



Big tobacco horrified by case costs

Comment
Marcus Priest

Amid all the talk of government waste and mismanagement after the federal budget, there would be many alarmed to learn this week that Julia Gillard is preparing to blow millions more dollars on lawyers.

The revelation was contained in a press release from British American Tobacco Australia headlined: "Don't let the taxpayer foot the bill for a bad bill".

With Opposition Leader Tony Abbott riding high in the polls on his campaign about Labor's wasteful spending, the tobacco spin doctors have decided to catch a ride on his bandwagon in a bid to stop plain packaging laws.

The BATA release breathlessly reveals it has obtained "confidential documents" showing the government has budgeted \$4.8 million to implement the laws and "\$10 million plus" for legal costs.

"We don't want to see a situation where taxpayer dollars are being wasted," BATA chief executive David Crow says.

"Unfortunately, this suggests the government has been planning a court case all along and is pushing us down the legal path."

Taxpayers would of course be shocked to discover a reluctant litigant like BATA is being "pushed" down the legal path. And BATA knows a thing or two about the cost of lawyers — it had to politely ask the son of Rolah McCabe when he sold his deceased mother's house if he could make a small contribution to the millions in legal fees racked up fighting her case.

But if there is one thing worse than shareholders footing the bill for tobacco lawyers, it is taxpayers footing the bill for the nicotine guns at Corrs Chambers Westgarth.

And of course, the McCabe case has some relevance in the current circumstances. The heart of the battle between the estate of the cancer victim and the tobacco boys was BATA's claim for legal professional privilege over legal advice in relation to their "document retention policy". Now having

finished shredding documents, they have set about doing the same to any few remaining scraps of credibility.

You see, BATA is all worked up that the government has refused to release 1995 legal advice from the Australian Government Solicitor about the legality of imposing plain cigarette packaging on companies.

BATA claims the government has "waived" legal professional privilege over the document by including a reference to the legal advice when it responded to a Senate committee report and also provided a summary to a working group of state and federal government officials devising anti-smoking strategies. BATA has appealed against a decision of the Administrative Appeals Tribunal upholding the claim for privilege.

"If the government is confident of its plans for plain packaging then we can't understand why they won't make this crucial document available," BATA said with a straight face back on April 28.

Rolah McCabe couldn't have put it better herself.

Senate Legal and Constitutional Affairs Committee
Budget Estimates 2011-12, 23-26 May 2011

Tabled Document 6

By: Senator Barnett

Date: 26/5/2011