

Proposal to introduce plain packaging of tobacco products in New Zealand

July 2012

Consultation document

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Part 1: Overview

Part 1 provides a short introduction, states the purpose of the consultation and outlines what is being consulted on. It then provides a guide to help readers identify the parts of this consultation document and what each part contains.

1.1 Introduction

Smoking is the single largest cause of preventable death and disease in New Zealand. Around 4500 to 5000 New Zealanders die each year from their own smoking or exposure to the smoke of others. Smoking is a leading cause of cancer, serious respiratory diseases and cardiovascular disease, including strokes and heart attacks.

The Government is serious about reducing the enormous harm, suffering and loss of life that smoking causes. It is a priority issue for the nation's public health.

New Zealand has a long history of implementing measures to counter the harms of smoking. The Government's official tobacco control programme dates back nearly 30 years. The combination of measures taken over that time has steadily reduced smoking rates, but the negative impact of smoking on population health is still too great.

The Government is committed to further reducing the prevalence of smoking in New Zealand. It has set an aspirational long-term goal of making New Zealand essentially a smokefree nation by 2025.¹

The Government continues to implement a comprehensive tobacco control programme and is pursuing a range of initiatives and options to increase its effectiveness. Among these options, the Government is now considering a plain-packaging regime for tobacco products to further discourage smoking, help reduce smoking prevalence and improve population health.

¹ In March 2011 the Government agreed to a long-term goal of reducing smoking prevalence and tobacco availability to minimal levels, thereby making New Zealand essentially a smokefree nation by 2025. The term 'smokefree' is intended to communicate an aspirational goal and not a commitment to banning smoking altogether by 2025. See *Government Response to the Report of the Māori Affairs Committee on its Inquiry into the tobacco industry in Aotearoa and the consequences of tobacco use for Māori (Final Response)*, presented to the House of Representatives in accordance with Standing Order 248, March 2011, p.4.

A plain-packaging regime for tobacco products² means tightly regulating every aspect of their appearance in order to prevent any form of tobacco marketing, promotion or advertising occurring on tobacco products and tobacco product packaging. This document presents the proposal to introduce plain packaging in New Zealand for public consultation.

1.2 Purpose

The purpose of this consultation document is to:

- set out the Government’s plain-packaging proposal
- gather the views of interested individuals, businesses and organisations
- inform New Zealand’s trade partners and invite their comment³
- seek additional information relevant to the proposal.

The purpose of this consultation process is therefore to provide the public, the health sector, non-governmental organisations, business interests and New Zealand’s trade partners with the opportunity to comment on the proposal and have their views considered before the Government decides whether or not to proceed.

1.3 What is being consulted on?

The plain packaging proposal for consultation comprises the following documents:

- this consultation document (and in particular the consultation questions set out in Part 7)
- the separate Regulatory Impact Statement developed to inform the Government’s recent agreement in principle to proceed with plain packaging.

Further detailed explanation of the Regulatory Impact Statement and its place in this consultation is given in Part 4.

References to key sources and links to background documents are separately listed in Appendix 2. This includes references to international evidence assembled in New Zealand, Australia and the United Kingdom, as summarised in Part 5.

Submitters may wish to comment on any matters raised in any of the background material, and those responses will be considered as part of this consultation. However, there is no requirement for submitters to access or reference any of the additional material in preparing their responses to this consultation document.

² For the purposes of this consultation, ‘tobacco products’ is defined widely and includes all tobacco products that may legally be sold in New Zealand, including cigarettes, loose-leaf tobacco and cigars.

³ In accordance with the World Trade Organization (WTO) *Agreement on Technical Barriers to Trade* (TBT), the WTO TBT Committee will be notified of this consultation process, providing New Zealand’s trade partners with an opportunity to comment.

1.4 Making a submission

This consultation is being undertaken by the Ministry of Health on behalf of the Government. The closing date for submissions is:

5 pm Friday 5 October 2012.

Submitters are encouraged to make submissions by email, using the attached Word consultation response form, to:

tobacco@moh.govt.nz

The consultation response form can also be downloaded from the website and filled out offline. Responses can also be mailed to:

Plain Packaging Consultation
Ministry of Health
PO Box 5013
Wellington 6145.

Further details of the consultation process are set out in Part 6 of this document.

1.5 Document outline

- Part 1 provides this overview.
- Part 2 sets out the Government's proposal for the plain packaging of tobacco products, including a formal statement of its policy objectives.
- Part 3 summarises the rationale for the plain-packaging proposal, including how it arises from New Zealand's domestic and international policy commitments for tobacco control.
- Part 4 introduces the separate Regulatory Impact Statement, which forms an integral part of this consultation.
- Part 5 summarises the international research and evidence base relating to plain packaging.
- Part 6 provides details of the consultation process and instructions on how to participate.
- Part 7 poses a number of consultation questions designed to elicit responses to the key issues and fill any information gaps.
- Appendix 1 contains a summary of New Zealand's tobacco control programme and recent initiatives to improve its effectiveness.
- Appendix 2 provides a list of sources, references and links to key documents.

Part 2: Proposal to introduce plain packaging

Part 2 presents a formal statement of the Government's public health policy objectives for plain packaging and summarises the basis on which the Government has agreed in principle to introduce a plain-packaging regime, subject to this consultation. It then describes the proposed plain-packaging regime for tobacco products in New Zealand, with further detail on proposed changes to health warnings, the use of trademarks and alignment with Australia's regime.

2.1 Formal statement of policy objectives

The Government of New Zealand is proposing to introduce a plain-packaging regime for tobacco products in order to contribute to reducing the prevalence of smoking in New Zealand, and in doing so, to improve population health outcomes.

The specific policy objective of the proposal to introduce plain packaging of tobacco products is to further reduce the ability of the tobacco industry to market tobacco products, and in particular, to prevent tobacco promotion and advertising from occurring on tobacco products and tobacco product packaging, in order to:

- reduce the appeal of tobacco products and smoking, particularly for young people
- reduce the wider social acceptance and approval of smoking and tobacco use
- increase the noticeability and effectiveness of mandated health warning messages and images
- reduce the likelihood that consumers might acquire false perceptions about the harms of tobacco products.

Combined with the existing package of tobacco control measures, this specific objective contributes to the broader objective of improving public health by:

- discouraging people from taking up smoking or using tobacco products
- encouraging people to give up smoking and to stop using tobacco products
- discouraging people who have given up smoking, or who have stopped using tobacco products, from relapsing
- reducing people's exposure to smoke from tobacco products
- supporting New Zealand to meet its international commitments and obligations under the WHO Framework Convention on Tobacco Control (the FCTC), particularly in relation to the guidelines developed to support implementation of Articles 11 and 13 of the FCTC.

2.2 Agreement in principle to a plain-packaging regime

In April 2012 the Government agreed in principle to introduce a plain-packaging regime for tobacco products.⁴ The agreement in principle is based on the Government's assessment that plain packaging of tobacco would:

- be an effective measure to reduce the appeal of tobacco products and strengthen the impact of mandated pictorial health warnings
- build on and support other measures to reduce the death toll and costly disease burden caused by smoking
- help meet New Zealand's international commitments under the Framework Convention on Tobacco Control
- be a significant step towards the 2025 goal of a smokefree New Zealand.

The Government has not made any final decisions on whether to legislate for plain packaging of tobacco products in New Zealand. Those decisions are subject to the outcome of this public consultation.

Background policy documents are being made available on the Ministry of Health website during the consultation period.

2.3 What would plain packaging look like?

Plain packaging means tightly regulating the appearance of tobacco products in order to remove any opportunity for tobacco companies to promote their products, or smoking behaviour in general, as being in any way desirable or attractive.

The core features of plain packaging are:

- prohibiting the use of tobacco company branding imagery and all other marketing devices on any form of tobacco product packaging, or on tobacco products themselves
- requiring tobacco products to carry large and prominent health warning messages and graphic images
- standardising all other design elements of the pack, such as the colours and type fonts that may be used, so as to maximise the impact of the health warnings
- allowing the brand name and certain other manufacturer information to be printed on the pack, but with tight controls over the type font, size, colour and position.

The Government has agreed in principle to introduce a plain-packaging regime for tobacco products in alignment with Australia, subject to the outcome of public consultation.

⁴ 'Moving towards plain packaging of tobacco products', media statement, Hon Tariana Turia, Associate Minister of Health (with portfolio responsibility for tobacco control).

Currently the two countries' tobacco-packaging and labelling regulatory regimes are very similar. Apart from some country-specific differences (eg, the New Zealand health messages in te reo Māori and the different country-specific free-phone Quitline numbers on the back of the pack), the regulated appearance of tobacco products on both sides of the Tasman has been essentially the same. The size and positioning of the health images follow the same specifications in both countries.



The images above show a mock-up of the front and back of a cigarette pack under the new Australian plain-packaging regulations that come fully into force in December 2012. The proposal to introduce plain packaging in New Zealand in alignment with Australia means it is proposed to adopt the same or very similar detailed regulatory requirements.

The Australian plain-packaging regime imposes similar and consistent regulatory controls on the packaging of all types of tobacco products, not just cigarettes. This includes restrictions on the size and shape of the packaging and the materials used.

The appearance of individual tobacco products and individual cigarettes is also controlled, again to remove the ability of tobacco companies to use special treatments and marketing devices, such as embossing or textured materials, to increase the attractiveness and desirability of their products.

As in Australia, if plain packaging is introduced in New Zealand, regulations would be developed to specify in detail what would be permitted and what would be prohibited.

2.4 Reviewing and enlarging health warnings on tobacco products

Currently in New Zealand the health warnings and images are required to cover 30 percent of the front of the pack. As illustrated above, in Australia the health warning messages and graphic images are being increased to cover 75 percent of the front of the pack as part of the plain-packaging regime. The coverage of the back of the pack is already regulated in both countries at 90 percent.

The plain-packaging proposal for New Zealand includes reviewing and enlarging the current health warning messages and images.

2.5 Trade marks

Tobacco companies will continue to be free to register and protect their trade marks. Trade marks in the form of printed brand names would still be permitted to appear on tobacco products, to distinguish brands and brand variants in the market.

There would, however, be detailed requirements concerning their printed appearance, such as the type font, size, colour, and positioning on the pack. The use of stylised logos, colours, graphics and other special effects such as embossing or textured materials would be prohibited from tobacco products and tobacco packs.

Tobacco companies would continue to be free to use logos and other representations of their trade marks in other ways, such as on corporate documents, but only if these uses do not have the intent or effect of advertising or promoting their tobacco products.

2.6 Alignment with Australia

The proposal for consultation is for New Zealand to introduce a plain-packaging regime for tobacco products in alignment with Australia. Australia is the first country in the world to have legislated for tobacco plain packaging. This will come fully into force on 1 December 2012.

There is no requirement for continued alignment with Australia, and New Zealand will make its own decision on whether or how to introduce plain packaging. However, Australia's introduction of plain packaging will mean that New Zealand's tobacco product regulations will no longer be aligned with those of Australia as at 1 December 2012.

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). The TTMRA foster closer economic relations between Australia and New Zealand by enabling regulatory standards for goods and occupations to be recognised in either country.⁵

New Zealand's tobacco control legislation also supports alignment with Australia. Facilitating the alignment of tobacco product controls with Australia is a specific purpose of Part 2 of the Smoke-free Environments Act 1990.

⁵ In TTMRA terms, the current alignment of regulatory regimes for tobacco products is a situation of 'mutual recognition' under which tobacco products that meet either the specific Australian or the New Zealand labelling requirements may be sold anywhere in Australia or New Zealand. However, once Australia's plain-packaging regime comes into force, mutual recognition is no longer viable.

Australia has passed a regulation to temporarily exempt tobacco products from the TTMRA for 12 months from 1 October 2012 to allow time for New Zealand to consider whether to adopt a similar regime. If New Zealand decides not to align with Australia over plain packaging, tobacco products would require a permanent exemption from the TTMRA.

Part 3: Rationale for introducing plain packaging

Part 3 summarises the basis on which the Government has agreed in principle to introduce plain packaging for tobacco products, subject to this consultation.

3.1 Why introduce plain packaging in New Zealand?

The harms from tobacco are well established. There is a wealth of evidence demonstrating the dangers of this highly addictive and harmful substance.

Around 4500 to 5000 New Zealanders die each year from smoking or exposure to second-hand smoke. It is estimated that half of all long-term smokers die of a smoking-related illness, losing on average 15 years of life.

Smoking harms almost every organ in the body. It causes over 80 percent of lung cancers and significantly increases the risk of many other forms of cancer. It is a leading cause of emphysema and other serious respiratory diseases. It is also a major cause of cardiovascular disease, including strokes and heart attacks. Smoking also contributes to a wide range of other health problems, such as reproductive difficulties and blindness.

There is no other consumer product in widespread use that directly poses such enormous health risks to users, particularly long-term users. To compound this, smoking is also highly addictive. A high proportion of people who try smoking soon become regular daily smokers and many smokers find it extremely difficult to quit. Smokers who do manage to stop typically require numerous attempts to quit over several years before they eventually succeed. Sadly, many continue to smoke and suffer the consequences of deteriorating health, serious disease and premature death.

Māori are significantly over-represented in all negative smoking statistics. Māori smoking prevalence rates are approximately double those for the general population. Each year more than a fifth of deaths of Māori are attributable to smoking. Māori begin smoking at a younger age and are three times more likely to die from lung cancer than non-Māori. Smoking is a leading cause of the disparity in life expectancies and standards of health between Māori and non-Māori.

In order to address these problems, New Zealand has extensive smokefree legislation in place and runs a comprehensive tobacco control programme through the Ministry of Health. As a result, smoking rates are declining⁶ and there has been a recent significant drop in the smoking rates of school students in Year 10.⁷ This is good news, but progress is not fast enough to reach the goal set by the Government of making New Zealand essentially smokefree by 2025.

Historical evidence shows that tobacco packaging has been a highly effective form of tobacco marketing. Brand imagery and other marketing devices used in tobacco product packaging increase the appeal of tobacco brands to youth and young adults and reduce the effectiveness of health warnings. Imagery and colours on cigarette packs also help to create false beliefs that some brands are less harmful than others.

Cumulatively, these effects undermine the effectiveness of other tobacco control initiatives.

3.2 Restrictions on advertising and display

The Smoke-free Environments Act 1990 and the regulations made under that Act ban almost all forms of advertising and promotion of tobacco products. Restrictions include:

- stringent restrictions on the sponsorship of events, scholarships and other contributions by tobacco companies
- advertising bans for radio, television, movies and print media
- retail display restrictions
- requiring written and pictorial health warning messages on tobacco packaging
- significant limitations on the use of tobacco product trade marks (other than on packaging)
- controls on the size of cigarette packs (eg, the packs must not contain fewer than 20 cigarettes).

⁶ The latest New Zealand Health Survey data shows that for July–December 2011, the daily smoking rate was 16.2 percent for New Zealand adults aged 15 years and over. There has been a significant decrease in the daily smoking rate since 2006/07, when the rate was 18.1 percent. These results, which have not yet been published, are based on the first six months of data collection from the survey (July to December 2011) via face-to-face interview. The official survey results will be published at the end of 2012 when a full 12 months data will be available.

⁷ The National Year 10 ASH Snapshot Survey 1999–2011 found that 4.1 percent of all Year 10 students were daily smokers in 2011 – a drop from 5.5 percent in 2010 and over 15 percent in 1999. Of students, 70.4 percent were never smokers in 2011 – an increase from 64.3 percent in 2010 and just over 30 percent in 1999.

The last remaining major avenue for the marketing and promotion of tobacco products is the packaging.

Cigarette pack design and presentation influence perceptions about tobacco products and the desirability of smoking. This helps attract new smokers, especially young people, as packaging can enhance the appeal of and perceptions of social approval for tobacco use. It also provides reinforcement for existing smokers, who might otherwise be persuaded to quit by friends, family, medical practitioners, or as a result of other tobacco control measures such as tobacco excise increases. The colouring and wording used on tobacco packaging has been shown to create misperceptions that tobacco products are less harmful and easier to quit than is in fact the case.

Last year an amendment to the Smoke-free Environments Act 1990 required tobacco products to be kept out of sight in shops. This provision came into force on 23 July 2012, but it will not control the visibility of tobacco products once they have been purchased.

3.3 Health warnings

Tobacco product packaging, even with the mandatory health warnings, still plays a role in attracting new smokers to try the products. Many of these people become addicted, often after only a few cigarettes.

Regulations introduced in 2007 set the current health warning requirements for tobacco products in New Zealand. These specify the size of health warnings and the requirements for pictorial as well as text warnings.

Ninety percent of the back and 30 percent of the front of the pack are required to be devoted to warning people of the dangers of smoking. Currently there are 14 pictorial health warnings that appear on cigarette packs, in both English and te reo Māori. These are rotated annually (two sets of seven, displayed on tobacco packs in alternate years). The health warnings and images need to be reviewed and refreshed over time to ensure they retain their impact on the consumer.

Allowing residual promotional activity on tobacco packaging in New Zealand dilutes the noticeability and effectiveness of written and pictorial warnings. Evidence shows that current tobacco packaging colours and imagery counter the deterrent effect of graphic health warnings, because the warnings are perceived by users as less serious than when the same warnings are presented on plain packs.

3.4 New Zealand domestic policy commitments

In September 2009 Parliament's Māori Affairs Committee initiated an Inquiry into the tobacco industry in Aotearoa and the consequences of tobacco use for Māori. The Committee reported to Parliament in November 2010 and made a number of recommendations.

In response, the Government adopted the goal of making New Zealand essentially smokefree by 2025. This means reducing smoking prevalence and tobacco consumption to minimal levels. In response to a specific recommendation on plain packaging, it was agreed to consider the possibility of New Zealand adopting plain packaging, in alignment with Australia.

The December 2011 Relationship Accord and Confidence and Supply Agreement between National and the Māori Party reaffirmed the commitment to work on the introduction of plain packaging and other anti-smoking initiatives. This commitment also featured in the Government's forward work programme, as set out in the February 2012 Speech from the Throne to Parliament.

3.5 New Zealand's international commitments under the FCTC

Plain packaging is a recommended action⁸ for countries to give effect to obligations under the global tobacco treaty, the Framework Convention on Tobacco Control (FCTC). This international treaty was negotiated under the auspices of the World Health Organization (WHO) and came into force in 2005. It has now been ratified by 176 parties, making it one of the most widely and rapidly adopted treaties in United Nations history. New Zealand ratified the FCTC in 2004.

The FCTC sets out the globally agreed 'framework for tobacco control measures to be implemented by the Parties at the national, regional and international levels in order to reduce continually and substantially the prevalence of tobacco use and exposure to tobacco smoke'.

Plain packaging of tobacco products is a recommended option to give effect to FCTC obligations. There are two main reasons, relating to Articles 11 and 13 of the treaty:

- to ensure that tobacco packaging does not create any erroneous impressions about health hazards and/or undermine the impact of graphic health warnings
- to further reduce the appeal of tobacco products (as part of achieving a comprehensive ban on tobacco advertising, promotion and sponsorship).

⁸ Guidelines have been developed to help parties to the treaty meet their obligations under the FCTC. The guidelines are not legally binding, but the parties have agreed to them as a desirable means of fulfilling their FCTC obligations.

Article 11 of the FCTC relates to the packaging and labelling of tobacco products. Guidelines on Article 11 of the FCTC recommend that:

Parties should consider adopting measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in a standard colour and font style (plain packaging). This may increase the noticeability and effectiveness of health warnings and messages, prevent the package from detracting attention from them, and address industry package design techniques that may suggest that some products are less harmful than others.

Article 13 of the FCTC relates to tobacco advertising, promotion and sponsorship. Guidelines on Article 13 of the FCTC state that:

Packaging and product design are important elements of advertising and promotion. Parties should consider adopting plain packaging requirements to eliminate the effects of advertising or promotion on packaging. Packaging, individual cigarettes or other tobacco products should carry no advertising or promotion, including design features that make products attractive.

Part 4: Regulatory impacts

Part 4 sets out the regulatory impact analysis carried out to date including consideration of alternatives to plain packaging, the impact on the tobacco industry and retail business, and the risk of international litigation.

4.1 Regulatory Impact Statement

Regulatory impact analysis was undertaken to inform the Government's decision to consult on its plain-packaging proposal. This analysis is summarised in a separate Regulatory Impact Statement, www.health.govt.nz/about-ministry/legislation-and-regulation/regulatory-impact-statements/plain-packaging-tobacco-products.

The Regulatory Impact Statement and all its contents, including consideration of alternative options, is an integral part of the proposal being consulted on.

4.2 Consideration of alternative options to plain packaging

The Regulatory Impact Statement sets out in more detail the regulatory issue that plain packaging addresses, and considers two other options as alternatives to the plain packaging proposal.

- **Alternative option 1**, the status quo, would continue the current suite of tobacco control initiatives and build on these incrementally with measures other than plain packaging or enhancing the health warnings on tobacco packaging.
- **Alternative option 2**, would involve reviewing and refreshing the health warnings on tobacco packages, and increasing their size so that they cover 80 percent of the front of the package compared to the current 30 percent. However, under this option no other changes would be made to the ability of tobacco companies to use marketing devices and brand imagery on the remainder of the pack.⁹

The third option examined in detail in the regulatory impact analysis (ie, introducing plain packaging) is the Government's preferred option at this stage.

⁹ This option was chosen for analysis based on the health warnings regime that has been introduced in Uruguay. The figure of 80 percent is slightly greater than the 75 percent coverage under plain packaging that is being implemented in Australia. Although it allows for tobacco marketing on the remainder of the pack, Uruguay's expanded health warning regime has also been the subject of international legal challenge, as has Australia's plain-packaging regime. In both cases, subsidiaries of the global tobacco company Philip Morris have instigated direct investor-state disputes under bilateral investment agreements between Uruguay and Switzerland, and Australia and Hong Kong, respectively.

Some other options are discussed briefly in the Regulatory Impact Statement document, but these were found not to adequately address the stated policy objectives and are considered not to be realistic alternatives.

4.3 Impacts on tobacco industry and related businesses

Introducing plain packaging of tobacco products would impose some costs on the tobacco industry, including manufacturers, importers and related businesses, such as the designers and manufacturers of tobacco product packaging and retailers stocking tobacco products. Possible costs were identified in the regulatory impact analysis but could not be quantified or assessed in detail without further consultation.

Additional detailed information regarding the costs and other implications for business and other stakeholders is now being sought through this consultation.

In considering the regulatory impact of plain packaging on the tobacco industry and related businesses, the Government will take into account the views and interests of the full range of stakeholders. This includes the wider public, both smokers and non-smokers, and also those exposed to ‘second-hand’ smoke. Other stakeholders include public health proponents, non-governmental organisations, academics and researchers.

Tobacco products differ from other commercially available goods in that it is the Government’s policy, consistent with its stated goal of making New Zealand essentially smokefree by 2025, to reduce the availability of tobacco products to a minimum.

A number of specific issues requiring further exploration have been raised in the development of the Regulatory Impact Statement. These include the type and magnitude of impacts (including, but not limited to, financial costs) for:

- tobacco companies in New Zealand
- retailers of tobacco products in New Zealand
- small importers of tobacco products into New Zealand
- printers, designers and manufacturers involved in the production of tobacco products in New Zealand
- employment in the tobacco industry generally in New Zealand.

4.4 Litigation risk

International experience with tobacco product regulation, and most recently with Australia's plain-packaging initiative, suggests that the introduction of plain packaging would carry a risk of some form of international litigation being brought against New Zealand by global tobacco companies or tobacco-producing countries.

Two tobacco-producing countries, Ukraine and Honduras, have instigated World Trade Organization (WTO) dispute settlement proceedings to challenge Australia's adoption of plain packaging. These are at the consultation stage and may or may not proceed to formal dispute resolution. Australia is also defending an investor-state dispute resolution process instigated by a tobacco company under its bilateral investment treaty with Hong Kong.

These cases are still before the relevant dispute panels, and it may be some time before final outcomes emerge. In all cases, Australia is asserting that plain packaging is fully consistent with its international obligations under WTO agreements and its other trade and investment agreements.

Regardless of the strength of the arguments that plain packaging would be consistent with New Zealand's international trade and investment obligations, were a case to eventuate New Zealand would face a cost in defending it. The Regulatory Impact Statement includes estimates of these costs.

Part 5: Evidence for the effectiveness of plain packaging

Part 5 summarises the evidence base for the effectiveness of plain packaging and makes particular reference to reviews of evidence undertaken in Australia and the United Kingdom.

5.1 Summary of international evidence

The Government's plain-packaging proposal is based on a substantial body of international research evidence and studies related to tobacco product marketing and plain packaging, including several studies undertaken in New Zealand. New Zealand has assessed the international evidence on the efficacy of plain packaging, as listed in both the Regulatory Impact Statement and Appendix 2 of this document, and has drawn its own conclusions on the effectiveness of plain packaging from this evidence.

5.2 Brand imagery and health warnings

The brand imagery and other marketing features on cigarette packs and other tobacco products function to support and reinforce smoking behaviour, because the packs are handled several times a day by the typical smoker – often in full view of whānau, family and friends.

There is good evidence that plain packaging of tobacco products would be an effective measure to stop tobacco companies using powerful marketing tools on cigarette packs to promote their products. All other forms of tobacco advertising and promotion have already been prohibited, so plain packaging would be the next logical step in prohibiting the advertising and marketing of tobacco.

Tobacco marketing on branded packaging is not the only factor that tempts young people to try smoking, or that triggers cravings and relapses in people trying to quit, but there is a substantial body of research to suggest it is an important factor. The research also shows that the use of standardised colours and wording on tobacco packs reduces false beliefs about the harmfulness of tobacco products compared to packs with tobacco brand marketing.

There is also substantial research evidence that tobacco products in plain packs are perceived as less appealing, less palatable, of lower quality and less socially desirable.

Other studies have tested the interaction between packaging and health warnings, and show that plain packaging featuring larger graphic health warnings will both reduce the appeal of the pack and strengthen the impact of the warnings. These well-studied effects are all important for reducing the number of young people who take up smoking and increasing the number of smokers who permanently quit.

Lowering the number of smokers in this way would directly reduce the harms caused by smoking and second-hand smoke, and improve population health.

5.3 International research and evidence base

Other countries are also considering whether to adopt some form of plain packaging. The United Kingdom (UK) has recently issued its own consultation documentation. Although these documents were published after the decision was taken to undertake this consultation in New Zealand, they are useful sources of additional information.

In preparing the UK's consultation package, the UK Department of Health (England) commissioned an independent systematic review of the evidence on plain packaging and also undertook its own regulatory impact assessment. The review was undertaken by academics at the University of Stirling, the University of Nottingham and the London Institute of Education, and it has been extensively peer reviewed.

The UK systematic review is now the most thorough and up-to-date summary available of the international research evidence base for plain packaging. Over 4500 possible citations were identified following an initial search, and after screening and quality appraisal 37 studies were assessed and included in detail. The impacts of plain tobacco packaging were categorised in terms of:

- **Appeal:** perceptions or ratings of attractiveness (19 studies), perceived quality, taste, smoothness and cheapness (12 studies), perceptions of smoker identity and personality attributes (13 studies), and appeal (10 studies)
- **Salience of health warnings:** increase in the ability to notice and recall health warnings (12 studies), comparison of responses to warnings on plain packs with branded packs (7 studies)
- **Perceptions of Product Harm and Strength:** perceptions of harmfulness and strength (16 studies), quantitative impact assessment of plain packs on perceptions of harm and strength (14 studies)
- **Smoking related Attitudes, Beliefs, Intentions and Behaviour:** impact on attitudes and beliefs, the perceived impact on smokers and young people in general, and the perceived impact on respondents' own intentions and behaviours (16 studies).

The executive summary of the systematic review concludes as follows.

This review found that there is strong evidence to support the propositions set out in the Framework Convention on Tobacco Control relating to the role of plain packaging in helping to reduce smoking rates; that is, that plain packaging would reduce the attractiveness and appeal of tobacco products, it would increase the noticeability and effectiveness of health warnings and messages, and it would reduce the use of design techniques that may mislead consumers about the harmfulness of tobacco products. In addition, the studies in this review show that plain packaging is perceived by both smokers and non-smokers to reduce initiation among non-smokers and cessation-related behaviours among smokers. The review also found some evidence of public support for plain packaging, although the majority of the public opinion studies were conducted in Australia.

The review had a number of strengths and limitations. Strengths include the diversity of research methods used in the studies, the diversity of samples and study sites, the different types of plain packaging assessed and the consistency of the findings across studies. The main limitation was that because plain packaging has yet to be introduced in any country, it has not yet been possible to evaluate the impact of the policy in practice. Individual studies in the review were also limited by elements of study design. For example, many of the surveys included convenience sampling and reporting was of variable quality in some of the articles and reports examined. In addition a number of types of literature were not covered by the review including internal tobacco industry documents and marketing practices. Despite these limitations there was consistency in study findings regarding the potential impacts of plain packaging. This consistency of evidence can provide confidence about the observed potential effects of plain packaging. If and when introduced, existing evidence suggests that plain packaging represents an additional tobacco control measure that has the potential to contribute to reductions in the harm caused by tobacco smoking now and in the future.¹⁰

The assessment of the research evidence in the UK systematic review accords closely with the assessment made on the same international evidence base by the New Zealand Government in reaching its decision to agree in principle to introduce plain packaging, subject to this consultation. It therefore provides participants in this consultation with a useful resource that analyses and assesses this evidence base in one comprehensive report.

¹⁰ Moodie et al (2012), Executive summary, p. v.

5.4 Australian research

The Government's proposal is for New Zealand to implement plain packaging in alignment with Australia. While this would not necessarily require every aspect of the Australian regime to be replicated in New Zealand (eg, New Zealand-specific elements such as the New Zealand Quitline 0800 number would be necessary), the Australian regime provides a good illustration of what plain packaging might look like in detail.

A review of evidence prepared by Quit Victoria, Cancer Council Victoria in May 2011 and updated in August 2011 showed there are strong grounds for believing that current tobacco packaging glamourises smoking and that tobacco products packaged in a standardised colour, typeface and form would: improve the effectiveness of health warnings; reduce misconceptions about relative harmfulness of various brands; and reduce the overall appeal of smoking.

The Australian information pack also includes references to the evidence base used in developing the Australian regime, including the market research studies used to determine the choice of standardised colours and font sizes that are now required as part of the plain-packaging scheme as introduced.

Part 6: Participating in the consultation process

Part 6 provides further details on the consultation process and how to provide feedback.

6.1 Submission of consultation feedback

This consultation is being undertaken by the Ministry of Health on behalf of the Government. The closing date for submissions is:

5 pm Friday 5 October 2012.

Submitters are encouraged to make submissions by email, using the attached Word consultation response form, to:

tobacco@moh.govt.nz

The consultation response form can also be downloaded from the website and filled out offline. Responses can also be mailed to:

Plain Packaging Consultation
Ministry of Health
PO Box 5013
Wellington 6145

6.2 Next steps

All responses received by the closing date will be considered and factored into the Government's final decisions on whether or how to legislate for plain packaging. It is expected that these decisions will be made before the end of the year.

Once the consultation period has closed, officials from several government departments, including the Ministry of Health, Treasury, Ministry of Foreign Affairs and Trade and the new Ministry of Business, Innovation and Employment will consider the results of the consultation and develop advice for the Government.

After the Government announces its decisions, a report summarising the submissions will be placed on the Ministry of Health website.

6.3 Commercially sensitive information

The public report on the consultation will seek to avoid prejudice to the commercial position of respondents who provide commercially sensitive information. Submitters are therefore asked to clearly indicate any information they wish to have treated as confidential commercially sensitive information.

6.4 Declaration of interest

New Zealand has international obligations under the Framework Convention on Tobacco Control, when setting and implementing public health policies with respect to tobacco control, to act to protect these policies from commercial and other vested interests of the tobacco industry.¹¹ To help meet this obligation, all respondents are requested to disclose any direct or indirect links to the tobacco industry, or whether they receive any funding from the industry. Responses accompanied by any such disclosures will still be carefully considered as part of the consultation process.

6.5 Further detail of a plain-packaging regime in alignment with Australia

If the Government decides to implement plain packaging following this consultation, it proposes to introduce plain packaging in alignment with Australia. While this would not necessarily require every aspect of the Australian regime to be replicated in New Zealand, the Australian regime provides the basis for how plain packaging would be implemented in New Zealand.

Some submitters may wish to assess and comment on the plain-packaging proposal in greater detail than the summary presented in this consultation document or in the Regulatory Impact Statement. The Australian legislation section in Appendix 2 contains references to the Australian Government's explanatory memoranda for Australia's tobacco plain-packaging legislation and explanatory statements for subsequent regulations that have been developed to implement the regime. These explanatory memoranda and explanatory statements set out the detail of the Australian plain-packaging regime as it is being implemented. This can be taken as the basis for a plain-packaging regime in New Zealand for the purposes of this consultation.

¹¹ Article 5.3 of the Framework Convention on Tobacco Control.

6.6 Further opportunities for consultation

If it is decided to introduce legislation for a plain-packaging regime in New Zealand, the normal legislative processes provide further opportunities to make submissions during the select committee stage of any resulting bill's passage through Parliament.

The detail of any such plain-packaging regime would most likely be implemented by means of regulations that would be subsequently developed under the primary legislation.

Established consultation processes for regulation-making would apply, and there would be further opportunities for interested parties to comment on the detailed regulatory provisions before any regulations were promulgated.

Part 7: Consultation questions

Part 7 poses a number of consultation questions designed to elicit responses to the key issues and to fill any information gaps. There are two sets of questions:

- general questions on the plain-packaging proposal
- specific questions relating to impacts on manufacturers, exporters, importers and retailers of tobacco products.

7.1 General consultation questions

1. Overall, do you support or oppose the proposal to introduce plain packaging of tobacco products in New Zealand, as outlined in this consultation document?
2. Do you agree that plain packaging of tobacco products has the potential to:
 - reduce the appeal of tobacco products?
 - increase the effectiveness of health warnings on tobacco packaging?
 - reduce the ability of tobacco packaging to mislead consumers about the harmful effects of smoking?
 - influence the attitudes and behaviours of children and young people?

If you do not agree that plain packaging should be introduced, are there other options you think should be adopted to address the issues above?

3. Do you agree that plain packaging of tobacco products would help to:
 - discourage young people from taking up smoking?
 - encourage people to give up smoking?
 - help stop people who have quit smoking from relapse?
 - contribute to a reduction in smoking prevalence in New Zealand and reduce people's exposure to second-hand smoke?

If you do not agree that plain packaging should be introduced, what other options do you think should be adopted to reduce smoking and the harm it causes?

4. If New Zealand does go ahead with plain packaging, is there any reason why a significantly different scheme might be necessary or desirable for New Zealand, compared to the scheme that has been introduced in Australia?

5. If adopted, do you think plain packaging of tobacco products might have any unintended or undesirable consequences, such as:
 - unacceptable implications for consumers (eg, limitations on consumer choice)?
 - legal implications (eg, implications for freedom of expression under the Bill of Rights Act)?
 - adverse implications for competition or trade?
 - unduly adverse impacts on tobacco manufacturers and exporters in developing countries?

6. Are you concerned that a plain-packaging regime might lead to an increase in illicit tobacco trade and related 'black market' or criminal activity? If so, can you provide any evidence to support your concern? For example:
 - what difference would plain packaging make to the incentives or opportunity for the supply of counterfeit or contraband (ie, smuggled or non-duty paid) cigarettes?
 - do you have any views as to the adequacy of measures contained in the Australian plain-packaging regime to avoid illicit trade?
 - do you have any views as to the role the tobacco supply industry itself should play in preventing illicit tobacco trade?

7. Do you have any comments to make on any aspect of the Regulatory Impact Statement that forms part of this consultation?

8. Do you have any other comments on plain packaging of tobacco products that you would like to be taken into account?

7.2 Specific questions relating to impacts on manufacturers, exporters, importers and retailers of tobacco products

9. What are the likely impacts that plain packaging would have for manufacturers, exporters, importers or retailers of tobacco products?
10. What would be the impact of plain packaging on the market mix and retail price of tobacco products?
11. What would be the additional costs of manufacturing tobacco packaging, including redesigning packs and retooling printing processes, if plain packaging of tobacco products were introduced?
12. Would the ongoing cost of manufacturing cigarette packs be lower or higher if plain packaging of tobacco products were introduced compared with the current cost of manufacturing packs, and by how much?
13. How often do manufacturers amend the design of tobacco packaging for brands on the New Zealand market, and what are the costs of doing so?
14. Would the ongoing costs of brand marketing increase or decrease over time under plain packaging?
15. To what extent is the design, manufacture and printing of packaging of tobacco products sold in New Zealand undertaken in New Zealand, including work outsourced to external specialist design, packaging and printing firms?
16. Would plain packaging of tobacco products result in a discontinuation of importation of tobacco products with small markets, and if so, what financial loss would be incurred by importers of those products?
17. Would it take longer for tobacco retailers to serve customers, and if so, why and by how much would this occur?
18. Would retailers face any other costs or benefits if plain packaging of tobacco products were introduced?

19. Please outline any other costs or benefits for manufacturers, exporters, importers or retailers that you think need to be taken into account when the Government considers whether to introduce a plain packaging of tobacco products regime.

20. Please outline any ways in which plain packaging might be introduced so as to minimise the costs and/or maximise the benefits of doing so.

Appendix 1: New Zealand's tobacco control programme

This appendix provides a summary of New Zealand's wider tobacco control programme, giving both historical context and a summary of the Government's recent initiatives. It is intended to provide further background and context to this consultation.

Tobacco control in New Zealand

New Zealand has a long-standing and comprehensive suite of tobacco control initiatives based on educating people of the health risks from smoking, preventing young people from starting to smoke, encouraging smokers to quit, and protecting people from the dangers of second-hand smoke, particularly in the workplace.

The Smoke-free Environments Act 1990 established the current statutory framework. The purposes of the Act include:

- reducing the social approval of tobacco use, particularly among young people, by:
 - placing controls on the marketing, advertising and promotion of tobacco products, either directly or through sponsorship with other products and events
 - requiring health messages and other information to be displayed on, or included with, packages containing tobacco products, and on automatic vending machines
- reducing the exposure of people who do not smoke to any detrimental effect on their health caused by smoking by others
- monitoring and regulating the presence of harmful constituents in tobacco products and tobacco smoke
- facilitating alignment of the laws of New Zealand and Australia relating to the labelling of tobacco products (including the display of health messages).

In 2003 the Act was amended to include a wider range of places to be smokefree. This covered all enclosed workplaces, including bars, restaurants, schools and care facilities.

In 2007 new regulations were introduced that provided for larger text- and picture-based health warnings and information messages on tobacco products. These regulations ensured that New Zealand complied with its obligations under the World Health Organization's Framework Convention on Tobacco Control, which New Zealand ratified in 2004.

The Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 further controls the marketing of tobacco products by banning their display in retail premises.

Recent initiatives for tobacco control

The Government has taken a number of recent initiatives to reduce smoking prevalence. Plain packaging would work alongside and support these other measures.

Health targets and smoking cessation support

Providing ‘Better help for smokers to quit’ is one of the six priority health targets. This health target makes it a priority throughout the health system to ensure patients are routinely asked about their smoking status, and given brief advice about quitting and the support available for smoking cessation. This applies both to hospitals and also to patients seen by doctors in general practice.

The Government funds Quitline and a range of other smoking cessation support services. Nicotine replacement gums, patches and lozenges and a number of other smoking cessation medicines are fully subsidised and readily available.

Tobacco excise tax increases

Tobacco excise tax has long been used in New Zealand to discourage smoking. Since 2010 the Government has significantly lifted the tobacco tax and pushed the price of a pack of 20 cigarettes up by 40 percent, giving smokers a strong financial incentive to quit. Budget 2012 included a further programme of four cumulative annual tobacco excise increases of 10 percent each year through to January 2016.

The Government does not set the final retail price that tobacco companies and retailers charge for their products. However, the announced series of tobacco excise increases through to 2016 is expected to lift the price of smoking up to around \$1 per cigarette and possibly higher. This should provide a powerful incentive for smokers to quit and to stop new smokers from starting.

Retail displays

Last year the Smoke-free Environments Act was amended to tighten controls on tobacco sales, including increasing the penalties for selling tobacco to people under 18 and putting tobacco products out of sight in shops. The ban on displaying tobacco products came into force on 23 July this year. However, the retail display ban does not control the visibility of tobacco products once they have been purchased.

Appendix 2: List of sources, references and document links

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