



Illicit Trade Protocol Consultation
Tobacco Control Team
Ministry of Health
PO Box 5013
Wellington 6145

Tēnā koe

Re: Submission on New Zealand and the Protocol to Eliminate Illicit Trade in Tobacco Products

Thank you for the opportunity to provide a written submission on this consultation document.

Regional Public Health serves the greater Wellington region, through its three district health boards (DHBs): Capital and Coast, Hutt Valley and Wairarapa and as a service is part of the Hutt Valley District Health Board.

We work with our community to make it a healthier safer place to live. We promote good health, prevent disease, and improve the quality of life for our population, with a particular focus on children, Māori and working with primary care organisations. Our staff includes a range of occupations such as: medical officers of health, public health advisors, health protection officers, public health nurses, and public health analysts.

We are happy to provide further advice or clarification on any of the points raised in our written submission. The contact point for this submission is:

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Nāku noa

Dr Stephen Palmer
Medical Officer of Health

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New Zealand and the Protocol to Eliminate Illicit Trade in Tobacco Products – Submission form

The closing date for submissions is: 5 pm Friday 12 June 2015.

Submitters are encouraged to make submissions by email, using this response form, to:
tobacco@moh.govt.nz

Alternatively, your completed form can be mailed to:
Illicit Trade Protocol Consultation
Tobacco Control Team
Ministry of Health
PO Box 5013
Wellington 6145.

A copy of this form is also available on the Ministry's website: www.health.govt.nz

Protection of commercially sensitive information

Public reporting on this consultation will seek to avoid prejudice to the commercial position of respondents who provide commercially sensitive information. Submitters are therefore asked to clearly indicate any information they wish to have treated as confidential commercially sensitive information.

Declaration of interest

In setting and implementing public health policies with respect to tobacco control, New Zealand has obligations under the WHO FCTC to protect those policies from commercial and other vested interests.¹ All respondents are therefore requested to disclose any direct or indirect links to the tobacco industry, or whether they receive any funding from the industry. The Ministry will still carefully consider responses accompanied by any such disclosures as part of the consultation process.

¹ Article 5.3 of the WHO FCTC.

Consultation questions

1. Have you or your organisation encountered any illicit tobacco products in New Zealand?

No illicit tobacco products have been encountered within the operating jurisdiction of Regional Public Health.

2. Are you or your organisation affected by illicit trade in tobacco products?

- Yes
- No**

If so, please explain how.

N/A

3. To what extent do you think there is scope for reducing illicit trade in tobacco products in New Zealand? Please explain your reasons and provide any views you have on how this could be achieved.

The current low consumption of illicit tobacco products may be seen as insignificant but tobacco use is still a major public health issue. Further reductions in the availability level of illicit tobacco can be made if supply-side measures are implemented. Supply-side measures outlined in this *Protocol* will further enhance the nation's Smokefree 2025 goal. Therefore, Regional Public Health (RPH) fully supports the adoption of the *Protocol*.

RPH **strongly supports** Article 6 [Licence, equivalent approval or control system] as a means of controlling the tobacco supply chain. RPH is currently advocating to local government the use of retailer licensing as a supply-side tool within the region (Capital Coast, Hutt Valley and Wairarapa DHBs). Enabling national legislation/regulation that supports the *Protocol's* Article 6 will be helpful at a local and national level or there is the distinct possibility that a patchwork of local government licensing schemes will result.

The consultation document alludes to relevant government agencies (Customs, Justice) providing legislative administration through to operational oversight within their purview. It is essential that consideration is given to penalties for seizures of illicit tobacco products being used as a deterrent and therefore a mechanism to reduce illicit trade in tobacco products. Penalties should be commensurate to the size of the seizure (large or small). Under which legislation a schedule of penalties would sit maybe up for debate but the *Customs and Excise Act 1996* appears more suitable than the *Smoke-free Environments Act 1990*.

Discussion regarding operational collaboration between Smokefree Enforcement Officers and Customs Officers should be considered in the future. Having a combined approach across services would strengthen workforce capacity and capability in this area.

New Zealand, as a signatory to the *Framework Convention on Tobacco Control (FCTC)*, must contribute to a **fully enabled** regime that reduces illicit tobacco products. Effectively, by supporting 'Option 2', New Zealand contributes to the broader international communities' efforts to stymie the manufacture, distribution and sale of illicit tobacco. Illicit trade in tobacco is after all a global issue.

4. Are you or your organisation currently doing anything to help prevent the illicit tobacco trade?

Yes

No

If so, please explain, and provide any information you have to help quantify the costs of any such activities (in \$NZD).

There are no indications that illicit tobacco is an issue therefore no specific operations are undertaken within the region.

If any activity related to illicit tobacco use/trade was identified Regional Public Health would engage with agencies such as the Ministry of Health for guidance on the matter.

5. Which of the policy objectives outlined above do you support, and why? Please also state any other objectives you think are relevant.

In regards to 'Objective 1', the policy objective should directly state that that the full implementation and commitment to the Māori Affairs Select Committee recommendations, from the tobacco industry inquiry, will meet commitments to *Smokefree 2025*. This would then strengthen the first paragraph's statement about incorporating a comprehensive tobacco control programme in place.

Regional Public Health strongly supports Objective 2 and 3 as New Zealand should be actively involved in making a commitment to the *Protocol* and the *FCTC*.

As an additional comment, it is acknowledged that the supply of illicit tobacco products is not significant in New Zealand. While one must future-proof policy/legislation for possible increased levels of illicit tobacco products coming into the community, it is more likely that a comprehensive tobacco control programme will have a greater impact on reducing and eliminating tobacco from communities.

6. To what extent do you think that New Zealand becoming a party to the Protocol would contribute to each of the objectives?

As a Party to the *FCTC* and an active participant in the development of the *Protocol* it would be perplexing if New Zealand did not support signing the *Protocol*.

Objective 1 is largely reliant on continued improvements to our domestic law and policy-making i.e. a comprehensive tobacco control programme. Becoming a signatory to the *Protocol* will clearly deal with issues pertaining to illicit tobacco products

Objectives 2 and 3 clearly benefit from New Zealand becoming a Party to the *Protocol*. Regional Public Health would encourage a fast-track adoption of the *Protocol* as it would demonstrate leadership and further commitment to the *FCTC*.

7. Do you support either:

Option 1 (retaining the status quo); or



Option 2 (New Zealand becoming a party to the Protocol)?

Please provide your reasons.

Regional Public Health is strongly supportive of the New Zealand government, as a Party to the *FCTC*, being a full participant in the adoption of this *Protocol*.

1. Aligns with New Zealand's commitment to the *FCTC*.
2. Aligns with New Zealand's commitment to *Smokefree 2025*.
3. Provides clear international and national public health leadership.
4. The *Protocol* offers guidance for establishing, under a legally binding framework, a clear mandatory approach to illicit tobacco products and trade.
5. Allows the government to control and enforce measures while limiting tobacco industry interference.

8. What impacts would the Protocol's supply control measures (as described in sections 4.2.1–4.2.7 of this document) have on you or your organisation?

Regional Public Health (RPH), like other public health units, is already tasked with enforcement of the *Smoke-free Environments Act 1990*. Enforcement Officers will meet new legislative requirements as needed to maintain compliance of the *Protocol's* Articles 6 to 9.

This will have an added burden on current operations so a needs analysis would have to be conducted to ensure that resource requirements can meet the new proposed measures. RPH will also be in a unique position regarding Article 7:

4.2.4 Article 7: Due diligence - The sole manufacturing plant in New Zealand, based in Petone, is within Regional Public Health's jurisdiction so conducting a due diligence process will be undertaken by our enforcement team.

RPH would respectfully suggest, if the *Protocol* is adopted under Option 2, that consultation with Smokefree Enforcement Officers is held in collaboration with the Ministry of Health in regards to developing practical implementation guidelines that will match the legislative requirements presented by the *Protocol*.

9. Are you aware of any existing track and trace models that you believe comply with the Article 8 of the Protocol?



Yes

No

Please provide information regarding the nature of any such systems, and an estimate of the likely costs associated with their implementation in New Zealand, if known.

Track and trace systems are ubiquitous to sectors that range from shoe manufacturers through to courier companies. New Zealand must work in partnership with other Parties to the FCTC regarding track and trace systems to enable them full oversight of their respective supply chains.

The international community, via the WHO's FCTC Secretariat, should adopt an international standard track and trace system that is independent of tobacco industry interference. Adopting and supporting such a model should be coordinated in concert with other parties i.e. FCTC Article 5.4 [General Obligations]:

The Parties shall cooperate in the formulation of proposed measures, procedures and guidelines for the implementation of the Convention and the protocols to which they are Parties.

Regional Public Health (RPH) acknowledges that two Parties to the FCTC, Brazil and Morocco, have already opted for the SICPA (<http://www.sicpa.com/>) supplied track and trace model. RPH would encourage the Ministry of Health to investigate this system but would also promote that, at a minimum, a collaborative approach with Australia and other Pacific Island states on this because of the cross border nature of tobacco export/import within the region.

It is RPH's position that **all costs** (direct/indirect) are borne by the tobacco industry as part of their operational costs within the New Zealand market.

Note: the tobacco companies have adopted a track and trace process called 'Codentify' which does not meet the FCTC Article 5.3 requirements and/or independence criteria.

10. Would Part IV (Articles 14–19) of the Protocol have any impacts on you or your organisation?

- Yes
 No

If so, can you quantify any such impacts (in \$NZD)?

Smokefree Enforcement Officers may work in partnership with other enforcement agencies. Regional Public Health is unable to quantify such an impact at this time.

11. Would Part V (International cooperation) of the Protocol have any impacts on you or your organisation?

- Yes
 No

If so, can you quantify any such impacts (in \$NZD)?

As per Question 10. It is likely that a lead agency such as Customs would be more involved with Regional Public Health providing information where and when necessary.

12. Would Parts VI–X of the Protocol have any impacts on you or your organisation?

- Yes

No

If so, can you quantify any such impacts (in \$NZD)?

N/A

If you wish to provide additional information, you are welcome to include this with your submission.



April 2015