



NEW ZEALAND COUNCIL OF TRADE UNIONS  
*Te Kauae Kaimahi*

**Submission of the  
New Zealand Council of Trade Unions  
Te Kauae Kaimahi**

to the

**Health Select Committee**

on the

**Smoke Free Environments (Tobacco Plain  
Packaging) Amendment Bill**

**P O Box 6645**

**Wellington**

**March 2014**

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## Summary

- The CTU fully supports the objectives of this Bill to reduce the appeal and use of tobacco products both to protect young New Zealanders from taking up smoking and to assist those people trying to quit smoking.
- New Zealand as a nation, has made great strides in reducing smoking rates. Legislation is an imperative tool in changing behaviours and reducing smoking rates.
- Unions and union members are part of the population who have witnessed significantly reduced smoking rates and exposure to smoking in their families/whanau, workplaces, communities and in wider society.
- The adverse outcomes from tobacco affect Māori, Pacific and low-income people disproportionately.
- This Bill should be passed within the time table stated in the Bill and without any recourse to the outcome of the World Trade Organisation's dispute process, and the international investment arbitration by Philip Morris tobacco company under a Hong Kong-Australia investment agreement, against Australia's plain packaging laws. To do so would be succumbing to the pressure of multi-national tobacco companies at the expense of the lives, health and welfare of New Zealand/ Aotearoa citizens.
- New Zealand should be withdrawing from investment agreements which have provisions allowing corporations such as Philip Morris to sue the New Zealand in this way: so-called investor-state dispute settlement (ISDS) provisions. We should also refuse to sign new agreements with ISDS provisions such as the Transpacific Partnership Agreement currently under negotiation. Further, New Zealand should call for a review of dispute processes in the WTO to ensure they cannot be used by deep-pocketed corporate interests by purchasing access to these processes using compliant governments as proxies.

- Delaying this Bill on the basis that legal action may be forthcoming is denying our own sovereign right to make decisions in the best interest of our citizens.
- There are obligations New Zealand has as a signatory to the World Health Organisation's Framework Convention on Tobacco Control. This Convention forbids the influence of tobacco manufacturers upon political decision - making.
- This Bill allows New Zealand to follow Australia's lead and also take an international lead in the fight against the tobacco industry.
- The CTU endorses the New Zealand Nurses Organisation submission on this Bill.

## 1. Introduction

- 1.1. This submission is made on behalf of the 37 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With over 330,000 members, the CTU is the peak body of organised labour in New Zealand and one of the country's largest democratic organisations.
- 1.2. The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga) the Māori arm of Te Kauae Kaimahi (CTU) which represents approximately 60,000 Māori workers.
- 1.3. The CTU supports this Bill to strengthen New Zealand's smoke free legislation with the removal of brand advertising from tobacco products and plain packaging of all tobacco products. We fully support the objectives of this Bill to reduce the appeal and use of tobacco products by reducing the attractiveness of cigarettes and smoking in the interests of preventing young people taking up smoking and assisting those people trying to quit smoking.
- 1.4. In 2003 the Service and Food Workers Union, with CTU endorsement, was a strong supporter of the Smoke-free Environments Bill to protect workers from exposure to second-hand smoke in their working environments and ensuring their right to work in smoke free environments.
- 1.5. Other CTU affiliated unions have publicly supported smoke-free legislation and measures. In 2012 FIRST Union, commented that the plain packaging of cigarettes is a significant, non-financial measure to smokers to reduce the harm caused by smoking, and congratulated Tariana Turia, and Hone Harawira before her, on their advocacy in this area.
- 1.6. Unions support the Smoke-free Environments (Tobacco Plain Packaging) Amendment Bill as a further step in achieving further and significant reductions in smoking rates in New Zealand Aotearoa.

- 1.7. The CTU endorses the New Zealand Nurses Organisation submission on this Bill.
- 1.8. We are very aware of the challenges for people who are addicted to cigarettes and tobacco and recognise the difficulties and hard choices for them. Most smokers want to give up but are unable to.
- 1.9. Unions as social justice organisations recognise the devastating social impacts and economic harm caused by tobacco products and the destructive and powerful role that tobacco companies play in causing and sustaining harm, illness and death.

## **2. Plain packaging**

- 2.1. A plain packaging regime for tobacco products will stop tobacco manufacturers who are furthering misperceptions about tobacco, countering the effects of health warnings on tobacco with branding, and undermining the effectiveness of policy towards eliminating tobacco use in New Zealand Aotearoa.
- 2.2. We fully support the amendments in this Bill to the Smoke-free Environments Act that remove the tobacco industry's power to promote its products particularly to young people and make it harder for people to quit smoking.
- 2.3. Tobacco packaging is one of the tobacco industry's leading promotional tools. Plain packaging is shown to be effective in reducing smoking rates by reducing the appeal of smoking to young people, improving the effectiveness of health warnings, and reducing the mistaken belief that some brands are safer than others.<sup>1</sup>

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<sup>1</sup> Moodie C, Mackintosh AM, Stead M, et al. *Plain tobacco packaging: a systematic review*, Public Health Research Consortium, University of Stirling, 2012

- 2.4. Removing tobacco company colours, logos and other marketing ploys designed to make tobacco products glamorous and attractive is a demonstrated effective step in reducing the uptake of smoking.<sup>2</sup>

### 3. Smoking impacts

- 3.1. There is widespread knowledge about the harm caused by tobacco. Tobacco is the leading cause of preventable deaths of New Zealanders and is one of the leading causes of life-threatening illnesses such as heart and lung disease and cancer.<sup>3</sup>
- 3.2. Smoking causes between 4,500 to 5,000 preventable deaths a year in New Zealand. Half the people who smoke today will die on average 15 years early.
- 3.3. However such facts and outcomes are not enough to stop tobacco companies continuing to promote and defend their products. Tobacco companies are currently waging a global war to protect their rights to promote and sell a toxic agent that is responsible for untold death, illness and social harm at a global level.
- 3.4. Standardised plain packaging increases the impact of health warnings and reduces the false and misleading messages that the tobacco industry is pushing such as that one type of cigarette is less harmful than another. Plain packaging, together with bigger health warnings, sends an unequivocal and factual message that tobacco causes preventable illness and death.
- 3.5. The argument for plain packaging is particularly strong when considering the interests, health and wellbeing of a younger generation and is a compelling reason for plain packaging.

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<sup>2</sup> *The evidence is clear: plain packaging for cigarettes works. The Government's backdown is sheer cowardice.* By Tom Chivers. <http://blogs.telegraph.co.uk/news/tomchiversscience/100226150/the-evidence-is-clearplain-packaging-for-cigarettes-works-the-governments-backdown-is-sheer-cowardice/>.

<sup>3</sup> Ministry of Health. 2005. Tobacco Facts 2005. Wellington: Ministry of Health

- 3.6. More than 2,000 children in New Zealand Aotearoa under the age of 10 have their first puff of a cigarette every year.<sup>4</sup> New, young smokers are the primary target of tobacco industry marketing. The attractive branding of tobacco products is highly researched by the tobacco industry and is designed to appeal to target particular groups.
- 3.7. The good news is that evidence shows that young people respond more effectively (in respect of quitting) to plain packaging compared to older groups<sup>5</sup>. Moving to standard packaging would reduce brand appeal and reduce smoking initiation. The evidence from Australia following the introduction of plain packaging is that the impact of the legislation is having the intended impact on young people and on quitting attempts.<sup>6</sup>
- 3.8. Tobacco products cause death and disease not only to their users but also to thousands of children who are unwillingly exposed (600,000 in the last New Zealand Census are living in a household with one person who smokes). The parents of those children may well be desperate to give up smoking but it is extremely difficult because of the powerfully addictive nature of nicotine.
- 3.9. Māori in New Zealand are disproportionately affected by smoking and there has been a loss of older generations but also ill-health of younger generations of Māori caused from tobacco.

#### **4. Reduced smoking rates: a success story**

- 4.1. New Zealand as a nation has made great strides in reducing smoking rates. The role of legislation has been very influential.

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<sup>4</sup> [http://www.plainpacks.org.nz/fileadmin/info\\_sheets/PPNZ\\_Factsheet1.pdf](http://www.plainpacks.org.nz/fileadmin/info_sheets/PPNZ_Factsheet1.pdf)

<sup>5</sup> Lovato, C et al. Cochrane Review: Impact of tobacco advertising and promotion on increasing adolescent smoking behaviours. The Cochrane Library. Issue 2, 2004.

<sup>6</sup> *The evidence is clear: plain packaging for cigarettes works. The Government's backdown is sheer cowardice.* By Tom Chivers. <http://blogs.telegraph.co.uk/news/tomchiversscience/100226150/the-evidence-is-clearplain-packaging-for-cigarettes-works-the-governments-backdown-is-sheer-cowardice/>.

- 4.2. Around one in five adult (19.9 percent) currently smoke in New Zealand (21.1 percent of men and 18.9 percent of women).<sup>7</sup>
- 4.3. In 1990, the cigarette smoking prevalence was 28 percent in New Zealand (28 percent for male; 27 percent for female). At that time, half of the Māori (51 percent) population smoked. Since then, the prevalence of cigarette smoking has gradually decreased. Between 2002/03 and 2006/07, there was a significant decrease in daily smoking rate, from 23.4 percent to 19.1 percent. Māori daily smoking prevalence dropped to 40.4 percent in 2006/07.<sup>8</sup>
- 4.4. Many unions and workers have used the services to quit smoking and been exposed to educational measures and awareness campaigns to stop smoking. As a result of the changes in legislation and educational campaigns, unions and union members have witnessed in whanau/ families communities and society significant attitudinal changes, behaviours and policies about smoking rates in workplaces, on marae, in community groups, clubs and in social and professional situations.

## **5. Who tobacco affects**

- 5.1. Tobacco manufacturers brand their products specifically to different income brackets and appeal to the different population groups who their researchers and markets have identified as target groups.
- 5.2. Smoking affects Māori, Pacific and low income people disproportionately. Tobacco use is a major contributor to health inequality among the Māori and Pacific population and those living with low socio-economic status.
- 5.3. Māori experience a 10 percent greater mortality rate from smoking than non-Māori and each year, 22 percent of deaths in Māori men and 21 percent of deaths in Māori women are attributable to smoking.

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<sup>7</sup> Ministry of Health. 2006. Tobacco Trends 2006: Monitoring tobacco use in New Zealand. Wellington :Ministry of Health.

<sup>8</sup>Ministry of Health. 2008. A Portrait of Health. Key Results of the 2006/07 New Zealand Health Survey. Wellington: Ministry of Health.

- 5.4. Adults who live in the most deprived neighbourhoods are three times more likely to be current smokers than ones who live in the least deprived neighbourhoods. Likewise, both male and female are three times more likely to be current smokers in the most deprived neighbourhoods than in the least deprived ones.<sup>9</sup>
- 5.1. Most New Zealander smokers begin smoking before they are 15 years old.
- 5.2. The 600,000 children who live in households with one person who smokes are not only exposed to cigarette smoke, they are also currently exposed to cigarette branding that has been designed to appeal to them. These children are prey for the tobacco industry.
- 5.3. The 2013 Census reported that 700,000 people in New Zealand are former smokers. Former smokers are vulnerable and at risk of taking up smoking again. Plain packaging which reduces the appeal of tobacco is an important supportive mechanism to prevent people becoming smokers again. .

## **6. Obligations under international agreements and sovereignty**

- 6.1. New Zealand has obligations as a signatory to the World Health Organisation's Framework Convention on Tobacco Control. This Convention aims to reduce the adverse social, health and economic impacts of tobacco. The guidelines of this Convention forbid any tobacco manufacturers from influencing political decision making.
- 6.2. Internationally agreed guidelines for implementing this United Nations Tobacco Treaty recommend that countries consider plain packaging as part of their comprehensive tobacco control programmes.
- 6.3. Australia has shown the way on plain packaging of tobacco products. This Bill allows New Zealand to join Australia in taking an international lead in the fight against the tobacco industry.

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<sup>9</sup> Ibid

- 6.4. Ireland has recently approved its draft plain packaging legislation for consultation, and the United Kingdom has also announced it will put regulatory powers in place to proceed with plain packaging after it completes an independent review due to report back in March 2014.

## **7. Legislation must not be delayed**

- 7.1. Introducing plain packaging of cigarettes and tobacco in New Zealand will strengthen the international campaign and moves against smoking and support Australia's legislative stand against the tobacco industry.
- 7.2. The almost unanimous passing of the first reading of this Bill (only one vote against it was recorded) was a powerful message from Parliamentarians.
- 7.3. We oppose any moves by the New Zealand Government to wait until the outcomes of the World Trade Organisation's dispute process against Australia's plain packaging laws are known.
- 7.4. The trumped-up nature of that dispute is clear from fact that it is the Ukraine, Honduras and the Dominican Republic which are challenging Australia's laws despite having minimal trade with it. They are being assisted by the tobacco companies to do so, including reportedly paying their legal fees<sup>10</sup>. Tobacco exports from Ukraine to Australia for the financial years 2006 to 2012 were zero according to statistics from Australia's Department of Foreign Affairs and Trade. In the financial year 2013 it exported A\$24,000 worth in a move that could be seen as attempting to provide a gloss of acceptability to its case. Total tobacco exports from the Dominican Republic over the period were larger but still tiny: A\$4.6 million. Honduras exported tobacco products valued at just A\$444,000. Australia's total tobacco imports over the period were A\$2.02 billion.<sup>11</sup>
- 7.5. Nor should the Government wait for the outcome of the investment arbitration by tobacco giant, Philip Morris, against Australia under the bilateral

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<sup>10</sup> Nebehay, S. (2012, May 23). Australia says big tobacco aiding WTO challengers. *Reuters*. Retrieved February 9, 2014, from <http://www.reuters.com/article/2012/05/23/us-trade-tobacco-idUSBRE84M0IO20120523>

<sup>11</sup> See <http://www.dfat.gov.au/publications/stats-pubs/pivot-tables.html>.

investment agreement between Hong Kong and Australia. Philip Morris moved ownership of its Australian subsidiary to its Hong Kong subsidiary in order to take this case.

- 7.6. This barrage of actions by the multinational tobacco companies is intended to intimidate, whether or not they have any chance of success. They should not be used as an excuse to delay the passing of this Bill. To do so would be to succumb to the pressure of multinational tobacco companies at the expense of the lives, health and welfare of the citizens of New Zealand
- 7.7. Succumbing to this intimidation establishes a bad precedent for other actions a New Zealand government might wish to take in future such as more stringent labelling requirements for alcoholic drinks or high-fat or high-sugar foods.
- 7.8. The threat of international actions under trade and investment agreements by the tobacco industry must not influence the Government in its decision on the implementation of plain packaging. Delaying this legislation would be anti-democratic, objectionable and denying our own sovereign right to make decisions in the best interest of our own citizens.
- 7.9. New Zealand should also be withdrawing from investment agreements which have provisions similar to those allowing corporations such as Philip Morris to sue the New Zealand in this way: so-called investor-state dispute settlement (ISDS) provisions. For example, New Zealand has an investment agreement with Hong Kong (signed in 1995) similar to Australia's which the New Zealand government is currently attempting to renegotiate. However we understand the negotiations are stalled. New Zealand should, like previous Australian Governments (including the Howard, Rudd and Gillard Governments) also refuse to sign new agreements with ISDS provisions. The Transpacific Partnership Agreement currently under negotiation includes such provisions. It is public knowledge that the tobacco industry is lobbying for strong protections under this agreement<sup>12</sup>. Both the Australian

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<sup>12</sup> Fooks, G., & Gilmore, A. B. (2014). International trade law, plain packaging and tobacco industry political activity: the Trans-Pacific Partnership. *Tobacco Control*, 23(1), e1. doi:10.1136/tobaccocontrol-2012-050869

Productivity Commission<sup>13</sup> and recent advice to the U.K. government<sup>14</sup> have advised against agreeing to ISDS, assessing the high risks and costs as being greater than any benefits. Germany and France are now opposing ISDS in the proposed agreement between the European Union and the US (the ‘Transatlantic Trade and Investment Partnership’, TTIP)<sup>15</sup>.

- 7.10. New Zealand should also call for a review of dispute processes in the WTO to ensure they cannot be used by deep-pocketed corporate interests by purchasing access to these processes using compliant governments as proxies.
- 7.11. This Bill must be enacted as the Bill provides for, on the date appointed by Order in Council, or at the latest 18 months after Royal assent.
- 7.12. That the tobacco industry is prepared to fight the introduction of plain packaging is very clear. They are blatant about it. According to Philip Morris International, the world’s major manufacturers are agreed in fighting the introduction of standard packaging stating that they ‘*do not want to see plain packaging introduced anywhere regardless of the size and importance of the market.*’<sup>16,17</sup>
- 7.13. Their motives are also clear. They are defending their profits. According to analysts from Morgan Stanley, if generic packaging becomes a legal requirement in the UK it “*could result in considerably reduced profits.*”<sup>18</sup>

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<sup>13</sup> Australian Productivity Commission. (2010). *Bilateral and regional trade agreements: Productivity Commission research report*. Melbourne, Australia: Productivity Commission, p.265-277. Retrieved from <http://www.pc.gov.au/projects/study/trade-agreements>.

<sup>14</sup> Poulsen, L. N. S., Bonnitcha, J., & Yackee, J. W. (2013). *Costs and Benefits of an EU-USA Investment Protection Treaty*. UK: LSE Enterprise for the Department for Business Innovation and Skills. Retrieved from <https://www.gov.uk/government/publications/costs-and-benefits-to-the-uk-of-an-eu-us-investment-protection-treaty>

<sup>15</sup> Fox, B. (2014, March 15). Germany opposes EU-US investor protection scheme. *Euobserver.com*. Brussels, Belgium. Retrieved from <http://euobserver.com/news/123473>

<sup>16</sup> [http://www.ashscotland.org.uk/media/4459/plainpackaging\\_briefing\\_Feb2012.pdf](http://www.ashscotland.org.uk/media/4459/plainpackaging_briefing_Feb2012.pdf)

<sup>17</sup> Dangoor D. PMI corporate affairs meeting, Rye Brook 950215 & 950216. In: Pim P. I. M., editor. Philip Morris; 1995. [online]. Available from: <http://legacy.library.ucsf.edu/tid/lft22e00;jsessionid=D29FECE12AB197B2CC7277F537571152> [Accessed 1 November 2011]

<sup>18</sup> <http://www.theguardian.com/uk/2008/sep/21/smoking.health>

## **8. Conclusion**

- 8.1. The CTU strongly supports this Bill which contributes significantly to meeting the goals of New Zealand's goal for a smoke free New Zealand by 2025 and builds on the excellent progress that has been made to date in reducing smoking rates in New Zealand. The motives of tobacco companies are solely about increasing their profits at the expense of the lives and health of people and at huge social and economic cost to society.
- 8.2. Plain packaging has been shown to be effective in reducing the uptake amongst youth of smoking and that is why it is an imperative tool to pursue to further reduce smoking rates.
- 8.3. The threat of legal action by tobacco companies against the government for introducing plain packaging must not be a reason to delay this Bill or change course. The threat of legal action by multinational tobacco companies that is designed to be intimidating must be resisted. In introducing this legislation New Zealand is complying with its international obligations as a signatory to the World Health Organisation's Framework Convention on Tobacco Control.