



Express law *fast track information for clients*

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High Court upholds Tobacco Plain Packaging Act

Today the High Court announced that, by at least a majority, the *Tobacco Plain Packaging Act 2011* (Cth) (the Act) is not contrary to the Constitution and is valid.

The Act

The general effect of the Act is to require cigarettes and other tobacco products to be sold in generic packaging of standardised shape and dimensions and without any company branding, logos, symbols or other images appearing on the packaging. The name of each brand will be permitted to appear, but only in a standard font, size and colour. At the same time that the Act was enacted, regulations were made under the *Competition and Consumer Act 2010* (Cth) requiring packaging to carry graphic health warnings covering 75% of the front of tobacco packaging and 90% of the back of tobacco packaging.

The litigation

In 4 separate cases, a number of tobacco companies challenged the validity of the Act on the basis that it acquires property otherwise than on just terms contrary to s 51(xxxi) of the Constitution. The Court upheld the validity of the Act.

Implications

The Court handed down orders only today and will publish its reasons for its decision at a later date. Accordingly, while it is clear that the Act is valid and that tobacco companies will have to start manufacturing plain packages from 1 October 2012, the broader implications of the Court's decision for Australian constitutional law will only be known once the Court hands down its reasons.

The Commonwealth was represented in the litigation by the Constitutional Litigation Unit of AGS and lawyers from Dispute Resolution in Canberra.

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