

Plain Packaging: The Ugly Policy

Ben Ritchie

The Government's plain packaging laws for cigarettes will require all cigarette producers to use the generic packets designed by the government in selling their product on the sole basis that the government's designed packets are as aesthetically unappealing as possible. The government's position on plain packaging laws is untenable as both an indefensible invasion of personal freedoms and as a policy which will inflict substantial harm upon society.

Before considering the question of whether plain packaging will produce positive outcomes for society, it is worth considering whether such strict restrictions are a legitimate subject of legislation. Previously, legislation has prevented tobacco products from being advertised and has required pictures of the cancerous effects to be displayed. These can be somewhat reconciled with free markets as mere instances of preventing consumers from being motivated to make irrational decisions and of consumers receiving perfect information in order to make rational decisions. Plain packaging is intended to do neither of these things but rather to make cigarettes unappealing to the taste of consumers. The government has decided that people should smoke less than they do and is attempting to enforce its verdict by altering the product that consumers are buying.

In a liberal nation such as Australia, it is not the role of the government to determine what an acceptable or unacceptable way to spend money is. This is both because of the fact that people, with a better understanding of their individual circumstances, can make far better decisions than far away bureaucrats but also because of the dangers to liberty of a government with the power of arbitrarily determining that certain things are unacceptable. This legislation is not to address external costs of smoking but rather because the government believes that rational people would smoke less than they currently do because of the health consequences of smoking. With Australia's health problems the same logic could justify a range of Orwellian measures such as a nation-wide exercise program. However it's not the responsibility of a government to ensure that everyone conforms to their accepted definition of a perfect life. Individuals free to make their own decisions will make better decisions and it's not the role of government to tell them that they're wrong.

The stated intention behind this legislation is to reduce the rates of smoking. This is considered necessary in spite of the fact that smoking rates are already declining. The theory offered by the Government is that having an unappealing packet will discourage people from the act of smoking. This theory simultaneously assumes that smokers do not wish to smoke, that they would stop smoking but lack the willpower because of the addictive properties of the chemicals in cigarettes and that smokers will be given the willpower by the sight of a yellow packet. If smokers genuinely lack the willpower to smoke there is no basis for suggesting that this will be changed by something as small as different packaging. This is supported by the fact that packets were already required to show pictures of the various diseases caused by smoking, hardly an aesthetic feature, which makes it difficult for any design to be significantly more unappealing. Therefore there is no reasoning that supports the government's view that plain packaging will achieve the intended goal of reducing smoking in Australia and so the benefits from this legislation will be at best mild.

There are however four key reasons why the government's plain packaging laws are harmful to Australia. Firstly, it serves as a precedent for unlimited interference in the activities of producers of harmful products. Secondly, it destroys the practical value of legitimately acquired intellectual property and lastly it necessitates significant levels of unnecessary expenditure while undermining the ability of the government to enforce existing laws.

The actions of the government demonstrate that they consider it morally justified to impose any kind of arbitrary restrictions on the actions of companies so long as they can be vilified or portrayed as harmful to society. This precedent should be considered exceptionally dangerous in a free society because it supports the notion that a government can do anything as long as they smear the reputation of the victim in the process. In the modern world, reputations can be very difficult to protect and a potential target is easily vilified which is why the precedent set is so dangerous. Public support is not a legitimate reason for targeting individuals in any society which can call itself free.

In addition to plain packaging being a dangerous precedent for a government to have, it is also a dangerous precedent for businesses considering investing in Australia. Why should any company invest in Australia if the Government will undermine them purely for the sake of political gain? The possibility of the government taking an arbitrary action creates risk for companies considering investing in Australia which makes it a less attractive destination for investment, both domestic and foreign. Reduced investment has a great number of detrimental flow-on effects for Australian consumers. It means not only lost jobs but also potentially higher prices as goods must be produced overseas and transported to Australia. It also reduces the strength of the economy, the wealth of the nation and prevents the job creation that accompanies investment.

The plain packaging legislation removes the ability of tobacco companies to make use of their intellectual property such as trademarks, in effect rendering it as unusable as if it no longer existed. This has the same effect as that of the Government compulsorily acquiring the property rights of the tobacco companies except that they conveniently aren't required to compensate. The protection of property rights was considered of such importance that the Constitution forbids acquisition of property without adequate compensation. This loophole of forbidding use could well be technically allowable under the Constitution but such a manoeuvre unequivocally violates the principle of the section: that private property should be protected from unreasonable actions by governments.

The third reason why this law is harmful to Australia is that administering, complying with and enforcing the regulations will involve large amounts of entirely unnecessary expenditure by the tobacco industry and governments which could only be justified by benefits which were larger than these costs. This also extends to the difficulty for governments in determining the producer of any specific packet of cigarettes as uniform packets are substantially easier to copy. This not only means

that fake packets can be passed off as legitimate without difficulty but that, in the event of breaches of quality control, the perpetrator will be able to deny having manufactured the particular packet with significantly greater success. The overall result of this is that governments will be spending more than ever to enforce the law but will have less success in deterring and convicting offenders.

From the reasons already given, it should be clear that there is no basis for extending a plain packaging policy to alcohol. Aside from the reasons against the plain packaging of cigarettes, alcohol does not have the same level of addictiveness, homogeneity or toxicity as cigarettes, making the most common defences of plain packaging for tobacco utterly untenable for alcohol. The entire wine industry for example is dependent upon distinguishing products on the basis of origin and to introduce plain packaging would drastically restrict the ability of producers to compete, even on the basis of health, because consumers would lose their inclination and ability to distinguish brands. While the same argument could be made about cigarettes, the vast differentiation within the wine industry makes plain packaging unquestionably unacceptable.

Plain packaging of cigarettes is a textbook example of poor public policy because the benefits are so greatly outstripped by the costs. In exchange for at best a mild reduction in smoking rates, Australians will bear the additional cost needed to enforce current and future laws, Australians will suffer the consequences of hostility to businesses and Australians will allow the government to dictate how to live their lives. Plain packaging is just another example of a policy based on politics and will prove to be nothing but harmful to smokers and non-smokers alike.