



NEW DEVELOPMENTS ON
FCTC ARTICLES 11 AND 13
TOBACCO PACKAGING & LABELLING AND
TOBACCO PROMOTION & ADVERTISING

Smoke Free Partnership briefing

November 2016

Background

In 2011, SFP published a [Spotlight on the application of Article 11 and 13 of the Framework Convention on Tobacco Control \(FCTC\)](#) in the context of the review of the Tobacco Products Directive 2001/37/EC. The Spotlight emphasized that the 2001 TPD was not in line with Articles 11&13 and their guidelines and called for the revision process to implement them through the adoption of large mandatory pictorial warnings and the introduction of plain packaging. The new TPD introduced larger pictorial warnings and allows Member States to introduce plain packaging at the national level. In view of recent progress, this briefing builds on the Spotlight and summarises key developments in Articles 11&13 globally and the most recent evidence regarding the effectiveness of plain packaging.

Pictorial warnings: key evidence and developments

Status of health warnings worldwide (Source: *Report by Canadian Cancer Society*, Nov. 2016)

- 105 countries worldwide now require pictorial warnings, and 94 of these require warnings to cover 50% or more of the size of the package.
- Four countries have adopted laws requiring plain packaging: Australia (2012), UK and France (2016) and Hungary (2018). 14 other countries, 7 of which are in Europe, are considering or in the process of finalising plain packaging regulations: New Zealand, Ireland, Norway, Slovenia, Canada, Uruguay, Thailand, Singapore, Belgium, Romania, Turkey, Finland, Chile and South Africa.

For more information, please see ***Cigarette Package Health warnings: International Status Report, 5th Edition*** (Canadian Cancer Society, Nov. 2016) at

<http://www.cancer.ca/~media/cancer.ca/CW/for%20media/Media%20releases/2016/CCS-international-cigarette-packaging-report-2016-English.pdf?la=en>

Judgment of the International tribunal in the case of PMI vs Uruguay (Source: *CTFK briefing on the findings of the International Arbitration Tribunal*, July 2016)

In 2011, PMI challenged the 2010 Uruguay legislation requiring pictorial warnings covering 80% of the front and the back of packs under the investment protection provisions of the Uruguay-Switzerland bilateral investment agreement. The judgment was rendered in July 2016. The core of the lawsuit concerns trade agreement provisions and is in many ways specific to the particular situation; however the Tribunal was strong in recognising the importance of the FCTC and of Uruguay's obligations under the Treaty:

- For the purpose of large pictorial warnings, Uruguay acted towards fulfilling its national and international legal obligations for the protection of public health
- For a country with limited technical and economic resources, adherence to the FCTC and its mechanisms of cooperation and exchange is an important, if not indispensable means for acquiring the scientific knowledge and market experience needed for the proper implementation of its obligations under the FCTC.
- The FCTC is an evidence based treaty such that, "in these circumstances there was no requirement for Uruguay to perform additional studies or to gather further evidence in support of the Challenged Measures"

For more information please see ***Philip Morris v Uruguay Findings from the International Arbitration Tribunal*** (Campaign for Tobacco Free Kids, July 2016) at

http://www.tobaccofreekids.org/content/press_office/2016/2016_07_12_uruguay_factsheet.pdf

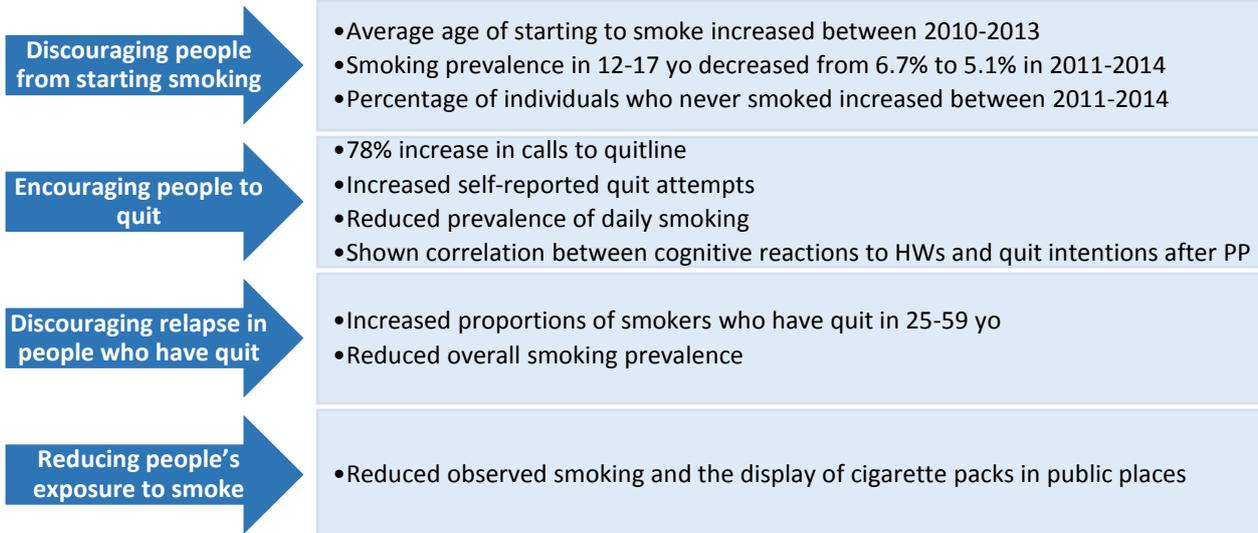
Plain packaging: effectiveness and implementation evidence in Australia

Source: *Presentation by Dr. Melanie Wakefield of Cancer Council Victoria, on [implementation research commissioned by the Australian government](#)*, June 2016.

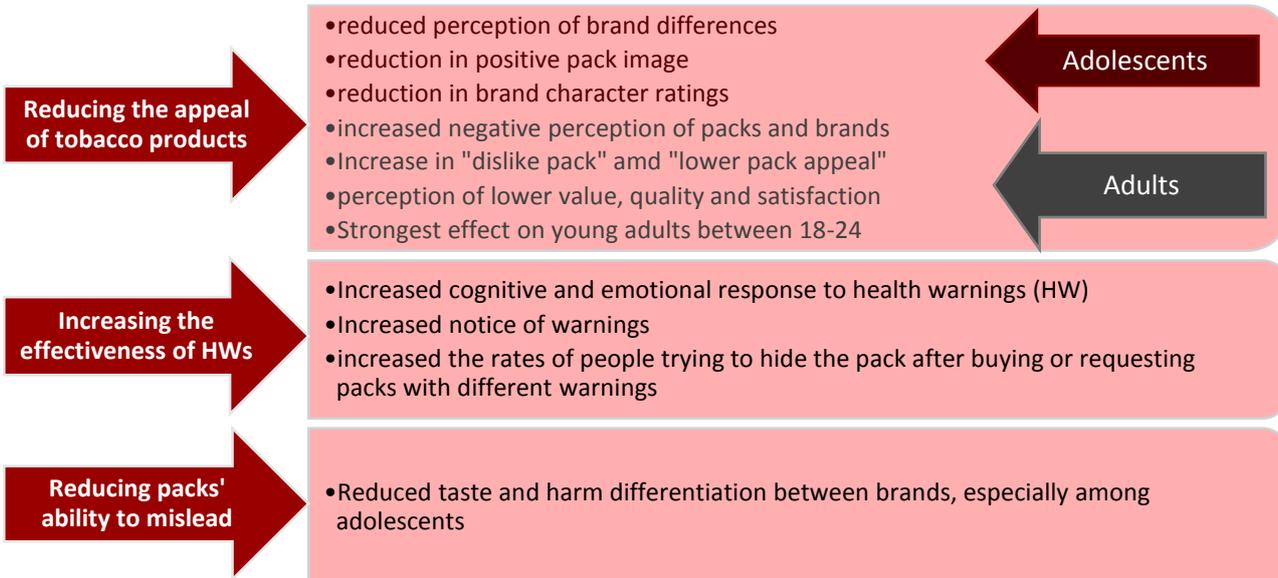
The first implementation report on plain packaging was completed in Australia in early 2016. Overall, **the objectives were largely achieved in Year 1 of plain packaging**, taking into account the impact of other policies such as price increases:

- ✓ Younger people were more influenced by reduced brand/pack appeal
- ✓ Health warnings were more effective and led to attempts & thoughts of quitting in adult smokers
- ✓ More smokers are to quit during PP roll-out and 1 year after
- ✓ Less smoking around children, and lower smoking prevalence in both adolescents and adults.

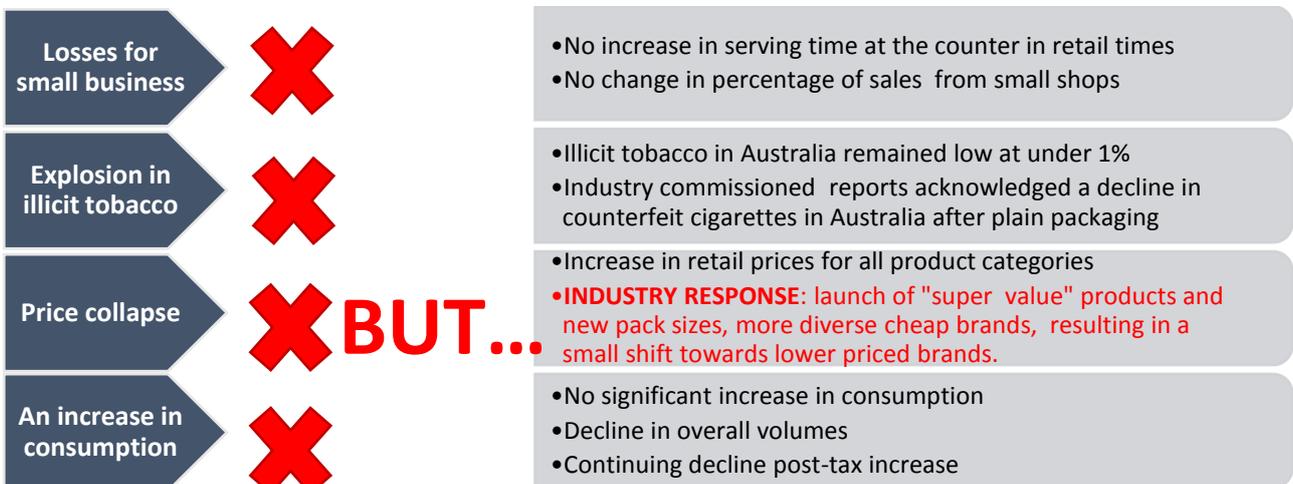
General objectives: to improve public health by



Specific objectives: to achieve the general objectives by



Negative impacts of plain packaging: tobacco industry myths versus reality



For more information please consult **Tobacco Plain Packaging: Post-implementation Review – Department of Health** (2016) <https://ris.govspace.gov.au/2016/02/26/tobacco-plain-packaging/> and **Plain packaging. The facts – Cancer Council Victoria**, <http://www.cancervic.org.au/plainfacts/default.asp>

Plain packaging: summary of the legal challenge brought in the United Kingdom

Source: ASH (UK) *Highlights of the High Court of Justice's ruling on standardised packaging*, Sept. 2016

The Act through which the UK introduced plain packaging for tobacco products was challenged in the UK High Court by BAT, JTI, PMI, Imperial, Gallaher, and carton manufacturers. Hearings in the case were held in December 2015, and the decision was issued in May 2016. In the decision, the High Court rejected all claims made by the tobacco industry that sought to invalidate the legislation. In particular, the Court found that:

- In adopting plain packaging, **the government acted to fulfil its obligation under the Framework Convention on Tobacco Control** to implement comprehensive policies so as to reduce tobacco use and exposure to tobacco smoke continually and substantially
- The Court recognized **the FCTC evidence-based obligation of governments to protect their public health policies from the interference of the tobacco industry:**



The conclusions which have arisen from the US courts about the sharp discord between what the tobacco companies think inside their own four walls and what they then say to the outside world (especially through experts), are so damning and the evidence of the discord so compelling and far reaching that it is not at all surprising that the WHO concluded that there was an evidence base upon which to found their recommendations to contracting states to apply vigilance and demand accountability and transparency in their dealing with the tobacco companies. [p. 18, ¶121]

- The Court found that the **evidence provided by the tobacco industry falls short of any acceptable requirements for both scientific and judicial review:**



As a generality, the Claimants' evidence is largely: not peer reviewed; frequently not tendered with a statement of truth or declaration that complies with the CPR [Court Procedural Rules for England and Wales]; almost universally prepared without any reference to the internal documentation or data of the tobacco companies themselves; either ignores or airily dismisses the worldwide research and literature base which contradicts evidence tendered by the tobacco industry; and, is frequently unverifiable. [p. 18, ¶23]

- The Court judgment denounces **the tobacco industry's tactic of dismissing or deliberately ignoring the existence of peer-reviewed, independent evidence** when elaborating its own commissioned "expert reports".
- Finally, the Court strongly **rejected the industry's demand of compensation for loss of revenues due to plain packaging, because of the deadly nature of tobacco use and its high costs to society:**



[There is no breach of the Right to peaceful enjoyment of property under the European Convention on Human Rights] if compensation is not paid due to a) the undeniable and all pervasive harm caused by the product; (b) the fact that the trademarks are used causally to further that harm by promoting the product to consumers; and (c) the fact that they thereby impose on the State clear up and remedial costs of a staggering large scale. [p. 320, ¶1802]

For more information please consult ***Tobacco Industry Legal Challenge to Standardised Packaging of Cigarettes and Tobacco Products: Highlights of the High Court of Justice's ruling on standardised packaging*** (Action on Smoking and Health (UK), Sept. 2016), at www.ash.org.uk (under the section: Standardised Plain Packaging) and

The ***High Court Judgment***, (full text) available at: www.judiciary.gov.uk/wp-content/uploads/2016/05/bat-v-doh-judgment.pdf