



Stubbing out democracy: no Government mandate for smokefree repeal

11 December 2023

Richard Edwards, Andrew Waa, Janet Hoek

Summary

The new coalition government has announced its intention to repeal the 2022 smokefree legislation and three key measures to help achieve the Smokefree Aotearoa goal. We assess whether this action has a mandate and legitimacy. Repeal of the legislation was not put before the electorate in the recent election campaign and is inconsistent with previous National Party policy positions. The decision was taken in covert coalition negotiations in stark contrast to the consultative processes preceding adoption of the legislation. The measures to be repealed have strong public support. Views of community leaders, health organisations and health and smokefree policy experts are being ignored, in contrast to those of retailers who support repeal and whose concerns have influenced decision-making. We conclude that the decision has no mandate or legitimacy and suggest the government should change its decision.

As part of its 100 day programme, the new coalition government intends to [repeal the 2022 Smokefree Environments and Regulated Products \(Smoked Tobacco\) Amendment Act](#) (SERPA). The SERPA Act provided for reducing the number of retail outlets selling smoked tobacco products, limiting nicotine in smoked tobacco products so these are no longer addictive, and introducing a 'smokefree generation' policy.

The legislation is predicted to deliver [rapid, profound and equitable reductions in smoking prevalence](#). Repeal is a deliberate action that the government is fully aware will very likely see smoking prevalence decline more slowly and prolong the huge burden of inequitable and avoidable deaths and suffering that smoking causes.

So, the stakes are high. Very high.

The pathway for the coalition government is clear as its parliamentary majority enables it to repeal the legislation rapidly if it wishes to.

However, the key question is not whether the government can proceed in this way but rather whether it should. If priority goals for the government include maximising health, well-being and equity in the best interest of its citizens then surely it should not. An additional perspective, the focus of this article, is whether the government has an electoral mandate and democratic legitimacy for its actions.

Lack of transparency and inconsistency with previous policy positions

Neither the [National](#) nor [ACT](#) parties included repeal of the smokefree legislation in their pre-election policy proposals. Only NZ First outlined its intention to repeal the legislation in its [manifesto](#). None of the parties campaigned on the issue (even NZ First) and, to our knowledge, repeal was never discussed during the election campaign.

The Prime Minister has argued that the [National Party opposed the smokefree legislation in Parliament](#). This statement is highly misleading. In the Third Reading debate National's health spokesperson, [Dr Shane Reti](#), not only explained why he saw denicotinisation as an evidence-based measure but, in [Supplementary Order Paper 314](#), proposed introducing this measure first, with the retailer reduction and smokefree generation policies implemented if required, following a review. National MPs voted against the legislation, but only because

they disagreed with the proposed sequencing of the two key measures (retailer reduction in July 2024, followed by denicotinisation in April 2025).

As a result, voters in the election had no indication that the National Party would repeal this legislation. As [Sir Ian Taylor noted](#) in his critique of the repeal decision:

It was not something that I was given the advantage of thinking about when deciding where to cast my vote.

Covert decision-making and lack of scrutiny

To general surprise and widespread condemnation, the proposal to repeal the legislation emerged from behind-closed-doors coalition negotiations. Finance Minister, [Nicola Willis, stated](#) that junior coalition partners NZ First and ACT insisted on repealing the smokefree legislation. The Prime Minister therefore agreed to repeal the legislation at the behest of minor parties who received less than 15% of the vote at the election. This covert and non-consultative process, contrasts markedly with detailed public and stakeholder consultation and scrutiny for the Smokefree Aotearoa Action plan and SERPA legislation that included a Ministry of Health-led public consultation and Health Select Committee review.

The government is considering introducing the repeal and other measures under ‘urgency’, and [curtailing the regulatory impact assessment process](#). If this proceeds it means a highly controversial measure with profound health consequences will be enacted with minimal parliamentary or expert scrutiny. [Nicola Willis has justified this process](#) on the basis that these actions were “campaigned on” which, as noted above, for the smokefree legislation is simply untrue.

Lack of public support

Not only has the Prime Minister shown a lack of leadership by allowing junior coalition partners to dictate inclusion of repeal within the coalition agreement, but he is wholly out of synch with public opinion.

The public strongly support the smokefree goal and measures that would have seen the goal realised (see table below). A [survey of youth and young adults](#) published last week found very strong support (65-81% supported vs 13-19% opposed) for all three key measures including the smokefree generation policy. There is no recent population data on adult support, but the [2022 ITC NZ survey of people who have recently quit smoking](#) found strong support for all three measures (see table). There was even substantial support among people who smoke for denicotinisation and the smokefree generation policy, though less so for retailer reduction.

Table: Support for smokefree goal and key smokefree measures in ITC NZ Youth and Adult Survey 2023 and Adult Survey 2022

		Adult	
		recent	Adult
		quitters	smokers
Youth	Young adults		

	Support %	Oppose %	Support %	Oppose %	Support %	Oppose %	Support %	Oppose %
Smokefree goal	79	14	81	13	74	20	45	48
Denicotinisation	65	18	69	19	75	16	48	32
Retail reduction	78	13	78	16	69	27	40	54
Smokefree generation	76	14	81	14	70	24	59	33

'Don't know' responses are not reported in table.

Selective attention to stakeholder views

The Minister of Health, [Dr Reti, has stated](#) that a major reason for not proceeding with the reduction in tobacco retailer numbers was a possible increase in ram raids and other retail crime. However, his only supporting evidence were anecdotal reports of unnamed retailers' concerns. Citing retailers' concerns as evidence for possible unintended consequences and reasons for repealing the legislation demonstrates that the government has listened to and prioritised their views. The government also appear to have heard clearly views of the tobacco industry and its allies whose submissions during the Action Plan and SERPA consultations strongly opposed implementing the three key measures. Is it mere coincidence that, to justify repealing the legislation, the government has advanced very similar arguments (e.g. increased crime and growth in black market) to justify cancelling the three key measures even though logic and research evidence suggests none of their arguments hold water?

And what of other stakeholders? To date, the government has completely ignored deep concerns expressed by numerous groups, including 105 medical, health, education and social service organisations and professional groups who signed an [open letter](#) to the government stating that repeal would be irresponsible and immoral and should not proceed. Authoritative international organisations such as [ASH US](#) and [international experts and public health leaders](#) have made similar and as yet equally unheeded calls for the government to reconsider this retrograde decision.

Conclusion

The Government could yet follow a morally-based and principled decision-making process. It could acknowledge and respond to the enormous opposition this ill-informed proposal has aroused within Aotearoa and internationally and accept that it has no mandate or legitimacy for its proposed actions. Repealing the smokefree legislation would create a highly unfortunate exemplar for the operation of democratic processes in Aotearoa and severely taint the reputation and authority of the Prime Minister, Health Minister, Government and the National Party. It will expose the National Party and Prime Minister as weak leaders, acting at the behest of junior coalition partners.

The solution is easy. The government needs to listen to the public. Listen to the health professionals who see and know the real impacts of smoking. Change course before it is too late and do what should be done, not just what can be done.

What is new in this Briefing

- We review whether the new coalition government has a mandate and legitimacy for its decision to repeal the 2022 smokefree legislation
- We conclude it does not based on the following:
 - Voters in the election had no inkling that National would repeal the legislation.
 - The covert and non-consultative decision-making process.
 - Strong public support for the measures that will be repealed.
 - Failure to pay attention to views of community leaders, health organisations and health and smokefree policy experts.

Implications for public health policy and practice

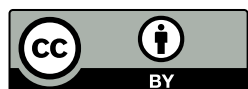
- Health workers should scrutinise processes for public health policy decision-making and hold decision-makers to account where those processes are inadequate.

Author details

[Prof Richard Edwards](#), [Assoc Prof Andrew Waa](#), [Prof Janet Hoek](#), co-directors, ASPIRE Aotearoa Research Centre, and Department of Public Health, University of Otago Wellington.

The authors acknowledge and thank Dr Lindsey Te Ata o Tū MacDonald, Department of Political Science and International Relations, University of Canterbury for his help and advice on this briefing.

The authors have no conflicts of interest to declare concerning tobacco industry funding or affiliation. All receive research funding from government or NGO research funders such as HRC and the Cancer Society of NZ. All contribute (unpaid) as members of public health and smokefree expert advisory groups.



Public Health Expert Briefing (ISSN 2816-1203)

Source URL:

<https://www.phcc.org.nz/briefing/stubbing-out-democracy-no-government-mandate-smokefree-repeal>