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s 9(2)(a)

Ref: H2024036892

Tēnā koe s 9(2)(a)

Response to your request for official information

Thank you for your request under the Official Information Act 1982 (the Act) to the Ministry of Health – Manatū Hauora (the Ministry) on 29 February 2024 for information regarding a news article relating to the Smokefree Environments and Regulated Products Amendment Bill. You requested:

“1) can you confirm that the Ministry holds the position that particular smokefree policies are entrenched in Te Tiriti o Waitangi.

2) If that is so, can you please provide information about which aspects of spokefree and and tobacco control policy are entrenched in Te Tiriti of Waitangi.

3) could you please provide information you hold about how the Ministry formed the view that the right to be smoke free is entrenched in Te Tiriti o Waitangi.

I am also interested in what other policies in your sphere may be entrenched in Te Tiriti o Waitangi:

4) could you please provide information you hold about any other health policy issues that the Ministry considers is entrenched by Te Tiriti o Waitangi?

5) In particular, are there any policies (whether currently applied or not) dealing with the regulation of alcohol or any policies around illicit drugs that are entrenched in Te Tiriti o Waitangi (eg does Te Tiriti also entrench alcohol prohibition?).”

The statement regarding the ‘*right to be smokefree is entrenched in Te Tiriti o Waitangi*’ was included as a footnote in the Smokefree Aotearoa 2025 Action Plan. This was written in the context of Māori having the highest smoking rate of any population group in New Zealand and the poorest overall health status. You can find the action plan on our website here: www.health.govt.nz/our-work/preventative-health-wellness/smokefree-2025/smokefree-aotearoa-2025-action-plan.

Whilst this statement was also included in recent advice provided by the Ministry to the Associate Minister of Health, we acknowledge that policies in relation to tobacco or other drugs are not “entrenched” by Te Tiriti o Waitangi in a legal sense of “entrenchment” (ie, referring to a statutory provision where more than a majority in Parliament is required to overturn that part of the law). Normally laws are passed on a 51% majority. New Zealand has very few cases of reserved provisions – they are confined to constitutional matters, mainly electoral law, and usually set with a 75% threshold.

However, section 6 of the Pae Ora (Healthy Futures) Act 2022 (the Pae Ora Act) provides for the Crown’s intention to give effect to the principles of Te Tiriti o Waitangi. This section also requires the Minister and all health agencies to be guided by the health sector principles in section 7 of the Pae Ora Act, which among other things, are aimed at improving the health sector for Māori and improving Māori health outcomes.

Given the impact smoking has on Māori and the legal obligations in sections 6 and 7 of the Pae Ora Act, the Minister, the Ministry, and other health agencies must have specific consideration of Māori perspectives, and the impact those decisions will have on different Māori groups. These provisions are also relevant to other public health issues, such as alcohol.

I trust this information fulfils your request. If you wish to discuss any aspect of your request with us, including this decision, please feel free to contact the OIA Services Team on: oiagr@health.govt.nz.

Under section 28(3) of the Act, you have the right to ask the Ombudsman to review any decisions made under this request. The Ombudsman may be contacted by email at: info@ombudsman.parliament.nz or by calling 0800 802 602.

Please note that this response, with your personal details removed, may be published on the Manatū Hauora website at: www.health.govt.nz/about-ministry/information-releases/responses-official-information-act-requests.

Nāku noa, nā



Tagaloa Dr Junior Ulu
Acting Deputy Director-General
Public Health Agency | Te Pou Hauora Tūmatanui