

*Current FOI requests*

- Since the last committee session, the Department has received one new request, which was subsequently withdrawn by the applicant.
- There are 16 requests currently being processed. An updated list is available for tabling.

*Costs to the Department*



- In one current case, the Department has spent eight months in negotiations with a tobacco industry applicant on narrowing the scope of a large number of detailed requests potentially covering over 10,000 files down to 242 files containing over 92,000 documents.
- In that case, the initial charges estimate to process the documents requested was \$1,471,372.52. Negotiations on the scope of the request brought that down to \$800,409.58, before agreement was reached on a request with estimated charges of \$367,106.33.
- In another current case, the Department has spent six months in negotiations with a tobacco industry applicant on narrowing the scope of a large number of detailed requests potentially covering over 5,800 files down to 280 files.
- In that case, the initial charges estimate was \$637,673.50. Negotiations on the scope of the request brought that down to \$100,426.17 before agreement was reached on a request with estimated charges of \$25,566.49.
- It is important to note that the FOI regulations do not provide for full cost recovery and that the charges levied to FOI applicants do not reflect the real cost of the completing the work.
- The regulations state that staff time, regardless of the level of the officer, is chargeable at \$15 per hour for search and retrieval and \$20 per hour for decision-making time.
- In addition, none of the costs involved in the process of negotiation, which included assessing the requests and preparing three charges estimates, are covered by the ultimate estimate of the charges for which the applicant will be liable.

Senate Community Affairs Legislation Committee  
Additional estimates 2010-2011  
DoHA

Tabled document no: 4

By: MS JANE HALTON, SECRETARY

Date: 23 February 2011

**Attachment A**

**List of Tobacco FOI requests on hand in the Department of Health and Ageing**

No	Terms of request	Date received	Applicant
1	Documents created or received on or after 1 January 2005 to 24 June 2010 relating to plain packaging of tobacco products, according to 19 focus questions on plain packaging, smoking rates, product prices and competition, retailing of tobacco products, illicit trade, graphic health warnings, intellectual property rights, trade obligations, documents passing between specific organisations and departments, research and writing of the Preventative Health Task Force, tobacco control, the Anti-smoking Action, legal advice and other specified documents.	28 June 2010	Philip Morris Limited (PML)
2	Documents created or received on or after 1 January 2005 to 24 June 2010 relating to plain packaging of tobacco products	Transfer FOI Treasury	PML
3	Documents created or received on or after 1 January 2005 to 24 June 2010 relating to plain packaging of tobacco products	Transfer FOI DFAT	PML
4	Documents created or received on or after 1 January 2005 to 24 June 2010 relating to plain packaging of tobacco products	Transfer FOI DIISR	PML
5	Documents created or received on or after 1 January 2005 to 24 June 2010 relating to plain packaging of tobacco products	Transfer FOI DOFA	PML
6	Documents created or received on or after 1 January 2005 to 24 June 2010 relating to plain packaging of tobacco products	Transfer FOI AGD	PML
7	<p>All documents created within the period from 1 January 2008 to date 19 July 2010 referring or relating to:</p> <p>(a) the formulation and drafting of the "Tobacco Recommendations" contained in the report titled, "Taking Preventative Action" (at pages 61 to 85 inclusive) released by the Department on 11 May 2010;</p> <p>(b) the expected effect of the introduction of the plain packaging of tobacco, appeal and desirability of smoking;</p> <p>(c) any other expected effect of the introduction of the plain packaging of tobacco products; and</p> <p>(d) the use of packaging by the tobacco industry, including in relation to "brand image".</p>	5 July 2010	BATA

8	<p>All documents created within the period from 1 January 2008 to date 19 July 2010 referring or relating to</p> <ul style="list-style-type: none"> <li>(a) the commission or conduct of a Regulatory Impact Statement in relation to the plain packaging of tobacco products;</li> <li>(b) any assessment of the impact, including costs, benefits and levels of risk, associated with the introduction of plain packaging of tobacco products on consumers, business, government and the community;</li> <li>(c) the optimal pack design to achieve the public health objectives associated with the plain packaging of tobacco products; and</li> <li>(d) concerns of retailers associated with the plain packaging of tobacco products.</li> </ul>	23 July 2010	BATA
9	<p>All documents that fall within the following categories "Technical Report 2: Tobacco control in Australia: making smoking history including addendum for October 2008 to June 2009)" (G Report) where those documents refer or relate to any of the following matters:</p> <ul style="list-style-type: none"> <li>(a) the consideration, development and drafting of the "Action Proposed" that is recorded in the following terms at page 21 of the TWG Report; <ul style="list-style-type: none"> <li>ACTION PROPOSED</li> <li>Require all tobacco products to be sold in plain packaging, the exact appearance of which (precise colour, paper finish, shape of pack etc) could be prescribed in regulations under the Trade Practices Act 1974</li> <li>Commission research to determine exactly how packs should be designed to minimise appeal to young people.</li> </ul> </li> <li>(b) the consideration, development and drafting of the "Action Proposed" that is recorded in the following terms at page 22 of the TWG Report; <ul style="list-style-type: none"> <li>ACTION PROPOSED</li> <li>Amend Schedule 2 to the Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 1974 to prescribe that health warnings must cover at least 90%</li> </ul> </li> </ul>	23 July 2010	BATA

	<p>of the front and 100% of the back of the pack.</p> <p>(c) the consideration, development and drafting of the "Action" that is recorded in the following terms at page 98 of the TWG Report:</p> <p style="padding-left: 40px;">Action 3.1</p> <p style="padding-left: 40px;">Legislate to eliminate all remaining forms of promotion, including promotion of price, public relations activities, payments to retailers and proprietors of hospitality venues, promotion through packaging and, as far as feasible, through new and emerging forms of media.</p> <p>(d) the consideration, development and drafting of the "Action" that is recorded in the following terms at page 99 of the TWG Report:</p> <p style="padding-left: 40px;">Action 3.3</p> <p style="padding-left: 40px;">Eliminate promotion of tobacco products through design of packaging</p>		
10	<p>All documents that fall within the following categories documents refer or relate to any of the following matters:</p> <p>(a) the scope or terms of reference of the report by Professor Susan Hurley, Dr Matthew Spittal, Ms Michelle Scollo, Dr Sarah Durkin and Professor Melanie Wakefield commissioned by the NPHT and titled "Predicted impact of proposed tobacco control strategies" dated June 2009 (Report), including any consideration or decision in relation to whether the scope or terms of reference of that Report should include consideration of the impact of the plain packaging of tobacco products;</p> <p>(b) the preparation of the Report, including any drafts of the Report; and any other reports, papers or research commissioned by or on behalf of the Department, the NPHT or the TWG; or by</p> <p>(c) any other Commonwealth Department or agency, in relation to the impact of proposed tobacco control strategies including plain packaging.</p>	23 July 2010	BATA

11	<p>All documents created within the period from 1 January 2008 to date 19 July 2010:</p> <p>(a) records of the National Preventative Health Taskforce (NPHT) and the Tobacco Working Group of the NPHT (TWG), including records of communications between the Department and the NPHT and TWG;</p> <p>(b) research commissioned or considered by the Department, the NPHT or the TWG;</p> <p>where those documents refer or relate to any of the following matters:</p> <p>(a) anti-counterfeit measures, including any increased incidence of counterfeiting, associated with the plain packaging of tobacco products; and</p> <p>(b) the illicit trade of tobacco products, including any anticipated increase in illicit trade, associated with the plain packaging of tobacco products.</p>	23 July 2010	BATA
12	<p>All documents that comprise the following "major sources" used in the preparation of the report prepared by the Tobacco Working Group of the National Preventative Health Taskforce titled, "Technical Report 2: Tobacco control in Australia: making smoking history including addendum for October 2008 to June 2009)" (as listed on page 51 of that report):</p> <ol style="list-style-type: none"> <li>1. Postings by members of the Inter-national Union Against Cancers "GLOBALink" network on proposals, legislative and regulatory reforms not currently in place in Australia.</li> <li>2. Recently published and soon to be published major reviews of scientific evidence conducted by international scientific agencies.</li> <li>3. Reviews and meta-analyses and studies in scientific journals.</li> <li>4. Policy recommendations prepared by international health authorities.</li> <li>5. Discussion papers prepared by expert groups.</li> <li>6. Reviews of evidence by government agencies prepared as part of regulatory impact statements required prior to consideration by legislators.</li> <li>7. Published and unpublished research on tobacco</li> </ol>	23 July 2010	BATA

	<p>promotion and media education conducted by the Centre for Behavioural Research in Cancer.</p> <p>Published and unpublished results of the Inter-national Tobacco Control Four Nations (ITC 4 Nations) study.</p>		
13	<p>All documents that were created within the period 1 January 2008 to date 19 July 2010 referring or relating to:</p> <p>(a) the impact of the introduction of plain packaging of tobacco products on Australia's obligations under International law and international treaties, including but not limited to, Australia's obligations under:</p> <ul style="list-style-type: none"> <li>• the agreement that is generally referred to as the GATT Agreement (General Agreement on Trade and Tariffs)</li> <li>• the agreement that is generally referred to as the TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights);</li> <li>• the agreement that is generally referred to as the TBT Agreement (Agreement on Technical Barriers to Trade);</li> </ul> <p>(b) the impact of the introduction of plain packaging of tobacco products on Australia's obligations under any free trade agreement or free trade agreements generally; and</p> <p>(c) the impact of the introduction of plain packaging of tobacco products on Australia's obligations under any bilateral investment treaty or bilateral investment treaties generally</p>	23 July 2010	BATA
14	<p>All documents to do with:</p> <p>(a) the meetings and other activities of the Framework Convention on Tobacco Control (FCTC) Working Group, including but not limited to any involvement by the Department or any other Commonwealth department or agency in those meetings and activities;</p> <p>(b) the meetings and other activities of the FCTC Inter-governmental Negotiating Body, including but not limited to any involvement by the Department or any other Commonwealth department or agency in those meetings and activities;</p> <p>(c) the meetings and other activities of the FCTC Open-Ended Inter-governmental Working Group, including but not limited to any involvement by the Department or any other Commonwealth department or agency in those meetings and activities;</p>	23 July 2010	BATA

	<p>(d) the meetings and other activities of the FCTC Conference of the Parties, including but not limited to any involvement by the Department or any other Commonwealth department or agency in those meetings and activities;</p> <p>(e) the meetings and other activities of the FCTC Working Group for the development of guidelines on the implementation of Article 5.3, including, but not limited to any involvement by the Department or any other Commonwealth department or agency in those meetings and activities;</p> <p>(f) the meetings and other activities of the FCTC Working Group for the development of guidelines on the implementation of Article 11, including, but not limited to any involvement by the Department or any other Commonwealth department or agency in those meetings and activities;</p> <p>(g) the meetings and other activities of the FCTC Working Group for the development of guidelines on the implementation of Article 13, including, but not limited to any involvement by the Department or any other Commonwealth department or agency in those meetings and activities;</p> <p>(h) the meetings and other activities of any expert group associated with the FCTC, including any reports, guidelines or protocols developed by any such group.</p>		
15	<p>All documents created after 1 March 2006 where those documents refer or relate to any report, review or research that was commissioned by or on behalf of the Department, or any agency of the Department, or was considered by the Department in relation to the effectiveness of the graphic health warnings on tobacco products that were introduced by the Trade Practices (Consumer Product Information Standards) (Tobacco Regulation Commonwealth) Regulations 2004 (Cwlth).</p>	4 Aug 2010	BATA

16	<p>All documents created after 1 August 2009 that fall within the following categories referring or relating to:</p> <p>(a) any consideration by the Department of the private members bill, known as the Plain Tobacco Packaging (Removing Branding from Cigarette Packs) Bill 2009, introduced by Senator Fielding into the Commonwealth Senate in August 2009 (Fielding Bill);</p> <p>(b) any report, review or research that was commissioned by or on behalf of the Department, or any agency of the Department, or was considered by the Department in relation to the effectiveness of the reforms proposed by the Fielding Bill;</p> <p>(c) any report, review or research that was commissioned by or on behalf of the Department, or any agency of the Department, in relation to the impact, effect or costs implications of the reforms proposed by the Fielding Bill; or</p> <p>(d) advice, including legal advice, sought in relation to the reforms proposed by the Fielding Bill.</p>	4 Aug 2010	BATA
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**List of Tobacco FOI requests completed in the Department of Health and Ageing**

17	All documents used in decision making for Anti-Smoking Action of 29 April 2010	1 July 2010	BATA
18	Internal Review of the Anti-Smoking Action of 29 April 2010	21 Dec 2010	BATA
19	All advice, documents, information on generic packaging during Minister Dr Carmen Lawrence time in office.	2 July 2010	BATA



**List of Tobacco FOI Requests withdrawn in the Department of Health and Ageing**

20	<p>Access to tobacco-related documents referred to in the linked document schedule, created by the Department of Health and Ageing for the Senate Community Affairs Committee. Specifically, The Australian requests access to the documents 1, 3, 4, 7, 8, 10 and 12 referred to in the tabled schedule.</p>	13 Jan 2011	The Australian Newspaper
21	<p>All documents that contain FOI requests seeking access to documents held by the Department that relate to the anti-smoking action announced by the Prime Minister, Treasurer and Minister for Health on 29 April 2010.</p> <p>Documents concerning the expense, time and resources used by the Department to date in the course of responding to FOI requests seeking access to documents held by the Department that relate to the anti-smoking action announced by the Prime Minister, Treasurer and Minister for Health on 29 April 2010.</p>	27 Sept 2010	Action on Smoking and Health (ASH)