

News

ON
JUN 9 2017

New Zealand approves new standardised tobacco packaging regulations

LC Paper No. CB(2)1610/16-17(03)

Follow Us



Facebook



Twitter

Newsletter

For all the latest packaging industry news, sign up for our regular updates.

Sign Up

The Government of New Zealand has approved new regulations to standardise the packaging of tobacco products.

Under the new regulations, all cigarettes and tobacco products will be available in a brown / green-coloured packaging with enlarged health warnings to cover at least 75% of the front of tobacco covers.

Tobacco manufacturers are allowed to print their brand name and variant on tobacco packaging, but it should follow the standardised look, size, font and colour.

The tobacco standardised packaging regime is set to become effective from 14 March 2018.

Maori Party co-leader Marama Fox said that the standardised packaging will reduce the appeal of tobacco products especially for children and young people.

"Standardised packaging, along with the existing suite of tobacco control measures and stop smoking services, is the logical next step toward our Smokefree 2025 goal."

New Zealand Associate Health Minister Nicky Wagner said: "More than 5,000 New Zealanders die of smoking-related illnesses each year — that's about 14 people per day, or more than one every two hours.

"Standardised packaging, along with the existing suite of tobacco control measures and stop smoking services, is the logical next step toward our Smokefree 2025 goal."

The new regulations require the sale of cigarettes only in standard cardboard packs of 20 or 25, while loose tobacco can be sold in pouches of 30g or 50g in rectangular soft plastic pouches.

A new set comprising 14 health warning messages and images have been prepared and will be printed on the packs.

Tobacco companies will be given an extra six weeks to distribute their old stock and a further six weeks to sell it.

After 6 June next year, only standardised packs can be sold.

Share

Related Articles »

HOME > INSIGHTS > [A CASE OF SMOKE WITHOUT FIRE: INTERNATIONAL TOBACC...](#)

June 2017

A case of smoke without fire: international tobacco retailer’s claims held to be misleading and deceptive under the Australian Consumer Law

If you are an international online retailer, think twice before assuming you won’t fall into the broad net of the Australian Consumer Law (ACL).[1]

The facts

Elusion Australia Limited (**Elusion**), a company registered in New Zealand, promoted and sold e-cigarette products to consumers in Australia, including on its website.

Between August 2015 and June 2016, Elusion made representations on its website that its e-cigarette products did not contain:

- Harmful chemicals, cancer-causing chemicals or carcinogens.
- Harmful chemicals, cancer-causing chemicals or carcinogens found in tobacco cigarettes.
- Any of the chemicals found in tobacco cigarettes.

What did the Australian consumer watchdog allege?

The Australian Competition and Consumer Commission (**ACCC**) alleged that the representations had the ability to mislead consumers about the health effects of non-nicotine e-cigarettes. More specifically, the ACCC argued that, by making the representations, Elusion had breached the ACL in the following ways:

- By engaging in conduct that was misleading or deceptive, or likely to mislead or deceive.[2]
- By making false or misleading representations that goods were of a particular composition in connection with the supply or possible supply, and the promotion of the supply or use of goods.[3]
- By engaging in conduct that was likely to mislead the public about the nature or characteristics of goods.[4]

The ACCC also alleged that John Dennis Burden, the managing director of Elusion, was directly or indirectly concerned in, or a party to, the above breaches because he had knowledge of Elusion’s conduct.[5]

Elusion rolls over and admits to allegations

In an interesting twist, Mr Burden appeared on behalf of himself and Elusion. He admitted to the allegations made by the ACCC. As a result, the parties negotiated the matter and sought orders and declarations from the Court by consent.

The Court exercised its discretion and agreed that the orders sought by the parties were appropriate. Accordingly, the Court made the following orders:

- Elusion was fined \$40,000.
- Mr Burden was fined \$15,000.
- Both Elusion and Mr Burden were restrained from further making the representations.
- Elusion was ordered to remove all advertising or promotional material containing the representations within seven
- Elusion was ordered to publish details of its breach on its website for a 90-day period.
- Mr Burden was ordered to attend and undertake a training session on obligations and responsibilities under the ACL and to provide the ACCC with a certificate of completion.
- Each of Elusion and Mr Burden were ordered to pay \$5,000 to the ACCC for its costs. Although the ACCC had incurred higher costs in litigating the matter, it did not claim its full costs due to the cooperation of the parties in settling the matter.

What should you take away?

Directors may be personally liable for breaching the ACL

If you are a director of a company operating in the retail sector, you may be held personally liable if your company breaches the ACL.

One of the advantages of trading as a corporation is that it enjoys limited liability and has a separate personality from its directors (except in limited circumstances).

In this case, Mr Burden was also fined because he had knowledge of the essential elements of Elusion’s breach of the ACL. In addition, he was knowingly concerned in or a party to those breaches. In its judgment, the Court referred to Mr Burden as being the ‘controlling mind’ of Elusion.

The ACL can apply to companies based overseas

Although Elusion is registered and based in New Zealand, the ACCC used the following facts to argue that the representations took place in Australia and, as a result, that the ACL applied:

- The website stated that Elusion shipped products Australia-wide.
- The website quoted prices in Australian dollars.
- Elusion had accepted payment from customers in Australian dollars.

The decision in this case echoes the ACCC’s earlier success against international gaming company Valve Corporation, which had made misrepresentations about consumer guarantees on its website, in breach of the ACL.[6] Both cases show that the ACCC is taking action against businesses that breach the ACL, regardless of whether or not they are based in Australia.

Would you like to find out more?

If you are an international business supplying goods or services to consumers in Australia and want a clear understanding of your obligations under the Australian Consumer Law, contact us.

Author: Priti Joshi

[1] Australian Consumer Law, *Competition and Consumer Act 2010* (Cth), schedule 2 (ACL).

[2] In breach of section 18 of the ACL.

[3] In breach of section 29(1)(a) of the ACL.

[4] In breach of section 33 of the ACL.

[5] In breach of sections 224(1)(e) and 232(1)(e) of the ACL.

[6] *Australian Competition and Consumer Commission v Valve Corporation (No 3)* (2016) 337 ALR 681.

Our expertise

Competition & consumer

Subscribe to our latest insights

Interested in receiving publications of interest directly to your inbox?

[Subscribe now](#)

You may also like:

March 2017
COMPETITION & CONSUMER

[Australian firm shares secret to 75-year success](#)

Sydney-headquartered Bartier Perry is celebrating its 75th year of operating in Australia’s legal market this year, and has opened up on what makes the firm a viable business model.

[LEARN MORE](#)

June 2016
COMPETITION & CONSUMER

[Ban on ‘excessive’ credit and debit card surcharges](#)

The new laws do not prevent a merchant from applying a surcharge to a card transaction if the surcharge is not excessive.

[LEARN MORE](#)

March 2016
COMPETITION & CONSUMER

[Less than 9 months to comply with the unfair contracts regime? That’s unfair](#)

With the extension to small business contracts, the scope of the unfair contract terms regime will widen considerably.

[LEARN MORE](#)

WHAT WE DO

- Administrative law
- Building & construction
- Business succession
- Commercial disputes
- Competition & consumer
- Contracts & procurement
- Corporate governance
- Data Protection & Privacy
- Deceased estates
- Dust diseases
- Elder law
- Environment & planning
- Finance & capital
- Insolvency & debt recovery

Intellectual property

- Information technology
- Mergers & Acquisitions
- Personal Property Securities
- Property
- Public liability
- Superannuation
- Taxation
- Trusts
- Wealth protection
- Wills & estate planning
- Work health & safety
- Workers compensation
- Workplace relations

WHO WE HELP

- Private companies
- Private clients
- Insurance
- Government

SECTORS

- Education
- Family business
- Financial services
- Government
- Health
- Not-for-profit
- Sales & distribution
- Superannuation
- Technology

Tobacco control

- New Zealand context
- Framework Convention on Tobacco Control
- Pathway to Smokefree New Zealand 2025 Innovation Fund
- Smokefree 2025
- Smokefree law
- Tobacco standardised packaging**
- Tobacco packaging warnings**
- Heat not burn tobacco products
- Tobacco returns
- E-cigarettes
- Guidance for practitioners
- Publications
- District Health Board tobacco control plans












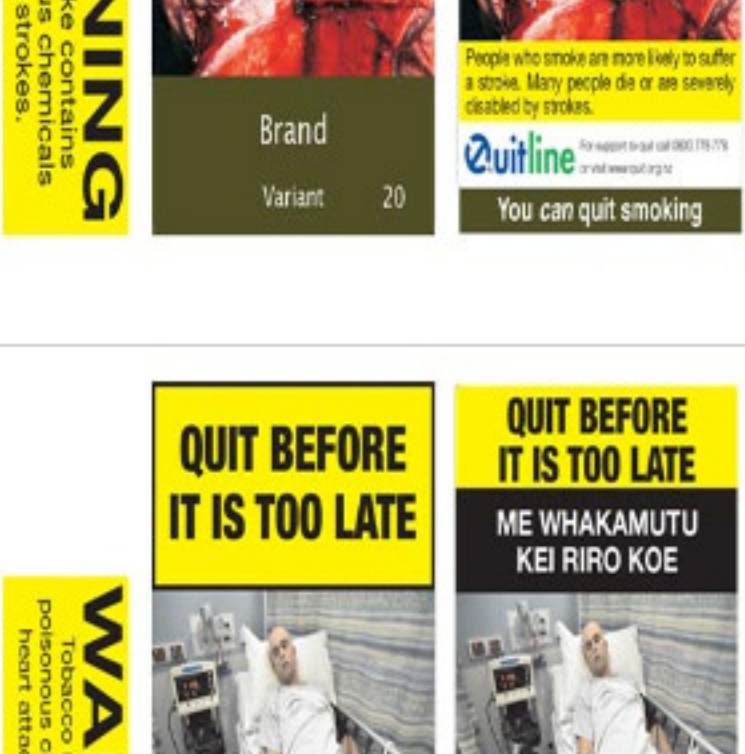


Tobacco packaging warnings

The 14 graphic pictorial health warnings, comprising graphic images and explanatory messages, cover the front and back of the cigarette packets.

Cigarette packets also carry the Quitline logo and freephone number and other information about quitting smoking. A rotation system has been developed to optimise consumer learning and awareness of the health effects of smoking. Seven images will be rotated each year.

Warning: the images below are graphic in nature

Graphic warnings for cigarette packets

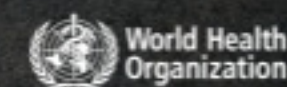
Warning	Image
Smoking causes heart attacks KA PĀ MAI NGĀ MANAWA-HĒ I TE KAI PAIPA	
Smoking causes over 80% of lung cancers NEKE ATU I TE 80% O NGĀ MATE PUKUPUKU KI NGĀ PŪKAHUKAHU I AHU MAI I TE KAI PAIPA	
Smoking harms your baby before it is born KA TŪKINOHIA TŌ PĒPI I TO KŌPŪ I TE KAI PAIPA	
Your smoking harms others KA TŪKINOHIA ĒTAHI ATU I Ō MAHI KAI PAIPA	
Smoking is a major cause of stroke KA PIKI AKE I TE KAI PAIPA TŌ TŪPONO KI TE IKURA RORO	
Smoking damages your blood vessels KA TŪKINOHIA Ō IA TOTO I TE KAI PAIPA	
Smoking is not attractive KA ANUANU KOE I TE KAI PAIPA	
Smoking causes heart attacks KA PĀ MAI NGĀ MANAWA-HĒ I TE KAI PAIPA	
Smoking causes lung cancer KA PĀ MAI TE MATE PUKUPUKU KI NGĀ PŪKAHUKAHU I TE KAI PAIPA	
Smoking when pregnant harms your baby KA TŪKINOHIA TŌ PĒPI I TE KAI PAIPA I A KOE E HAPŪ ANA	
Your smoking harms children KA TŪKINOHIA NGĀ TAMARIKI I Ō MAHI KAI PAIPA	
Smoking is a major cause of stroke KA PIKI AKE I TE KAI PAIPA TŌ TŪPONO KI TE IKURA RORO	
Quit before it is too late ME WHAKAMUTU KEI RIRO KOE	
Smoking causes gum disease and stinking breath KA PĀ TE MATE PŪNIHO, KA HAUNGA TŌ HĀ I TE KAI PAIPA	



WHO global health days

- [WHO global health days](#)
- [World Tuberculosis Day](#)
- [World Health Day](#)
- [World Immunization Week](#)
- [World Malaria Day](#)
- [World No Tobacco Day](#)
- [World Blood Donor Day](#)
- [World Hepatitis Day](#)
- [World AIDS Day](#)
- [World Antibiotic Awareness Week](#)

GET READY FOR PLAIN PACKAGING



31MAY:WORLDNOTOBBACODAY #NoTobacco

Frequently asked questions: Plain packaging of tobacco products

31 May 2016

About plain packaging

1. What is plain packaging?

The Guidelines for Implementation of Article 11 (Packaging and labelling of tobacco products) of the WHO Framework Convention on Tobacco Control (WHO FCTC) define plain packaging as "measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in a standard colour and font style (plain packaging)".

The Guidelines for Implementation of Article 13 (Tobacco advertising, promotion and sponsorship) describe plain packaging in the following terms:

- black and white or two other contrasting colours, as prescribed by national authorities;
- nothing other than a brand name, a product name and/or manufacturer's name, contact details and the quantity of product in the packaging, without any logos or other features apart from health warnings, tax stamps and other government-mandated information or markings;
- prescribed font style and size; and
- standardized shape, size and materials;
- There should be no advertising or promotion inside or attached to the package or on individual cigarettes or other tobacco products.

2. What is standardized packaging?

The phrase 'standardized packaging' is used interchangeably with 'plain packaging'. Some prefer the phrase standardized packaging on the basis that plain packaging, when used in conjunction with large graphic health warnings, is not actually plain.

WHO uses the phrase plain packaging because that is the language used in Guidelines to Articles 11 and 13 of the WHO FCTC.

3. Is plain packaging the same as large graphic health warnings?

No. Large graphic health warnings are a separate policy that may be implemented alongside plain packaging. The purpose of large graphic health warnings is to warn consumers of the risks associated with tobacco use.

4. What are the goals of plain packaging?

Plain packaging is a demand reduction measure that serves several purposes, including:

- Reducing the attractiveness of tobacco products.
- Eliminating the effects of tobacco packaging as a form of advertising and promotion.
- Addressing package design techniques that may suggest that some products are less harmful than others.
- Increasing the noticeability and effectiveness of health warnings.

Because plain packaging builds upon other tobacco control measures, it is recommended that plain packaging be used as part of a comprehensive multisectoral approach to tobacco control.

Frequently asked questions:

- [1. About plain packaging](#)
- [2. FAQs on implementation](#)
- [3. FAQs on guidelines, trade, tax](#)

[World No Tobacco Day 2016](#)

Email Address

[Subscribe](#)

[Sign up for WHO updates](#)

[1](#) [2](#) [3](#) [Next page »](#)

WHO global health days > World No Tobacco Day 2016: Get ready for plain packaging



© WHO 2017

[Sitemap](#)
[Home](#)
[Health topics](#)
[Data](#)
[Media centre](#)
[Publications](#)
[Countries](#)
[Programmes and projects](#)
[Governance](#)
[About WHO](#)

[Help and Services](#)
[Contacts](#)
[FAQs](#)
[Employment](#)
[Feedback](#)
[Privacy](#)
[E-mail scams](#)

[WHO Regional Offices](#)
[WHO African Region](#)
[WHO Region of the Americas](#)
[WHO South-East Asia Region](#)
[WHO European Region](#)
[WHO Eastern Mediterranean Region](#)
[WHO Western Pacific Region](#)





WHO global health days

Email Address

Sign up for WHO updates

- WHO global health days
- World Tuberculosis Day
- World Health Day
- World Immunization Week
- World Malaria Day
- World No Tobacco Day
- World Blood Donor Day
- World Hepatitis Day
- World AIDS Day
- World Antibiotic Awareness Week

GET READY FOR PLAIN PACKAGING



World Health Organization

31MAY:WORLDNOTOBACCO DAY #NoTobacco

Frequently asked questions: Plain packaging of tobacco products

FAQs on implementation

5. Is plain packaging included in the WHO Framework Convention on Tobacco Control?

Yes. Guidelines for Implementation of Articles 11 and 13 of the WHO FCTC recommend that Parties consider adoption of plain packaging.

These Guidelines need to be viewed in their broader context. The WHO FCTC obliges Parties to implement "effective measures" to ensure that

- tobacco packaging and labelling do not promote tobacco products by means that are false, misleading or deceptive (Article 11.1(a)); and
- packaging carries health warnings describing the harmful effects of tobacco use (Article 11.1(b)).
- Article 13 also obliges Parties to undertake a comprehensive ban (or restrictions) on tobacco advertising, promotion and sponsorship.

6. Where has plain packaging been implemented?

Australia became the first country to fully implement plain packaging in December 2012.

Ireland, France and the United Kingdom have passed laws to begin implementing plain packaging from May 2016. (Sell through periods mean that packs will not appear in stores immediately and, in the case of Ireland, implementation may be delayed.)

7. Which countries is plain packaging good for? Is plain packaging only for developed countries?

WHO recommends that plain packaging be implemented as part of a comprehensive approach to tobacco control. This includes comprehensive bans on tobacco advertising, promotion and sponsorship as well as other tobacco packaging and labelling measures, such as health warnings.

Plain packaging is a suitable policy for any country implementing a comprehensive approach to tobacco control. Developed countries have taken the lead in designing and implementing plain packaging measures and other countries, including developing countries, will benefit from their experience.

8. Which products should plain packaging be applied to?

The best practice is to apply plain packaging to all categories of tobacco products. The Article 11 and 13 Guidelines make no distinction between tobacco product categories.

9. Is there evidence that plain packaging works?

Yes. A strong evidence base supports implementation of plain packaging. This evidence base includes a large body of peer reviewed studies that have been the subject of three systematic reviews (two in the United Kingdom and one in Ireland).

This evidence supports the conclusion that plain packaging:

1. reduces the attractiveness of tobacco products
2. restricts use of the pack as a form of advertising and promotion
3. limits misleading packaging, and
4. increases the effectiveness of health warnings.

It is too early to measure the full impact of plain packaging in Australia, and it is often difficult to isolate the impact of individual measures. Nonetheless, the evidence from Australia is consistent with the conclusion that plain packaging is working.

Studies have shown increased urgency among smokers to quit,⁽¹⁾ increased calls to the Quitline ⁽²⁾ and increased quit attempts.⁽³⁾ Fewer consumers (wrongly) believe that brands differ in harmfulness and there are indicators that health warnings have become more effective among smokers.⁽⁴⁾

Australia's post-implementation review found that introduction of plain packaging together with introduction of larger health warnings and new warnings had reduced smoking prevalence in Australia beyond the pre-existing downward trend. Specifically, the report estimated that between December 2012 and September 2015 "the 2012 packaging changes reduced average smoking prevalence among Australians aged 14 years and over by 0.55 percentage points".⁽⁵⁾

According to the model, if these changes to packaging had not been introduced average smoking prevalence in the post-implementation period would have been 17.77% rather than 17.21%. This effect on smoking prevalence is expected to grow over time.

References

⁽¹⁾ Wakefield MA, Hayes L, Durkin S, Borland R. Introduction effects of the Australian plain packaging policy on adult smokers: a cross-sectional study. *BMJ Open*, 2013; 3: e003175.

⁽²⁾ Young JM, Stacey I, Dobbins TA, Dunlop S, Dossaix AL, Currow DC. Association between tobacco plain packaging and Quitline calls: a population-based, interrupted time-series analysis. *MJA*, 2014; 200:29–32.

⁽³⁾ Durkin S, Brennan E, Coomber K, Zacher M, Scollo M, Wakefield M. Short-term changes in quitting-related cognitions and behaviours after the implementation of plain packaging with larger health warnings: findings from a national cohort study with Australian adult smokers. *Tobacco Control*, 2015; 24:ii26 – ii32.

⁽⁴⁾ Wakefield M, Coomber K, Zacher M, Durkin S, Brennan E, Scollo M. Australian adult smokers' responses to plain packaging with larger graphic health warnings 1 year after implementation: results from a national cross-sectional tracking survey. *Tobacco Control* 2015; 24:ii17–ii25, p. 21.

⁽⁵⁾ Post-Implementation Review Tobacco Plain Packaging, 2016, Australian Government, Department of Health, 26 February 2016, <https://ris.govspace.gov.au/files/2016/02/Tobacco-Plain-Packaging-PIR.pdf>, paragraph 107.

« Previous page 1 2 3 Next page »

WHO global health days > World No Tobacco Day 2016: Get ready for plain packaging



© WHO 2017

Sitemap
 Home
 Health topics
 Data
 Media centre
 Publications
 Countries
 Programmes and projects
 Governance
 About WHO

Help and Services
 Contacts
 FAQs
 Employment
 Feedback
 Privacy
 E-mail scams

WHO Regional Offices
 WHO African Region
 WHO Region of the Americas
 WHO South-East Asia Region
 WHO European Region
 WHO Eastern Mediterranean Region
 WHO Western Pacific Region



WHO global health days

- [WHO global health days](#)
- [World Tuberculosis Day](#)
- [World Health Day](#)
- [World Immunization Week](#)
- [World Malaria Day](#)
- [World No Tobacco Day](#)
- [World Blood Donor Day](#)
- [World Hepatitis Day](#)
- [World AIDS Day](#)
- [World Antibiotic Awareness Week](#)

GET READY FOR PLAIN PACKAGING



31MAY:WORLDNOTOBACCO DAY #NoTobacco

Frequently asked questions: Plain packaging of tobacco products

FAQs on guidelines, trade, tax

10. How were the Guidelines to Articles 11 and 13 of the WHO FCTC developed?

The Article 11 and 13 Guidelines were developed by Parties to the WHO FCTC and adopted by consensus of the Conference of the Parties. This was a government led process and all Parties to the Convention had the opportunity to participate fully in the process. The Guidelines are based on available scientific evidence.

11. What other consumer goods is plain packaging appropriate for? Doesn't plain packaging for tobacco create a "slippery slope" for other products?

WHO is not recommending adoption of plain packaging for products other than tobacco products. Tobacco products are uniquely harmful and there is a body of evidence showing that plain packaging of tobacco products is an effective public health intervention.

12. Doesn't plain packaging violate international and domestic laws?

There is nothing inherently unlawful about plain packaging. Laws differ from country to country, making it difficult to generalize, but:

1. Plain packaging is an evidence-based policy that contributes to protection of public health.
2. Domestic and international laws provide scope for governments to protect public health.
3. WHO is encouraged by the fact that Australia has prevailed in litigation against it under domestic law and under an investment treaty.
4. WHO cannot comment on ongoing litigation, but WHO is watching closely the World Trade Organization (WTO) dispute concerning plain packaging, as well as other litigation.

Won't plain packaging increase illicit trade in tobacco products?

There is no rational basis on which to predict that plain packaging will increase illicit trade. Tobacco company arguments that tobacco control measures will increase illicit trade seek to:

- discourage legitimate regulation; and
- prepare the ground to dispute the effectiveness of tobacco control measures where sales decline after implementation.

Governments introducing plain packaging:

- continue to permit tobacco companies to use anti-counterfeiting devices on product packaging;
- may use a range of enforcement responses to address any concerns about illicit trade; and
- are encouraged to ratify the WHO FCTC Protocol to Eliminate Illicit Trade in Tobacco Products.

14. Won't plain packaging hurt retailers?

Plain packaging should not have a disproportionate or sudden impact on retailers.

In Australia, retailers have quickly gained experience with plain packaging and their processing times (to process customer requests for a product) quickly returned back to normal levels.

The effects of plain packaging on retail sales are unlikely to be sudden or dramatic.

- Experience in the context of tobacco taxes shows that money not spent on tobacco products may be spent on other consumer goods.
- Plain packaging is an incremental step used as part of a comprehensive approach to tobacco control. The effects of plain packaging will increase over time.
- In many countries, strong population growth means that total tobacco consumption continues to grow even though the prevalence of tobacco use may decline.

15. Won't plain packaging lead to increased competition and reduced prices?

Governments can exercise significant control over the affordability of tobacco products, such as through the use of tax and price measures. Any government concerned about affordability increasing with plain packaging should consider increasing taxes.

Frequently asked questions:

1. About plain packaging
2. FAQs on implementation
3. FAQs on guidelines, trade, tax

[World No Tobacco Day 2016](#)

Email Address

Subscribe

Sign up for WHO updates

« Previous page

1

2

3

WHO global health days > World No Tobacco Day 2016: Get ready for plain packaging



© WHO 2017

Sitemap

Home
Health topics
Data
Media centre
Publications
Countries
Programmes and projects
Governance
About WHO

Help and Services

Contacts
FAQs
Employment
Feedback
Privacy
E-mail scams

WHO Regional Offices

WHO African Region
WHO Region of the Americas
WHO South-East Asia Region
WHO European Region
WHO Eastern Mediterranean Region
WHO Western Pacific Region

