



Submission on the Regulatory Standards Bill

Health Coalition Aotearoa

1. Summary

- 1.1. Health Coalition Aotearoa strongly opposes this Bill and calls for it to be rejected, as has happened three times before, because its narrow principles for law-making do not reflect the wider values of New Zealanders. Specifically for health, it will thwart major prevention regulations from being enacted to reduce the harm from the biggest preventable killers of New Zealanders – tobacco, alcohol and unhealthy foods.
- 1.2. If this Bill is passed into law, the net effect will be the legal empowerment of harm corporations to kill any constraining regulations (eg warning labels, restricting marketing, reducing access) affecting their products. It will disempower governments because the principles, as defined in the Bill, privilege the liberties and properties of corporations with no principles articulated for protecting against health harm, creating healthy environments, honouring Te Tiriti o Waitangi, safeguarding for future generations, or taking precautionary action.
- 1.3. The existing ‘regulatory chill’ (ie politicians being reluctant to regulate due to fears of protracted battles with powerful corporations) has, to date, meant slow progress on implementing public good, evidence-based, WHO-recommended regulations in New Zealand on tobacco, alcohol and unhealthy foods. This Bill will convert this slow progress into a ‘regulatory freeze’ where no such prevention regulations will be enacted because the legal playing field will be too heavily tilted in favour of harm corporations.

2. About Health Coalition Aotearoa

- 2.1. Health Coalition Aotearoa is an alliance of over 60 public health NGOs, health professional associations, and academic organisations with a shared goal of promoting equitable health outcomes in Aotearoa New Zealand. We advocate for healthier public policies in the areas of tobacco, alcohol, and unhealthy food, which collectively cause about one third of the preventable premature deaths and diseases in this country.
- 2.2. Guided by Te Tiriti o Waitangi, Health Coalition Aotearoa is committed to upholding its principles, embedding tikanga Māori and kaupapa Māori values into all aspects of our work. We have four expert advisory panels that provide guidance to our efforts, to ensure that our advice is both evidence-based and culturally responsive.

2.3. While New Zealand has been at the international forefront of implementing tobacco control regulations, these have been dismantled by the current government and replaced by strategies favoured by the tobacco industry, namely education and the use of their other commercial tobacco and nicotine products. In relation to regulations on alcohol and unhealthy food, New Zealand has been remarkably sluggish in implementing the evidence-based policies recommended by WHO and many national and international expert groups.

3. General comments on the Bill

3.1. There are many general reasons for opposing the Bill in its current form as articulated by many legal experts and organisations who work towards public good goals, such as health, social equity, and sustainable environments, rather than for private economic goals.

3.2. The Bill privileges the protection of individual liberties and private property rights, including the liberties and intellectual properties of corporations, above other principles of good law-making.

3.3. Major principles of good law-making which are omitted include the principles of Te Tiriti o Waitangi (which the Treaty Principles Bill is concurrently trying to distort), avoiding public harm, distributive justice, healthy environments, safeguards for future generations, the precautionary principle, and international obligations.

3.4. This Bill also fails its own criteria for good law-making, because:

3.4.1. It does not define the 'public interest' of this Bill,

3.4.2. The diagnosis of the problem to be addressed ('Most of New Zealand's problems can be traced to poor productivity, and poor productivity can be traced to poor regulations') is heavily contested,

3.4.3. A range of options that are 'reasonably available for addressing the issue' is not presented,

3.4.4. It does not provide a proper analysis of 'who is likely to benefit, and who is likely to suffer a detriment, from the legislation'.

3.5. This Bill has been rejected three times before because it does not accord with the broad values of New Zealanders. The substantial critiques and reasons for the previous rejections have not been addressed in this version.

3.6. The Bill, and its previous renditions, have been criticised by Treasury, the Commerce Commission and various Regulatory Impact Statements. As with other legislation passed by this government, this Bill runs counter to the principles of this Government's Coalition Agreement, because it is not pro-democracy, evidence-based and people-focused.

4. Health impacts

- 4.1. For pro-health regulations, in particular, this Bill is particularly dangerous. We give examples of how population health will suffer if regulations cannot be made which address the huge health and social damage caused by the harm industries producing tobacco, alcohol and unhealthy foods.
- 4.2. 'Regulatory chill' is where politicians are reluctant to regulate due to fears of protracted battles with powerful corporations. This has been the prevailing status in New Zealand explaining the slow progress (or recently retrograde progress in the case of tobacco) on implementing public good, evidence-based, WHO-recommended regulations in New Zealand on tobacco, alcohol and unhealthy foods.
- 4.3. This Bill will convert the current regulatory chill into a future 'regulatory freeze' on prevention regulations because the legal playing field will be too heavily tilted in favour of harm corporations.
- 4.4. '[Corporate political activity](#)' refers to the suite of strategies used by corporations to achieve a political economy conducive to maximising their profits. Strategies include lobbying, (mis)information campaigns, political party funding, lawsuits, cosy relationships with politicians, funding research and scientists to oppose regulations, leverage through trade agreements, and setting up voluntary codes of practice.
- 4.5. Courageous governments and health ministers who are prepared to do battle against the barrage of corporate political activities from harm industries are very rare. We need legal structures which tilt the legal playing field more in favour of public good rather than in favour of greater profits for harm corporations. This would mean that pro-health regulations would be enacted more readily and frequently because the legal powers of harm corporations to kill, delay or dilute them would be reduced.

5. Potential health scenarios in New Zealand if this Bill is enacted

- 5.1. **Marketing regulations:** If the government enacted regulatory restrictions so that children would not be exposed to the marketing of unhealthy foods, alcohol or vape products, this Bill would support these harm corporations by allowing them to sue the Government for compensation for loss of intellectual property and sales.
- 5.2. **Access regulations.** If the government enacted regulations to restrict the number of fast-food outlets or alcohol outlets in poorer neighbourhoods, this Bill would support these harm corporations by allowing them to sue the government for impinging their rights to commercially trade their products where they choose.
- 5.3. **Health levies.** If the government implemented 'health levies' on ultraprocessed foods or increased those already imposed on tobacco and alcohol, this Bill would support the harm corporations contesting the government through the courts about the balance of risks and benefits and the cost-efficiency of this policy versus other policies.

6. Examples of corporate political activity delaying, obstructing, and weakening pro-health regulations

- 6.1. **New Zealand:** [Local Alcohol Policies](#) (LAPs). LAPs are intended to give communities more say on alcohol supply, however, because of the legal levers available to the supermarket chains and other alcohol industries, they were able to delay and delay the implementation of LAPs. Some five years after the introduction of the Act, only 24% of the population was covered by a LAP. Infamously, the alcohol industry took appeals against Auckland's LAP as far as the Supreme Court where they lost, but they created a nine-year delay in doing so. The more levers available to deep-pocketed harm industries, the more they will use them to kill or delay or weaken public health regulations.
- 6.2. **Australia and New Zealand:** [Pregnancy warning labels on alcohol](#). When discussions about mandatory warnings on the risks of alcohol during pregnancy arose in the late 2000s, the alcohol industry immediately developed a voluntary system of small, difficult-to-see labels in 2011. This system was ineffective as a communication tool to consumers, but it bought the industry 7 years of government inaction. In 2018, Australian and New Zealand governments found the courage to implement clear mandatory warnings, but the industry used the FSANZ's processes and regulatory frameworks to argue that they would be too costly to implement, demanded more cost-benefit analyses, maximised their messages at every public forum, inundated FSANZ with technical reports, used FSANZ's own regulatory requirements to argue every point, lobbied ministers, demanded reviews of every issue including colours and sizes of warnings, and demanded a 3 year implementation timeframe to 2023. Thus, the alcohol industry has achieved nearly a quarter of a century of delays and added taxpayer costs on one simple regulation which was relatively non-threatening to their bottom line. Harm industries do not need more legal leverage (as this Bill gives them) to delay, weaken and add costs to pro-health regulations.
- 6.3. **Australia:** [Plain packaging for cigarettes](#). Nicola Roxon was a courageous Australian federal Minister of Health and Attorney-General. She enacted plain packaging regulations for cigarettes in 2011. The tobacco industry heavily opposed the implementation of this regulation from 2010 to 2020 through: political lobbying, creation of 'astroturf' front groups (ie non-grass roots, industry-funded), High Court challenges, public media campaigns, funded 'think tanks', supporting random countries (eg Honduras, Cuba, Dominican Republic and Ukraine) to challenge Australia through the World Trade Organisation, and Philip Morris shifting its head office to Hong Kong so that it could sue the Australian government through a bilateral trade agreement it had with Hong Kong. None of these actions scuttled the regulations, but the very deep pockets of the tobacco industry and the multiple ways that they try to spook politicians and undermine public health were on full display. Australia's legal fees were \$AUD39 million. If this Regulatory Standards Bill was law in Australia, this protracted battle would have been even longer, harder, and more expensive for the taxpayers.
- 6.4. **Mexico and Brazil:** [Food policies](#). Mexico and Brazil have been at the forefront of Latin American countries taking action on their rising obesity levels using taxes and regulations and this has exposed how far the harm industries will go to oppose the government actions. In Mexico, Coca Cola used the long-standing revolving door at the highest levels between the corporation and the Mexican government, so they could lobby straight into the ear of

senior ministers. In both countries, the industry lobbied hard and financed key politicians. They also funded science and sports groups to promote exercise as the answer to obesity and diabetes and self-regulatory codes to delay the government policies. Scientists and advocates in Mexico had their phones and computer hit with malignant spyware from unknown sources. Each policy, even after it is enacted, is relentlessly attacked by industry using every legal and non-legal means at their disposal, all of which costs a huge amount of government time and money.

7. Conclusion

- 7.1. Health Coalition Aotearoa is already battling substantial policy inertia to get pro-health policies enacted. This Bill, with its narrow and biased definition of 'good' law-making, will turn the current regulatory chill into a regulatory freeze on pro-health regulations. On health grounds, the Bill should be rejected (yet again).
- 7.2. New Zealanders value many things like equity, healthy environments, and the wellbeing of future generations – all of which are omitted from the Bill. On values grounds, the Bill should be rejected (yet again).