

2010-2011

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

**SENATE**

**TOBACCO PLAIN PACKAGING BILL 2011**

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be Moved on Behalf of the Government

(Circulated by the authority of the Minister for Health and Ageing,  
the Hon Nicola Roxon MP)



## **TOBACCO PLAIN PACKAGING BILL 2011**

### **OUTLINE**

The Tobacco Plain Packaging Bill 2011 is a crucial part of the Australian Government's comprehensive suite of tobacco control measures. The Bill will remove one of the last forms of tobacco advertising, the retail packaging of tobacco products, by restricting or prohibiting tobacco industry logos, brand imagery, colours and promotional text other than brand and product names in a standard colour, position, font style and size, so as to prevent them from being used as design features to detract attention from health warnings, or otherwise to promote the use of tobacco products.

The Government is introducing amendments to the commencement provisions of the Bill following delays to Parliament's consideration of the Bill, to ensure that there is sufficient time for the industry to comply before the penalty provisions commence.

The first amendment revises the commencement dates of the Bill such that, except for clauses 17 to 27, provisions which previously were expressed to commence on 1 January 2012 will now commence on Royal Assent to the Bill, with offences and civil penalties for domestic manufacturing of non-compliant products and packaging commencing on 1 October 2012 (previously 20 May 2012) and for the sale of non-compliant products and packaging commencing on 1 December 2012 (previously 1 July 2012). This amendment delays commencement of the Bill to take account of delays in its passage through Parliament, and affords an additional period of time for manufacturers of products and packaging to adjust their production processes, for flush-through of tobacco products, and to aid retailers in stock management.

Clauses 17 to 27 were previously set to commence on 1 January 2012. The amendments provide for those clauses to commence with the first tranche of offences and civil penalty provisions, on 1 October 2012. This amendment is intended to avoid any possible implication that clauses 18 to 27, and the simplified outline at clause 17, were intended to give rise to legal obligations independently of Chapter 3 (Offences) and Chapter 5 (Enforcement) of the Bill.

The same purpose is served by the insertion of a new clause 27A, which makes clear that clauses 18 to 27 have no legal effect other than specifying requirements for the purposes of the definition of 'tobacco product requirement' in clause 4(1).

The final amendment is to address a technical implementation issue. This is an amendment to clause 18(3)(c) to allow for rounded corners to be used on the inside lip of the cigarette packs. Some cigarette manufacturers state that requiring the inside lip of cigarette packs to have only straight edges, as proposed in the original drafting of clause 18(3)(c), would necessitate some retooling of machinery, which would carry expense and be difficult to achieve within the commencement dates originally proposed in the Bill.

In response to this concern, the amendment allows rounded corners on the inside lip so that machines do not need to be retooled for this purpose. The clause will continue to provide that the lip may not be otherwise bevelled, shaped or embellished in any way, so as to prevent the inside lip being used as a decorative feature.

These amendments do not alter the Bill's approach to plain packaging of tobacco products.

### **FINANCIAL IMPACT STATEMENT**

The amendments outlined will not cause a significant variation in financial impact of the Bill.

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### NOTES ON CLAUSES

#### **Amendment 1 – Clause 2 – Commencement**

This clause amends clause 2 to insert a new table indicating the commencement of the provisions of the Bill. Different parts of the Bill are still scheduled to commence on different dates:

- On the day the Act receives Royal Assent, the provisions of the Act that give the short title of the Act and provide for commencement will commence.
- Other preliminary provisions of the legislation; including the provisions that allow the authorised investigative and enforcement officer roles to be established will now commence on the day the Act receives Royal Assent.
- On 1 October 2012, the provisions creating offences and civil penalties relating to packaging and manufacturing non-compliant tobacco products as well as manufacturing non-compliant retail packaging will commence, along with the investigation and enforcement powers of authorised officers. These provisions previously were expressed to commence on 20 May 2012.
- In addition, the provisions in Chapter 2 that specify the 'tobacco product requirements' for tobacco products and their retail packaging will also commence on 1 October 2012. The offence and civil penalty provisions deal with non-compliance with these requirements.
- On 1 December 2012, the provisions creating offences and civil penalties relating to selling and purchasing non-compliant tobacco products and tobacco products in non-compliant packaging will commence. These provisions previously commenced on 1 July 2012.

As outlined above, these amendments are proposed to address the delay to Parliamentary consideration of the Bill, and to ensure that there is sufficient time for the industry to comply before the penalty provisions commence.

The revised implementation dates provide for a two month “flush-through” period, during which manufacture and packaging of non-compliant product in Australia is prohibited but retail sales of such product can continue.

Consistent with the earlier specification of commencement dates, information gathering and enforcement powers will come into effect on commencement of the first tranche of offence and civil penalty provisions, on 1 October 2012 to allow the Bill to be effectively administered. Various other administrative provisions will commence on Royal Assent.

The provisions specifying tobacco product requirements will move from commencing on 1 January 2012 to commencing with the first offences and civil penalty provisions on 1 October 2012. This is to make it clear that these provisions are not intended to have legal effect before the related offence and civil penalty provisions commence.

#### **Amendment 2 – Clause 18 – Physical features of retail packaging**

Clause 18 provides that no decorative ridges, embossing, bulges, irregularities of shape or texture, or other embellishments, including coloured glues or adhesives, can be used on tobacco packaging. Clause 18 also outlines particular requirements specific to cigarette packs

and cartons, including that the inside lip of the cigarette pack must have straight edges. These requirements are intended to ensure that, as far as possible, the appearance of cigarette packs is standardised, and that novelty shapes and forms are not used to increase consumer interest in the packaging or detract attention from health warnings.

Clause 18(3)(c) is amended to permit rounded corners on the inside lip of cigarette packs. This amendment is intended to allow the inside lip of cigarette packs to be rounded to the extent necessary for automated manufacture of cigarette packaging using existing machinery. This avoids the need for existing machinery to be retooled which would make compliance with the commencement dates that had been proposed in the Bill difficult, and carry some expense.

This amendment is not intended to allow any additional innovation in packaging shape and opening. Instead, it permits the existing standard inside lip to continue to be used, in order to ensure that compliance with this requirement will not require modification or retooling of existing standard machinery.

Clause 18(3)(c) will still provide that the inside lip may not be bevelled, otherwise shaped or embellished in any way. This means that the inside lip may not be designed so as to be used as a decorative element.

### **Amendment 3 – Clause 27A – Legal effect of sections 18 to 27**

Clause 27A provides that the purposes of clauses 18 to 27 is to specify requirements and provide for regulations that may specify requirements within the meaning of 'tobacco product requirement' outlined in clause 4(1) the Bill. These clauses do not have any other legal effect.

A note to clause 27A states the offences and civil penalty provisions associated with failing to comply with a tobacco product requirement are set out in Chapters 3 and 5. The offence and civil penalty provisions in Chapter 3 of the Bill, and the enforcement powers in Chapter 5 of the Bill, apply in various situations of failure to comply with the 'tobacco product requirements'. The purpose of clauses 18 to 27 of Chapter 2 is to specify, and provide for regulations to specify, these 'tobacco product requirements'. Clause 27A is a new clause inserted to make clear that the tobacco product requirements specified in clauses 18 to 27, and in the regulations, have no other legal effect, and do not impose obligations independent of the offence and civil penalty provisions in Chapter 3 of the Bill, and the enforcement powers outlined in Chapter 5 of the Bill.