

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S DEPARTMENT

Program 1.1

Question No. 57

Senator Bernardi asked the following question at the hearing on 22 February 2011:

I refer to the former Prime Minister's announcement of 29 April 2010 to introduce legislation to mandate plain packaging of tobacco products and I refer to his joint doorstep interview of 29 April where he states "the government will not be paying any compensation to any tobacco company anywhere."

The IPA, in a recent report "Governing in ignorance: Australian governments legislating, without understanding, intellectual property" claim that "Stripping intellectual property from products is akin to stripping someone of their physical property and requires compensation under the Commonwealth Constitution and our free trade agreements". They say that "IPA calculations show that the taxpayer compensation could amount to as much \$3 billion for tobacco companies annually because of these laws".

1. Has the Department received any advice in relation to the Government's exposure to compensation payments to companies arising out of the introduction of the plain packaging proposal?
2. If so, who provided that advice?
3. When was that advice received?
4. Has Minister Roxon and/or the Attorney General received or briefed on that advice, and if so, what date did this occur?
5. Did this advice categorically rule out compensation payments to tobacco companies? Please provide a full copy of this advice/s.
6. What has the Attorney General's Department budgeted for in relation to potential legal costs arising out of a possible action by tobacco companies suing the Commonwealth Government for compensation? Please provide full copies of budgetary estimates and costs.

The answer to the honourable senator's question is as follows:

1. The Department has been consulted in the preparation of legal advice related to the plain packaging proposal.
2. Advice has been provided by the Australian Government Solicitor and the Department of Foreign Affairs and Trade.
3. The Department was consulted on advice provided to the Department of Health and Ageing between April and December 2010.
4. Questions concerning the knowledge of ministers should be addressed to them.

5. The Department of Health and Ageing, as the agency which requested the legal advice, should respond to questions about that advice. It is the long standing practice of Government not to comment on legal advice.
6. Nil.