

# THE AUSTRALIAN

## Plain packaging policy disguised as science, but where's the proof?

By Patrick Basham

**THE public health establishment disseminates numerous "truths" about health, disease and lifestyle. Sadly, junk science is often the driving force behind these regulatory assaults on drinkers, smokers, gamblers and the overweight.**

Exhibit A is the Gillard government's belief that tobacco advertising and promotion are the main reasons young people begin to smoke. Packaging, they claim, is merely an extension of advertising, and because advertising increases tobacco consumption, it's necessary to require all tobacco products to be sold in plain packaging.

Unfortunately, neither this belief nor this policy meets the standards of evidence-based policy-making, which requires decisions based on rigorous, systematic reviews of "best practice"; that is, interventions that work the best in reducing harm. Evidence alone, not theory or tradition, must drive policy.

The empirical record about tobacco advertising's effect on young people is mixed. Large independent studies have failed to find a significant connection between tobacco advertising, consumption and youth smoking.

This lack of evidence is confirmed by the fact countries that have had advertising bans for 25 years or more have not experienced statistically significant declines in youth smoking. Consumption and prevalence data from 145 countries finds little evidence that the entire range of tobacco control measures, including advertising restrictions and bans, has a statistically significant effect on smoking prevalence in any country.

Yet Canberra pushes ahead with draconian restrictions on tobacco brand promotion through legislation to require cigarettes be sold in plain packaging. Even though the Department of Health claims there's substantial evidence to show plain packaging will reduce youth smoking, this simply isn't the case.

The evidence in support of plain packaging, just as for tobacco display bans, is embarrassingly thin. Most studies show plain packaging will have no statistically significant effect on youth smoking. None of the so-called evidence about plain packaging provides compelling behavioural evidence that any young person started smoking after seeing conventional displays of cigarette products.

Other nations have rejected plain packaging. For example, Canada briefly considered plain packaging in 1994 but eventually took no action. More recently, Britain seriously

examined the concept in 2008 and 2009, but the then Labour government concluded there was insufficient evidence to justify legislation.

British and Canadian policy-makers also acknowledged that the risk of violating intellectual property rights was a factor in their respective decisions to defer consideration of plain packaging. Respective international treaties do not permit the sweeping seizure of trademarks that plain packaging policies would initiate.

Under these treaties, plain packaging proponents must provide compelling evidence that the registered trademark, the packaging, not the product, causes public harm and eliminating the trademark is an effective remedy. Proponents assert that broad health concerns trump trademark rights. But such a highly subjective determination would undermine all intellectual property rights.

Proponents argue that foreign IP treaties govern registration of trademarks but not their use and therefore governments can lawfully restrict or prohibit trademark use. The main purpose of safeguarding trademark registration, however, is to permit their use. Prohibiting trademark use would essentially void all IP treaties.

The studies that purportedly prove a causal connection between the use of trademarks on tobacco packaging and youth consumption must actually prove that packaging is a significant factor in relation to all other possible causes of youth smoking. The studies cited by advocates don't show this to be a significant factor.

These studies also suffer from deep methodological flaws and fail to consider and refute other smoking initiation factors, such as family and peer influence.

If tobacco advertising bans are to be a useful proxy for exempting plain packaging laws from IP protection treaties, advocates must show those bans are effective at reducing tobacco consumption. There's a growing body of empirical evidence, however, that reveals how unsuccessful full or partial advertising bans have been in reducing smoking, especially among youth. In addition, studies done on alternative instigators of youth smoking -- peer pressure, parental environment and economic and educational backgrounds -- further undermine claims that advertising causes tobacco consumption.

Proponents will ultimately have to rely on the relatively small body of studies directly focused on plain packaging to make the case that their policies merit exemptions from their treaty obligations. An assessment of the most frequently cited studies, however, exposes extensive methodological flaws that violate the scientific method and therefore reduce apparently scientific claims to mere rhetorical dogma.

The plain truth is that while the Gillard government is entitled to its own opinion on the best way to reduce smoking, it is not entitled to its own evidence.

Nor should it compound its error by turning the food industry into the new tobacco, as the public health establishment encourages it to do. From fat taxes on Big Macs and soft

drinks, to kilojoule counts in restaurants, to bans on marketing chocolates to kids, the anti-Big Food policy menu, an absolute junk science smorgasbord, is a recipe for failure.

Even if one were to suspend reality and accept the notion of an actual childhood obesity "epidemic", these conventional prescriptions for fitter, thinner adolescents will be unsuccessful for the same reason that tobacco plain packaging will fail. All are doomed by the absence of an evidentiary basis to suggest that they are necessary or, indeed, helpful.

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