

**MAKING THE TOBACCO INDUSTRY ACCOUNTABLE FOR  
MISLEADING STATEMENTS  
Information for the public, 19 June 2006**

**What have tobacco companies done?**

The tobacco industry has continually misled the New Zealand public about the nature of tobacco products and the harm caused by second-hand smoke.

Examples include:

- Advertisements in the late 1980s by the now-defunct Tobacco Institute of New Zealand stating that "science has not established that other people's cigarette smoking causes diseases in non-smokers".
- Public statements from British American Tobacco (BAT) in the late 1990s that "The [International Agency for Research on Cancer] study confirms a view that the industry had long held that while smoke in the air may annoy some non-smokers, passive smoke is not a lung cancer risk."
- Public statements from BAT in 2001 that "...we have gone through the international evidence on second-hand smoke and there is a pattern of research [indicating] that it is not a serious health issue."
- BAT's website currently states: "Based on our assessment of the available science on the whole, we think that many of the claims against environmental tobacco smoke have been overstated. Specifically, we don't believe that it has been shown to cause chronic disease, such as lung cancer, cardiovascular disease or chronic obstructive pulmonary disease, in adult non-smokers."

**Why hasn't action been taken before now?**

Despite legislation in this country that forbids traders from misleading the public about the nature of their products, action under the Fair Trading Act has never been taken against the New Zealand tobacco industry. The Fair Trading Act is designed to protect people from deceit or unfair treatment.

A paper by Otago University researchers George Thomson and Nick Wilson suggested that this lack of action indicated an unwillingness by Government and government agencies to take advantage of legislative opportunities to make the tobacco industry accountable.

This sends a message to the industry that they can get away with continuing to mislead the public, with only a low risk of legal action being taken against them.

This is in contrast to the Australian experience, in which a consumer organisation (largely funded by Government) took the local Tobacco Institute to court on false statements about second-hand smoke. The court required

that the industry could not describe second-hand smoke as not being shown to be unsafe.

In 2005, the Australian Competition and Consumer Commission obtained a court enforceable undertaking from Imperial Tobacco Australia Limited to remove misleading descriptors (such as 'light' and 'mild') from its products.

These instances show that the tobacco industry is much more likely to be held accountable in Australia for its statements and actions, than it is in New Zealand.

### **What can I do about it?**

Sometimes it requires pressure from the public before the Government and/or government agencies will take action on issues.

The Smokefree Coalition encourages members of the public to write to the Minister of Consumer Affairs, and the Associate Minister of Health to insist that tobacco companies be held accountable for their actions.

Contact details are:

Damien O'Connor  
Associate Minister of Health  
Parliament Buildings  
WELLINGTON

Judith Tizard  
Minister of Consumer Affairs  
Parliament Buildings  
WELLINGTON

Letters sent to Parliament do not require a stamp. Letters urging action on tobacco industry deception can also be sent to your local newspaper.

You may wish to elaborate on the following points:

- Tobacco companies have deliberately misled the New Zealand public for decades, and it is time they were held accountable. They have continued to refuse to admit to the health risks of exposure to second-hand smoke; have misused product design – by using descriptors such as 'light' and 'mild' to imply that some tobacco products are safer than others; and have continually opposed evidence-based tobacco control measures proposed by the New Zealand health sector.
- Despite strong evidence being presented to them, both the Commerce Commission and the Ministry of Health have declined to take action against the tobacco industry under the Fair Trading Act.
- However, action under the Fair Trading Act relating to deceptive statements is regularly initiated by the Commerce Commission on other issues. In 2002, at least twenty legal actions were taken, all on relatively minor health issues compared to the harms caused by

tobacco use. This included taking action over the claim of a fish and chip shop that it used cholesterol-free oil.

- Tobacco use causes the deaths of around 5000 New Zealanders every year, while making the tobacco industry millions of dollars. The Government must use every available tool to make tobacco companies accountable for their deceptions.
- We urge the Government to take this issue out of the 'too-hard' basket and to allocate the resources necessary to properly prosecute tobacco companies that mislead the public.

### **How do I make a complaint to the Commerce Commission?**

The Commerce Commission enforces legislation that promotes competition in New Zealand markets and prohibits misleading and deceptive conduct by traders. The Commission also enforces a number of pieces of legislation specific to the telecommunications, dairy and electricity industries.

When making a complaint to the Commerce Commission, prepare your query or complaint with as much relevant detail as possible – including your contact details, information about the trader or individual, and evidence of any suspected breach.

Send your complaint to the Commerce Commission, Contact Centre, PO Box 2351, Wellington, or email at [contact@comcom.govt.nz](mailto:contact@comcom.govt.nz)