

18 October 2024

John Ryan
Controller and Auditor General
100 Molesworth Street
Thorndon
Wellington 6011

Dear Mr Ryan,

This letter is to request that you undertake an investigation under the *Public Audit Act* into the government's decision to halve the excise tax on Heated Tobacco Products (HTPs).

The decision lacks a political or policy justification and carries health risks. It is also likely to only benefit a single tobacco company.

There are several indications of tobacco industry influence and potential corruption that must be investigated to maintain trust in government.

The decision also likely breaches our obligations under the Framework Convention on Tobacco Control.

I provide the following evidence to support my request for an urgent investigation:

1. The decision to grant an excise tax reduction was unjustifiable

- a. Tobacco excise tax is collected to disincentivise the use of tobacco,¹ it has been a highly effective measure driving the reduction in smoking rates in New Zealand from 18.3% to 13.8% between 2006/07 to 2016/17.²
- b. **The decision lacked evidence that it would achieve the desired outcome.** Treasury advised against the measure as (document 5)³ there is no clear independent evidence that HTPs are significantly less harmful than cigarettes. The Treasury also advised there is no clear evidence that HTPs are effective in



helping people become completely smokefree (the government's publicly stated aim).

- c. Ministry of Health advice provided to the minister in February 2024 was unequivocal that: "there is no clear independent evidence that HTPs are significantly less harmful than cigarettes". The Ministry's rapid evidence review reached the same conclusion.⁴ Furthermore, the World Health Organization asserts that HTPs should not be described as a smoking cessation aid and noted that HTPs "do not help smokers to end tobacco use".⁵
- d. In response to this robust, independent advice and evidence presented, the Minister wrote in the budget bid template that she had obtained "independent advice" (page 23) on the efficacy of heated tobacco products. When asked to provide this advice, the minister released five papers.⁶ The papers did not include a synthesis of scientific reports that usually constitutes public health advice nor did they include the recent authoritative Cochrane systemic review.⁷ The papers were an opinion piece and four scientific reports, that are not applicable to the New Zealand context, are out of date, or relate to products other than heated tobacco products. In summary, neither official advice nor the Minister's papers provide a policy basis for the reduction in excise tax.
- e. **Furthermore, the decision created risks of health harms.** Treasury also cited other risks including health and other costs if the policy led people who smoke to use HTPs rather than vaping products, young people starting to use HTPs de novo and HTPs driving ex-smokers who had quit or who vape to relapse.
- f. **The initiative was unlikely to achieve the desired outcome, and would probably only benefit a single tobacco company.** Treasury advised that it was unclear whether the excise tax reduction would be passed on to consumers, because Philip Morris NZ holds a virtual monopoly on heated tobacco products. Specifically, Treasury documents advised: "*This initiative is likely to most benefit the sole importer of these products.*"
- g. **The initiative lacked an evaluation framework.** As public health and tobacco control researchers have argued, Cabinet's planned review of the excise tax reduction in 12 months cannot be described as a trial, which requires a formal methodological approach.⁸ Information released by the Associate Health Minister provides no predefined description of the evaluation design, data collection, or outcome measures. The documents do not provide any baseline data or indication that baseline data has been collected (making valid evaluation impossible); nor do they either describe monitoring that will assess impacts on HTP retail prices or measures that will assess the impact of the excise tax reduction on cessation outcomes. Notwithstanding differences in expert and lay understandings of what constitutes a trial, the government has not described a system that can be used for monitoring the impact of the policy and the value of the spending/forgone revenue. This lack of rigour creates a serious risk that data

will be cherry-picked at the report back date, and that poor quality decision is perpetuated.

2. **There are serious questions of probity raised by what is known about the decision, and investigating the influence of the tobacco industry in these decisions is crucial for trust in government.**
 - a. Recent changes to tobacco control policies including in New Zealand, including reducing HTP excise duty, address industry priorities but lack public support, sound policy logic, or a robust evidence base. In other words, there appears to be no motive for these policy changes other than addressing industry priorities. The tobacco industry has a long history of interfering in government efforts to reduce smoking prevalence,⁹ and draws on well-documented tactics to undermine proportionate policy-making. A thorough investigation assessing whether industry interference has occurred is crucial for trust in government.
 - b. Several lines of evidence point to tobacco industry influence on Government policy. **First, Philip Morris documents reveal this company's plans to influence the New Zealand Government policy with the stated goal of removing the excise duty on heated tobacco products.** A leaked strategy explicitly outlined the company's plan to develop "a long-term fiscal strategy for smoke-free products" and focused on excise tax cuts for HTPs. The company also planned to target New Zealand First (and the Māori Party) and collaborate with the NZ Taxpayers' Union, NZ Initiative and "select public health stakeholders" to garner support for reducing excise tax applied to HTPs.¹⁰ It appears Philip Morris has achieved their goal, given inclusion of a proposal to remove excise duty from HTPs was included in the National - New Zealand First coalition agreement.
 - c. Minister Costello's plans to change tobacco control policies, including removing excise tax from HTPs, and redefining HTPs as vaping products were outlined in a document sent from the Minister's Office to health officials.¹¹ This document includes talking points that align with tobacco industry arguments, including the Philip Morris New Zealand plan to "cast opponents of these initiatives as opposing harm reduction on being pro harm". The document contains several factually incorrect statements, including the false assertion that "nicotine is as harmful as caffeine", a statement used for many years by tobacco companies to diminish the harms their products cause.¹²
 - d. **The Minister has been obfuscatory and misleading in her description and management of this document.** Although she described the document as a collection of historical policy positions, it is clearly a contemporary document as evidenced by references the 2024 coalition agreement and recent policy regulatory changes for vaping. Minister Costello claims not to know how the document came to be in her office and has referred to it as a collation of

different documents. However, she has evaded answering how she knows it was collated if it was not collated in her office.¹³ The Ombudsman found Minister Costello acted contrary to the law in withholding the document and instructed her to apologise.¹⁴ The Ombudsman also took the rare step of notifying the Chief Archivist about the record keeping problems identified during his investigation.¹⁵ The Ministry of Justice Anti-Corruption guide identifies poor record keeping as a red flag for corruption.¹⁶

- e. **Clarity on the provenance of key documents is needed.** Findings from the Ombudsman and concerns raised by public health academics and journalists create a strong case for investigating links between Minister Costello's office the New Zealand First Party, and the tobacco industry, alongside groups that receive funding from tobacco companies, including the Taxpayers' Union.¹⁷ In particular, the provenance of the "mystery document" must be established as must the source of papers provided as "independent advice" on HTPs. Furthermore, the source of the content of the Minister's cabinet papers¹⁸, that differ markedly from the advice provided by officials⁴ must be identified.
- g. **The tobacco industry uses organisations to influence Government policy making.** The Cancer Society reports on so-called 'front organisations' as part of a global civil society initiative to monitor tobacco industry interference, and lists the Taxpayers' Union, as one such organisation that receives tobacco industry support.¹⁹ Casey Costello chaired the Taxpayers' Union prior to standing for election in 2023. The Taxpayers' union was the second highest spending third party promotor at the last election.²⁰ Third party promoters are not required to disclose their donors, therefore an investigation would assist in excluding any concerns about corruption .
- h. **There is a 'revolving door' between New Zealand First and the tobacco industry.** The revolving door refers to the movement of government officials into the tobacco industry and vice versa, to achieve influence. Consistent with the documented plan to influence New Zealand First, two Philip Morris executives are former New Zealand First staff members – Api Dawson and David Broom. Api Dawson is so close to New Zealand First he was invited to the ceremony to swear in the government.²¹
- i. The Minister's interaction with her fellow New Zealand First cabinet members, party staff and officials are not subject to the Official Information Act, thus my ability to obtain further information under this Act is limited. **I believe only an investigation by the Auditor General can resolve these issues of probity.** I note that the Public Audit Act 2001 anticipates that the Auditor General may need to seek information from a person who is not a member, employee, or office holder of the public entity [under investigation] while investigating the use of public funds at s25(2).

3. New Zealand may have breached its obligations under article 5.3 of the Framework Convention on Tobacco Control, obligations intended to protect tobacco control policy from industry influence.

- a. New Zealand is a signatory to the Framework Convention on Tobacco Control (FCTC); Article 5.3 of the FCTC states that: “in setting and implementing public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry.
- b. As noted in Treasury advice on the heated tobacco excise tax budget bid “removing duty from HTPs may be viewed as in the interests of the tobacco industry, noting that the WHO recommendation is that HTPs should be taxed at an equivalent rate to conventional smoked cigarettes”.
- c. Guidelines on article 5.3 state “Parties should ensure that any interaction with the tobacco industry on matters related to tobacco control or public health is accountable and transparent”.²²
- d. I note Minister Shane Jones’s statements that he has “taken soundings” from tobacco industry officials and gives “not one iota” of concern about the Government’s FCTC responsibilities.²³
- e. I note that prior Auditor General investigations have addressed New Zealand’s international obligations.²⁴

4. Another policy initiative that benefits Philip Morris proposed to cabinet, but not accepted and the bizarre consequences that followed

- a. When in Government, I passed safety regulations that applied to vaping products and heated tobacco products. The IQOS heated tobacco product produced by Philip Morris (the only HTP product available within Aotearoa) was subject to these regulations, and did not comply with them. These regulations were due to come into force in March 2024 but did not. The ‘mystery document’ contains arguments against these regulations requiring child restraint attributes and removable batteries,¹¹ and the New Zealand First – National coalition agreement includes a commitment to end vaping product requirements by March 2024.
- b. On 11 March Minister Costello took a paper to the Cabinet Social Outcomes Committee that sought to defer regulations relating to vaping product requirements for two years. The committee did not accept this recommendation and requested she resubmit the paper.²⁵ Cabinet later agreed to defer the regulations by six months.
- c. As Philip Morris is the only supplier of heated tobacco products to the NZ market, the “trial” of an excise tax reduction on heated tobacco products now occurs in a situation where new devices cannot be purchased.²⁶ In other words, Cabinet has agreed to a health intervention with considerable forgone revenue and the required equipment has not met regulatory standards. While it is possible that other or modified Philip Morris products will enter our market, it is

incomprehensible that this situation would arise with other health interventions such as a vaccination or screening initiative.

- d. This set of facts suggests elements of the Minister's work have been siloed from officials as otherwise it is hard to believe that would not be reflected in advice on the excise tax reduction.
- e. The Minister's advice to cabinet on vaping regulations did not explicitly say that safety mechanism would impact IQOS devices. Instead it included the vague statement that "it is likely that higher quality vaping devices used by former adult smokers will soon be unavailable domestically as high-end manufacturers that cater to international markets may not make New Zealand specific models." The material accompanying the budget bid for the excise tax reduction did not disclose that there were no products for the "trial" to be completed.
- f. **It is hard to believe that the Minister sought regulatory changes that would allow IQOS devices to continue to be sold by Philip Morris in March, but did so ignorant of the fact that they were non-compliant with regulations.** It may be that the Minister did not disclose the non-compliance of IQOS devices because it would reveal the extent to which she was seeking cabinet to alter regulations largely for the benefit of one company.

It is of significant public interest that your office investigates the decision to remove excise duty on heated tobacco products itself, and whether the tobacco industry interfered in that decision directly, or via any links to New Zealand First or the Taxpayers' Union. If you decide not to do so I would appreciate a written opinion as to why not.

Yours sincerely



Hon Dr Ayesha Verrall

References

- 1 Parliamentary Debates (Hansard). *Excise and Excise-equivalent Duties Table (Tobacco Products) Amendment Bill — First Reading, Second Reading, Third Reading*, <https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/49HansD_20100428_00001014> (2010).
- 2 Ernst & Young Ltd. Evaluation of the tobacco excise increases as a contributor to Smokefree 2025. (Ministry of Health, 2018).
- 3 The Treasury. *Binder 20240673 Documents released under the Official Information Act* (2024).
- 4 Ministry of Health. *Briefings and aides mémoire: heated tobacco products* <<https://www.health.govt.nz/information-releases/cabinet-and-briefing-material-heated-tobacco-products>> (2024).
- 5 World Health Organization. *Heated Tobacco Products Information Sheet*, <<https://iris.who.int/bitstream/handle/10665/331297/WHO-HEP-HPR-2020.2-eng.pdf?sequence=1>> (2020).
- 6 Radio New Zealand. *Casey Costello releases 'independent' advice on heated tobacco*, <<https://www.rnz.co.nz/news/political/529782/casey-costello-releases-independent-advice-on-heated-tobacco>> (3 October 2024).
- 7 Andreyeva, T., Marple, K., Marinello, S., Moore, T. E. & Powell, L. M. Outcomes Following Taxation of Sugar-Sweetened Beverages: A Systematic Review and Meta-analysis. *JAMA Netw Open* **5**, e2215276 (2022). <https://doi.org/10.1001/jamanetworkopen.2022.15276>
- 8 Edwards R., W. A., Bullen C.,. The heated tobacco products excise cut – a trial, but not as we know it. *Newsroom* (7 October 2024). <<https://newsroom.co.nz/2024/10/07/the-heated-tobacco-products-excise-cut-a-trial-but-not-as-we-know-it/>>.
- 9 Global Centre for Good Governance in Tobacco Control. *Global Tobacco Industry Interference Index 2023*, <<https://globaltobaccoindex.org/report-summary>> (2023).
- 10 Espiner, G. Leaked tobacco lobbying plan for 'political pressure' shows tobacco giant got its tax cut wish. (23 August 2024). <<https://www.rnz.co.nz/news/political/525810/leaked-tobacco-lobbying-plan-for-political-pressure-shows-tobacco-giant-got-its-tax-cut-wish>>.
- 11 Radio New Zealand. *Costello Office Notes*, <<https://www.documentcloud.org/documents/24451462-costello-office-notes?responsive=1&title=1>> (2023).
- 12 Becker, R. Why Big Tobacco and Big Vape love comparing nicotine to caffeine. (27 April 2019). <<https://www.theverge.com/2019/4/26/18513312/vape-tobacco-big-companies-nicotine-caffeine-comparison-drugs-chemicals>>.
- 13 Parliamentary Debates (Hansard). *Oral Questions — Questions to Ministers 12—Health* <https://www.parliament.nz/mi/pb/hansard-debates/rhr/document/HansS_20240828_051360000/12-question-no-12-health> (28 August 2024).
- 14 Espiner, G. NZ First Minister Casey Costello forced to apologise after acting 'contrary to law'. (11 July 2024). <<https://www.rnz.co.nz/news/in-depth/521816/nz-first-minister-casey-costello-forced-to-apologise-after-acting-contrary-to-law>>.
- 15 Ombudsman. *Chief Ombudsman publishes details of investigation into Associate Health Minister's refusal to release information on author of tobacco policy advice*, <<https://www.ombudsman.parliament.nz/news/chief-ombudsman-publishes-details-investigation-associate-health-ministers-refusal-release>> (19 September 2024).
- 16 Ministry of Justice. *Anti Corruption Guide*, <<https://www.justice.govt.nz/assets/Ministry-of-Justice-Anti-Corruption-Guide.pdf>> (2018).
- 17 Sam Sachdeva. Taxpayers' Union backed by tobacco giant. *Newsroom* (24 January 2019). <<https://newsroom.co.nz/2019/01/24/taxpayers-union-backed-by-tobacco-giant/>>.
- 18 Associate Minister of Health Hon Casey Costello. *Cabinet material: reducing excise duty from heated tobacco products*, <https://www.health.govt.nz/system/files/2024-07/cabinet_material_reducing_the_excise_duty_on_heated_tobacco_products_-_watermarked_and_coversheet_for_publishing.pdf> (2024).
- 19 Cancer Society of New Zealand (National Office). *New Zealand Tobacco Industry Interference Index 2023*, <<https://www.cancer.org.nz/about-us/latest-news/new-zealand-still-needs-to-protect-ourselves-from-the-tobacco-industry-2/>> (2023).

- 20 Farah Hancock. \$2m surge in election campaign spending by third-party groups. (26 February 2024). <<https://www.rnz.co.nz/news/in-depth/510208/2m-surge-in-election-campaign-spending-by-third-party-groups>>.
- 21 Vance, A. Tobacco lobbyist guest at Ministers' swearing-in ceremony. *The Post*, (25 January 2024). <<https://www.thepost.co.nz/politics/350158370/tobacco-lobbyist-guest-ministers-swearing-ceremony>>.
- 22 World Health Organization. *Guidelines for implementation Article 5.3*, <<https://fctc.who.int/news-and-resources/publications/m/item/guidelines-for-implementation-of-article-5.3>> (2013).
- 23 Newton, K. NZ First Minister Shane Jones says he doesn't know or care about tobacco industry transparency rules. (7 March 2024). <<https://www.rnz.co.nz/news/in-depth/511054/nz-first-minister-shane-jones-says-he-doesn-t-know-or-care-about-tobacco-industry-transparency-rules>>.
- 24 Office of the Auditor General. *Inquiry into the Saudi Arabia Food Security Partnership*, <<https://oag.parliament.nz/2016/food-security/docs/food-security.pdf>> (2016).
- 25 Costello C. *Smokefree 2025: Progressing Coalition Agreement Commitments*, <https://www.health.govt.nz/system/files/2024-05/smokefree_2025_progressing_coalition_agrmnt_commitments_cab-24-min-0071.01_black_box_watermarked.pdf> (2024).
- 26 Espiner, G. Casey Costello's tobacco tax cut plan stalled as device pulled from shelves. (2 October 2024). <<https://www.rnz.co.nz/news/in-depth/529583/casey-costello-s-tobacco-tax-cut-plan-stalled-as-device-pulled-from-shelves>>.