From: Merritt, Chris [mailto:merrittc@theaustralian.com.au]

Sent: Tuesday, 17 June 2014 3:57 PM

To: Nick Leys

Subject: FW: Media Watch questions

Nick,

Additional questions - and a spelling correction for Mr Koukoulas:

1. Why did Media Watch exclude these quotes, which support The Australian's story, from the BAT press release it cited ...

"Subsequently, since plain packs were introduced on 1 December 2012, industry volumes have actually grown for the first time in a long time to +0.3 per cent.

"With growth in industry volumes, fewer people quitting and a jump in the amount of cheap illegal cigarettes on the streets, you could draw the conclusion that people are actually smoking more now than before plain packaging came into effect."

2. Does Media Watch accept that The Australian's report about a rise in the number of cigarettes sold in 2013 is entirely consistent with the ABS figures showing consumption rose in 2013 and fell only after the December increase in the excise?

Chris

From: Merritt, Chris

Sent: Tuesday, 17 June 2014 3:21 PM

To: 'leysw.nick@abc.net.au'
Subject: Media Watch questions

Nick,

Here are the questions for Tim Latham.

Chris

Mr Latham,

I have several questions concerning your report on Monday night on The Australian's coverage of cigarette sales and plain packaging. I would appreciate your responses before the close of business tonight:

Was Media Watch aware that Stephen Koukoulas was a senior adviser to former prime minister Julia Gillard?

If you were aware of this information why was it not disclosed during your program?

Given the fact that Mike Daube chaired a government panel that recommended in favour of the plain packaging laws, are you concerned that your report supporting the effectiveness of the Gillard government's plain packaging laws was based on the views of two Gillard government advisors?

Given the fact that your critique relies to a large extent on statistical analysis by Mr Koukoulas, and that analysis appears to be selective, was it fair to present this an independent?

Chris Merritt

Legal Affairs Editor -

The Australian

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From: John-Paul Cashen [mailto:jpcashen@khq.com.au]

Sent: Thursday, 19 June 2014 6:56 PM

To: Legal ABC Cc: Daniel Stuk

Subject: Complaint by The Australian Newspaper - Media Watch and plain packaging issues

Dear Sir/Madam

We act for Nationwide News Pty Ltd, publisher of *The Australian* newspaper.

Please see attached correspondence.

Regards

John-Paul Cashen Director

KellyHazellQuill Lawyers

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Timothy Latham

From:

Sent:

Timothy Latham Thursday, 26 June 2014 2:44 PM Kirstin McLiesh

To:

Cc: Subject: Simon Melkman

Attachments:

Media Watch Broadcast 16 June 2014 - Tobacco. MW The Australian Tobacco - Final.docx

Hi Kirstin,

Attached MW response to The Australian.

Let me know if you need any other documents.

Cheers

Tim



Tim Latham Executive Producer ABC Media Watch

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1. Nothing Media Watch stated in The Broadcast contradicts The Article.

The Australian's story on the 6th of June was headlined "Evidence 'World's Toughest Anti-Smoking Laws' Not Working". The article was emphatic - plain packaging tobacco laws had failed and that smoking was on the rise.

"...new sales figures showing tobacco consumption growing during the first full year of the new laws".

Media Watch (MW) disputes *The Australian's* article and the data used to reach its conclusion. MW argues the front page headline and article was misleading and wrong. MW argues tobacco consumption in Australia has not increased.

Fundamental to *The Australian's* story that tobacco consumption has increased was information provided to it from the industry monitor, InfoView. This information on wholesale sales is not publicly available and cannot be verified. It is industry information which is collated by, and paid for, by tobacco companies. It is this information which *The Australian* relies on in its second paragraph.

"...new data, obtained by The Australian, shows that tobacco sales volumes increased by 59 million "sticks", or individual cigarettes or their roll-your-own equivalents last year."

MW compared this data with the Australian Bureau of Statistics (ABS) and the subsequent discrepancy formed the basis of the broadcast.

The ABS is not beyond criticism but it is accepted as a source of high quality, objective data, which informs community and all levels of government.

The ABS shows the volume of tobacco consumed between 2012 and 2013 decreased by 0.9%.

MW also references the ABS figures which show an overall <u>decrease</u> from the December 2012 to March 2014 quarters of 5.3%.

These figures were available to *The Australian* but were not included in Mr Kerr's analysis and were referred to only briefly and in passing.

Claims by tobacco companies that the volume of cigarettes sold to retailers increased by 59 million sticks are not sufficient to support Mr Kerr's claims that tobacco consumption grew during 2013.

Wholesale sales cannot justify conclusions about consumption. This increase could have been influenced by retailers re-stocking inventories of plain packaged cigarettes following a de-stocking of the old branded packets. Another driver is the move by retailers to increase inventories prior to a

rise in the tobacco excise on the 1st of December 2013. Indeed the tobacco industry suggested this to the UK government's recent Chantler Review into standardised packaging.

But the ABS is not the only source that points to a downward trend in tobacco consumption.

Roy Morgan data also demonstrates a decrease in the number of people smoking between 2012-2013.

Data subsequently released by the Commonwealth Treasury (in the aftermath of *The Australian's* attack on the Media Watch story) also shows "tobacco clearances (including excise and customs duty) fell by 3.4% in 2013 relative to 2012 when tobacco plain packaging was introduced."

The Federal Government health department also quotes the ABS, saying it shows that "total consumption of tobacco and cigarettes in the March quarter 2014 is the lowest ever recorded, as measured by estimated expenditure on tobacco products."

And the industry's own figures, quoted in British American Tobacco Australasia (BATA) press release of 4 April 2014, also make this clear. It says the number of smokers fell in 2013 by 1.4%, as did the average number of cigarettes smoked per person.

2. Selective reporting of the media release

MW highlighted two quotes from the British American Tobacco Australasia (BATA) press release, April 4 2014, which contradict *The Australian* article.

Paragraph three which was quoted in The Broadcast says:

"...the number of smokers fell in 2013 by 1.4 per cent."

And paragraph six of the press release, also mentioned in The Broadcast says:

"Further, the number of cigarettes smoked on a daily basis declined at a rate of -1.9 per cent in the five years leading up to plain packaging, while it slowed to -1.4 per cent after green packs hit shelves."

The Australian did not include this information in its front page article but alleges omission by MW for not including the following paragraph:

"With growth in industry volumes, fewer people quitting and a jump in the amount of cheap illegal cigarettes on the streets, you could draw the conclusion that people are actually smoking more now than before plain packaging came into effect"

MW does not believe that it is reasonable to reach that conclusion. Indeed, BATA's own press release does not support the statement - which is speculative at best.

3. Inappropriate and biased sourcing

Professor Daube is a highly respected public health expert who has served for many years in several high level public health advisory roles. Professor Daube chaired the government panel recommending the plain packaging laws. It is entirely appropriate for MW to ask the man who proposed plain packaging for his view on the assertion that those laws have failed. *The Australian* says Mike Daube is 'conflicted'.

In response to attacks on his credibility Professor Daube told Crikey, Friday June 20:

A related article refers to me with phrases including "political involvement" and "Gillard government adviser". I was Deputy Chair of the National Preventative Health Taskforce and chaired the tobacco expert committee. It is ridiculous and offensive to describe that as "political involvement", or to imply that membership of expert health committees somehow makes one politically partisan. I have enjoyed working for and with governments and Ministers from both sides of politics, have no political links, and was indeed publicly critical of the last government on various issues. My last "political involvement" was as a member of the British Young Conservatives in the 1960s.

Professor Daube's analysis is not alone. It is supported by other public health experts including Professor Simon Chapman and Michael Moore from the Public Health Association of Australia and the AMA. Their assessment is that it isn't possible to conclude cigarette consumption has increased or that plain packaging has failed.

Stephen Koukoulas was employed for ten months in Julia Gillard's office when she was Prime Minister. He was employed as an economic advisor. He did not work on the plain packaging legislation nor was he an advocate. He did not work in the Health Minister's office which had carriage of the plain packaging legislation. He has not previously written articles on tobacco plain packaging. Stephen Koukoulas has 25 years experience as an economist.

MW's critique was of the Christian Kerr front page article, not of Professor Judith Sloan's analysis.

However, her conclusion that 'through most of 2013, total spending on cigarettes rose' is misleading: total expenditure in 2013 was 0.9 per cent lower than 2012, something Professor Sloan neglected to mention.

Professor Sloan's conclusion that "we can be reasonably confident the number of cigarettes consumed rose in 2013, after the introduction of plain packaging" is not even supported by the industry's own figures, as previously stated in the BATA press release.

"Further, the number of cigarettes smoked on a daily basis declined at a rate of -1.9 per cent in the five years leading up to plain packaging, while it slowed to -1.4 per cent after green packs hit shelves."

Nor is it supported by the ABS figures. And it has also been shown to be false by figures released by the Department of Treasury which, as previously mentioned, show "tobacco clearances (including excise and customs duty) fell by 3.4% in 2013 relative to 2012."

4 Allegations against Christian Kerr

MW does not allege a conspiracy on behalf of Christian Kerr.

MW simply highlighted that:

Mr Kerr has written for the Institute of Public Affairs (IPA).

There are similar themes pursued in his IPA articles and *The Australian* front page – namely criticisms of the 'Nanny State'.

That the IPA has opposed plain packaging and is partly funded by the tobacco industry.

MW argues these disclosures are in the public interest and should have been made clear to *The Australian's* readers.

Questions on Mr Kerr, the IPA and the data used in the front page *Australian* article were put to Christian Kerr and the newspaper's editor, Clive Mathieson.

Media Watch included quotes from Mr Mathieson and a link to his full response was included on the MW website.

Conclusion:

MW's critique of *The Australian* is that, based on current official data, the newspaper's claim that smoking has increased and plain packaging laws have failed cannot be substantiated and is not supported by the evidence, which is provided by the Commonwealth Treasury, the ABS, Roy Morgan Research, the Department of Health and the industry's own figures on the decline in the number of smokers and cigarettes smoked per person.

To reach its conclusion MW looked at all the evidence, impartially.

The Australian relied almost exclusively on tobacco industry data which has not been made public and cannot be independently verified.