



12 May 2014

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Dear Prime Minister

**The TPPA threatens the future of health in NZ, by elevating “investor rights” of transnational corporations over the right of the New Zealand people to develop, adapt or improve domestic regulatory policies according to changing health needs**

We as members of the New Zealand health professional community are writing to express serious concerns about a variety of important risks posed by the Trans-Pacific Partnership Agreement (TPPA) to health in NZ.

This open letter to you as Prime Minister follows on from three previous letters sent by different health related groups to yourself or the Minister of Health dated 1 March, 4 October and 4 December 2013. Signatories to those letters totalled more than 400 health professionals from a wide variety of backgrounds in healthcare.

We are writing to highlight the far-reaching unintended consequences that investor state dispute (ISDS) provisions proposed in the TPPA would have on the future of health in New Zealand. We base our concerns on the draft text of the investment chapter that was leaked in June 2012 and similar chapters in US free trade agreements. That leaked chapter revealed that Australia was the only party that opposed the application of ISDS to foreign investments in its country; New Zealand did not.

ISDS provisions would allow foreign transnational corporations to seek compensation from the New Zealand government should the value of their investment and/or their anticipated profits be threatened by actions taken to improve the health of New Zealanders. The very existence of ISDS provisions can have a significant ‘chilling effect’ on national regulatory processes, due to the threat of litigation.

While New Zealand does already have ISDS obligations in some of its agreements, the TPPA is far more sweeping in the number of parties it covers and the scope of the rules. The inclusion of the US alone marks it out as a major new development.

The likely unintended health consequences of ISDS provisions in the TPPA relate to the tobacco, alcohol, fossil fuel and pharmaceutical industries, as follows:

- **Firstly, the mere existence of ISDS provisions could seriously hinder the ability of New Zealand people, through our representative government, to tighten controls on harmful substances.**

Important examples include regulatory controls on the sale and marketing of alcohol and tobacco.

The use of ISDS provisions by transnational tobacco companies is not hypothetical. The tobacco company Philip Morris Asia is currently exercising ISDS provisions under an existing treaty by seeking compensation from the Australian government in response to tobacco plain packaging laws. Philip Morris has also pursued ISDS claims against tobacco control policies in Uruguay and Norway. We can already see the chilling effect of threats to sue in your government's decision to defer the introduction of plain packaging of tobacco products until several legal actions against Australia, including an ISDS case being brought by Philip Morris, are concluded.

The inclusion of these ISDS provisions in the TPPA would thus seriously undermine current progress toward achieving a Smokefree Aotearoa by 2025, as well as achieving public health targets relating to other harmful substances.

- **Secondly, ISDS provisions would limit the ability of the New Zealand government to improve regulatory controls on the activities of foreign fossil fuel companies that pose potential health risks due to toxic environmental contamination.**

A particular example of the need to increase regulation is hydraulic fracturing (fracking). According to the 2012 report by the Parliamentary Commissioner for the Environment, fracking can only be performed safely when best practices are enforced through regulation rather than by voluntary agreement. The need to strengthen the current regulatory framework in NZ is indicated in the concluding chapter: "In New Zealand... companies appear to be not only regulating themselves, but monitoring their own performance". The dangers of that light-handed approach of self-regulation have been exposed through the Pike River mining tragedy and the spate of deaths of forestry workers.

Fossil fuel companies have an extensive track record of exercising ISDS provisions under investment treaties such as the North American Free Trade Agreement (NAFTA). As of March 2013, there were 60 ISDS cases relating to oil, mining or gas being brought before the International Centre for Settlement of Investment Disputes (ICSID). Further claims for billions of additional dollars are pending.

- **Thirdly, ISDS provisions would reduce the ability of the New Zealand government to improve regulatory controls on the sales and marketing of medicines by transnational pharmaceutical companies.**

New Zealand should retain the option to regulate direct to consumer advertising of drugs, such as antibiotics, the use of which must be urgently restricted according to a recent WHO report which warns that increasing antimicrobial resistance poses a global threat to public health.

In the same way that both tobacco and fossil fuel companies have aggressively exercised ISDS provisions under NAFTA, the pharmaceutical industry has also sought compensation in response to new legislation or domestic legal rulings. For example, the pharmaceutical company Eli Lilly is currently bringing a case against the Canadian government for \$500 million Canadian dollars in response to a patent ruling made in a

Canadian federal court, which found that Eli Lilly had not satisfied Canada's domestic legal requirements.

These examples highlight our concerns about ISDS provisions. Including such provisions in the TPPA would jeopardise both the right and responsibility of the NZ government to implement policies to safeguard the health of the NZ public.

Furthermore, while these specific examples of ISDS cases are alarming enough, even more concerning is the powerful deterrent effect that the continuous threat of such action would have on future New Zealand governments, even when faced with new evidence identifying that existing regulatory frameworks need to be revised in the interest of health.

Other serious unintended consequences for health in New Zealand include the extension of patent monopoly rights on pharmaceuticals, diagnostic tests, and vaccines; all of which would result in significantly increased health costs for the NZ public.

The inclusion in the TPPA of "transparency" provisions that undermine the current bargaining power of PHARMAC in its regular negotiations with the pharmaceutical industry would further exacerbate cost increases. Such cost increases will inevitably either erode the health gains available within DHBS' health budgets, or require substantial increases in health spending to merely maintain the health gains from new pharmaceutical (and impending medical devices) spending; this patently will affect "the fundamentals of PHARMAC", despite Ministerial assurances to the contrary.

Similarly, New Zealand has no provision for a period of exclusive rights over clinical trial data, as some countries have and that has been a subject of TPPA negotiation. Any period of data exclusivity will delay the production of generic versions of new drugs, especially new cancer medicines that have greater efficacy and fewer side effects, and will increase PHARMAC'S costs.

The potential ramifications of the TPPA are thus incredibly far-reaching for us as New Zealand people and the sovereignty of our representative government, both now and for our future generations.

We therefore reiterate previous calls for:

1. An unwavering commitment to provisions that rigorously safeguard the health of all New Zealanders.
2. Immediate transparency and release of the TPPA negotiating texts so that a rigorous, fair and informed democratic public debate can be conducted prior to any irreversible concessions being made, let alone any agreement being signed. We echo the concerns of the Public Health Association that whereas hundreds of US corporate advisors have been granted access to the negotiation texts, similar access has been with-held from health experts and the wider public there and in NZ.
3. An independent assessment of all chapters by teams of local experts and civil society, not only considering the implications for foreign policy and trade, but also potential for far reaching, long term adverse health consequences for the New Zealand people.
4. In the interest of a healthy and functioning democracy, we ask the leaders of all political parties to clearly articulate their respective positions on the TPPA – specifically the proposed ISDS provisions – at the earliest possible opportunity.

Yours sincerely

New Zealand health organisations and 270+ individual health professionals:

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New Zealand Nurses Organisation

Australasian Society of Infectious Diseases, New Zealand branch

New Zealand Medical Students' Association

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