

NEW ZEALAND

2020

TOBACCO
INDUSTRY
INTERFERENCE
INDEX

Acknowledgements

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This report uses the questionnaire developed by the Southeast Asia Tobacco Control Alliance based on the Article 5.3 guidelines. Information used in this report is obtained from the public domain only. A scoring system is applied to make the assessment. The score ranges from 0–5, where 5 indicates the highest level of industry interference. Hence, the lower the score, the better for the country. Ref: Assunta, M. Dorotheo, E. U. SEATCA Tobacco Industry Interference Index: a tool for measuring implementation of WHO Framework Convention on Tobacco Control Article 5.3. April 2015

<http://tobaccocontrol.bmj.com/content/early/2015/04/23/tobaccocontrol-2014-051934>

Introduction

New Zealand (NZ) is a party to the WHO Framework Convention on Tobacco Control (FCTC), a global treaty that sets out strategies for governments to combat the tobacco epidemic. A key measure of this treaty, Article 5.3, requires parties to protect public health policies from the vested interests of the tobacco industry. Although NZ has fared quite well in resisting industry interference, Article 5.3 remains an underutilised measure, and the tobacco industry continues to forward its interests. This report outlines tobacco industry interference in public policy making in New Zealand (2018-19) and ways in which the government has resisted. Recommendations to strengthen protections are also presented.

Summary of Findings

1. INDUSTRY PARTICIPATION IN POLICY DEVELOPMENT

There is no evidence of tobacco industry (TI) involvement in government groups and agencies directly setting public health policy, although there have been instances of TI representatives and tobacco industry-affiliated organisations participating in parliamentary consultations and advisory groups.

2. INDUSTRY CSR ACTIVITIES

Instances of TI CSR activities were identified in the reporting period, including TI promotion of a discounted heated tobacco product (HTP) to indigenous and poverty advocate groups at 'community activations'. TI also lobbied health officials to conduct 'community trials' of HTPs and to include HTPs in New Zealand's (NZ) smoking cessation services.

3. BENEFITS TO THE INDUSTRY

There is no evidence of preferential exemptions being granted to the tobacco industry by the government, but tax policy relating specifically to the TI are unclear. NZ does not appear to specifically exclude tobacco from treaties, with the exception of investor-state dispute processes in the Trans-Pacific Partnership (CPTPP). There was no indication that the government accommodated requests from TI for a longer time frame for implementation or postponement of tobacco control law in the reporting period.

4. UNNECESSARY INTERACTION

No incidences were identified of state employees meeting with or fostering relations with TI, or any evidence of the government entering into agreements or accepting assistance from TI.

5. TRANSPARENCY

Details of meetings held between the Ministry of Health (MoH) and TI are notified to the public on the MoH website. Interactions between TI and other Government departments are not publicly available. There is no existing requirement for TI, affiliated entities, and organisations acting on their behalf, including lobbyists, to register with the Government.

6. CONFLICT OF INTEREST

There are general rules regulating political contributions, and the disclosure of such contributions, but no legislation specifically prohibiting TI from donating to political parties, candidates, or campaigns. During the reporting period, no former or current state/public employees government officials or relatives were known to form part of the tobacco industry, although a former executive of TI currently works as an opposition MP.

7. PREVENTIVE MEASURES

The NZ government has general conflict of interest guidelines for Members of Parliament (MPs) and public officials, however, no comprehensive set of rules exists for regulating their interaction with the TI. Industry revenues are required to be public by NZ company law, but in general the government does not ensure that the public has access, in accordance with FCTC Article 12(c), to a wide range of information on tobacco industry activities.

Recommendations

- Implement a government programme to maintain awareness and compliance of Article 5.3 consistently across all government departments and agencies. Ensure robust monitoring and public reporting.
- **Increase transparency:**
 - Collect and publicly report tobacco industry data, for each tobacco corporate entity with any operations in New Zealand, on revenue, profits, taxes, spending on marketing, philanthropy, research and CSR in a single public repository, such as on the Ministry of Health website.
 - Any communications between the tobacco industry and all government departments and agencies (not just the Ministry of Health) should be published and made publicly available on the websites of each government department or agency involved in such communications.
 - Implement rules mandating that the government does not provide financial aid in any way to the tobacco industry.
- Require that no international treaty applies to tobacco, either through specific references or in accordance with general provisions, and that the treaty explicitly states that tobacco is out of scope of that treaty.
- Exclude the tobacco industry and its representatives from being consulted on or have any input into international treaties.
- Require that no government agency or government funded agency, either at the national or local level, participate in any activity that constitutes or could be reasonably assumed to be a CSR activity for the tobacco industry or its associate.
- **Restrict lobbying:** create a government transparency lobbying register and make it a legal requirement for all tobacco industry and affiliated organisations and individuals to register before any lobbying.
- **Conflict of interest policies:**
 - Update code of conduct, including the *Standards of Integrity and Conduct* issued by the State Services Commissioner under the State Sector Act 1988, section 57, for all public officials prescribing standards for how they should deal with the tobacco industry. Government agencies should ensure that all state employees understand obligations set out in the code of conduct in beginning employment within the public service.
 - Prohibit public officials from holding positions in the tobacco industry either during or after their public employment.
 - Prohibit political parties, public employees, and organisations/institutions from accepting all forms of contributions (monetary, other resources or ‘in kind’) from the tobacco industry.

Results and Findings

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INDICATOR 1: Level of Industry Participation in Policy-Development						
1. The government ¹ accepts, supports or endorses any offer for assistance by or in collaboration with the tobacco industry ² in setting or implementing public health policies in relation to tobacco control ³ (Rec 3.1)				3		
<p>While there is no evidence of tobacco industry (TI) involvement in government groups and agencies directly setting public health policy, in 2018-19 there have been instances of TI representatives, or TI-affiliated organisations participating in parliamentary consultative bodies:</p> <p>A. Legislative processes are used by TI to apply influence on policy. In NZ, almost all Bills are referred to the relevant Select Committee where public submissions are heard. The proposed law change that would ban smoking in cars (with children under 18 years) heard from Imperial tobacco and the Centre of Research Excellence, Indigenous Sovereignty and Smoking (COREISS) [1]. COREISS is funded by the Foundation for a Smoke-Free World (which is in turn funded by a grant from Phillip Morris International) [2]. Imperial’s head of corporate and legal affairs argued that smokeless tobacco use in cars should remain legal, because these products don't produce smoke [3]. COREISS’s written submission entitled ‘Do we really need another law? The cost to New Zealand of banning smoking in cars’[1]was followed by an oral submission to the Health Select Committee. COREISS stated to the Committee that “scientific studies have not proven that exposure to cigarette smoke in the car causes disease” and went on to say the evidence that suggests cigarette smoke exposure in cars could be toxic to children was “junk science” [4]. The Health Select Committee was not aware of COREISS’s funding until raised by a subsequent submitter.</p> <p>This issue raised considerable debate regarding the influence of the TI on public policy making and declaring conflict of interests [5]. In response, the Speaker of the House, Trevor Mallard stated that he would look at whether people making submissions on proposed law changes should be forced to disclose conflicts of interest. This was opposed by the leader of the conservative ACT party, David Seymour, who stated “ultimately what is and isn't a conflict of interest becomes just as political as the conflicts of interest themselves. My advice to the Speaker would be to steer well clear of it” [6]. In the final report of the Health Select Committee (Dec 2019), they noted that “that there is no requirement for submitters to disclose any interests they may have in a particular issue. We accept that, in fact, the submissions process is overtly designed to allow people to advocate for their own interests and</p>						

¹ The term “government” refers to any public official whether or not acting within the scope of authority as long as cloaked with such authority or holding out to another as having such authority

² The term, “tobacco industry’ includes those representing its interests or working to further its interests, including the State-owned tobacco industry.

³ “Offer of assistance” may include draft legislation, technical input, recommendations, oversees study tour

opinions. We also note that it would be very difficult to attempt to create a regime in which submitters would have to declare all of their interests. Regardless, we wish to draw to the attention of the House the possibility of similar conflicts in future submissions. We also intend to write directly to the Standing Orders Committee, to ask it to give this matter some consideration” [7]. It is worth noting that stipulating a declaration of conflicts of interests is easily achievable and has been standard practice in academic publishing and other fields for decades.

- B. There have also been examples of politicians using reports funded by the tobacco industry to potentially influence policy. In July 2019, KPMG released a report on illicit tobacco in NZ commissioned by Imperial Tobacco NZ [8]. As *Tobacco Tactics* outlined, the report included data from a consumer survey carried out by Kantar NZ, commissioned by BAT NZ, Imperial Tobacco NZ and PMI. It estimated that 9.2% of total tobacco consumption was illicit. Previous estimates from 2013 suggest illicit tobacco made up only 1.8-3.9% of total tobacco consumption in NZ [9]. The 2018 report was released approximately four months after the Ministry of Health announced a review of tobacco excise tax and was published throughout the national media. Acting Prime Minister Winston Peters responded to the report by suggesting high tobacco tax excise tax was fuelling violent crime [11].
- C. Example of the Ministry of Health commissioning research from a firm who works with the tobacco industry: New Zealand Ministry of Health used a consulting firm EY (formerly Ernst & Young) to research the impacts of tobacco taxation, despite EY’s work locally and internationally for tobacco companies. The report was published in 2018. After a letter was sent by concerned researchers to the Associate Minister of Health (responsible for tobacco control), the Minister replied that “EY notified that to the best of their knowledge no actual or potential conflicts would prevent them from undertaking this work” [11].

2. The government accepts, supports or endorses <u>policies or legislation drafted</u> by or in collaboration with the tobacco industry. (Rec 3.4)	0					
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No such incidents have been identified for the 2018-2019 period.

3. The government allows/invites the tobacco industry to sit in government interagency/ multi-sectoral committee/ advisory group body that sets public health policy. (Rec 4.8)			2			
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The Ministry of Health established a Technical Advisory Group on Electronic Cigarette Product Safety to advise on e-cigarette product safety standards and/or regulatory requirements for e-cigarettes and e-liquid [12]. There was concern from the tobacco control sector that three of the members were from the NZ vape industry, and one who previously worked for Nerudia (Imperial Brands), the “home of R&D for Next Generation Products” (NGPs include vapour, heated tobacco and oral nicotine delivery)[13]. In the Advisory Groups terms of reference (TOR), members were asked to ensure that “there is no conflict of interest which would preclude their appointment”. The Group has now finished its work plan set out in the TOR. As stated by the Tobacco Control Programme (Ministry of Health), this work was to “direct(ly) support the Smoke-free Environments (E-cigarettes) Amendment Bill work programme” [12].

4. The government nominates or allows representatives from the	0	1				
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tobacco industry (including State-owned) in the delegation to the COP or other subsidiary bodies or accepts their sponsorship for delegates. (i.e. COP 4 & 5, INB 4 5, WG) ⁴ (Rec 4.9 & 8.3)						
No such incidents have been identified for the 2018-19 period.						
INDICATOR 2: Industry CSR activities						
5. A. The government agencies or its officials endorses, supports, forms partnerships with or participates in so-called CSR activities organized by the tobacco industry. (Rec 6.2) B. The government (its agencies and officials) receives contributions ⁵ (monetary or otherwise) from the tobacco industry (including so-called CSR contributions). (Rec 6.4)		1				
<p>In 2019, the Director General of Health (Ministry of Health) wrote to all District Health Boards (DHBs) throughout the country to remind them of their obligations under the FCTC (DHBs are responsible for the provision of health services in each region) [14]. This was in response to Philip Morris NZ (PMNZ) approaching the MoH, DHBs, and other organisations to discuss its new heated tobacco products that it is actively marketing in New Zealand.</p> <p>Emails obtained by the media under the Official Information Act (OIA) show that PMNZ general manager wrote to a Ministry of Health senior DHB manager asking for Phillip Morris products to be included in stop smoking programmes. He wanted to know whether the DHB would accept a scenario where PMNZ would give the IQOS device away at no cost to the service provider for "community-based trials, data collection and monitoring". PM's general manager also wrote that including the IQOS device in the programmes would be "a significant health benefit". Phillip Morris claims the IQOS heated tobacco device is 90 per cent safer than cigarettes [15]. PMNZ also approached South Auckland's District Health Board (DHB) in an attempt to give away its IQOS device for use in quit smoking groups.</p> <p>At the same time, PMNZ targeted poverty advocate groups and Māori by selling its IQOS device at half price in what it called "community activations" held at South Auckland marae and rugby league clubs [16]. The Director General of Health reminded the District Health Boards that "given our international obligations under the FCTC, I strongly advise you not to engage with representatives from PMI or other representatives from the tobacco industry – the health sector does not share the same goals or aspirations of this industry" [14]. It is unclear to what extent the District Health Boards have taken on this advice, but media reports indicate that PMNZ's efforts to be part of government smoking cessation initiatives have been rebuffed by health officials at NZ's largest DHB [15].</p>						
INDICATOR 3: Benefits to the Tobacco Industry						
6. The government accommodates requests from the tobacco industry for a longer time frame for implementation or postponement of	0					

⁴ Please annex a list since 2009 so that the respondent can quantify the frequency, <http://www.who.int/fctc/cop/en/>

⁵ political, social financial, educations, community, technical expertise or training to counter smuggling or any other forms of contributions

tobacco control law. (e.g. 180 days is common for PHW, Tax increase can be implemented within 1 month) (Rec 7.1)						
No such incidents have been identified for the reporting period.						
7. The government gives privileges, incentives, exemptions or benefits to the tobacco industry (Rec 7.3)				3		
<p>There is no evidence of preferential exemptions being granted to the tobacco industry by the government. However, the rules mandating that the government does not provide preferential tax exemption to the tobacco industry are unclear.</p> <p>Tobacco is excluded from investor-state dispute processes in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), that entered in to force in 2018 [16]. Aside from this, it does appear that NZ does not otherwise specifically exclude tobacco from treaties.</p> <p>Companies that manufacture tobacco are excluded from the NZ Superannuation fund investment portfolio [17].</p> <p>From January 2010 to January 2020, the government has increased tobacco excise by at least CPI+10% each year.</p> <p>Duty-free allowance for tobacco brought from outside NZ for personal use amounts to 50 cigarettes or 50 grams of cigars or tobacco products or; 50 grams of a mixture of all three [18].</p>						
INDICATOR 4: Forms of Unnecessary Interaction						
8. Top level government officials (such as President/ Prime Minister or Minister ⁶) meet with/ foster relations with the tobacco companies such as attending social functions and other events sponsored or organized by the tobacco companies or those furthering its interests. (Rec 2.1)	0					
None identified for the reporting period						
9. The government accepts assistance/ offers of assistance from the tobacco industry on enforcement such as conducting raids on tobacco smuggling or enforcing smoke free policies or no sales to minors. (including monetary contribution for these activities) (Rec 4.3)	0					
<p>None identified for the reporting period.</p> <p>The NZ government has not signed up to the FCTC Protocol to Eliminate Illicit Trade in Tobacco Products [19].</p>						
10. The government accepts, supports, endorses, or enters into	0					

⁶ Includes immediate members of the families of the high-level officials

<p>partnerships or agreements with the tobacco industry. (Rec 3.1) <i>NOTE: This must not involve CSR, enforcement activity, or tobacco control policy development since these are already covered in the previous questions.</i></p>						
<p>No such incidents have been identified for the reporting period.</p>						
<p>INDICATOR 5: Transparency</p>						
<p>11. The government does not publicly disclose meetings/ interactions with the tobacco industry in cases where such interactions are strictly necessary for regulation. (Rec 2.2)</p>			2			
<p>The Ministry of Health records and makes public on their website meetings with the TI [20]. These meetings are increasingly rare. The last recorded meeting was in 2017 with Imperial Tobacco to discuss how new tobacco products and nicotine-delivery devices should be regulated. More informal targeting of key MoH figures by TI are not recorded but are occasionally reported in the media (e.g. see point 5). No instances of formal interactions that have not been disclosed have been identified for the reporting period.</p> <p>In regard to other Government departments, the NZ Government does not ensure that the public has access, in accordance with FCTC Article 12(c), to a wide range of information on tobacco industry activities, including details on TI meetings with government departments, other than the MoH.</p>						
<p>12. The government requires rules for the disclosure or registration of tobacco industry entities, affiliated organizations, and individuals acting on their behalf including lobbyists (Rec 5.3)</p>			3			
<p>There is no existing requirement for TI and affiliated entities to register with the Government.</p> <p>The NZ government does not regulate lobbyists. The NZ Taxpayers Union, which opposed tobacco tax increases and plain packaging laws was only recently exposed as having British American Tobacco (BAT) as a corporate funder by <i>The Guardian</i> Newspaper. The NZ Taxpayers' Union has not disclosed its financial support from tobacco companies. <i>The Guardian</i> identified the relationship between the Taxpayers' Union and British American Tobacco as part of its series on "the huge damage of the tobacco epidemic ... and the industry behind it" [21].</p> <p>The think tank - The New Zealand Initiative (NZI) - is a regular contributor to public debate and government submissions on tobacco and heated tobacco products. NZI states on its website that British American Tobacco, Imperial Brands and Phillip Morris NZ are corporate members, and all their members "are united in their commitment to investing in policy development and public debates about the future of our country" [22]. Their 2018 submission to the Government's Tax Working Group on the future of tax stated that tobacco and other "lifestyle" taxes should be rejected because "there is no strong evidence that lifestyle taxes will achieve the intended public health outcomes" and "evidence that these taxes will work is necessary but not sufficient: overriding personal liberty requires a strong justification" [23]. A 2018 NZI report warns against applying combustible tobacco regulations on heat-not-burn products (and swedish snus) because an "overly burdensome regulatory regime like the US FDA... limits access to their products and can discourage market competition"[24].</p>						
<p>INDICATOR 6: Conflict of Interest</p>						

13. The government does not prohibit contributions from the tobacco industry or any entity working to further its interests to political parties, candidates, or campaigns or to require full disclosure of such contributions. (Rec 4.11)				3		
<p>There are general rules regulating political contributions, and the disclosure of such contributions. Donations worth over \$NZ15,000 to national political parties must be declared, along with every anonymous donation over \$NZ1,500. Donations over \$NZ50 from an overseas person are not accepted from Jan 2020 [25]. However, there is no legislation specifically prohibiting the tobacco industry from donating to political parties, candidates, or campaigns.</p>						
14. Retired senior government officials form part of the tobacco industry (former Prime Minister, Minister, Attorney General) (Rec 4.4)		1				
<p>No such incidents have been identified for the 2018-2019 period. However, there have been examples in the past of ex-MPs involvement with TI.</p>						
15. <u>Current government officials</u> and relatives hold positions in the tobacco business including consultancy positions. (Rec 4.5, 4.8, 4.10)		1				
<p>No such incidents have been identified for the reporting period. However, Member of Parliament Chris Bishop used to work for PMI as a Corporate Affairs Manager (2011-2014), where he “actively worked against the National Government’s plans to increase excise on tobacco and plain packaging” [26]. He was elected in 2014 and represents the National Party (currently in opposition).</p>						
INDICATOR 7: Preventive Measures						
16. The government has put in place a procedure for disclosing the records of the interaction (such as agenda, attendees, minutes and outcome) with the tobacco industry and its representatives. (Rec 5.1)			2			
<p>As noted, the Ministry of Health records and makes public meetings with the TI. The meetings and purpose are recorded but no other records are disclosed. Minutes of e-cigarette advisory meetings with a member who has tobacco industry ties have been published in the reporting period.</p>						
17. The government has formulated, adopted or implemented a code of conduct for public officials, prescribing the standards with which they should comply in their dealings with the tobacco industry. (Rec 4.2)			2			
<p>The NZ Government has general conflict of interest guidelines for MPs (and public officials), which include disclosure of certain assets and interests and pecuniary or non-pecuniary interests [27,28], however, no comprehensive set of rules exists for public officials on regulating their interaction with the TI.</p>						
18. The government requires the tobacco industry to periodically submit information on tobacco production, manufacture, market share, marketing expenditures, revenues and any other activity, including			3			

lobbying, philanthropy, political contributions and all other activities. (5.2)						
<p>The Ministry of Health makes available on its website annual tobacco returns filed by tobacco manufacturers and importers [29]. Industry revenues are required to be public by NZ company law. However, in general the NZ Government does not ensure that the public has access, in accordance with FCTC Article 12(c), to a wide range of information on tobacco industry activities relevant to the objectives of the Convention, such as in a public repository.</p> <p>The government does not require information from the industry regarding ‘marketing expenditures and any other activity, including lobbying, philanthropy, political contributions and all other activities’</p>						
19. The government has a program / system/ plan to consistently ⁷ raise awareness within its departments on policies relating to FCTC Article 5.3 Guidelines. (Rec 1.1, 1.2)						4
<p>NZ does not currently have a national tobacco control plan and no information was found detailing a comprehensive or systematic strategy for raising awareness on policies relating to FCTC Article 5.3</p>						
20. The government has put in place a policy to disallow the acceptance of all forms of contributions/ gifts from the tobacco industry (monetary or otherwise) including offers of assistance, policy drafts, or study visit invitations given or offered to the government, its agencies, officials and their relatives. (3.4)						2
<p>No specific policy to disallow contributions from the tobacco industry exists. However, such interactions are governed by broader anti-corruption regulation [30]</p>						
TOTAL					33	

⁷ For purposes of this question, “consistently” means: a. Each time the FCTC is discussed, 5.3 is explained. AND b. Whenever the opportunity arises such when the tobacco industry intervention is discovered or reported.

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ANNEX A: SOURCES OF INFORMATION

I. TOBACCO INDUSTRY ACTIVITY

LOCAL TOBACCO COMPANIES

Top 5 Local Tobacco Company	Market Share (manufactured cigarettes)	Source
British American Tobacco	65%	Ministry of Health Tobacco Returns 2018
Imperial Tobacco	21%	As above
Phillip Morris	13%	As above
Others	1%	As above

TOBACCO FRONT GROUPS

Tobacco Industry Representative	Type (Front Group/ Affiliate/ Individual)	Source
NZ Taxpayers Union	Lobby group	The Guardian
The New Zealand Initiative (NZI)	Lobby group	NZI website

a. News Sources

Newspaper/Dailies	Type (Print/Online)	
Stuff	Online	
Radio New Zealand	Online	
The Guardian	Online	

b. Government Agencies referred to

Agency	Specify if more than one office is involved in this function:	General Sources of Information/ News for each office
1. Office of the Chief Executive (Prime Minister/ President)		Department of the Prime Minister & Cabinet https://dpmc.govt.nz/
2. Cabinet and/or National Assembly (Policy makers)		
3. Agriculture / National Tobacco Board		
4. Customs		NZ Customs Service https://www.customs.govt.nz/
5. Education		
6. Environment		
7. Finance/ Revenue/ Investments/ Excise		NZ Super Fund https://www.nzsuperfund.nz/
8. Health		Ministry of Health Manatū Hauora www.health.govt.nz
9. Labor		
10. Trade and Industry/ Investments		
Additional agencies/sectors to be named per country:		State Services Commission https://www.publicservice.govt.nz/ NZ Parliament Health Select Committee https://www.parliament.nz/en/pb/sc/scl/health/ Parliamentary Counsel Office

		http://legislation.govt.nz/ Tax Working Group https://taxworkinggroup.govt.nz/ New Zealand Electoral Commission www.elections.nz
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This list serves not only as a bibliography or reference list but an undertaking to search each source listed as needed to answer a specific question.

c. Meetings Attended/ Public Hearings

List the types of meetings and name of groups meeting (Working Group, Drafting group, National Assembly Public Hearing, National Tobacco Control Committee, etc.) and the contact person / source of the minutes:

Type of Meeting	Source
Ministry of Health meetings with Tobacco industry representatives	https://www.health.govt.nz/our-work/preventative-health-wellness/tobacco-control/who-framework-convention-tobacco-control/meetings-tobacco-industry-representatives
Electronic Cigarette Technical Expert Advisory Group (2018)	https://www.health.govt.nz/our-work/preventative-health-wellness/tobacco-control/vaping-and-smokeless-tobacco/electronic-cigarette-technical-expert-advisory-group .

II. Laws, Policies, and issuances:

HEALTH LAWS:

1. Is there a health law database? If yes, please list which one will be used and cite the limitations: No

2. If there is no existing health law database, then list the primary source of the law listing to be searched: www.legislation.govt.nz

3. Does the above sources include issuances? O Yes O No
If no, please list the alternative source for the issuances: _____

ALL LAWS:

4. Is there a centralized (all) law database? If yes, please list which one will be used and cite the limitations: Parliamentary Counsel Office www.legislation.govt.nz

5. If there is no existing centralized law database, then list the primary source of the law listing to be searched: n/a

6. Does the above sources include issuances? Yes
If no, please list the alternative source for the issuances: _____