

EXPLANATORY STATEMENT

Subject: *Competition and Consumer Act 2010*
Competition and Consumer (Tobacco) Information Standard 2011

Overview

The *Competition and Consumer (Tobacco) Information Standard 2011* (the Standard) updates and expands the health warnings required on tobacco packaging as part of a comprehensive suite of reforms being implemented by the Australian Government (Government) to reduce smoking and its harmful effects.

The Government is responsible for mandating health warnings on tobacco product packaging. A national system of text-only warnings was introduced in 1995, after initially being regulated through State and Territory legislation. Following a review of the text-only warnings, from 1 March 2006, most tobacco product packaging manufactured in, or imported into Australia, has been required to be printed with graphic health warnings through the *Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 2004* (the 2004 Regulations).

The Standard updates the system of health warnings mandated through the 2004 Regulations. The Standard is prescribed under the Australian Consumer Law (ACL) in Schedule 2 to the *Competition and Consumer Act 2010* (CCA).

The policy underpinning the Standard has been informed by consumer research on graphic health warnings and plain packaging. This builds on the 2008 evaluation¹ of the effectiveness of Australia's graphic health warnings and a significant body of peer-reviewed research showing that larger health warnings, including graphic health warnings, have greater impact on consumers.

The updating of the system of health warnings is consistent with Australia's obligations under the World Health Organization Framework Convention on Tobacco Control (FCTC). The FCTC is an international treaty that provides a global policy framework for Parties to implement strong measures against the death and disease caused by smoking.

The health warning requirements are being applied on a non-discriminatory basis to address a legitimate public health objective. All tobacco products are harmful to health and, accordingly, all should convey a consistent public health message about the risks associated with smoking and tobacco use.

The Standard includes an increase in the size of graphic health warnings to 75 per cent of the front surface of most tobacco product packaging (with limited exceptions) to convey a consistent public health message on the most visible surface of the package. The Standard maintains the size of 90 per cent of the back surface for cigarette packaging but requires an increase to 75 per cent of the back surface of packaging for most other tobacco products (with limited exceptions).

¹ Shanahan, P and Elliott, D, 2009, *Evaluation of the Effectiveness of the Graphic Health warnings on Tobacco Product Packaging 2008*, Australian Government Department of Health and Ageing, Canberra.

In finalising the Standard, the Government considered the issues raised during public consultations undertaken by the Australian Competition and Consumer Commission (ACCC) between September 2011 and December 2011. For example, to assist industry and retailers in their preparations, the implementation date of 1 December 2012 has been aligned with the revised dates in the *Tobacco Plain Packaging Act 2011*.

The Government has plans to keep under review, through regular monitoring, the impact of the measures imposed under the Standard and the *Tobacco Plain Packaging Act 2011*.

An accompanying supplier's guide will be produced by the ACCC and made available to assist industry in complying with the requirements under the Standard.

The Competition and Consumer (Tobacco) Information Standard 2011

The Standard provides consumers with updated and more prominent health warnings about the health effects of smoking, and incorporates both graphic and text-only health warnings. The content of all health warnings is based on scientific evidence and has been cleared by the Chief Medical Officer.

The Standard is split into 9 parts.

Part 1 of the Standard sets out the preliminary provisions, including definitions of key terms, commencement information, the purpose of the Standard and application details. The Standard commences on 1 January 2012, with full implementation from 1 December 2012. The 2004 Regulations will be repealed on 1 December 2012.

Part 2 of the Standard provides that a tobacco product that is supplied by way of retail sale must be in retail packaging when it is supplied to the purchaser. This Part also identifies the outer surfaces of retail packaging and the combinations of health warnings that are required to be displayed on those outer surfaces.

Part 3 and Part 4 of the Standard sets out the content of the health warnings that is required on retail packaging for cigarettes and smoked tobacco products not mentioned in other Parts.

Part 5 of the Standard sets out the content of the health warnings that is required on retail packaging for cigars other than cigar tubes.

Part 6 of the Standard sets out the content of the health warnings required on retail packaging that is cigar tubes.

Part 7 of the Standard sets out the content of the health warnings required on retail packaging for bidis.

Part 8 of the Standard sets out the content of the health warnings required on retail packaging for smokeless tobacco.

Part 9 of the Standard sets out how to display and rotate the health warnings on retail packaging for all tobacco products.

Further details of the Standard are set out in the [Attachment](#).

Details of the *Competition and Consumer (Tobacco) Information Standard 2011*

Part 1 – Preliminary

Section 1.1 – Name of information standard

The name of the Standard is the *Competition and Consumer (Tobacco) Information Standard 2011*.

Section 1.2 – Commencement

The Standard commences on 1 January 2012.

Section 1.3 – Definitions

This section contains definitions of key terms used in the Standard. For consistency, the definitions align with those in the *Tobacco Plain Packaging Act 2011*, where possible. Some of the core definitions are discussed further below.

‘container’ – the term ‘container’ is given a broad definition to include anything that contains a tobacco product. The definition provides a non-exhaustive list of examples of the different types of containers.

‘retail packaging’ – ‘retail packaging’ includes any container that a tobacco product is packed in for retail sale. This includes the packaging immediately around the tobacco product, any carton that contains one or more packages of tobacco products, any wrapper that covers the packaging of a tobacco product or a tobacco product itself, anything placed inside the packaging (apart from the tobacco product), and anything attached to or forming part of the packaging.

Where there is more than one form of packaging used for retail sale, for example where a carton or other container holds more than one packet of tobacco product, each layer of packaging (including the initial packet holding the tobacco product as well as the carton) is required to comply with this Standard.

The Standard does not apply to packaging of tobacco products that is used solely for the purpose of shipping or wholesale distribution where the tobacco product is not for retail sale (for example, packing containers or crates).

‘supply’ – this definition is derived from the definition of ‘supply’ under the ACL in Schedule 2 to the *Competition and Consumer Act 2010*. Unlike the definition under the ACL, the definition of ‘supply’ in the Standard is limited to goods that are supplied within Australia. That is, the definition of ‘supply’ in the Standard does not extend to goods that have been supplied by a person in Australia to a person outside of Australia, nor to goods that have been supplied by a person outside of Australia to a person within Australia, nor to goods supplied between two persons who are both located outside of Australia. In particular, it does not extend to the supply of tobacco products at the point of import.

‘tobacco product’ - the definition of ‘tobacco product’ means that generally any product containing tobacco, no matter how small the amount, is within the scope of the Standard if it was manufactured for smoking, sucking, chewing or snuffing. This is intended to encompass all tobacco products which contain tobacco and are designed for human consumption.

Therapeutic goods, which are on the Australian Register of Therapeutic Goods and are aimed at helping people to quit their use of tobacco products, are not regulated by the Standard. Products that contain nicotine but do not contain any tobacco are not regulated by the Standard.

The broad definition of ‘tobacco products’ may encompass some tobacco products which are unlawful under Commonwealth, State or Territory laws that regulate the use and sale of tobacco. These laws are not affected by the operation of this Standard. An example is the ban on some forms of smokeless tobacco under Consumer Protection Notice No 10 of 1991.

Section 1.4 – Purpose

The purpose of the Standard is to provide for a system of health warnings to increase consumer knowledge of the health effects relating to the use of tobacco products; to ensure the continuing effectiveness of health warnings on retail packaging of tobacco products; and, by ensuring the continuing effectiveness of health warnings on tobacco packaging, to encourage the cessation of the use of tobacco products and to discourage uptake or relapse.

Section 1.5 – Application of the Standard

Paragraph (1) of this section provides that the Standard applies to a tobacco product that is supplied in Australia on or after 1 January 2012.

Although cigars sold as single items were exempt from the requirements of the 2004 Regulations, that exemption is not continued in the Standard. There is no public health justification for maintaining that exemption. The FCTC Guidelines for packaging and labelling state that “there should be no exemptions for small-volume companies or brands or for different types of tobacco products.”²

Paragraph (2) of this section provides a ‘phase-in’ period for tobacco products that were required before 1 January 2012 to comply with the 2004 Regulations. A supplier of those products must either comply with this Standard or with the 2004 Regulations, during the period between 1 January 2012 and 30 November 2012 inclusive.

Paragraph (3) of this section provides that for tobacco products that are not subject to the 2004 Regulations, the product may comply with this Standard at any time on or after 1 January 2012.

² Clause 36, ‘WHO Guidelines for implementation of Article 11 of the WHO FCTC Packaging and labelling of tobacco products’. http://www.who.int/fctc/guidelines/article_11.pdf

Paragraph (4) of this section provides that all tobacco products supplied in retail packaging in Australia must comply with this Standard from 1 December 2012.

Section 1.6 – Application of *Trans-Tasman Mutual Recognition Act 1997*

The Standard is exempt from the operation of the *Trans-Tasman Mutual Recognition Act 1997* (TTMR Act). The purpose of the TTMR Act is to recognise within Australia, regulatory standards adopted in New Zealand regarding goods and occupations. In general terms, the TTMR Act provides that goods that can be lawfully sold in New Zealand can also be lawfully sold in Australia without the supplier needing to satisfy any additional requirement. The application of the TTMR Act is subject to specific kinds of exemptions.

The exemption invoked under this section of the Standard will prevent goods that do not comply with this Standard from being supplied in Australia, irrespective of whether or not those goods can be lawfully sold in New Zealand.

The exemption will be effective on and after 1 December 2012. In accordance with section 46 of the TTMR Act, the exemption will operate for a period of up to 12 months.

Section 1.7 – Repeal of the *Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 2004*

This section repeals the previous tobacco labelling information standard - the *Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 2004* – and related amending legislative instruments, on 1 December 2012. A tobacco product supplied on or after 1 December 2012 must comply only with this Standard.

Part 2 – Display of health warnings

This Part sets out what health warnings are required to be displayed on the outer surfaces for a range of retail packaging for tobacco products supplied in Australia.

Section 2.1 – Supply of tobacco product

Paragraph (1) of this section requires a tobacco product supplied by way of retail sale to be in retail packaging when it is supplied to the purchaser. That retail packaging is required to comply with the Standard and carry the requisite health warnings for that tobacco product.

Where a tobacco product which is already in retail packaging at the point of retail sale which complies with this Standard, is placed in another container by the supplier after the point of sale (such as a plastic bag), that other container (the plastic bag) does not have to display health warnings.

Paragraph (2) of this section requires any single cigar supplied for retail sale to be contained in retail packaging, even if it is in a plastic or other wrapper, provided at least one layer of packaging is not a plastic or other wrapper. The retail package could be a cigar tube or other container (such as a bag) that displays the required health warning. The issue of transparent wrappers is dealt with further in section 9.9.

Section 2.2 – Outer surfaces

This section identifies the outer surfaces of retail packaging for each type of tobacco product for the purposes of identifying the health warnings that are required to be displayed on those outer surfaces. The health warnings could include a warning statement, a graphic, an explanatory message and/or an information message.

For example, a cigarette pack is required to have a warning statement and graphic on the front outer surface, which is the surface that includes the front of the flip-top lid; a warning statement, graphic and explanatory message on the back outer surface, which is the surface directly opposite the front surface; and an information message on the side outer surface, which is one of the two longest of the other surfaces.

Paragraph (2) of this section requires that where an illustration of a layout for the display of a health warning is provided in the Standard then the outer edges of the illustration are the edges of the outer surface of the packaging, unless the retail packaging is a small cylinder. The health warning is also required to extend as close as possible to the edges of the outer surface and health warnings with a common border must join without space between them.

Part 3 – Health warnings – retail packaging for cigarettes and smoked tobacco products not mentioned in other Parts (first set of health warnings)

This Part outlines the content of the first set of seven health warnings required to be displayed on retail packaging for cigarettes and smoked tobacco products not mentioned in Parts 5 to 8. The health warnings required on these retail packages comprise a warning statement, corresponding graphic, corresponding explanatory message and corresponding information message. Where more than one graphic is required, this Part identifies which graphic is required on the front surface and which graphic is required on the back surface.

Part 9 sets out rotation requirements and the period for display of combinations in Part 3.

Part 4 contains more combinations for this retail packaging.

Part 4 – Health warnings – retail packaging for cigarettes and smoked tobacco products not mentioned in other Parts (second set of health warnings)

This Part outlines the content of the second set of seven health warnings required to be displayed on retail packaging for cigarettes and smoked tobacco products not mentioned in Parts 5 to 8. The health warnings required on these retail packages comprise a warning statement, corresponding graphic, corresponding explanatory message and corresponding information message. Where more than one graphic is required, this Part identifies which graphic is required on the front surface and which graphic is required on the back surface.

Part 9 sets out rotation requirements and the period for display of combinations in Part 4.

Part 3 contains more combinations for this retail packaging.

Part 5 – Health warnings – retail packaging for cigars (other than cigar tubes)

This Part outlines the content of the five health warnings required to be displayed on retail packaging for cigars (other than cigar tubes). The health warnings required on these retail packages comprise a warning statement, corresponding graphic and corresponding explanatory message.

This Part also applies to retail packaging for single cigars if they are not in cigar tubes. As Section 2.1 requires all tobacco products that are supplied by way of retail sale to be in retail packaging, single cigars not in cigar tubes will be required to be placed in a suitable container (such as a bag) with health warnings that meet the requirements of the Standard including this Part.

Health warnings for single sale cigars in tubes are in Part 6 of the Standard.

Part 6 – Health warnings – retail packaging that is cigar tubes

This Part outlines the content of the five health warnings required to be displayed on retail packaging for single sale cigars in tubes. The health warnings required on this retail package comprise a warning statement only. The content of each warning statement is the same as those required for other cigar packaging outlined in Part 5.

Consumer research supports the use of text-only warnings on single cigar tubes, noting that the layout and format of the text-only warnings was sufficient to communicate the intended message.

Part 7 - Health warnings – retail packaging for bidis

This Part outlines the content of the five health warnings required to be displayed on retail packaging for bidis. The health warnings required on these retail packages comprise a warning statement only.

Consumer research supports the use of text-only warnings on bidis. Graphic health warnings were found to have limited impact and were difficult to understand as the package had to be turned to be read and the image was difficult to decipher given the curvature of the cylindrical style bidi package tested.

Part 8 - Health warnings – retail packaging for smokeless tobacco

This Part outlines the content of the two health warnings required to be displayed on retail packaging for smokeless tobacco. The health warnings required on these retail packages comprise a warning statement only. It is noted that some forms of smokeless tobacco are banned under Consumer Protection Notice No 10 of 1991 (originally made under the *Trade Practices Act 1974*, this ban is now a permanent ban under section 114 of the ACL).

Part 9 – How to display health warnings

Division 1 – Preliminary

Section 9.1 states that Part 9 sets out the requirements for how health warnings are to be displayed on tobacco retail packaging.

Division 2 – General Requirements

Section 9.2 – Health warnings not to be obscured

This section states that a health warning required to be displayed on retail packaging must not be obscured or obliterated at the time of supply of the tobacco product. This requirement applies across the supply chain, including, for example, the distribution and point of retail sale of the product.

Additionally, a health warning on retail packaging must not be obliterated, removed or rendered permanently unreadable when the retail package is opened in the normal way. An exception to this is provided for cigarette cartons and cigar tubes. Following consultations, the exception for cigar tubes was included in recognition that some tubes open in the middle and the cigar tube is not likely to be reused once it has been opened.

Section 9.3 – Graphics

This section states that if a graphic is required to be displayed on retail packaging then it must not be distorted. However, in recognition of the range of retail packaging for tobacco products, this section permits the cropping of graphics, provided the overall effect of the graphic is not affected.

Section 9.4 – Display of parts of graphics and Quitline logo

Paragraph (1) of this section allows required text or numbers in a graphic to be placed in a different position if the text or numbers are completely contained within the image or images in the graphic and the overall effect of the graphic is not affected by the new position of the text or numbers.

Where a graphic consists of a larger and a smaller image, paragraph (2) of this section also allows for the smaller image to be placed in a different position provided the smaller image is displayed entirely within the area of the larger image and the overall effect of the graphic is not affected by the new position of the smaller image. Subsection 3.4(2) of the Standard displays a graphic that consists of a larger and a smaller image.

Paragraph (3) of this section allows required overlays to be placed in different positions provided the overlay is completely contained within the graphic and the overall effect of the graphic is not affected by the position of the overlay. Paragraph (4) provides an example of the display of the Quitline logo overlay.

Section 9.5 – Health warnings to be displayed in rotation – general

This section specifies a rotation system and changeover arrangements for health warnings on cigarette packs, cigarette cartons, pouches, cylinders and any other retail packaging to which section 9.6 or 9.7 does not apply.

These retail packages are required to use the set of seven combinations in Part 3 for the first eight months commencing on 1 December 2012, and the set of seven combinations in Part 4 for the first eight months commencing on 1 December 2013. For the period of four months beginning on 1 August in a year, retail packaging may display the set of combinations in either Part 3 or Part 4.

Only the seven combinations in Part 3 can be displayed on retail packaging supplied during the period between 1 January 2012 and 30 November 2012 inclusive.

The combinations in Part 3 and 4 are required to be displayed in rotation for a specified period so that each combination is displayed as nearly as possible on equal numbers of the retail packaging of each kind of tobacco product.

This system of rotation will continue for the life of the Standard.

Section 9.6 – Health warnings to be displayed in rotation – retail packaging for cigars (other than cigar tubes)

This section specifies a rotation system for health warnings on retail packaging for cigars (other than cigar tubes) and single cigars not in tubes.

Only the combinations in Part 5 can be displayed on these retail packages supplied during the period between 1 January 2012 and 30 November 2012 inclusive.

The combinations in Part 5 must be displayed in rotation during the period of 24 months commencing on 1 December 2012, so that each combination is displayed as nearly as possible on equal numbers of the retail packaging of each kind of tobacco product.

This system of rotation will continue for the life of the Standard.

Section 9.7 - Health warnings to be displayed in rotation – cigar tubes and retail packaging for bidis and smokeless tobacco

This section specifies a rotation system for health warnings on retail packaging for cigar tubes, bidis and smokeless tobacco.

Only the relevant warning statements can be displayed on these retail packages supplied during the period between 1 January 2012 and 30 November 2012 inclusive.

The relevant warning statements must be displayed in rotation during the period of 24 months commencing on 1 December 2012 so that each statement is displayed as nearly as possible on equal numbers of the retail packaging of each kind of tobacco product.

This system of rotation will continue for the life of the Standard.

Section 9.8 – Use of adhesive labels

This section states that a health warning required to be displayed on a cigarette pack or a cigarette carton must be printed on the pack or carton. Health warnings required on other retail packaging must be printed on the retail packaging or printed on an adhesive label that is firmly affixed to the retail package.

Section 9.9 – Transparent wrappers

This section applies to transparent wrappers covering retail packaging and single cigars.

Paragraphs (1) and (2) of this section apply to retail packaging that is a plastic or other wrapper that covers any retail packaging of a tobacco product, such as a plastic wrapper covering a cigarette pack. It prescribes how the items of retail packaging covered by a transparent wrapper are to be arranged to ensure the health warnings on the retail packaging are visible.

Paragraphs (3) and (4) of this section apply to retail packaging that is a plastic or other wrapper that directly covers a single cigar. Combined, these paragraphs provide that the wrapper does not have to display health warnings if it is totally transparent and not coloured. However, paragraphs (3) and (4) should be read in conjunction with paragraph 2.1(2). Paragraph 2.1(2) provides that a single cigar should be covered by at least one layer of retail packaging that is not a wrapper.

Paragraph (5) allows the appearance of certain other markings on transparent wrappers. For example, tear strips that comply with the *Tobacco Plain Packaging Regulations 2011*, bar coding and other labelling information that may be required by law.

Division 3 – Text requirements

Section 9.10 – Warning statement

This section prescribes the format of warning statements on front and back outer surfaces of retail packaging.

Section 9.11 – Explanatory message

This section prescribes the format of explanatory messages on retail packaging.

Section 9.12 - Information message

This section prescribes the format of information messages on retail packaging and provides the layout in which an information message must be displayed.

Division 4 – Displaying health warnings on surfaces

This division prescribes how the health warnings are to be displayed on retail packaging, arranged by packaging shape, orientation and size requirements. The health warning layouts and sizes were informed by market research findings.

Layouts are provided with indicative proportions to assist industry in meeting requirements. Note that these are not exact proportions, given the diversity of different types and shapes of packaging. Providing exact proportions could result in distortion of warnings as there needs to be some flexibility to print the warnings on the wide range of retail packaging.

Subdivision 1 – Front outer surfaces

Section 9.13 – Front outer surface of cigarette packs and general vertical retail packaging

This section prescribes the display requirements for the front outer surfaces of a range of retail packaging, including cigarette packs, vertical cigarette cartons, vertical retail packaging for cigars (other than a cigar tube which is dealt with in section 9.16), vertical pouches, large cylinders (cylindrical containers at least 41mm in height) and other vertical retail packaging that is not dealt with in another section of this subdivision.

The health warning must cover at least 75 per cent of the front outer surface area.

For large retail packaging for cigars where the area of the front outer surface is at least 250cm² the health warning must cover at least 188cm² (although the warning does not have to be larger than 188cm² for packages greater than 250cm²).

Section 9.14 – Front outer surface of general horizontal retail packaging

This section prescribes the display requirements for the front outer surfaces of retail packaging, including horizontal cigarette cartons, horizontal retail packaging for cigars (other than a cigar tube which is dealt with in section 9.16), horizontal pouches, and any other horizontal retail packaging that is not dealt with in another section of this subdivision.

The health warning must cover at least 75 per cent of the front outer surface area.

Section 9.15 – Front outer surface of small cylinders

This section prescribes the display requirements for the front outer surfaces of small cylinders (cylindrical containers that are less than 41mm in height). The health warning must cover at least 60 per cent of the total area.

Section 9.16 – Front outer surface of retail packaging for cigar tubes

This section prescribes the display requirements for the front outer surface of a cigar tube. The health warning must cover at least 95 per cent of the total length and extend at least 60 per cent of the circumference.

The health warning is to be positioned lengthwise as research on other cylindrical packaging indicated that it is easier to read when not required to rotate the package.

Section 9.17 - Front outer surface of retail packaging for bidis

This section prescribes the display requirements for the front outer surface of retail packaging for bidis. This section requires the health warning to measure at least 50mm by 20mm.

The health warning is to be positioned lengthwise as research on cylindrical bidi packaging indicated that it is easier to read when not required to rotate the package.

Section 9.18 - Front outer surface of retail packaging for smokeless tobacco

This section prescribes the display requirements for the front outer surface of retail packaging for smokeless tobacco. The health warning must cover at least 25 per cent of the surface.

Subdivision 2 – Back outer surfaces

Section 9.19 – Back outer surface of cigarette packs and vertical cigarette cartons

This section prescribes the display requirements for the back outer surfaces on retail packaging for cigarette packs and vertical cigarette cartons. The health warning must cover at least 90 per cent of the total area.

Section 9.20 - Back outer surface of horizontal cigarette cartons

This section prescribes the display requirements for the back outer surfaces on retail packaging for horizontal cigarette cartons. The health warning must cover at least 90 per cent of the total area.

Section 9.21 - Back outer surface of pouches

This section prescribes the display requirements for the back outer surfaces on retail packaging for pouches. The health warning must cover at least 75 per cent of the total area.

Section 9.22 - Back outer surface of large cylinders

This section prescribes the display requirements for the back outer surfaces on retail packaging for large cylinders. This section does not cover cigars packaged in large cylinders (see section 9.24). The health warning must cover at least 75 per cent of the total area.

Section 9.23 - Back outer surface of small cylinders

This section prescribes the display requirements for the back outer surfaces on small cylinders. This section does not cover cigars packaged in small cylinders (see section 9.24). The health warning must cover at least 60 per cent of the total area.

Section 9.24 - Back outer surface of retail packaging for cigars (other than cigar tubes) and other general retail packaging

This section prescribes the display requirements for the back outer surfaces on all retail packaging for cigars (other than tubes) and retail packaging that is not dealt with in another section of this subdivision. This section requires the health warning to cover at least 75 per cent of the total area.

For large retail packaging for cigars where the area of the back outer surface is at least 250cm², the health warning must cover at least 188cm² (although the warning does not have to be larger than 188cm² for packages greater than 250cm²).

Subdivision 3 – Other outer surfaces

Sections 9.26 – 9.30 specify how an information message is to be displayed, where required.