

# Tobacco industry interference: Is the new Government meeting its international obligations?

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## Summary

The new coalition Government has controversially proposed repealing Aotearoa's world-leading smokefree legislation. Ratified by Aotearoa, the World Health Organization Framework Convention on Tobacco Control (FCTC) includes clauses to protect policy making from tobacco industry interference. The FCTC commits signatories to engaging with the tobacco industry only as required and specifies any engagement with tobacco companies must be recorded and open to public scrutiny.

The tobacco industry, associated front groups, and others sympathetic to industry views, have developed narratives to oppose evidence-based policies. Use of these narratives by members of the coalition Government makes it timely to remind politicians of their FCTC obligations, call on them to declare any past associations with tobacco companies, and request them to publicly commit to meeting all requirements the FCTC places on them and their staff.

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Tobacco companies have an overwhelming commercial interest in opposing effective tobacco control policies and a long history of attempting to disrupt policies that would

protect citizens from the harms their products cause.<sup>1</sup> They have made misleading or false assertions,<sup>2</sup> lobbied and influenced decision-makers,<sup>3</sup> manipulated research “evidence”,<sup>4</sup> undermined independent researchers,<sup>5</sup> and developed alliances by creating or cultivating front-groups to promote their goals.<sup>6</sup>

These tactics have been well-documented in the US and recent studies report on-going interference by tobacco companies as they attempt to disrupt the introduction and implementation of new policies.<sup>2, 7, 8</sup>

The World Health Organization (WHO) developed the Framework Convention on Tobacco Control (FCTC) in response to the global challenge presented by the tobacco epidemic. The FCTC explicitly calls on signatories to protect policy making from tobacco industry influences; Article 5.3 states that: “in setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law”.<sup>9</sup> Further, Article 5.3 requires governments to interact with tobacco companies only as required for regulatory purposes, and states that all interactions must be documented and transparent,<sup>10</sup> an obligation the Ministry of Health acknowledges on its website.

The NZ Ministry of Health has taken action to ensure all employees recognise these obligations. For example, Professor Sir Ashley Bloomfield, then Director-General of Health, wrote to DHB and PHO chief executives to explain their FCTC obligations and discourage engagement with a centre that received funding from the Foundation for a Smokefree World (at that time, the Foundation for a Smokefree World was solely funded by Philip Morris International). The Ministry of Health documents relatively few meetings or discussions with tobacco companies until 2021, after which it reports 19 engagements with tobacco companies, in line with Article 5.3.

Tobacco companies may also attempt to foster public opposition to new policies in an attempt to impede their introduction. British American Tobacco’s “Agree-Disagree” opposed plain packaging; although Hon Tony Ryall, Minister of Health at the time, dismissed the campaign as a waste of money, plain packaging was not implemented in NZ until five years after Australia, despite continuing calls for an earlier timeline.<sup>11</sup>

Tobacco companies have also worked behind the scenes. For example, the Save our Stores social media campaign, supported by British American Tobacco NZ and Imperial Brands Australasia, opposed the planned reduction in retail outlets from around 6000 to 600. The campaign implied reducing tobacco retail outlets would have serious unintended outcomes, including increased crime and a burgeoning illicit market trading in tobacco products, but provided no robust evidence to support these claims.<sup>12</sup>

If repeated often enough and seeded carefully, these claims may come to be accepted even when they are inconsistent with robust, independent research. It is thus concerning to see that Government coalition politicians have used similar claims to those made in submissions on the retail reduction policy by tobacco companies and groups that receive tobacco industry-funding. Table 1 compares comments made by members of the new coalition Government with comments made by tobacco companies.

**Table 1: Summary comparison of politicians’ comments and tobacco companies’ statements**

## Politicians and policy

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### Retailer reduction policy: increased ram raids and black market

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#### Prime Minister Luxon:

"To say that actually, you can concentrate all that distribution in a few shops and you have one smoke shop in one small town in New Zealand, you can't not tell me that will be a massive target for ram raids and crime."

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#### Prime Minister Luxon

"The issue very simply is, when you remove distribution points just to 600 across the country, you're going to be creating and putting a lot of sale of cigarettes underground and into the black market."

#### Dr Shane Reti, Minister of Health (overall)

Asked how he knew there would be an increase in ram raids as a result of the law, Dr Reti said they had listened to cigarette retailers. "And their very clear indication that they are deeply concerned that they could be at risk of increased crime, with a reduction from the 6000 distributing networks down to 600 and so that has been a concern."

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### Denicotinisation: increased black market, promotion of gangs and prohibition

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## Tobacco Industry Statements

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#### Imperial Brands Australasia

"The other side of tobacco related criminal activity is the ongoing stream of violent robberies and assaults of which 'ram raids' are a key feature. These have been well documented in the media over a number of years with the brunt of them being borne by dairy stores. This will only intensify if the number of businesses selling tobacco is reduced significantly. Those left retailing tobacco will become more attractive targets to gangs due their larger stock holdings."

#### British American Tobacco

Such a swift and drastic reduction will deliver several concerning outcomes... A smaller and more attractive list of 500 retailers for ram raids and robberies."

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#### Imperial Brands Australasia

"Measures that seek to limit the accessibility and availability of tobacco products would eliminate legitimate purchasing opportunities. As demand for tobacco products is unlikely to decline at the same rate, there is a danger that consumers would increasingly turn to illicit goods which are often readily available, thus creating greater exposure to illicit networks while reducing future excise payments to government and bypassing current legislation intended to protect consumers such as age restrictions."

### **Prime Minister Luxon**

"...there will be an increased black market - an untaxed black market - for [cigarettes]."

"We think it will encourage a black market, we think it will encourage more crime, and as a result we're sticking with the status quo," Luxon said.

### **Dr Shane Reti, Minister of Health (overall)**

He said there were submissions during the Smokefree Amendment select committee process that the black market would be impacted by the legislation.

### **Regulation Minister David Seymour**

Regulation Minister David Seymour said he believed the smokefree laws would force tobacco onto the black market. "What is now going to happen is all those dairy owners as part of their revenue - all of those people who are law-abiding and don't break any other rules - can continue to buy [cigarettes] and the Government can continue to tax it."

### **Imperial Brands Australasia**

"Proposed measures under the Smokefree Aotearoa 2025 Action Plan will ultimately lead to unintended consequences which have been well canvassed in recent times by a number of stakeholders across the public and private sector. The most problematic of these will be an explosion in the black market for cigarettes.... The sole beneficiary of an increased black market will be organised criminal syndicates who already generate a significant cash flow from these products. This in turn this is redirected to drive other income streams such as illicit drugs."

"Reduced nicotine content will ultimately drive smokers to smoke more, and/or exacerbate the illicit tobacco market."

### **Japan Tobacco Inc**

"Illegal tobacco sellers undermine tobacco control efforts because they are more likely to sell to those who are underage and the unregulated products they sell do not comply with legislative standards. The profits made from the illegal trade are also known to fund other activities such as terrorism and people trafficking which harm all of society."

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### **ACT Party**

"The radical prohibitionism they advocate would push smokers into the arms of gang members, who are already flogging off smuggled and homegrown tobacco at dairies and tinnie houses near you."

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### **British American Tobacco**

"Experience has demonstrated that prohibition does not work. It merely hands over control of the market to criminal organisations who would willingly supply illegal, unregulated products to people on the black market."

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### **Smokefree generation: practicalities of implementation**

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**Prime Minister Luxon**

"The issue is the component part of the programme - how does it ultimately get enforced? A 36-year-old can smoke, but a 35-year-old can't smoke down the road? That doesn't sort of make a lot of sense."

**Imperial Brands Australasia**

"The policy will likely see a significant increase in the compliance burden placed upon small business retailers who are already struggling against unprecedented headwinds. The proposal's enforcement will inevitably fall on small businesses who would now be tasked with regulating a new tiered definition of adulthood."

**Japan Tobacco Inc**

"...retailers would also be heavily burdened by having to verify the age of all their adult customers for all their tobacco sales. For example, in 2047, retailers will be asked to be able to differentiate between a 39-year-old customer, to whom it is legal to sell tobacco products, and a 38-year-old, to whom it is illegal to do so."

**Casey Costello, Minister of Health responsible for tobacco**

"What you're talking about is, in about four years' time, a 19-year-old won't be able to buy a tobacco product - the retailer's going to be dealing with that situation. I just think there's smarter legislation.

"The level of violence and resistance that's happening in shops now... you're going to have retailers dealing with, 'Show me your ID', 'Oh, no, I'm sorry, you're born in 2009' - this sort of stuff, I just think there are smarter ways to deal with this."

**Imperial Brands Australasia**

"There are also a number of practicality and workability concerns associated with the introduction of a 'smokefree generation'. The policy will likely see a significant increase in the compliance burden placed upon small business retailers who are already struggling against unprecedented headwinds."

**British American Tobacco**

"A proposed smokefree generation policy would also be unworkable in practice."

Even more importantly, these examples raise important questions about how tobacco companies' rhetoric has emerged in explanations offered by coalition politicians when asked to explain repealing the smokefree legislation. Who is leading matters for the coalition Government? What history do coalition members have with tobacco companies? How confident can the public feel that the new Government is meeting its FCTC obligations, a question Former Health Minister and architect of the smokefree legislation, Dr Ayesha Verrall, and recent commentaries have raised (see here and here). In Table 2 below, we set out past connections between coalition politicians and their parties, and tobacco companies or groups that receive tobacco industry funding.

**Table 2: Potential Tobacco Industry Influence Channels**

**Tobacco Company**

**Political connections**

**Evidence of industry links**

British American Tobacco	Casey Costello (NZ First Party) formerly Chair and member of Tax Payers' Union Board. Now Minister with responsibility for the Smokefree Environments and Regulated Products Act 1990; vaping; smokeless tobacco; oral nicotine. <sup>1</sup>	Guardian investigation reported TPU received funding from British American Tobacco  TPU has links with the Atlas Network, which has received tobacco industry funding.  In 2023, a TPU staff member received an Atlas Network competition prize. TPU was described as an Atlas Network partner.
British American Tobacco Imperial Brands Australasia	Nicola Willis, Deputy leader National Party, formerly Board Director New Zealand Initiative	NZI list tobacco companies British American Tobacco and Imperial Brands Australasia as members.
Philip Morris International	Apirana Dawson was formerly Deputy Prime Minister Winston Peters' Director of Operations and Research; currently Director External Affairs and Communications, Philip Morris International.  He wrote of his experiences as an NZ First supporter.	LinkedIn profile documenting roles in NZ First and PMI
Philip Morris New Zealand	Chris Bishop, ranked number three within National Party caucus formerly Corporate Affairs Manager Philip Morris New Zealand	LinkedIn profile documenting roles in National and PM(NZ)
Philip Morris New Zealand	David Broome former Chief of Staff managing the Parliamentary Office and staff of the Deputy Prime Minister Winston Peters.	Described in press releases as Manager of External Relations, Philip Morris NZ. LinkedIn profile ends in 2021.

Tobacco companies, including BAT (NZ),<sup>13</sup> have lobbied for smokeless tobacco and oral nicotine to be sold in Aotearoa NZ. Minister Costello has authority over these products, which are currently not legal; the NZ First coalition agreement proposes “reforming” regulation of these products and the Minister is already reported as “considering” their introduction.

FCTC Article 5.3 requires Governments to protect smokefree policies from commercial and other vested interests of the tobacco industry. Past connections between the tobacco industry, or groups it funds, and politicians and parties forming the coalition Government raise the possibility of tobacco company strategy permeating the current Government.

To support its plans to repeal the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act, the coalition Government has used arguments that align with the tobacco industry's opposition to this statute. Tobacco companies have a clear vested interest in opposing measures estimated to greatly accelerate reductions in smoking prevalence. To foster public confidence that the coalition Government is making evidence-

based decisions, all Government members should acknowledge their obligations under Article 5.3 and the Government should publicly commit to meeting these. As part of the principled decision making that underpins the coalition agreements, all Government members should confirm their acceptance that compliance with Article 5.3 and its related guidelines requires the declaration of all past and current interactions of any kind with staff of tobacco companies, or members of groups funded by tobacco companies, and the maintenance and publication of a full and complete register of all such interactions.

## What is new in this Briefing?

- All signatories to the WHO's Framework Convention on Tobacco Control have specific obligations under the Convention and related guidelines to limit engagement with tobacco companies to the minimum required for regulation; they are also required to record all interactions with tobacco companies.
- The coalition Government's proposal to repeal the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act has raised questions about tobacco industry interference.
- Arguments used by coalition Government members align with those used by tobacco companies or groups they support to oppose smokefree policies.

## Implications for public health practice and policy

- To meet its FCTC obligations, all coalition Government members must declare past and current engagement with tobacco companies or groups that receive tobacco industry funding, and commit to meeting their obligations under Article 5.3, including full transparency about any and all engagement with tobacco companies.

### Author details

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