New Zealand’s legal action against IQOS postponed, consultation with Big Tobacco follows

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With an ambitious goal of eradicating tobacco use by 2025,1 New Zealand is often considered a leader in tobacco control policy.2 The ‘tobacco endgame’ policy and tightening controls on the industry have wide public support.3–5 While a recent study concluded new measures are needed to achieve the goal of eradicating smoking by 2025,6 a society without cigarettes is now becoming a very real possibility.7–9

With the eventual phasing out of cigarettes a looming prospect, the tobacco industry in New Zealand, as elsewhere,10,11 is increasingly turning its attention to alternative nicotine and new tobacco products, including electronic nicotine delivery systems (ENDS) and ‘heat-not-burn’ (HNB) tobacco products. However, the legal status of these products, and the applicability of laws protecting the public from passive smoke, is uncertain.12,13 For example, e-cigarettes (ie, devices that heat liquid propylene glycol to create an inhalable aerosol with nicotine14) have been available in New Zealand since around 2007, despite nicotine being legally classified as a medicine.15 In March 2017, the Government announced that nicotine-containing e-cigarettes will be regulated as consumer products.16

In May 2017, the New Zealand Ministry of Health sued Philip Morris for importing and marketing IQOS on the grounds that it was prohibited under s 29(2) Smoke-free Environments Act 1990.26 The court hearing, initially scheduled in June 2017, was rescheduled for September.27 In the meantime, three meetings between Ministry of Health officials and industry representatives (British American Tobacco, Imperial Tobacco and Philip Morris) were held in quick succession (30 May–2 June) to “discuss regulation of new tobacco and nicotine-delivery products”.28 Subsequently, in August 2017, the government announced their plan to establish a pre-market approval system for smokeless tobacco products such as IQOS.29
The process through which the proposal to regulate HNB tobacco products emerged is alarming. Unlike the earlier proposal to regulate nicotine e-cigarettes, it has not been subject to similar public consultation. Also, the delay in enforcing legislation which currently prohibits sale of HNB products undermines the legitimacy of existing tobacco control laws. Finally, New Zealand is a Party to the Framework Convention on Tobacco Control and under art. 5.3 is legally obliged to protect tobacco control policy from commercial and other vested interests of the industry. While regulation of new nicotine and tobacco products may indeed support achievement of the ‘endgame’ goal (through offering potentially safer alternatives to smoking), major uncertainties remain as to the health risks and normalisation effects. Given that industry survival depends on these technologies, greater transparency is needed in the process of designing regulations for the new products.

Competing interests:
Nil.

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