



Australian Government

Department of Health

Ms Jeanette Radcliffe
Secretary
Senate Standing Committee on Community Affairs
Parliament House
CANBERRA ACT 2066

Dear Ms Radcliffe

Request for Amendment to Evidence Provided at the Senate Community Affairs Committee Additional Estimates Hearing, 25 February 2015: Outcome 1

I am writing to correct statements that I made at the Additional Estimates Hearing of the Senate Community Affairs Committee on 25 February 2015.

Senator Leyonhjelm asked a series of questions regarding the Post Implementation Review (PIR) of the tobacco plain packaging measure, which the Department of Health is to undertake in accordance with the requirements of the Australian Government Office of Best Practice Regulation. The Department of Health has engaged the services of Siggins Miller Consultants Pty Ltd (Siggins Miller), to undertake two major components of the PIR: consultation with stakeholders impacted by the tobacco plain packaging measure and a cost-benefit analysis of the measure.

Senator Leyonhjelm's questions principally related to whether the stakeholder consultation documents for the PIR reflect the objectives of the tobacco plain packaging measure, as stated in the *Tobacco Plain Packaging Act 2011* (the Act). In asking these questions, Senator Leyonhjelm also asked questions about the wording used to describe the objects of the tobacco plain packaging measure. The discussion around these questions inadvertently created confusion.

In responding to the questions on the objects of the tobacco plain packaging measure, I used wording from the Explanatory Memorandum to the Tobacco Plain Packaging Bill 2011. The purpose of an Explanatory Memorandum is, as a companion document to a Bill, to assist members of Parliament, officials and the public to understand the objectives and detailed operation of the clauses of the Bill¹. The Department of Health's position is that the Explanatory Memorandum correctly describes the objectives of the tobacco plain packaging measure. However, to the extent that Senator Leyonhjelm's questions were directed to the specific wording used in the stakeholder consultation documentation for the PIR, some of my answers were inadvertently inaccurate.

¹ Australian Government Legislation Handbook; pg 39. Department of the Prime Minister and Cabinet, Canberra. Available at: <http://www.dpmc.gov.au/pmc/publication/legislation-handbook>

Set out below are the amendments to my responses to a number of Senator Leyonhjelm's questions.

1) In relation to the following question:

"I understand that in its consultation document, Siggins Miller lists the objectives of the plain packaging measure and that this list includes reducing the attractiveness and appeal of tobacco products to consumers, particularly young people. Are you aware of this?"

My response was as follows:

"Absolutely. They are the objects of the Act. There are a number of objects of the Act. They are: to reduce the attractiveness and appeal of tobacco products to consumers, particularly young people; to increase the noticeability and effectiveness of mandated health warnings; to reduce the ability of retail packaging of tobacco products to mislead consumers about the harms of smoking; and, through the achievement of these aims in the long term – and I want to emphasise that – as part of a comprehensive range of tobacco control measures, contribute to efforts to reduce smoking rates."

My response used wording that is included in the Explanatory Memorandum to describe the rationale for tobacco plain packaging. However, it has been brought to my attention that Siggins Miller's consultation document, in listing the objectives of the tobacco plain packaging measure, does not use the terms "attractiveness", or "particularly to young people". The response should therefore be as follows:

"No, Siggins Miller's consultation documentation, in listing the objectives of the tobacco plain packaging measure, do not use the terms "attractiveness", or "particularly to young people".

2) In relation to the following question:

"Does the objective section of the Tobacco Plain Packaging Act refer to an objective or an intention to reduce the attractiveness of tobacco products to consumers, particularly young people?"

My response was as follows:

"That is what I just read out to you, Senator."

As noted, in responding to the first question above, I used wording that is included in the Explanatory Memorandum to describe the rationale for tobacco plain packaging. The response to the question should have been as follows:

"The section of the *Tobacco Plain Packaging Act 2011* that sets out the objects of the Act (section 3) does include in subsection 3(2), an intention to contribute to achieving the objects in subsection 3(1) by regulating the retail packaging and appearance of tobacco products in order to reduce the appeal of tobacco products to consumers, but does not use the words "attractiveness", or "particularly young people". However, these words are included in the Explanatory Memorandum, which explains the objectives and detailed operation of the tobacco plain packaging legislation."

3) In relation to the following question:

“I am understand (sic) the Act does not say that – does it?”

My response was as follows:

“It is in the objects of the Act.”

In accordance with the amendment to the response to the previous question, the response should be as follows:

“The section of the *Tobacco Plain Packaging Act 2011* that sets out the objects of the Act (section 3) does include in subsection 3(2) an intention to contribute to achieving the objects in subsection 3(1) by regulating the retail packaging of tobacco products in order to reduce the appeal of tobacco products to consumers, but does not use the words “attractiveness”, or “particularly young people”. However, these words are included in the Explanatory Memorandum, which explains the objectives and detailed operation of the tobacco plain packaging legislation.”

4) In relation to the following question:

“Does it include the noticeability of health warnings?”

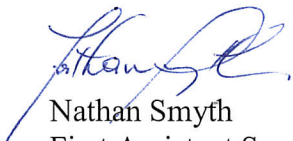
My response was as follows:

“Yes it does. It increases the noticeability and effectiveness of health warnings.”

As noted, in responding to the first question above, I used wording that is included in the Explanatory Memorandum which describes the rationale for tobacco plain packaging, and which does include the word “noticeability” in relation to health warnings. The response to the question should therefore be as follows:

“The section of the *Tobacco Plain Packaging Act 2011* that sets out the objects of the Act (section 3) does include in subsection 3(2) an intention to contribute to achieving the objects in subsection 3(1) by regulating the retail packaging of tobacco products in order to increase the effectiveness of health warnings on the retail packaging of tobacco products, but does not use the word “noticeability”. However, this word is included in the Explanatory Memorandum, which explains the objectives and detailed operation of the tobacco plain packaging legislation.”

Yours sincerely



Nathan Smyth
First Assistant Secretary
Population Health Division

25 March 2015