



**Irish
Cancer
Society**

50
years

Mr Paul Kelly
Principal Clerk
Joint Committee on Health and Children
Leinster House
Kildare Street
Dublin 2

15 January 2014

**Re: Submission on the Public Health
(Standardised Packaging of Tobacco) Bill 2013**

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Patron
Michael D. Higgins, President of Ireland

Dear Mr Kelly,

I write to you in relation to the recent request by the Joint Committee on Health and Children for submissions from interested groups in respect of the Public Health (Standardised Packaging of Tobacco) Bill 2013. Please find attached the submission from the Irish Cancer Society.

Tobacco is the leading cause of death and disability in Ireland, with at least 5,200 people dying prematurely each year. Upwards of a quarter of the Irish population smoke and 1 in 2 long-time smokers will die from a smoking-related disease.

Smoking is an addiction largely acquired in childhood and adolescence. Harm from smoking begins immediately, ranging from addiction to serious damage to the heart and lungs. The earlier children become regular smokers and then continue the habit in adulthood, the greater the risk of developing heart disease or lung cancer.

Plain packaging has been proven to be effective in reducing the take-up of smoking among teenagers as well as encouraging current smokers to quit. We therefore welcome its introduction in Ireland.

The Irish Cancer Society would be delighted to be given the opportunity to present at the upcoming public hearings on the Bill. Please do not hesitate to contact Eoin Bradley, Policy Officer on (01) 2310 518 or ebradley@irishcancer.ie.

Kind regards,

Kathleen O'Meara
Head of Advocacy & Communications



Public Health
(Standardised Packaging of Tobacco) Bill

Submission by the Irish Cancer Society
to the Oireachtas Joint Committee on
Health and Children

15 January 2014

1. Introduction

Established in 1963, the **Irish Cancer Society** is the national cancer charity. Our vision is that every person in Ireland will have access to the best possible cancer services; will have the lowest risk of getting cancer, the highest survival rates and the best support and information available when affected by cancer. Our goals are cancer prevention, early detection and fighting cancer with three programme areas to achieve them: advocacy, cancer services and research.

Half of all smokers die from smoking related diseases. Not only that, their quality of life can be badly affected as years of smoking take their toll.

Lung cancer is one of the most common cancers in Ireland. Approximately 1,500 people develop lung cancer each year and **90% of these cases are directly caused by smoking.**

It is not only smokers who are affected. Non-smokers who breathe in other people's tobacco smoke, or 'second-hand' smoke, have an increased risk of lung cancer. Children and teenagers exposed to second-hand smoke may be particularly at risk of lung cancer later in life as well as have an increased risk of asthma and other respiratory problems.

Smoking is a contributory risk factor to a number of other cancers such as mouth and neck cancer, cancer of the pancreas, stomach, bladder and colon.

The Irish Cancer Society seeks to ensure that everyone achieves the best possible outcomes regarding cancer survival and quality of life.

2. Executive Summary

The Irish Cancer Society strongly supports the measures outlined in the General Scheme of the Public Health (Standardised Packaging of Tobacco) Bill 2013 as part of the Government's commitment to a tobacco-free Ireland by 2025.

5,200 people die from smoking every year.¹ In Ireland, smoking kills more people than the next six biggest causes of preventable death put together. Currently 21.7% of the population smokes and this has been declining. One in eight 15-17 year olds has reported smoking.²

In order to maintain current profit levels in Ireland, the tobacco industry must ensure there are 50 new smokers every day to replace those who have either died or quit.

Standardised packaging will:

- reduce the appeal of tobacco products to young people.³
- stop smokers believing that some cigarettes are less harmful than others.⁴
- make health warnings more effective.⁵
- increase negative feelings about smoking.⁶

The Public Health (Standardised Packaging of Tobacco) Bill eliminates the last great marketing tool for the tobacco industry. Adults rarely change the brand they smoke and young people are the greatest receptors of marketing.

The Irish Cancer Society and the Irish Heart Foundation have commissioned research into the impact of tobacco branding and standardised packaging on young people.⁷

This research showed that teens' overall impressions of branded pack designs influenced everything from perception of quality of the product to the likely users of the brand and ultimately their likelihood to try them.

Standardised packaging is immediately rejected by teens and strips away any glamour or fun attributes imbued by branded packs. For those teens that have trialled smoking, most reported that the introduction of plain packaging would be enough to prevent them from trying cigarettes again.

The Bill as outlined aims to prevent the take up of smoking by young people and our research proves that this will work.

1 Department of Health, Tobacco Free Ireland, <http://www.dohc.ie/publications/pdf/TobaccoFreeIreland.pdf?direct=1>

2 National Tobacco Control Office, Cigarette Smoking Trends in Ireland, December 2012, <http://www.hse.ie/eng/about/Who/TobaccoControl/Research/>

3 Moodie C, Ford A, Mackintosh AM, Hastings G (2012). Young people's perceptions of cigarette packaging and plain packaging: an online survey. *Nicotine & Tobacco Research*, 14(1): 98-105. <http://dx.doi.org/10.1093/ntr/ntr136>

4 Wakefield, M (2013); Introduction effects of the Australian plain packaging policy on adult smokers: a cross-sectional study; *BMJ Open* 2013; 3e003175 doi:10.1136/bmjopen-2013-003175

5 Munafò M, Roberts N, Bauld L, Ute L (2011). Plain packaging increases visual attention to health warnings on cigarette packs in non-smokers and weekly smokers but not daily smokers. *Addiction*, 106(8): 1505-1510. <http://dx.doi.org/10.1111/j.1360-0443.2011.03430.x> <http://www.ncbi.nlm.nih.gov/pubmed/21401767>

6 Hoek J, Gendall P, Gifford H, Pirikahu G, McCool J, Pene G, Edwards R, Thomson G (2011b). Tobacco branding, plain packaging, pictorial warnings, and symbolic consumption. *Qualitative Health Research*. Dec 27 [Epub ahead of print] <http://dx.doi.org/10.1177/1049732311431070>

7 The Impact of tobacco branding and standardised packaging on young people' (2013), Ignite Research for the Irish Cancer Society and the Irish Heart Foundation

The tobacco industry will argue that plain packaging will increase smuggling. As the General Scheme outlines, plain packaging is not a simple white box. It will still have all the key security and anti-counterfeiting mechanisms that are currently on packs. Reports into the matter for the European Commission and the House of Commons show that there is no evidence to support such a claim.^{8 9}

Tobacco companies will also argue that if the Bill is passed as outlined, the State could be liable to compensation in relation to intellectual property rights. In Australia, where plain packaging of tobacco has been on the shelves since December 2012, the Courts ruled that it did not represent an acquisition of property by the government, from which they could benefit.¹⁰

The Irish Cancer Society argues that plain packaging is a public health issue and the State is seeking to restrict the use of trademarks and intellectual property rather than profit from it.

In December 2013, the EU sought agreement on the revised Tobacco Product Directive. As the Heads are currently drawn on the basis of the 2001 Tobacco Products Directive, the Irish Cancer Society wants the Minister to include the revised measures in forming legislation. The changes include the inclusion of graphic warnings on the front and back of the packs as well as the inclusion of a Quitline telephone number to help those seeking to stop smoking.¹¹

The Irish Cancer Society is eager for the introduction of plain packaging in Ireland. The tobacco industry will do as much as it can to delay the legislation by whatever means. It will seek to do three things before plain packaging is introduced – block it, amend it and delay it. We would ask the Committee and the Minister to bring forward the commencement date without any undue or unwarranted delay.

The sooner plain packs are introduced, the sooner young people are protected from the marketing tactics of the tobacco industry.

8 European Commission (2012), Impact Assessment on the proposal for a Directive of the European Parliament and the Council. http://ec.europa.eu/health/tobacco/docs/com_2012_788_ia_en.pdf

9 All Party Parliamentary Group on Smoking and Health (2013), Inquiry into the illicit trade in tobacco products. <http://www.ash.org.uk/APPGillicit2013>

10 High Court of Australia, JT International SA v. Commonwealth Of Australia; British American Tobacco Australasia Limited & ORS v Commonwealth Of Australia [2012] HCA 43, <http://www.hcourt.gov.au/assets/publications/judgment-summaries/2012/hca43-2012-10-05.pdf>

11 Directive Of The European Parliament And Of The Council on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products, available: http://ec.europa.eu/health/tobacco/docs/com_2012_788_en.pdf

3. Recommendations

The Irish Cancer Society recommends:

- That the Committee approach this Bill understanding their responsibilities under the WHO Framework Convention on Tobacco Control.
- That there is no undue delay in finalising and passing the Public Health (Standardised Packaging of Tobacco) Bill.
- That the date for implementation of the Bill following its passage through the Oireachtas is the shortest timeframe possible.
- That the final legislation takes into account the revised EU Tobacco Products Directive that will see graphic warnings on both the front and back of the standardised pack and the inclusion of Quitline number for those looking to give up.
- That the final legislation regulates the size and shape of the cigarette pack.
- That the legislation considers any attempt by the tobacco industry to register new trade marks in order to exploit the new regulations.
- That the Committee and the Minister for Health treat the arguments of the tobacco industry with a natural scepticism and take into account the research coming from Australia showing that plain packaging works.
- That the Committee appreciates that standardised packaging will restrict, not acquire or profit from, existing trademarks.
- That the Committee consider that this public health measure undermines any argument regarding legal difficulties on intellectual property.

4. Submission

One in two smokers will die of a tobacco related disease.

5,200 people die from smoking every year in Ireland.¹²

For these reasons, tobacco products should not be seen as a normal consumer product. The Public Health (Standardised Packaging of Tobacco) Bill 2013 seeks to ensure that the last great marketing tool of the tobacco industry is eliminated.

Head 1 – Interpretation

The Irish Cancer Society is broadly in agreement with the Head as outlined as it takes its lead from the Australian Plain Packaging Act 2011.

However, we would recommend that the legislation take into account the experience of Australia where the tobacco industry exploited a loophole whereby they registered new trademarks. Because ‘brand, company or business name’ is not defined, tobacco manufacturers sought to place commonly perceived ‘variant’ names as brands; for example, brand Marlboro and variant Red, became brand Marlboro Red with the scope to provide further marketing in the space available for variant.

The Irish Cancer Society wants to ensure that this exploitation does not occur in Ireland.

Head 2 – Regulations

The Irish Cancer Society is in agreement with the Head as outlined as it takes its lead from the Australian Plain Packaging Act 2011.

Head 3 – Purpose of Legislation

Plain packaging will reduce the appeal of tobacco products to young people.¹³ In Ireland, tobacco companies need 50 people a day to take up smoking in order to replace those quitting or dying.

Plain Packaging will stop smokers believing that some cigarettes are less harmful than others.¹⁴ Light colours and pack design is used to give a false impression that some cigarette brands are ‘healthier’ than others.

Plain Packaging will make health warnings more effective. Research has shown that more smokers will seek to quit with plain packs.¹⁵

¹² Department of Health, Tobacco Free Ireland

¹³ Moodie C, Ford A, Mackintosh AM, Hastings G (2012). Young people's perceptions of cigarette packaging and plain packaging: an online survey. *Nicotine & Tobacco Research*, 14(1): 98-105. <http://dx.doi.org/10.1093/ntr/ntr136>

¹⁴ Wakefield, M (2013); Introduction effects of the Australian plain packaging policy on adult smokers: a cross-sectional study; *BMJ Open* 2013; 3:e003175 doi:10.1136/bmjopen-2013-003175

Plain Packaging will increase negative feelings about smoking.¹⁶ It has been shown that plain packs were perceived to be poorer quality, poorer tasting and cheaper than branded packs.

78% of smokers start smoking before the age of 18.¹⁷ Adult smokers rarely change the brand they smoke; therefore young people are the principal target of industry marketing.

The economic cost of smoking in Ireland was estimated at €3,500 million in 2009.¹⁸

The Irish Cancer Society wants the inclusion of a declaration of Ireland's obligations under the WHO Framework Convention on Tobacco Control (FCTC) under this Head.¹⁹

Ireland is a signatory of the Framework Convention of Tobacco Control which is designed to reduce the harm caused by tobacco. It states that the tobacco industry should not be treated in the same way as other industries.

Article 5.3 of the FCTC requires all Parties, when setting and implementing their public health policies with respect to tobacco control, to: *"...act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law"*.²⁰

As Ireland is a Party to the FCTC, the Oireachtas has an obligation to take steps to protect its law-making from the vested interests of the tobacco industry.

Head 4 – Application of the Provisions of this Act

The Irish Cancer Society is in agreement with the Head as outlined.

Head 5 – Physical Features for Retail Packaging of Cigarettes

The Irish Cancer Society welcomes the changes proposed in the packaging of cigarettes. Standardised packaging will reduce the appeal of tobacco products to young people and young people are a primary target for tobacco industry marketing.

In 2010, 27% of children report that they have 'ever smoked' tobacco.²¹ This figure is down nine points since 2006. The aim of plain packaging is to provide a deterrent for young people to try smoking.

15 Munafò M, Roberts N, Bauld L, Ute L (2011). Plain packaging increases visual attention to health warnings on cigarette packs in non-smokers and weekly smokers but not daily smokers. *Addiction*, 106(8): 1505-1510.

<http://dx.doi.org/10.1111/j.1360-0443.2011.03430.x> <http://www.ncbi.nlm.nih.gov/pubmed/21401767>

16 Hoek J, Gendall P, Gifford H, Pirikahu G, McCool J, Pene G, Edwards R, Thomson G (2011b). Tobacco branding, plain packaging, pictorial warnings, and symbolic consumption. *Qualitative Health Research*. Dec 27 [Epub ahead of print] <http://dx.doi.org/10.1177/1049732311431070>

17 Department of Health, Tobacco Free Ireland, <http://www.dohc.ie/publications/pdf/TobaccoFreeIreland.pdf?direct=1>

18 Jarvis, A., et al (2009), *A Study on Liability and the Health Costs of Smoking*, London: GHK, http://ec.europa.eu/health/tobacco/docs/tobacco_liability_en.pdf

19 For more information on the WHO Framework Convention on Tobacco Control, see: <http://whqlibdoc.who.int/publications/2003/9241591013.pdf>

20 WHO, Framework Convention on Tobacco Control, available at: <http://www.fctc.org/index.php/what-is-the-fctc-5/treaty-overview/part-ii-objective-guiding-principles-and-general-obligations>

The current design-heavy packets use colours, imagery and design to demean the health warnings on packs and to transmit certain characteristics. In September 2013, the Irish Cancer Society and the Irish Heart Foundation produced research into the impact of tobacco branding and standardised packaging on young people.²²

This research showed that teens' overall impressions of branded pack designs influenced everything from perception of quality of the product to the likely users of the brand and ultimately their likelihood to try them.

Standardised packaging is immediately rejected by teens and strips away any glamour or fun attributes imbued by branded packs. For those teens that have trialled smoking, most reported that the introduction of plain packaging would be enough to prevent them from trying cigarettes again.

The tobacco industry knows that plain packaging works, and will do anything to delay and amend its introduction. In 2010, trade magazine 'Tobacco Reporter' ran a series of articles on the importance of packaging to the industry's business: 'In many countries, the cigarette pack is now the only remaining avenue of communication with smokers. This development is challenging packaging suppliers to be creative.'²³

The extensive legal challenges in Australia to plain packaging show how effective the tobacco industry expected plain packaging to be at reducing the take-up of smoking among young people.

Following their introduction of plain packaging, a recent study in the state of Victoria showed that those smoking from plain packs:²⁴

- perceived their cigarettes to be lower in quality
- perceived their cigarettes as less satisfying than the previous year
- were more likely to have thought about quitting at least once a day
- rated quitting as a higher priority
- tended to support the policy on plain packaging

Currently, the shape and colour of tobacco packaging, combined with the brand logo all help to make the product attractive to new consumers.

The Irish Cancer Society is concerned that the Heads as outlined do not regulate the size and shape of the cigarette pack. Tobacco manufacturers produce small, slim packs designed to appeal to young women. These slim packs not only diminish the strength of health warnings, but also create the impression that they are somewhat 'healthier' than other cigarettes.

The tobacco industry will argue that the change to plain packaging will increase illicit trade.

Plain packaging is not a plain white box. Standardised packs will still carry the sophisticated markings, health warnings and other labels currently on packs.

21 Kelly, C., Gavin, A., Molcho, M. & Nic Gabhainn, S. (2012). *The Irish Health Behaviours in School-aged Children study (HBSC) study 2010*. Dublin: Department of Health. http://www.dohc.ie/publications/hbsc_report.html

22 The Impact of tobacco branding and standardised packaging on young people' (2013), Ignite Research for the Irish Cancer Society and the Irish Heart Foundation

23 'Standing Out', Tobacco Reporter, January 2010, <http://www.meadwestvaco.com/mwv/groups/content/documents/document/mwv016190.pdf>

24 Wakefield, M (2013); Introduction effects of the Australian plain packaging policy on adult smokers: a cross-sectional study; BMJ Open 2013; 3:e003175 doi:10.1136/bmjopen-2013-003175

The key difference in the introduction of plain packaging is that these packs would be less attractive, especially to children.

An impact assessment carried out by the European Commission rejected the tobacco industry's claims on plain packaging and illicit trade declaring '**no convincing evidence has been submitted**'.²⁵

The UK All Party Parliamentary Group on Smoking and Health also found **no evidence** to back up the claims of the tobacco industry, asserting 'evidence to our inquiry... showed that external packaging is not what is used by enforcement authorities in determining whether tobacco products are illicit. Covert and overt security markings... [including] coded numbers and anti-counterfeit marks... would still be present on standardised packaging.'²⁶

The Irish Cancer Society strongly recommends that the Bill seeks to amend Section 38 of the Public Health (Tobacco) Act 2002 to include the prohibition of cases and stickers designed to cover the standardised packaging of tobacco.²⁷ While the Heads provide for the inclusion of such stickers and cases contained within a pack, in Australia a group of retailers sought to bypass the law by offering a free cardboard cover with every purchase of a pack of plain pack cigarettes.²⁸ This is clearly designed to demean and diminish the strength of the warnings on a plain pack and offers a way of marketing tobacco products not considered under the current General Scheme.

The colour and imagery on current tobacco products seek to undermine the health and pictorial warnings on the packet. A 'dull drab' colour will ensure that there will be no mistaken belief among consumers that some cigarettes are more harmful than others.

Our research shows that teenagers find the plain pack 'unattractive', 'uncool' and 'a pack you would not like to be seen with'.

Head 6 – Labelling Requirement for Retail Packaging of Cigarettes

The Irish Cancer Society requests the Minister to consider the revised EU Tobacco Products Directive that was agreed at COREPER on 18 December 2013.²⁹

The revised proposal would see this Head amended to include a combined warning (picture and text) on **75% of the front and back** of tobacco products, presented in rotation. It also obliges member states to display cessation information on packs.

The introduction of a Quitline phone number on Australian plain packs saw a big increase in calls to that number.³⁰

25 European Commission (2012), Impact Assessment on the proposal for a Directive of the European Parliament and the Council. http://ec.europa.eu/health/tobacco/docs/com_2012_788_ia_en.pdf

26 All Party Parliamentary Group on Smoking and Health (2013), Inquiry into the illicit trade in tobacco products. <http://www.ash.org.uk/APPGillicit2013>

27 Public Health (Tobacco) Act 2002, <http://www.irishstatutebook.ie/2002/en/act/pub/0006/sec0038.html#sec38>

28 Canberra probes 'free' cigarette covers, Sydney Morning Herald, 4 January 2013, <http://www.smh.com.au/national/canberra-probes-free-cigarette-covers-20130103-2c6lo.html>

29 Directive Of The European Parliament And Of The Council on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products, available: http://ec.europa.eu/health/tobacco/docs/com_2012_788_en.pdf

30 Australian Plain Tobacco Packaging with Vivid Anti-Smoking Graphics Kicks Off. International Business Times, 27 Dec 2012, <http://au.ibtimes.com/articles/418483/20121227/smoking-tobacco-resolution-health.htm>

The increase in importance of graphic warnings comes on the back of further evidence produced for the European Commission that such warnings 'serve as a prominent source of health information for smokers and non-smokers, can increase health knowledge and perceptions of risk and can promote smoking cessation. The evidence also indicates that comprehensive warnings are effective among youth and may help to prevent smoking initiation. Pictorial health warnings that elicit strong emotional reactions are significantly more effective.'³¹

Head 7 – Requirements for Appearance of Cigarettes

The Irish Cancer Society believes that it is of vital importance that the tobacco industry is incapable of demeaning the value of standardised packaging by not being subject to similar checks for individual cigarettes.

As outlined under Head 5 (above), the tobacco industry has sought new and innovative ways of marketing their product and transmitting a false message to young and impressionable consumers. In the research conducted by the Irish Cancer Society and the Irish Heart Foundation, teenagers found some cigarette brands to be assuring and communicating a message that they would be less harmful than other cigarettes.³²

For this reason, we would recommend that the brand and variant does not appear on cigarette sticks. Cigarettes in Ireland are not permitted to be sold on an individual basis. Therefore we do not agree that the brand and variant must be printed on cigarette sticks.

Instead, the Australian regulations stipulate that manufacturers print an alphanumeric code to assist with the identification of illicit products and we would recommend that such a condition be added to Head 7.

Head 8 – Physical Features for Retail Packaging of Roll-your-own tobacco

As per Head 5 (above), the Irish Cancer Society is in agreement with the Head as outlined.

Head 9 – Labelling requirements for the Retail Packaging of Roll-your-own tobacco

As per Head 6 (above), the Irish Cancer Society encourages the Minister to take into account the updated EU Tobacco Products Directive that would extend the use of graphic warnings on packaging and include a Quitline telephone number and web address.

31 Hammond D. Health warning messages on tobacco products: a review. *Tob Control* 2011; 20:327-3. Sambrook Research International. A Review of the Science Base to Support the Development of Health Warnings for Tobacco Packages. Newport: Sambrook Research International; 2009. (Report prepared for the European Commission).

32 The Impact of tobacco branding and standardised packaging on young people' (2013), Ignite Research for the Irish Cancer Society and the Irish Heart Foundation

Head 10 – Requirements for the Retail Packaging for Tobacco Products other than cigarettes and Roll-your-own tobacco

As per Head 5 (above), the Irish Cancer Society is in agreement with the Head as outlined.

However, the Society would be keen to ensure that the regulations will cover the sale of individual cigars.

Head 11 – General Requirements

The tobacco industry has used innovations in design to communicate particular attributes about their brands and to make them attractive to certain groups of customers in the past.

The Irish Cancer Society believes that this Head is necessary in preventing innovations in packaging that would in any way demean and negate health warnings.

Already, tobacco companies have designed packaging in such a way as to transmit certain qualities and characteristics.

Research conducted by the Irish Cancer Society and the Irish Heart Foundation has shown that teenagers' overall impressions of branded pack designs influenced everything from perception of quality of the product to the likely users of the brand and ultimately their likelihood to try them.³³

Our research also showed that slim cigarettes and slim boxes are designed in such a way as to appeal to young females and give a reassuring impression that they are somehow less harmful.

Head 12 – Authorised Officers

The Irish Cancer Society is in agreement with the Head as outlined as it provides for an amendment of the current Public Health (Tobacco) Act 2002.

Head 13 – Offences

The Irish Cancer Society is in agreement with the Head as outlined as it takes its lead from the Australian Plain Packaging Act 2011. We understand that the aim of plain packaging is to make smoking less attractive, ensure young people do not take up smoking but penalise the tobacco industry and retailers rather than the general public.

Head 14 – Fines and Penalties

The Irish Cancer Society is in agreement with the Head as outlined.

³³ The Impact of tobacco branding and standardised packaging on young people' (2013), Ignite Research for the Irish Cancer Society and the Irish Heart Foundation

Head 15 – Trade Marks Act 1996

The Irish Cancer Society is of the opinion that standardised packaging will restrict, not acquire or profit from, existing trademarks.

In the case of Australia, tobacco companies launched legal action on the basis that the State was acquiring their intellectual property rights. On 15 August 2012, the High Court in Australia ruled that plain packaging law, due to be implemented on the 1 December 2012, did not represent an 'acquisition of property' by the government, from which they could benefit.³⁴

On 27 November 2013, the Irish Times published an article stating that tobacco giant Philip Morris had sent a legal opinion to the Minister for Finance and Minister for Health warning of 'stark' consequences if plain packaging was introduced.³⁵ It stated that it was likely the State would have to pay compensation relating to losses suffered by the tobacco companies.

The argument that plain packaging infringes IP has been dismissed by the Intellectual Property Research Institute of Australia.³⁶ They argue that governments are permitted to amend their laws surrounding IP to protect public health. The State does not acquire the intellectual property of tobacco companies as governments do not propose to use the logos. Tobacco companies will still maintain full rights to their logos and brand imagery. They will simply no longer be able to use these marketing tools on cigarette packages.

In the UK, the retired Court of Appeal Judge, Sir Richard Buxton, argued that any attempt by tobacco companies to take legal action under the Trade Marks Act there was obsolete. 'The grant of trade mark accordingly confers a right to stop others using that mark. It does not confer on the trademark holder to use the mark in all circumstances and irrespective of public policy considerations'.³⁷

It is obvious that the Bill does not propose to confer on any person a right, let alone even an opportunity, to infringe any registered trade mark. Instead, it merely restricts, in the interest of limiting the damage to public health from one of the most dangerous products that a consumer may choose to use, the place and manner in which trade mark may be affixed to the packaging of tobacco products.

The Irish Cancer Society welcomes this proposal as, if enacted, it will remove room for any doubt but that compliance with the proposed plain-packaging requirements of the Bill will not open the owners of registered trade marks for tobacco products to any greater risk of revocation actions under section 51 of the Trade Marks Act 1996 than they currently face under that provision.

34 High Court of Australia, *JT International SA v. Commonwealth Of Australia; British American Tobacco Australasia Limited & ORS v Commonwealth Of Australia* [2012] HCA 43, <http://www.hcourt.gov.au/assets/publications/judgment-summaries/2012/hca43-2012-10-05.pdf>

35 Fiach Kelly, 'Tobacco giant says plain packaging could lead to State compensation', 27 November 2013, available at: <http://www.irishtimes.com/news/health/tobacco-giant-says-plain-packaging-could-lead-to-state-compensation-1.1608508>

36 Davison M. Plain packaging of cigarettes: would it be lawful? *Australian Intellectual Property Law Bulletin* 2010;23(5):105–8. Available from: http://www.lawyersweekly.com.au/blogs/intellectual_property/

37 Buxton, R. (2008) *The Lawfulness of Requiring Plain Packaging for Tobacco Products: Opinion of Sir Richard Buxton*. Available from Department of Health website; Available:

http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_127277.pdf

The introduction of plain packaging under the Public Health (Standardised Packaging of Tobacco) Bill is primarily a public health measure and therefore usurps any argument that this will infringe on property rights as outlined.

Head 16 ~ Short Title and Commencement

The Irish Cancer Society is concerned with regard to a potential timetable for the introduction of plain packaging. To maintain current profits, the tobacco industry needs to recruit 50 new smokers in Ireland every day. The sooner plain packs are introduced, the sooner young people are protected from the marketing tactics of the tobacco industry.

The tobacco industry will seek to do three things before plain packaging is introduced – block it, amend it and delay it.


In Australia, tobacco companies argued that the date of introduction of plain packaging following the legislation was too short and that the industry would need at least 2 years of a lead-in time. There was no logical explanation for arguing such a delay and the Committee and the Minister should be aware of this tactic by the industry.

5. Declaration

The Irish Cancer Society strongly supports the WHO Framework Convention on Tobacco Control and is a member of the Framework Convention Alliance.

The Society has had no, and will have no, contact or relationship with the tobacco industry.

Signed



John McCormack
Chief Executive
Irish Cancer Society



Kathleen O'Meara
Head of Advocacy & Communications
Irish Cancer Society

15 January 2014