

New Zealand's tobacco endgame U-turn - a reversal or an advance?

written by Clive Bates | 11 December 2023



There has been much agonising about the reversal of New Zealand's three 'endgame' tobacco policy measures by its new right-of-centre governing coalition - one commentator even describing the reversal as "[deliberate... systematic genocide](#)".

In short, I think these were poor policy choices with multiple likely unintended consequences. The coalition has cleared the way to developing a better policy environment that would build on New Zealand's success so far. Rather than bemoaning the loss, public health advocates should respect the election-winning coalition's rational political choices and get behind a better package of measures that would work politically.

Let's look into what happened and what to make of it.

The reversal

Following the October 14 election, three parties - National (right-of-centre), New Zealand First (populist), and ACT (libertarian) - announced they had formed a viable coalition: see the press release: [National, ACT and New Zealand First to deliver for all New Zealanders](#) (24 November 2023).

The coalition agreements contained a surprise commitment to repeal legislation implementing three signature “endgame” tobacco control measures.

- *Repeal amendments to the Smokefree Environments and Regulated Products Act 1990 and regulations before March 2024, removing requirements for denicotisation, removing the reduction in retail outlets and the generation ban, while also amending vaping product requirements and taxing smoked products only.*
- *Reform the regulation of vaping, smokeless tobacco and oral nicotine products while banning disposable vaping products and increasing penalties for illegal sales to those under 18.*

*Coalition Agreement: New Zealand National Party & New Zealand First [[pdf](#)]
see also National and ACT agreement [[PDF](#)] for similar language.*

For reference, this was the proposed timetable for [NZ ‘endgame’ measures](#). The measures are included in [Smokefree Environments and Regulated Products Act 1990](#) (as amended) and came into force on 1 January 2023. The three measures are:

- Denicotinisation of smoking products ([section 57I](#)) - 1 April 2025
- Contraction of retail outlets by 90% ([section 20M](#)) - 1 July 2024
- Smokefree generation - unlawful to sell smoked tobacco to persons born after 1 Jan 2009 ([sections 40A&B](#))- has effect from 1 Jan 2027

I can understand the impulse to show solidarity with tobacco control colleagues in New Zealand. Perhaps there is also some distaste for the politics of the new coalition, but we should discuss the three policies to be reversed *on their merits*.

And also the politics of what has happened.

Assessing the policy reversal

There are really two *types* of objections to such policy initiatives.

Utilitarian objections - will the policy work?

Can it be implemented successfully? Will it do more harm than good because it will create black markets, workarounds such as home production, lawlessness and harmful behavioural effects that outweigh the hoped-for benefits of switching and cessation? Further, the benefits and costs should not be compared with the status quo but a realistic alternative package (for example, raising the age limits to 21).

There has to be an acceptable limit to adverse effects in making trade-offs: I cannot see where tobacco control advocates have stated their tolerance for lawlessness; how much lawlessness would be *too much* compared to the hoped-for benefits of these policies compared to alternatives? At some point, a sufficiently robust black market can become embedded and hard to remove (see illicit drugs trade) - and undermines all other tobacco control policies, as the suppliers are, *by definition*, non-compliant. Where is the acceptable trade-off? New Zealand already has a problem with ram-raiding and gang-related violence linked to illicit trade in tobacco and nicotine products (see below). The government-commissioned modelling for these proposals simply ignored illicit trade. But imagine making an assessment of illicit drug policy without considering the malign effects of illicit trade.

Customs officials have expressed concern about the likelihood of more illicit trade arising from the new measures.

“I’m concerned this will lead to smokers who do not have easy access to lawfully sold products to switch to illegal sellers,” she said. “This would strengthen the demand for illicit product, undermining the Smokefree objectives. Since they would already be operating illegally, such sellers would have less [hesitation] about selling illegal product ... than legal sellers would.”

Then Customs Minister Meka Whaitiri, quoted in Stuff, [Concerns over Smokefree plan as illegal tobacco manufacture operation discovered](#). 2 July

Principled objections - is the policy right?

Is it right to coerce adults into behaviour change that they may not want to make, and for their own good? However we dress it up, this is basically the state trying to stop people smoking by taking away their cigarettes. Is this the right way to do public health - to use the power of the state in this way? There is no right or wrong answer to the "is it right?" question - it is a matter of values.

But what are our values? It might be a good idea to explore our boundaries as far as state action is concerned. Are there any tobacco control policies that tobacco control activists or ordinary people might regard as going too far, even if they "work" (in the sense of reducing smoking)? If so, why? For example, would criminalising *possession* of tobacco or nicotine be acceptable? Should kids be removed from their parents if their parents smoke? Should smokers be denied medical treatment on the basis of "contributory negligence"? Should smoking be banned in private houses, including social housing - because it wouldn't work, or something more to do with privacy and property rights?

Perhaps we could also explore our attitude to such boundaries by looking at other behavioural change policies. How far do we go with prohibitions for the good of the adult individual doing it? Seat belts? Mandatory motorcycle helmets? But these are harm reduction measures for dangerous activities. We don't prohibit horse riding or rock climbing. Would we consider a 'Dry Generation' to control the harm arising from alcohol? I doubt it. But why?

If there are policies that you think are going too far, what principles underpin your judgment about the boundaries? Or do you think there are no boundaries provided the measure reduces smoking?

My view is that the state does better as an *enabler* in public health when it comes to individual risk behaviours. It should pursue harm reduction for risk behaviours, not prohibition, and concentrate its coercive power on the externalities that arise with infectious diseases or major incidents (e.g. nuclear accidents).

1. Denicotinisation

Policy: impose a low nicotine standard for smoked tobacco (0.8mg nicotine per gram of tobacco) coming into effect on 1 April 2025.

The proposed policy reduces nicotine in cigarettes and other smoked tobacco by about 20 times compared to typical cigarettes... to 0.8mg nicotine per gram of tobacco on 1 April 2025. Despite considerable hype about these products, few consumers are willing to use them, and they have never been a commercial success, even with the endorsement of the US FDA. So the big policy idea is to make them the *only* choice of cigarette. This is not a prohibition of *nicotine*, of course, but it is a *de facto* prohibition of *cigarettes* and other smoked tobacco, given that smoking is a nicotine-seeking behaviour and nicotine is the *sine qua non* of smoking. Some think that is a good thing, and it will precipitate smoking cessation and switching to safer products. It probably would to some (unknown) extent, and that would be context-dependent.

However, for every good behaviour change pathway, there are bad ones. People will be able to switch to other forms of nicotine, of course - vapes, etc. And some may be happy to get a nudge from the law. But what if a sizeable number of smokers don't want to switch? Or what if they don't want to be *forced to switch* and would prefer to control their own personal behaviours?

The policy will trigger a range of behavioural responses under the duress of a *de facto* legal prohibition of cigarettes. Such responses may include the desired response (e.g. switching to vaping or smoking cessation) but also may include a wide range of other responses that involve continued smoking by illegal means or by finding workarounds. Very few in the populations most at risk (committed adult smokers) will actually switch to the regulated low-nicotine cigarettes as they don't provide enough nicotine - and even if they did, it would be a bad outcome. The policy question is what they would do instead.

Another factor to consider is that the people may simply dislike the government doing this to them and may become resentful or angry (experiencing what psychologists call "[negative affect](#)") and greater [distrust in government](#). Declining participation and trust create a wider malaise and feed fringe political movements. The tobacco control mindset too easily dismisses such subtle detriments in the name of their higher goal: smoking cessation. But not everyone

wants to quit smoking or start vaping, and many who say they do are likely to be overstating their commitment to actually doing it, especially if they are being made to do it. Real care has to be taken with forcing behaviour change on people *for their own good* and against their will - especially when their alternative will access to illegal, untaxed products.

The evidence for the denicotinisation measure relies on modelling, which in turn relies on clinical trials in which participants are willing volunteers, paid to participate, briefed by the investigators, asked to comply with a protocol, and given free low-nicotine cigarettes. None of these conditions apply to the reality of a smoker going to her corner shop or supermarket to buy cigarettes with her own money. The modelling of this policy was commissioned by its sponsors in the New Zealand Ministry of Health and undertaken by committed enthusiasts for the policy - in my view, it relied on deeply flawed and barely scrutinised projections from irrelevant clinical trials and simply assumed away illicit trade.

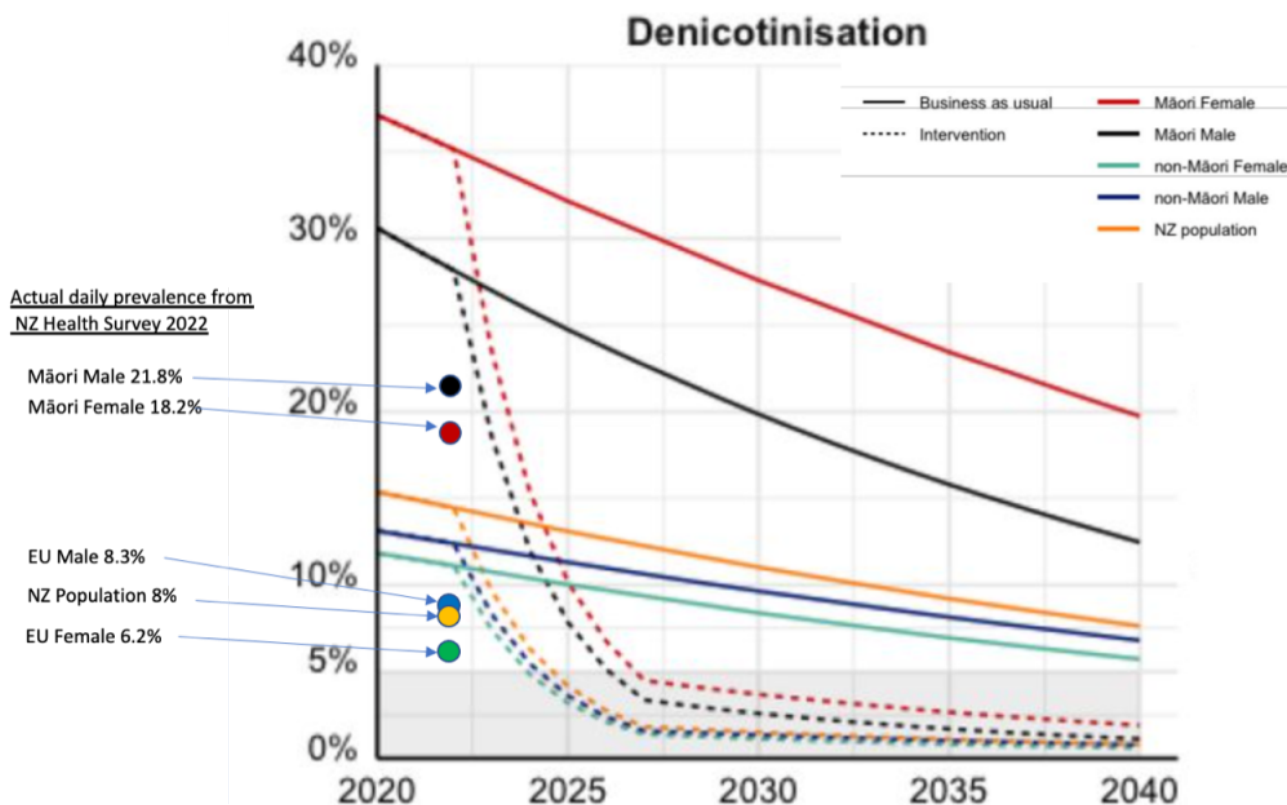
See a critique of the modelling here: [Using Models Disconnected From Reality To Justify Huge 'Endgame' Interventions](#) - with a more detailed critique and exchanges with the authors accessible [here](#).



In the context of the United States (which differs from New Zealand in several material respects), I have set out [Twenty reasons to be sceptical about rules lowering nicotine levels in cigarettes - and what to do instead](#), but some are relevant to the New Zealand case.

A better policy: do more to encourage the voluntary migration from smoking to smoke-free products without the ugly element of coercion. New Zealand has already had great success in smokers migrating to vaping. The chart below is from [our critique of the modelling](#) (illustration by Ben Youdan), showing that the real-world experience (dots) is far outpacing the assumed baseline with no

intervention (solid lines) and even showing progress ahead of the projected pathway following the denicotinisation endgame measure (dotted lines).



It shows that there have been dramatic reductions in smoking without these measures, notably in the Māori community. If the government merely keeps up this progress, it will achieve dramatic reductions in smoking without needing to resort to risky interventions with unknown consequences.

2. Reduction in retail outlets

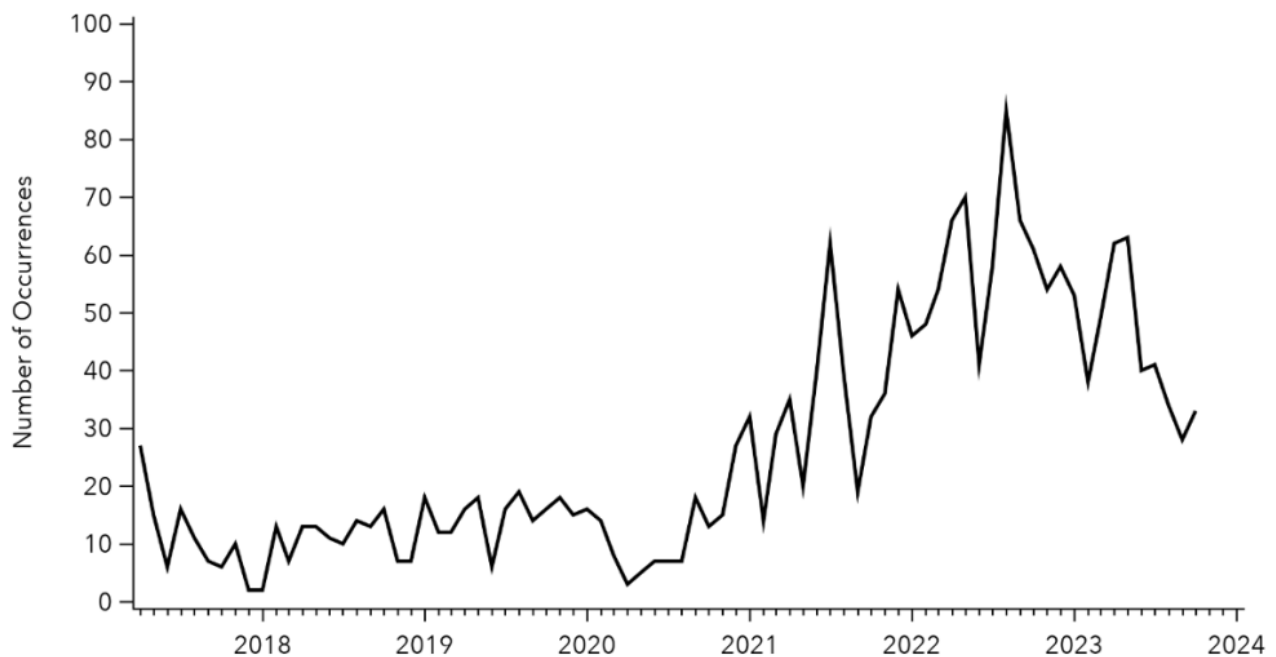
Policy: Reduction of outlets permitted to sell smoked tobacco from about 6000 to 600 coming into effect 1 July 2024

Reducing retail outlets by 90% is a very rapid contraction by any standard. It will apply an additional “tax” to users in the form of increased travel time and cost to people still willing and able to purchase cigarettes from lawful suppliers. That ‘time tax’ will be arbitrary, based on geography, and probably penalising smokers in more rural or suburban populations more, depending on how the licensing allocation plays out. It may have some effect (like monetary taxes) in promoting cessation or switching. However, New Zealand already has very high tobacco taxation by international standards.

It will also help to deepen the illicit market for cigarettes or create a secondary and unregulated retailing structure in legally purchased cigarettes - I don't think that is ever desirable. The moment of contraction (1 July 2024) will be an amazing commercial opportunity for black marketeers to fill the void. The policy will rapidly concentrate retailing in a smaller number of larger enterprises, necessarily holding more stock. These will become bigger targets for New Zealand's ram-raiders, extortionists, and gangs and will require the chosen retailers to adopt enhanced security if they haven't already.

Tobacco-related ram-raiding is already a problem afflicting small hops ("dairies") in New Zealand. New Zealand Police collect trend data on these raids.

Graph 2: The monthly number of Ram Raid occurrences since 1st April 2017 to 31st October 2023.



New Zealand Police, Ram-raid data, November 2023 [[link](#)]

Ram raids are not the only or the most reliable benchmark of criminality in the tobacco sector. However, these violent crimes have increased substantially, from 65 in 2018 to 427 in 2022. Some colleagues see hope in the 2023 downturn of about a quarter in the average monthly rate. I would read that chart differently. It shows the potential for violent criminality in this area to rise sharply when the incentives encourage it.

Show me the incentives and I will show you the outcome.

The retail contraction policy interacts in a chaotic way with the first policy above, 'denicotinisation'. The retail contraction comes into effect on 1 July 2024, followed by denicotinisation coming into effect on 1 April 2025, less than a year later. So, the 600 chosen retailers would experience a radical expansion that lasts less than one year before coming to an abrupt end, as they are then only permitted to stock denicotinised products that few people will wish to buy. Also, if tobacco control activists somehow think low-nicotine cigarettes help the population's health, as some apparently do (and I do not), then why would you want to make them relatively harder to obtain and illicit products relatively easier?

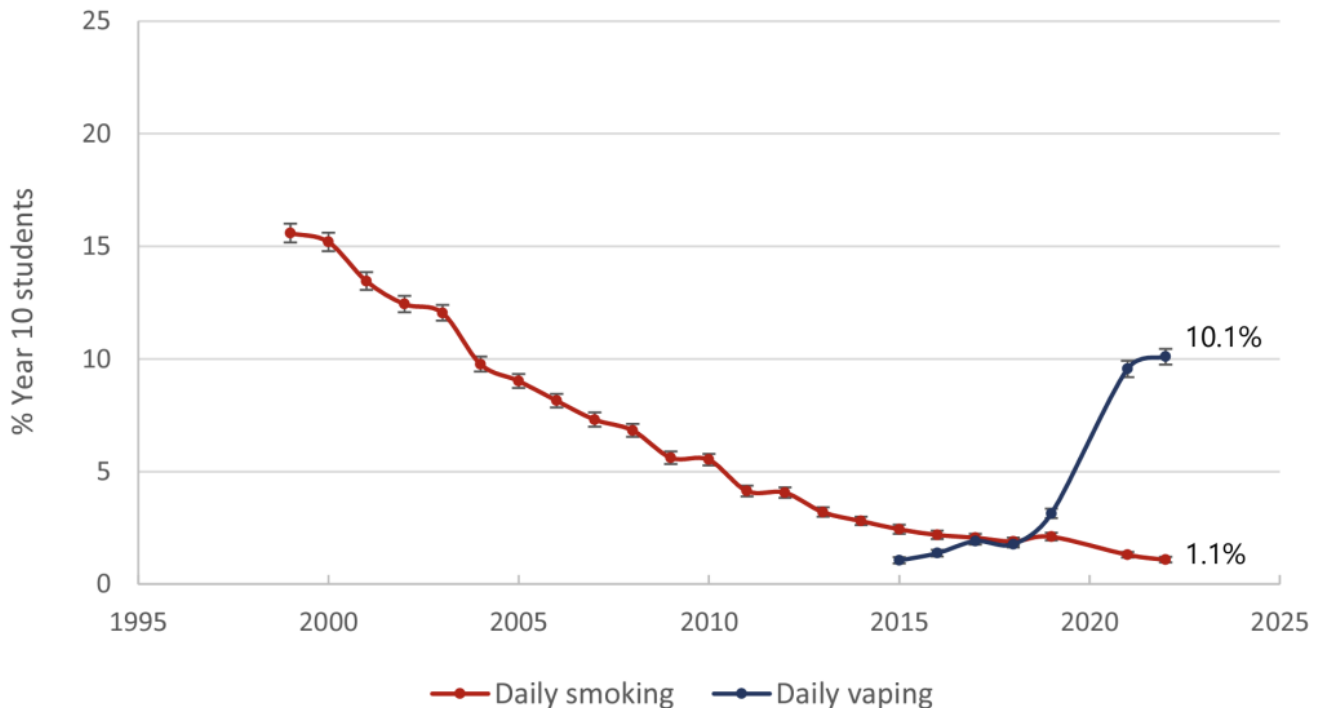
A better policy? I would suggest retail licensing without dramatic contractions. Licensing can be used to impose conditions at the point of sale and to apply escalating sanctions for breaking conditions, including age restrictions and age verification protocols. If, as a policymaker, I was going for a contraction in retail outlets (which I do not favour at all), I would definitely not introduce an overnight 90% cut in one go but taper it down more gradually and see what the effect was.

3. Smoke-free generation

Policy: A ban on the sale of smoked tobacco to people born after 1 January 2009. This would start to have an effect from 1 January 2027, as those born in 2009 or later start to turn 18 (the current age for legal sale).

Smoke-free Generation (SFG) is a policy applied exclusively to *future adults* and designed to restrict future *adult* choices. It is a novel experiment in extending the age of majority concept indefinitely into adult life - I can think of no precedents for treating mature adults differently on the basis of age. It creates incentives to foster age-stratified illicit trade. It does nothing to address the main public health problem - the *stock* of existing adult smokers. The *flow* from adolescent to adult smoking has already fallen to a trickle as fewer and fewer young people smoke (see chart). That problem has already been solved by other means - partly the displacement of youth smoking by youth vaping.

Figure 1: Youth daily smoking (1999-2022) and daily vaping prevalence (2015-2022)



Action for Smokefree 2025 (ASH). 2022. ASH Year 10 Snapshot Survey 2022 Topline -Youth smoking and vaping. Available [here](#)

Age restrictions have always been circumvented by young people determined to smoke, and this would continue - bans on sales to people under 18 or 21 do not mean that people under 18 or 21 do not smoke, even if there is an effect at the margin. I don't have the strongest *utilitarian* objections to this policy as it will largely be irrelevant - a response to a non-problem. To the extent that it is relevant, it will be placing controls on future adults to restrict choices that other, slightly older adults can make - that makes no sense to me on adult autonomy grounds.

In the case of New Zealand, the law would already remove that choice anyway with the denicotinisation measure before the SFG measure bites. So, SFG would only be banning adults from using non-nicotine products that few will ever want. Again, the policy interacts chaotically with the denicotinisation measure.

A better policy. In my opinion, a 21-year age limit for the sale of combustible tobacco, "C-21," would be far preferable. I think New Zealand health campaigners would be better off reading the room and pressing for that as an alternative (as I will be doing in the UK) for which there is good evidence and no unsettling novel issues of principle. See Mike Pesko's commentary, [Combustible tobacco age-of-sale laws: an opportunity?](#) - also see [ASH\(UK\) brief on Tobacco 21](#). The only thing

that SFG offers over and above C-21 is an age-related intervention *exclusively directed at adults*.

Was there universal support?

Not everyone agrees with these measures. Obviously, I don't - see my submission to New Zealand consultation [here](#). But I'm not the only one. The debate about the reversal of New Zealand's 'endgame' policies has proceeded almost as if there is universal support for these measures in the public health community and society more generally. As if they are the obvious next step in tobacco control, in which the expectation is always to graduate to more extreme measures, ultimately heading to full prohibition.

But these are speculative policies for which there is no implementation experience and many risks. I haven't seen many Americans or Europeans pressing forward on these, with the exception of the nicotine rule in the United States, where I am fairly confident it will soon be abandoned again. The right-of-centre UK government of Rishi Sunak has proposed SFG legislation, but it too will face a challenge from its right-wing, populist, and libertarian dissidents and a rival party to its right. So far, 194 countries have NOT pursued these measures, and they are far from the norm in tobacco control.

To describe it politely, I think many in the tobacco control field welcomed the willingness of the previous New Zealand government to offer its population up for experimentation with novel, untested measures.

Take UK tobacco control groups. In their submission to the 2021 New Zealand inquiry into these measures, the UK groups ASH, Royal College of Physicians and SPECTRUM research consortium were equivocal about all three to varying degrees and for good reasons - see [consultation response](#). They neither agreed nor disagreed with the SFG and denicotinisation proposal and gave qualified support for the (at the time unquantified) retail contraction proposal but with doubts about its effect. In each case, they pointed out the difficulties and poor evidence base without actually going wholly negative on the proposal. While they may have changed their tune now, 2021 is not that long ago. To my knowledge, these groups are recent converts to the SFG measure and do not campaign for retail contraction or denicotinisation in the UK. Does that mean the tobacco

industry has captured them? Of course not. It means they were sceptical.

Is this the tobacco industry, politics or both?

I have no idea if the tobacco companies are behind this reversal in some way. It certainly is possible. However, it's also possible that these are political choices of the coalition parties: would it really be a surprise if a party of the right was concerned about lawlessness and the impact on small retailers, a populist party supported smokers, and a libertarian party saw these measures as state overreach? It is quite possible, therefore, that these are legitimate political choices made by parties in forming their coalition. Tobacco control colleagues might not like it, but tobacco industry influence is *not necessary* to explain this reversal. The coalition is not doing anything out of the ordinary for an election-winning, right-wing, populist, libertarian alliance. And remember, the endgame measures are a policy of the coalition's defeated predecessors deliberately designed to take an outlying position relative to all other countries in the world.

One of the more pernicious trends in tobacco control is to see every doubt or opposition to extreme and outlier policies as support for the tobacco industry or resulting from tobacco industry influence. As I discussed above, it is possible to object to such measures on pragmatic or principled grounds. No one has a monopoly on righteousness.

The duty to live out the dreams of your opponents

Ask yourself this: would such an alliance propose these measures in the first place? If not, it is quite reasonable for them to consider repealing the measures before they have to implement them as the incoming government. Though they didn't propose them, they would have to take responsibility for the practical and political impact - some of which they evidently judge to be harmful (as I do) or misaligned with their own politics, which they are. The coalition partners would need to expend their finite political capital to defend and deliver the outlier programme of its predecessor. Why should they do that?

Why shouldn't they base their approach on the position of New Zealand, which was already far in advance of almost all other countries, prior to 1 Jan 2023? Why shouldn't it build its public health approach with principles aligned with its own politics? The arguments of those complaining about the reversal would be stronger if these policies were already implemented and working. But they are not, and there is minimal supporting evidence for them and a range of obvious risks.

The tax argument

I also wanted to address a particularly revealing and specious argument against this reversal. There has been a lot of indignation because the incoming finance minister, Nicola Willis, "admitted" that tobacco tax revenues (i.e. taxes not lost in the future as a result of reversing these measures) would be used to finance tax cuts promised during the election campaign. Take this statement, which is typical of the reactions from the health community:

"Guess what? Māori and Pacific people are going to pay for the price of tax cuts. It's immoral and I think it's totally unacceptable."

Leading Pasifika health expert Sir Collin Tukuitonga, [quoted](#) in the New Zealand Herald

Is it too early to point out that this is exactly the effect of the most-favoured policy of tobacco control - raising tobacco taxes? It imposes taxes on generally poor and disadvantaged people who smoke, and that allows headroom within a given fiscus for lower taxes in general. *As the most regressive tax of all, tobacco tax always funds tax cuts for the better-off.* By design!

New Zealand has been raising a highly regressive tax on tobacco, disproportionately falling on its minorities, for a long time now. Yet no one who is complaining now has complained about this before - in fact, this has been celebrated as a success. Between 2010 and 2020, the New Zealand Government increased tobacco excise tax by inflation plus 10% each year [[Gendall et al 2022](#)]. The table below shows that inflation-adjusted prices per cigarette stick have more than doubled, and the biggest increases have been in the cheapest cigarettes, most likely to be those used by those facing greater economic hardship.

Market partition	Volume-weighted real stick price (cents NZ)		
	2010	2020	Ratio
Super Value	50.2	126.1	2.51
Premium	69.9	156.6	2.24
Ratio	1.39	1.24	

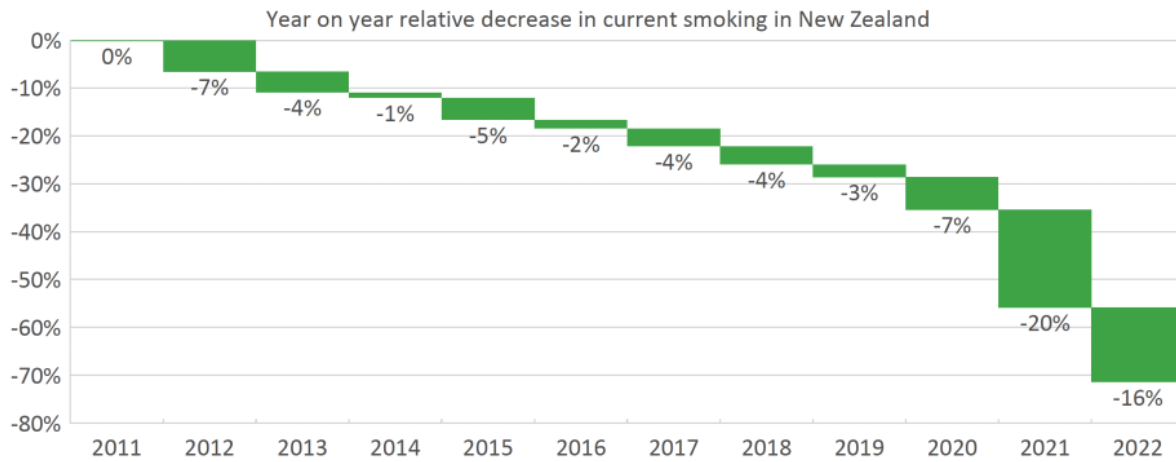
Data from: Gendall, P., Gendall, K., Branston, J. R., Edwards, R., Wilson, N., & Hoek, J. (2022). Going 'Super Value' in New Zealand: Cigarette pricing strategies during a period of sustained annual excise tax increases. *Tobacco Control*. <https://doi.org/10.1136/tc-2021-057232>

All the new government would do is restore the position to what it would have been without the measures that have not yet been implemented - *to the tax base established by the Labour government* and favoured by New Zealand's tobacco control advocates well before the endgame measures were on the statute book. In fact, the total tax take will be *lower* than expected because of the success of vaping in freeing many smokers, notably Māori, from punitive tobacco taxes imposed. Thank goodness for vaping!

One further point. Future tax losses arise from reduced consumption of *legal and taxed cigarettes*. To the extent there is illicit trade in cigarettes, there is a loss of tax, a bonanza for criminals, and *no improvement in health*. So, if you believe that these measures will stimulate a large lawless market, it is rational to try to protect the revenue by reversing the measures that cause it.

A better way: turn reversal into advance

I think it would be better for the tobacco control community to stop raging about this reversal and to think of a pragmatic way to engage the coalition in measures that will work for public health and are consistent with coalition politics. The signal I read from the coalition agreement is that it wants to go further and deeper with tobacco harm reduction. This approach has already succeeded in New Zealand beyond anyone's expectations, least of all the endgame modellers, who got their baseline hopelessly wrong. A dramatic switch from smoking to vaping (see above) and the resulting accelerating declines in smoking (see below) have been achieved *without* the endgame measures.



Source: New Zealand Health Survey 2011-2012

Accelerating progress to Smoke-free New Zealand (New Zealand Health Survey Data, graphic by Ben Youdan, E-cigarette Summit 2023, London)

Better policies

The reason that I am positive about the coalition's reversal is that it repeals coercive prohibition policies that I think would fail or do more harm than good. At the same time, it creates new political space for better policies that would rely more on consent rather than coercion and build on New Zealand's success to date in driving out smoking.

The coalition has signalled that it wants to "reform the regulation of vaping, smokeless tobacco and oral nicotine products". That is an opportunity for New Zealand to embrace a world-leading approach to tobacco harm reduction, driving out smoking and the cigarette trade with consumer consent rather than by coercion.

Here are some ideas (updated 13 Dec) for the incoming coalition to consider to advance a pragmatic public health agenda, building on New Zealand's recent rapid progress:

1. Retailing. Introduce C-21 - prohibit the sale of cigarettes and other combustible tobacco products to persons aged under 21. Maintain the age for legal sale of smoke-free products at 18 to reflect the value of diversion from smoking to vaping among people who otherwise smoke.
2. Retailing. License tobacco and nicotine retailers to enforce age-related standards and impose licensing conditions for responsible retailing, such as display and point-of-sale promotion.

3. Retailing. Allow all smoke-free products to be sold by any responsible and compliant licensed retailers, but impose restrictions on in-store marketing, trial, or display, allowing different rules in environments restricted to persons aged 18 years and older (e.g. specialised vape shops)
4. Product regulation. Lift the ban on low-nitrosamine snus and oral nicotine pouches. There is no basis for denying smokers options for quitting smoking - especially products that are likely safer for both users and bystanders than heated, non-combustible products. There is no reason to ban these products while cigarettes remain lawfully available. These products should be regulated for quality and consistency and subject to maximum nicotine content (e.g. 20mg/pouch).
5. Product regulation. Confine the most intrusive tobacco control measures to *combustible* tobacco (taxes, plain packaging, total advertising bans etc). Develop a risk-proportionate system for tobacco control that applies the toughest measures short of prohibition (*de facto* or *de jure*) to combustible products and focuses on consumer protection for smoke-free products (e.g. chemical, electrical, and thermal safety).
6. Packaging. Focus the regulation of flavoured smoke-free products on youth-appealing flavour *descriptors, trademarks, and branding*, as these are forms of marketing. Do not ban characterising flavours, as that would diminish the appeal of vaping in favour of smoking.
7. Packaging. Require inserts to be placed in cigarette packs promoting switching to smoke-free products and smoking cessation - perhaps with messages from aspirational health leaders, trusted public figures, respected institutions, or even celebrities and sports stars.
8. Communication. Intensify risk communication and awareness-raising to motivate trust and confidence in switching from smoking to smoke-free alternatives. That requires better awareness and buy-in among healthcare professionals and in related services and a more problem-solving and proactive approach to addressing smoking using smoke-free alternatives.
9. Communication. Maintain a comprehensive ban on advertising smoked tobacco but allow carefully circumscribed promotional activity for vapes and smoke-free products with restrictions on themes and placement that would prevent marketing that disproportionately appeals to youth.
10. Communication. Addressing misinformation through clear government-sponsored proactive and responsive communication. Supplement efforts

to address misinformation with a range of government-approved generic statements about vaping and other smoke-free products that can be used in both commercial and public health promotional activities. [See [Canada's proposal](#) - never implemented, unfortunately]

11. Smoking cessation. Investment in community-led quit initiatives to increase trial and uptake of vaping among smokers in deprived communities - a particular focus on high smoking areas, pregnancy and mental health service users, food banks, city missions and so on. The UK [Swap to Stop scheme](#) is worth considering.
12. Smoking cessation. Provide vapes or other smoke-free alternatives as a quit tool via state-funded cessation services. This could be in the form of brief advice, direct provision, vouchers for reputable vapes, or hospital-based interventions (especially) for those with smoking-related conditions.

I'd love to hear from people who have better or different ideas for an alternative programme for reducing smoking in New Zealand. I'll update this list accordingly, and I've already done one update in response to excellent feedback.

Better policymaking

If this coalition or a future government is unwisely tempted to return to prohibition-based endgame measures, then I strongly advise a more deliberative and flexible approach to legislating. It would be better to take powers in primary legislation and use the flexibility of regulations (secondary legislation) to allow in-depth consultation on design and implementation with those affected, to vary headline targets and dates as necessary, and to respond to unforeseen adverse developments as the process unfolds. I would also advise periodic assessment and review and possibly a sunset clause that would require active renewal or replacement after, say, five years.

I have heard such measures described as "policy by masterstroke", the idea that writing the law delivers the results expected. But these measures are little more than untested hypotheses at present, and evidence for their hoped-for effects rests largely on wishful thinking among tobacco control activists. Given that sort of uncertainty, a flexible and responsive approach is essential.

But that approach was not taken. The decision to hardwire headline goals (e.g. 600 retail outlets, 0.8mg/g, 1 Jan 2009) into primary legislation suggests attention-seeking - with more orientation to winning international recognition for world-beating headline measures rather than actually delivering robust, workable public health policy for New Zealand.

To many, the reversal announced on 24 November looks like a giant setback. I see it completely differently: I think it will allow New Zealand to advance further and faster, with more pragmatic measures built on lawful, well-regulated markets drawing on consent rather than coercion. That will be better for everyone (except the criminals and gangs).