

NEW ZEALAND | AOTEAROA

2021

TOBACCO
INDUSTRY
INTERFERENCE
INDEX

Acknowledgements

Author: Cancer Society of New Zealand (National Office)

Review: Thank you to Professor Janet Hoek and Dr Lindsay Robertson, University of Otago, for providing expert feedback on this report.

Background information

This report attempts to identify instances of tobacco industry interference (TII) in Aotearoa/New Zealand between January 2020 and March 2021, which by its nature is very difficult to document. In two instances, it also includes information on incidents that took place in 2019 that only emerged or were first identified in 2020 and were not covered in the 2019 report, available here: <https://globaltobaccoindex.org/country/NZ>.

The Tobacco Industry Interference Index (TIII) was initiated by Southeast Asia Tobacco Control Alliance (SEATCA) as a regional report with support from Bloomberg Philanthropies and is part of an international publication of the Global Center for Good Governance in Tobacco Control (GGTC) at the School of Global Studies in Thammasat University, Thailand.

The authors received no specific funding for this work.

Methodology

This report uses the questionnaire developed by SEATCA based on the Article 5.3 guidelines. Information used in this report is obtained from the public domain only (e.g., media, websites, and reports). A scoring system is used 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 the compliance with the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC) Article 5.3. For details on scoring see: 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>

Suggested Citation: Cancer Society of New Zealand. Aotearoa/New Zealand Tobacco Industry Interference Index 2021. Global Center for Good Governance in Tobacco Control (GGTC), 2021.

Disclaimer: This Index is based solely on publicly available information obtained by researchers in New Zealand (NZ). If you have information that can strengthen this report, contact us at: info@ggtc.world. For more information visit: www.exposetobacco.org and www.globaltobaccoindex.org

Key acronyms

BATNZ	British American Tobacco New Zealand
CSR	Corporate Social Responsibility

DHB	District Health Board
FCTC	Framework Convention on Tobacco Control
ITNZ	Imperial Tobacco New Zealand
MBIE	Ministry of Business, Innovation and Employment
MoH	Ministry of Health
MP	Member of Parliament
MSD	Ministry of Social Development
NZ	New Zealand
PMINZ	Philip Morris International New Zealand
TI	Tobacco Industry
WHO	World Health Organisation

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.

Between January 2020 and March 2021, tobacco company allies¹ actively tried to influence policy, primarily by using proposed vaping and heated tobacco regulations to approach Members of Parliament (MPs) during parliamentary consultative processes and through the national media. As outlined in this report, there were instances where COVID-19 pandemic restrictions were used to attack and question the timing of proposed tobacco control laws. Despite this pressure, the New Zealand (NZ) Government was slightly more successful at preventing tobacco industry interference in 2020 than it was in 2019. Compared to 2019, there were no identified instances of a cabinet minister reiterating tobacco industry arguments, nor any instances of industry participation in policy advisory groups.

However, there was no progress in implementing Article 5.3 measures that prevent tobacco-related conflicts of interest within government and ensure transparency in any interactions that do occur. For instance, the Government has no specific policy to prohibit political parties or public employees from accepting contributions (including monetary, offers of assistance or policy drafts) from the tobacco industry. Nor is the tobacco industry specifically prohibited from donating to political parties, candidates, or campaigns. Comprehensive rules are not in place to regulate interactions between the industry and public officials. Lobbyists continue to be unregulated. In addition, the Government does not ensure that the public has access to a wide range of information on tobacco industry activities such as revenue, profits, taxes and political contributions.

There is also no evidence of a systematic strategy for raising awareness within government departments on policies relating to FCTC Article 5.3. The importance of maintaining awareness of and compliance with the FCTC was reinforced by the Government's decision to allow tobacco production during the 2020 COVID-19 lockdown by designating it as a 'business essential to the necessities of life'. While the country was facing twin pandemics - COVID-19 and tobacco - the Government acted decisively and effectively to protect the community from COVID-19, while permitting the production of the most lethal consumer product in history.

This report outlines tobacco industry interference in public policy making in New Zealand Jan 2020-March 2021 and presents ways in which the government resisted. Recommendations to strengthen protections are also presented.

¹ Throughout this report, the term "tobacco industry" includes those representing its interests or working to further its interests. 'Allies' and 'affiliates' refers to individuals and organisations with financial ties to tobacco companies.

Summary Findings

1. INDUSTRY PARTICIPATION IN POLICY DEVELOPMENT

No instances of the NZ Government accepting offers of assistance from the tobacco industry, endorsing their policies, or of industry representatives attending policy meetings were identified. However, there were many instances of industry representatives or their affiliates participating in public regulatory consultations and promoting measures that would undermine proposed tobacco control laws.

2. INDUSTRY “CORPORATE SOCIAL RESPONSIBILITY” (CSR) ACTIVITIES

The NZ Government did not endorse, support or form partnerships with tobacco industry CSR activities. But the Ministry of Social Development partnered with high profile NZ Fashion Week (NZFW) to promote the role businesses play in addressing social issues. A tobacco company tried to position itself as a supporter of this goal by attempting to sponsor designers who, in return, were asked to promote the company’s ‘alternative’ heated tobacco products.

3. BENEFITS TO THE INDUSTRY

A preferential exemption was granted to the tobacco industry by the Government during the national COVID-19 State of Emergency. Imperial Tobacco’s factory was designated an ‘essential business’ and permitted to continue its operations throughout the COVID-19 national lockdown.

4. UNNECESSARY INTERACTION

There was no evidence that top-level NZ officials attended tobacco industry social functions or any evidence that the Government accepted assistance from the industry to undertake tobacco-control activities. However, there were two identified cases of engagement of a tobacco industry affiliated organisation with regional health authorities (District Health Boards) for a smoking cessation event and smoke-free strategy development.

The NZ government has not signed the FCTC Protocol to Eliminate Illicit Trade in Tobacco Products.

5. TRANSPARENCY

The Ministry of Health Manatū Hauora (MoH) and NZ Customs Service Te Mana Ārai O Aotearoa record meetings with the tobacco industry. No details on meetings with other government departments (if they occurred) are reported.

The NZ Government does not regulate lobbyists. It can therefore be a challenge to expose tobacco industry links to, and funding of, allied groups. Over seven years, an industry ‘PR’

lobbyist and former British American Tobacco employee systematically and anonymously attacked and defamed public health experts who proposed policy opposed by his tobacco, sugar and alcohol clients.

Prominent lobby groups regularly participated in legislative hearings and appeared in the national news media vigorously opposing tobacco control laws without disclosing their tobacco industry support.

6. CONFLICT OF INTEREST

There is no legislation specifically prohibiting the tobacco industry from donating to political parties, candidates, or campaigns and lobbyists, although contributors and donations over a certain amount must be declared.

No retired or current government officials were identified as holding positions in the tobacco business; however, a current Member of Parliament (MP) used to work for the tobacco industry, and a former political staffer has gone on to work for the tobacco industry.

7. PREVENTIVE MEASURES

No comprehensive set of rules exists for public officials on regulating their interaction with the industry. Interactions between public officials, MPs and the tobacco industry are governed by general conflict of interest guidelines only. There is also no specific policy to disallow contributions from the tobacco industry (monetary, offers of assistance, policy drafts etc.), although such interactions are governed by broader anti-corruption regulation.

The Ministry of Health and NZ Customs Service provide details of meetings with the tobacco industry on their websites, but minutes and/or outcomes of these meetings are not published. The Ministry of Health makes available on its website annual tobacco returns filed by tobacco manufacturers and importers. However, in general the NZ government does not ensure that the public has access to a wide range of information on tobacco industry activities. For example, the government does not require information from the industry regarding marketing expenditures and other activities, including lobbying, philanthropy, and political contributions. Nor does the Government have a comprehensive or systematic strategy for raising awareness within Government departments on policies relating to FCTC Article 5.3

Recommendations²

- 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, marketing expenditure, philanthropy, research and CSR in a single public repository, such as the Ministry of Health website.
 - All communications between the tobacco industry and any government departments and agencies (not just the Ministry of Health/NZ Customs) 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.
 - Exclude the tobacco industry and its representatives from being consulted on or having 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 'Corporate Social Responsibility' (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 companies 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.

² Recommendations remain largely unchanged from the previous report (2019), as no progress has been made with the exception of online notifications of meetings between NZ Customs and tobacco companies.

2021 Tobacco Industry Interference Index Results and Findings

	0	1	2	3	4	5
INDICATOR 1: Level of Industry Participation in Policy-Development						
<p>I. The government³ accepts, supports or endorses any offer for assistance by or in collaboration with the tobacco industry⁴ in setting or implementing public health policies in relation to tobacco control⁵ (Rec 3.1)</p>	0					
<p>While there is no evidence of tobacco industry (TI) involvement in government groups and agencies directly setting public health policy, in 2020, TI representatives and TI-affiliated organisations participated in parliamentary consultative processes. In NZ, almost all Bills (proposed laws) are referred to the relevant Select Committee, which invites and hears public submissions. This legislative process is used by the TI to try and influence policy. Opposition from political parties to tobacco control legislation was also considerable but ultimately unsuccessful. Examples are presented here to illustrate the pressure the Government/Ministry of Health was placed under when attempting to pass tobacco control laws and policies.</p> <p>The Tax Working Group</p> <p>The Government created the <u>Tax Working Group</u> to “improve the fairness, balance and structure of the tax system over the next ten years” and called for public submissions [1]. <u>Philip Morris</u> used this opportunity to lobby the Government to introduce a lower excise tax on heated tobacco products and commissioned a local advisory firm (<u>TBD Advisory</u>) to prepare an “independent analysis” to submit to the Tax Working Group [2, 3]. Following the consultation process, Philip Morris publicly announced that it wanted NZ to be its “first cigarette free market” and stated they would be able to exit the NZ market more quickly if the Government provided a tax break on heated tobacco products [2]. This call for lower excise tax was not considered by the Tax Working Group as “detailed recommendations on the rates of alcohol and tobacco excise are beyond the expertise of the Group”[1]. Philip Morris also sought to meet with the Ministry of Health to “explain how they would help the Government achieve its Smokefree 2025 goal (of reducing smoking prevalence and tobacco availability to minimal levels) but complained that they were rebuffed “even after sending the agency six binders of scientific information”[2].</p> <p>Regulated Products (Vaping) Amendment Bill (‘Vaping Bill’) 2020</p> <p>Parliament’s Health Select Committee received submissions on the Vaping Bill, which proposed measures to regulate vaping and heated tobacco products. Several vaping and tobacco companies, including: <u>British American Tobacco (BATNZ)</u>, <u>Japan Tobacco International</u>, <u>Imperial Brands New Zealand</u>, <u>Nicoventures Trading Ltd (BAT)</u>, and <u>JUUL Labs (Altria)</u> made submissions. All published TI submissions expressed tobacco companies’ sincere commitment to preventing youth access to their products; however, all were running aggressive global or local marketing and sponsorship</p>						

³ 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

⁴ The term, “tobacco industry” includes those representing its interests or working to further its interests, including the State-owned tobacco industry.

⁵ “Offer of assistance” may include draft legislation, technical input, recommendations, overseas study tour

campaigns, often targeting young people [4-7]. For example, a few months following their submission, Vype (BAT) sponsored a ‘Vype Village’ at large music festivals attended by over 30,000 young New Zealanders, which included a Vype Lounge, truck, waterslides and shade tent, and IQOS (PMI) sponsored a number of Highlife Entertainment music festivals [8-10]. Sponsored images of Vype/Vuse and IQOS were posted on social media by high profile artists and festival goers, reaching thousands more potential customers.

Submissions to the Health Select Committee were made by at least four organisations identified as having ties to TI, which pressured the Government to halt, delay or “relax” the proposed vaping regulations:

- i) The NZ Taxpayers Union, a lobby group that reportedly has British American Tobacco (BAT) as a corporate funder [11], opposed the Bill to regulate vaping products, arguing that “there is no reason to believe that strict measures to dissuade [young people] from vaping are necessary, and accordingly the measures contained in the Bill are unjustifiable...”[12]. The Taxpayers Union strenuously argued against the Bill in national media, stating that it “will help keep people smoking cigarettes...Minister Salesa [then the Minister responsible for tobacco control] is clearly in the pocket of big tobacco to ban flavoured vapes from the very places most smokers buy their durries” [13].
- ii) The New Zealand Initiative (NZI), a self-styled “leading think tank” with two tobacco company members (BAT, Imperial Brands), strongly opposed the Government’s efforts to progress the Vaping Bill during the national Covid-19 stay at home order: “frankly, it boggles the mind that the House of Representatives is spending any time whatsoever on this legislative process during the current pandemic. Vapers will be unlikely to find the time to submit on this process. It is incomprehensible that the Health Select Committee is making this process a priority now”[14]. Despite NZI’s stated concern that the “pandemic lock-down would severely limit engagement of disadvantaged communities”[14], the Select Committee received 1,355 written and oral submissions, mostly individual vapers (72%) and small general retailers (20%)[15].
- iii) COREISS, a centre funded by Foundation for a Smokefree World (which is in turn fully funded by PMI) argued against many of the Vaping Bill’s proposals to increase control over e-cigarette sales and marketing. The COREISS submission also advocated overturning the ban on Swedish snus.
- iv) In addition, COREISS continued to oppose the Bill to ban smoking in cars carrying children that was passed in to law in May 2020. The Director of COREISS claimed in Parliament that “scientific studies have not proven that exposure to cigarette smoke in the car causes disease”[16]. A COREISS researcher wrote an op-ed entitled *Why fining parents for smoking in cars isn’t the answer*, based on an hour spent observing women pulling up to her local takeaway shop. The author wrote that it was such a rare sight to see a parent smoking in a car with a child that “I began to wonder if [the Ban on smoking in cars] was just another cooked up middle-class attack on the poor who have disproportionately high smoking rates... it’s time privileged Pākehā [European New Zealanders] academics backed off from relentlessly lobbying for their top-down authoritarian strategies to be funded over and above Māori and Pasifika solutions”. This argument was disputed by Māori Public Health Agency Hāpai Te Hauora, who pointed

out the need to listen to children, who had clearly voiced that smoking in cars made them feel unhappy and unwell [17].

- v) Australian Tobacco Harm Reduction Association (ATHRA), who describe themselves as a “health promotion charity that helps to reduce the harm from tobacco smoking in Australia”, presented written and oral submissions on the Vaping Bill to the Health Select Committee [18, 19]. ATHRA’s director, a medical practitioner, recommended that proposed regulations, including prohibitions on advertising and sponsorship of vaping and smokeless tobacco products, should be “relaxed”[19]. In 2018, ATHRA received \$8000 from Knowledge Action Change (KAC), a UK organisation that has received millions of dollars of funding from the Philip Morris-funded Foundation for a Smoke-Free World [20]. ATHRA is also linked to a global public relations firm Burson Cohn & Wolfe (BCW), that has worked on behalf of Philip Morris and other tobacco and vaping interests[21]. ATHRA’s representatives did not disclose this information and their submission disclosure states “we do not accept donations from tobacco companies or their subsidiaries”[19].

The Vaping Bill passed in 2020 despite opposition from the affiliated organisations listed above and opposition political parties. Leader of the ACT Party, David Seymour (a right-wing conservative party) had vowed to campaign to “ensure it [the Bill] never sees the light of day” [22]. The Prime Minister Jacinda Ardern accused the National Party of holding up the Bill, by proposing an amendment that would allow vaping retailers to sell oral nicotine pouches.

Customs and Excise (Tobacco) Amendment Bill (May 2020)

This Bill, passed under urgency in 2020, tightened border controls closed to reduce revenue evasion and to close off import channels used by smugglers. Prior to this law passing, NZ Customs Service had to prove importations aimed to evade excise tax before tobacco could be seized or a prosecution started. Importing tobacco products, leaf and refuse now requires a permit and receipt of any tobacco products through the international mail is prohibited. A permit is not required to import cigars, cigarillos, water-pipe tobacco, chewing tobacco, snuff and snus [23, 24]. ACT party leader David Seymour voted against the Bill, maintaining that the new permit system was “bureaucratic activity which failed to acknowledge why the tobacco black market existed - the cost of cigarettes”. He said that people operating in the black market were not following the rules by definition, so any effect of the new permit system would be marginal: “what we have here is a failure to admit the tobacco tax policy has failed. The government is addicted to the revenue. Now, instead of admitting it’s wrong and reducing tobacco taxes, it’s scaling up enforcement activities to try and protect that revenue base” [25]. MP Seymour’s comments were echoed six days later by Imperial Brands: “We believe there is a clear pattern. Consumers who cannot afford tobacco are increasingly turning to the black market...the concern is that the situation in New Zealand could follow Australia which has far greater levels of illicit trade in tobacco as well as a sophisticated organised crime network that sustains it”[26]. It should be noted that NZ has a strong border and NZ Customs considers TI overestimates the size of illicit trade [27]. A 2021 estimate from NZ Customs was that illicit products made up only 6-7% of the NZ market [28].

The General Election (Oct 2020)

	0	1	2	3	4	5
Just prior to the 2020 General Election, <u>Winston Peters</u> the Deputy Prime Minister and leader of <u>New Zealand First</u> (in coalition with the NZ Labour party) announced his policy platform on tobacco. If voted in again, he stated that his Party would “put a stop to the belief that what is being done is working” by lowering tobacco excise so that the average pack of cigarettes is no more than \$20 (current price is approx. \$28-\$38) and remove tax from vaping and heated tobacco products. He said tobacco companies would not benefit from his party's policy and stated he had not been lobbied either by them or by vaping companies. The NZ First party said the policy would help cut crime as "high tobacco excise has fuelled a huge black market for tobacco, with sophisticated criminal operations avoiding tax by buying and importing cigarettes from parts of the world where tobacco excise is low. In response, the Prime Minister, <u>Jacinda Ardern</u> said she would not lower taxes on cigarettes - and this position was non-negotiable[29]. At the General Election, Ardern led the Labour Party to a landslide win with enough votes to govern alone and Winston Peters' NZ First Party was voted out of power. Post-election, NZ First's policy position remains focused on “stop attacking the low-incomed with exorbitant taxes (\$2 billion) whilst claiming to support Smokefree [Aotearoa] by 2025” [30].						
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					
No such incidents have been identified for the Jan 2020-March 2021 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)	0					
No such incidents have been identified for the Jan 2020-2021 period.						
4. The government nominates or allows representatives from the 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) ⁶ (Rec 4.9 & 8.3)		1				
No such incidents have been identified for the Jan 2020- March 2021 period.						
INDICATOR 2: Industry corporate social responsibility (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 ⁷ (monetary or otherwise) from the tobacco industry (including so-called CSR contributions). (Rec 6.4)				3		

⁶ Please annex a list since 2009 so that the respondent can quantify the frequency, <http://www.who.int/fctc/cop/en/>

⁷political, social financial, educations, community, technical expertise or training to counter smuggling or any other forms of contributions

	0	1	2	3	4	5
--	---	---	---	---	---	---

5.A. Tobacco industry CSR activities are not banned in NZ.

New Zealand Fashion Week (NZFW): Philip Morris offered to pay the fees and venue costs of designers at NZ Fashion week, an event co-sponsored by the Government. NZFW worked alongside the Ministry of Social Development (MSD) “in a new partnership...to highlight the leading role businesses play in addressing social issues” [31, 32]. An NZFW Brand manager asked designers if they smoked or vaped and if they would be interested in have their costs paid by Philip Morris as “we are keen to introduce this brand” but “you would NOT have to say you have association with them or promote them”[33]. It was reported in the media that some fashion labels rebuffed the offer but IQOS (Philip Morris) did go on to sponsor at least one event at NZFW [34, 35]. A designer involved said “much can be said about a fashion brand being sponsored by Philip Morris, but for us, it’s a genuine alliance with a brand that’s purpose is to lessen the effects smoking has on its users” [35]. NZFW is a prominent and well publicized event involving over 30,000 attendees and a target market of women aged between 25-49[32]. It is not known whether the MSD was aware of the link between NZ Fashion Week and Philip Morris.

5.B None identified for the reporting period.

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 tobacco control law. (e.g., 180 days is common for PHW, Tax increase can be implemented within 1 month) (Rec 7.1)	0					
---	---	--	--	--	--	--

None identified for the reporting period. The Government resisted requests from TI affiliated bodies to postpone TC legislation during the reporting period (see indicator 1).

7. The government gives privileges, incentives, exemptions or benefits to the tobacco industry (Rec 7.3)			4			
--	--	--	---	--	--	--

i) A preferential exemption was granted to a tobacco company by the Government during the national COVID-19 ‘lockdown’. Imperial Tobacco’s factory was designated an ‘essential business’ and permitted to continue its operations throughout the national COVID-19 State of Emergency. The Ministry of Business, Innovation and Employment (MBIE) required all businesses and services, except those deemed “essential to the provision of the necessities of life” to close for seven weeks, while the NZ population stayed at home in their ‘bubbles’ [36]. It is therefore unclear why MBIE permitted the Imperial Tobacco factory to remain open throughout the pandemic. As one public health expert stated: “it is outrageous that a tobacco factory whose products are likely to contribute to making the effects of the epidemic worse is deemed essential, while stores that provide truly essential services, like local greengrocers, are forced to close... a healthier, more beneficial way for government to help smokers would be to subsidise over-the-counter nicotine replacements”[37, 38]. Imperial Brands stated that the Government had given them permission to stay open “under strict conditions and to ensure continued supplies of fast moving consumer goods”[39]. MBIE defines ‘fast-moving consumer goods’ as “any entity involved in the supply, delivery, distribution and sale of food, beverage and other key consumer goods essential for maintaining the wellbeing of people”[36]. Tobacco does not fit within this definition.

	0	1	2	3	4	5
<p>In general, the rules mandating that the government does not provide preferential tax exemption to the tobacco industry are unclear.</p> <p>ii) 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 [40]. Aside from this omission, NZ does not otherwise appear to specifically exclude tobacco control from treaties. Companies that manufacture tobacco are excluded from the NZ Superannuation fund investment portfolio[41].</p> <p>iii) From January 2010 to 2020, the government increased tobacco excise by CPI+10% each year. The 2020 increase was the fourth and final of the 10% increases announced in the 2016 Budget and legislated for in the Customs and Excise Act 2018. After 2020, tobacco excise will only be adjusted for CPI changes [42].</p> <p>iv) 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 [43].</p>						
INDICATOR 4: Forms of Unnecessary Interaction						
8. Top level government officials (such as President/ Prime Minister or Minister ⁸) 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					
None identified for the reporting period.						
The NZ government has not signed up to the FCTC Protocol to Eliminate Illicit Trade in Tobacco Products [44].						
10. The government accepts, supports, endorses, or enters into partnerships or agreements with the tobacco industry. (Rec 3.1) NOTE: This must <u>not</u> involve CSR, enforcement activity, or tobacco control policy development since these are already covered in the previous questions.			2			

⁸ Includes immediate members of the families of the high-level officials

	0	1	2	3	4	5
--	---	---	---	---	---	---

During the reporting period, COREISS worked with at least two District Health Boards (DHBs), that are responsible for health services in each region of NZ. The Director of COREISS, (a centre established in 2018 solely funded by FSFW/funded by PMI), presented at Midcentral DHB’s smoking cessation event and participated in Bay of Plenty DHBs Smokefree Strategy Day. When questioned by the media, MidCentral DHB Chief Executive (CE) said that the DHB “does not have a policy” on relations with the TI, a statement that suggests the CE is unaware of obligations under the Framework Convention on Tobacco Control (FCTC) [45]. When the Ministry of Health was informed, it told DHBs they would prefer they not work with COREISS [46]. The Director of COREISS, Dr Marewa Glover was a finalist in 2019 New Zealander of the Year and 2019 Communicator of the Year, an event that was won by the Prime Minister’s former Chief Science Advisor [47, 48]. She sits on the programme organising committee of the Global Forum on Nicotine (GFN), an annual conference that provides a platform for the tobacco industry and is funded by KAC (which is in turn funded by FSFW/PMI) [49].

INDICATOR 5: Transparency

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)		1				
--	--	---	--	--	--	--

The Ministry of Health Manatū Hauora (MoH) and NZ Customs Service Te Mana Ārai O Aotearoa record meetings with tobacco companies. No details on tobacco companies’ interactions with other government departments (if they occur) are reported.

The Ministry of Health:

The MoH makes public on their website notifications of meetings with tobacco companies. The last recorded meeting was in 2021 to discuss social media advertising of regulated products and promotion and in 2017 three meetings were held with Imperial Tobacco, Philip Morris and British American Tobacco to discuss how new tobacco products and nicotine-delivery devices should be regulated [50]. Informal targeting of key MoH figures by TI is not recorded but can be disclosed through Official Information Requests (OIA) or reported in the media [2] [51].

NZ Customs Service

Meetings between NZ Customs Service and TI are now publicly available online “on an as necessary basis to discuss illicit trade in tobacco and, when appropriate, any changes to Customs’ legislation that affect importers and manufacturers”. In 2020, two meetings were recorded, the first in January with Imperial Tobacco, and the second in May with British American Tobacco and Imperial Tobacco. NZ Customs also note that “operational staff have regular contact with importers and manufacturers of tobacco products in respect of ensuring compliance with importing and excise obligations”[52].

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)					4	
---	--	--	--	--	---	--

	0	1	2	3	4	5
--	---	---	---	---	---	---

The NZ Government does not regulate lobbyists. There is no existing requirement for TI and affiliated entities to register with the NZ Government and it is unclear how the relationship between businesses and government is moderated.

Industry 'PR' lobbyist Carrick Graham, a former BAT employee and son of the former Justice Minister, was found to have been paid to anonymously and systematically attack public health experts who proposed policy opposed by his tobacco, sugar and alcohol clients[53]. Graham campaigned for over seven years to attack the Health Research Council (the government health research funder), defame well respected public health experts, and attack public health messaging to "advance the interests of industry"[54]. It is alleged that his services had been paid for by clients of the Food and Grocery Council, the trade body for big tobacco (including British American Tobacco), alcohol and processed food companies. The Chief Executive (CE) of the Food and Grocery Council, Katherine Rich, a former National MP, also sat on the board of Te Huringa Hauora Health Promotion Agency, which leads the Government's health promotion initiatives designed to protect the health of New Zealanders[55]. Professor Boyd Swinburn, an advocate for strong public health policies and one of the experts who successfully won a defamation case against Graham, said the situation highlighted the tactics employed by those with vested interests: "these industries have successfully stalled public health policies for far too long in this country because they have deep pockets, powerful lobbying influence over government and very few scruples"[54]. During the 2020 reporting period, Swinburn and two other public health experts sued lobbyist Graham, the Food and Grocery Council and CE Katherine Rich for defamation. In Sept 2020, the High Court ordered Graham must turn over invoices for his work for clients, including British American Tobacco, but these have not yet been produced [56].

As identified earlier, lobby groups NZ Taxpayers Union, and the NZ Initiative, which both have tobacco industry support, are regular contributors to public debate and government submissions. Both groups have vigorously opposed plain packaging laws, tobacco tax increases and vaping regulations.

INDICATOR 6: Conflict of Interest

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		
--	--	--	--	---	--	--

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 contributor who donated over \$15,000 during the year and every anonymous donation over \$1,500. Donations over \$NZ50 from an overseas person are not accepted from Jan 2020 [57]. However, there is no legislation specifically prohibiting the tobacco industry from donating to political parties, candidates, or campaigns.

Registered political parties must also report:

- all payments from the Electoral Commission of donations protected from disclosure

	0	1	2	3	4	5
<ul style="list-style-type: none"> the number of anonymous party donations under \$1,500 and the total amount of these donations the number of all party donations over \$1,500 but less than \$5,000 and the total amount of these donations the number of all party donations over \$5,000 but less than \$15,000 and the total amount of these donations 						
14. Retired senior government officials form part of the tobacco industry (former Prime Minister, Minister, Attorney General) (Rec 4.4)	0					
No such incidents have been identified for the reporting period.						
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				
No such incidents have been identified for the reporting period. However, Member of Parliament <u>Chris Bishop</u> used to work for <u>Philip Morris</u> as a Corporate Affairs Manager (2011-2014), where he “actively worked against the <u>National Government’s</u> plans to increase excise on tobacco and plain packaging”[58]. He was elected in 2014 and represents the National Party (currently in opposition). In addition, <u>Apirana Dawson</u> the former Director of Operations for the NZ First Party reportedly works for <u>Philip Morris</u> as their Manager External Affairs (as of Jan 2020) [59, 60]						
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)		1				
As noted, the <u>Ministry of Health</u> and <u>NZ Customs Service</u> records and makes public meetings with the TI on their websites. The meetings and purpose are recorded but no other records are disclosed.						
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			
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 [61], however, no comprehensive set of rules exists for public officials on regulating their interaction with the TI.						
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 lobbying, philanthropy, political contributions and all other activities. (5.2)			2			

	0	1	2	3	4	5
The Ministry of Health makes available on its website annual tobacco returns filed by tobacco manufacturers and importers [62]. 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. 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'.						
19. The government has a program / system/ plan to consistently ⁹ raise awareness within its departments on policies relating to FCTC Article 5.3 Guidelines. (Rec 1.1, 1.2)					4	
No information was found detailing a comprehensive or systematic strategy for raising awareness within Government departments on policies relating to FCTC Article 5.3.						
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			
No specific policy to disallow contributions from the tobacco industry exists. However, such interactions are governed by broader anti-corruption regulation [63].						
TOTAL					30	

⁹ 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.

ANNEX A: SOURCES OF INFORMATION

TOBACCO INDUSTRY ACTIVITY

LOCAL TOBACCO COMPANIES

Top 5 Tobacco Companies/distributors	Market Share (cigarettes)	Source
British American Tobacco NZ (BATNZ)	69%	Tobacco Returns, Ministry of Health (2019)
Imperial Tobacco NZ (ITNZ)	18%	«
Philip Morris NZ (PMNZ)	11%	«

ORGANISATIONS RECEIVING TOBACCO INDUSTRY FUNDING

Top Tobacco Industry Representative	Type	URL
The NZ Taxpayers' Union	Lobby group with TI support	taxpayers.org.nz
The NZ Initiative	Think tank with TI support	nzinitiative.org.nz

NEWS SOURCES

Top 5 Newspaper/Dailies	Type (Print/Online)	URL
Radio NZ (RNZ)	online	rnz.co.nz
The Spinoff	online	thespinoff.co.nz
Scoop Independent News	online	scoop.co.nz
Newsroom	online	newsroom.co.nz
Stuff	online	stuff.co.nz

References

1. Tax Working Group Te Awheawhe Tāke. *Future of tax final report Vol 1. Recommendations*. 2019; Available from: <https://bit.ly/3yawXPz>.
2. Reidy M, *Philip Morris calls for tax break in switch from cigarettes to tobacco sticks*, in RNZ. 2019, RNZ: Wellington.
3. TDB Advisory Ltd. *Incorporating harm reduction in tobacco taxation: a submission to the Tax Working Group*. 2018; Available from: <https://bit.ly/3bsZUMW>.
4. Imperial Brands New Zealand. *Submission to the Health Select Committee. Smoke-free Environments and Regulated Products (Vaping) Amendment Bill*. Health Select Committee 2020; Available from: <https://bit.ly/3ohz6o5>.
5. JUUL Labs. *Submission to the Health Selection Committee, Smokefree Environments and Regulated Products (Vaping) Bill*. 2020; Available from: <https://bit.ly/3eOdMmV>.
6. Nicoventures Trading Limited. *Submission to the Health Select Committee, Smokefree Environments and Regulated Products (Vaping) Bill*. 2020; Available from: <https://bit.ly/3ojs7Lj>.
7. British American Tobacco. *Submission to the Health Select Committee, Smokefree Environments and Regulated Products (Vaping) Amendment Bill*. 2020; Available from: <https://bit.ly/3ojdkjF>.
8. Highlife Entertainment. *IQOS is back with us for another year! 2019 2021*]; Available from: <https://bit.ly/2RWCPvj>.
9. Rythym and Vines with Vuse. *VYPE at R&V*. 2019; Available from: <https://www.facebook.com/watch/?v=2225482937752001>.
10. Hoek, J. and B. Freeman, *BAT(NZ) draws on cigarette marketing tactics to launch Vype in New Zealand*. *Tobacco Control*, 2019. **28**(e2): p. e162.
11. Glenza, J., *Revealed: the free-market groups helping the tobacco industry*, in *The Guardian*. 2019.
12. NZ Taxpayers Union. *Submission to the Health Select Committee. Smoke-free Environments and Regulated Products (Vaping) Amendment Bill*. 2020; Available from: <https://bit.ly/33NU98p>.
13. NZ Taxpayers Union. *Vaping law will harm the public, gives in to Big Tobacco*. Press release: NZ Taxpayers Union. Scoop Independent News 2020; Available from: <https://bit.ly/3uKWook>.
14. The NZ Initiative. *Submission to the Health Select Committee, Smokefree Environments and Regulated Products (Vaping) Amendment Bill*. 2020; Available from: <https://bit.ly/3ok6ivd>.
15. Ministry of Health. *Smokefree Environments and Regulated Products (Vaping) Amendment Bill: departmental report*. 2020; Available from: <https://bit.ly/3ou4QGR>.
16. Health Select Committee NZ Government. *COREISS oral submission to Smoke-free Environments (Prohibiting Smoking in Motor Vehicles Carrying Children) Amendment Bill (21 August 2019)*. 2019; Available from: <https://www.facebook.com/hescnz/videos/2378441462191664/>.
17. Hāpai te Hauora, C.S., Otago University,. *Listen to kids when they tell you to stop smoking*. 2019; Available from: <https://thespinoff.co.nz/atea/23-03-2019/listen-to-kids-when-they-tell-you-to-stop-smoking/>.
18. Australian Tobacco Harm Reduction Association (ATHRA). *What is ATHRA?* [cited 2020; Available from: <https://www.athra.org.au/>.

19. Australian Tobacco Harm Reduction Association (ATHRA). *Submission to the Health Select Committee: Smokefree Environments and Regulated Products (Vaping) Amendment Bill*. 2020; Available from: <https://bit.ly/3hqnyE3>.
20. Foundation for a Smokefree World Inc. *2020 Annual Tax Return, Form 990, Return of Private Foundation 2020* [cited 2021; Available from: <https://bit.ly/34vAASN>].
21. Workman, M. and S. Hutcheon, *Metadata reveals medical charity ATHRA received assistance from PR company linked to vaping campaign*, in ABC 2021, ABC: Australia.
22. ACT. *Vaping crackdown condemns another generation to smoking*. 2020; Available from: <https://bit.ly/3uOcxK4>.
23. NZ Government. *Customs and Excise (Tobacco) Amendment Bill*. 2020; Available from: <https://www.legislation.govt.nz/bill/government/2020/0251/latest/LMS344516.html>.
24. NZ Customs Service Te Mana Arai O Aotearoa. *Tobacco*. 2020 [cited 2020; Available from: <https://bit.ly/2Sj3oUY>].
25. Todd, K. *Tobacco law changes will see stricter border rules from next week*. 2020 [cited 2020; Available from: <https://bit.ly/3ogUUQG>].
26. Imperial Brands New Zealand. *Black-Market Tobacco Sidesteps \$287 Million In Excise Tax*. 2020 [cited 2020; Available from: <https://bit.ly/3tLFt45>].
27. NZ Customs Service Te Mana Arai O Aotearoa. *Departmental disclosure statement: Customs and Excise (Tobacco) Amendment Bill*. 2020; Available from: <http://disclosure.legislation.govt.nz/assets/disclosures/bill-govt-2020-251.pdf>.
28. Gallagher A, R.L., Hoek J, Wilson N, Edwards R., *Email from Berry B (NZ Customs Investigations Manager), In Illicit tobacco trade and the Smokefree Aotearoa 2025 Goal: Arguments and Evidence*, in *Email to lead author Public Health Expert D.A. Gallagher*, Editor. 2021.
29. RNZ. *New Zealand First aims to cut price of cigarettes to \$20*. 2020; Available from: <https://www.rnz.co.nz/news/political/426301/new-zealand-first-aims-to-cut-price-of-cigarettes-to-20>.
30. NZ First Party. *Policy: primary care and services*. 2021 [cited 2020; Available from: https://www.nzfirst.nz/primary_care_and_services].
31. NZ Fashion Week. *The Guide. Everything you need to know*. NZFW/19. 2019; Available from: <https://fashionweek.partica.co.nz/fashionweek/nzfw-the-guide-2019/flipbook/1/>.
32. NZFW. *NZFW Partner Manual*. 2019 [cited 2021; Available from: <https://bit.ly/3eOcyi5>].
33. RNZ. *NZ Fashion Week's secret plan to bring big tobacco to the catwalk*. 2019 [cited 2021; Available from: <https://www.rnz.co.nz/news/national/396652/nz-fashion-week-s-secret-plan-to-bring-big-tobacco-to-the-catwalk>].
34. UneeQ. *NEWS: NZ Fashion Week gets an AI-powered digital human supermodel!* 2019; Available from: <https://digitalhumans.com/blog/nz-fashion-week-gets-an-ai-powered-digital-human-supermodel/>.
35. Black Magazine: BLKonBLK. *SALASAI SEVEN' Salasai Present Autumn Winter 2020*. 2019 [cited 2021; Available from: <https://www.blackmagazine.co.nz/blk-list/introducing-salasai-seven/>].
36. BusinessNZ. *Essential businesses*. 2020; Available from: <https://bit.ly/3y7KCH4>.
37. Asthma and Respiratory Foundation of New Zealand. *Tobacco Is Not Essential For Life - ARFNZ*. 2020; Available from: <https://www.scoop.co.nz/stories/GE2003/S00168/tobacco-is-not-essential-for-life-arfnz.htm>.
38. Tso, M. *Coronavirus: Asthma authority outraged by tobacco factory staying open*. 2020; Available from: <https://bit.ly/33LP2VW7>.

39. Hunt, T. *Coronavirus: Cigarette factory says it has MBIE approval to operate through lockdown*. 2020; Available from: <https://bit.ly/3ycnqYd>.
40. Hirono, K., Gleeson, D, and B. Freeman, *To what extent does a tobacco carve-out protect public health in the Trans-Pacific Partnership Agreement?* Public Health Res Pract, 2016. **26**(2).
41. NZSuperFund Te Kaitiaki Tahua Penihana Kaumātua o Aotearoa. *Exclusions*. Available from: <https://nzsuperfund.nz/how-we-invest/responsible-investment/exclusions/>.
42. NZ Customs Service Te Mana Arai O Aotearoa. *Tobacco excise increase on 1 January 2020*. 2020; Available from: <https://bit.ly/3omRMTf>.
43. NZ Customs Service Te Mana Arai O Aotearoa. *Duty-free shopping*. 2020; Available from: <https://www.customs.govt.nz/personal/travel-to-and-from-nz/duty-free-shopping/>.
44. Ministry of Health Manatū Hauora. *Illicit trade protocol*. 2017; Available from: <https://bit.ly/3w9RD8B>.
45. Ministry of Health Manatū Hauora. *Reminder of obligations under the WHO Framework Convention on Tobacco Control (FCTC): Article 5.3*. 2019; Available from: <https://www.health.govt.nz/our-work/preventative-health-wellness/tobacco-control/who-framework-convention-tobacco-control/illicit-trade-protocol>.
46. Espiner, G. *Gloves off: Smoking researcher shunned over Philip Morris funding*. 2019; Available from: <https://www.rnz.co.nz/news/in-depth/397224/gloves-off-smoking-researcher-shunned-over-philip-morris-funding>.
47. Scoop Independent News. *Gluckman named New Zealand Communicator of the Year*. 2019.
48. The New Zealander of the Year Awards Office. *2019 New Zealander of the year awards finalists confirmed*. 2019; Available from: <https://nzawards.org.nz/news/2019-new-zealander-year-awards-finalists-confirmed/>.
49. Tobacco Tactics. *Global Forum on Nicotine*. 2020; Available from: <https://tobaccotactics.org/wiki/global-forum-on-nicotine/>.
50. Ministry of Health Manatū Hauora. *Meetings with tobacco industry representatives*. 2021 [2021]; Available from: <https://bit.ly/3ol6Y3j>.
51. Ministry of Health Manatū Hauora. *Response to Official Information Act request: Information on companies entering vaping market*. 2019.
52. NZ Customs Service Te Mana Arai O Aotearoa. *International agreements*. 2020; Available from: <https://www.customs.govt.nz/about-us/legislation/international-agreements/>.
53. Newport, P., *Carrick Graham: Without Apologies*, in Metro. 2015, Bauer Media Group.
54. Espiner, G. *Dirty Politics: Saga ends with Carrick Graham apology in court*. 2021; Available from: <https://www.rnz.co.nz/news/national/437562/dirty-politics-saga-ends-with-carrick-graham-apology-in-court>.
55. Alcohol Action NZ. *Katherine Rich Finally Leaving the Board of the HPA*. 2015; Available from: <https://www.scoop.co.nz/stories/GE1506/S00167/katherine-rich-finally-leaving-the-board-of-the-hpa.htm>.
56. Murphy, T. *New win for academics in Dirty Politics case*. 2020; Available from: <https://www.newsroom.co.nz/new-win-for-health-researchers-in-dirty-politics-case>.
57. New Zealand Electoral Commission Mō Te Kaitiaki Take Kōwhiri. *Party donations and loans by year*. Available from: <https://elections.nz/democracy-in-nz/political-parties-in-new-zealand/party-donations-and-loans-by-year/>.

58. Rutherford, H. *Hutt South candidate downplays his tobacco past*. 2014; Available from: <https://bit.ly/3fkdlQl>.
59. Ministry of Health. *Philip Morris Tobacco Return 2019*; Available from: <https://www.health.govt.nz/system/files/documents/pages/philipmorris-tobacco-return-2019.pdf>.
60. Dawson, A., *My year as a NZFirst supporter*, in *Newsroom*. 2017.
61. Te Kawa Mataaho Public Service Commission. *Standards of integrity and conduct for the State Services, ministerial staff and agencies*. 2021; Available from: <https://www.publicservice.govt.nz/our-work/integrityandconduct/>.
62. Ministry of Health Manatū Hauora. *Tobacco returns 2020*. 2021; Available from: <https://bit.ly/3hu3PwX>.
63. New Zealand Government. *Crimes Act 1961*. Available from: <https://bit.ly/2RSR1W2>.