactive release of the paper under SOC (13) 101 and the associated minute on the Ministry of Health website in due course, subject to any deletions necessary and consistent with the Official Information Act 1982.

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