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29/10/2012 14:42

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Subject Fw: High Court of Australia holds Tobacco Plain Packaging Act 2011 valid - Reasons for Decision [SEC=UNCLASSIFIED]

[REDACTED]

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----- Forwarded by [REDACTED] PH3/DOH/GB on 29/10/2012 14:41 -----



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09/10/2012 11:41

To

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cc

Subject High Court of Australia holds Tobacco Plain Packaging Act 2011 valid - Reasons for Decision [SEC=UNCLASSIFIED]

Dear Colleagues,

As you are aware, the High Court of Australia made orders in the proceedings between JT International v Commonwealth and British American Tobacco Australasia v Commonwealth on 15 August 2012, finding in favour of the Commonwealth.

For your information, the Court delivered its reasons for the decision on Friday 5 October. By a 6:1 majority, the Court held that the the *Tobacco Plain Packaging Act 2011* was valid as it did not acquire property. It therefore did not engage s 51(xxxi) of the Constitution, which requires any acquisition of property effected by a Commonwealth law to be on just terms.

A majority of the Court held that to engage s 51(xxxi) an acquisition must involve the accrual to some person of a proprietary benefit or interest. Although the Act regulated the plaintiffs' intellectual property

rights and imposed controls on the packaging and presentation of tobacco products, it did not confer a proprietary benefit or interest on the Commonwealth or any other person. As a result, neither the Commonwealth nor any other person acquired any property and s 51(xxxi) was not engaged.

The full judgment is available at <http://www.hcourt.gov.au/cases/case-s389/2011>.

Kind regards,

[REDACTED]  
Assistant Secretary | Tobacco Control Taskforce | Population Health Division | Department of Health and Ageing | [REDACTED] | [REDACTED]@health.gov.au

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