

Aide-Mémoire

Amendments to the International Health Regulations (2005): process and timeline

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To:	Hon Dr Shane Reti, Minister of Health		
Consulted:	Health New Zealand: <input type="checkbox"/> Māori Health Authority: <input type="checkbox"/>		

Contact for telephone discussion

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To: Hon Dr Shane Reti, Minister of Health

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Purpose of advice: This aide-mémoire provides information on the proposed amendments to the International Health Regulations 2005 that will be considered for adoption at the World Health Assembly in May 2024.

Summary: This aide-mémoire:

- provides information and potential pathways to adopt the amendments, timeline, and possible future decision points.
- follows on from earlier advice, *Update on International Health Regulations negotiations and consultation ahead of World Health Assembly* (H2024039280 refers).
- discloses all relevant information.



Dr Andrew Old

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Background and context

International Health Regulations 2005

1. The International Health Regulations 2005 (IHR) are the principal legal framework for preventing and controlling the spread of disease and other public health hazards between countries. The IHR define the roles and responsibilities of both State Parties (eg, countries) and the World Health Organization (WHO) in detecting, assessing, and responding to public health risks and emergencies that have the potential to, or have crossed international borders.
2. The IHR are an instrument of international law and are legally binding for all 194 WHO Member States. The IHR respect national sovereignty and while WHO can issue recommendations, countries retain the right to determine their own health policies and priorities.
3. While in general terms the IHR have performed well, the COVID-19 pandemic made it apparent that they would benefit from improvements, particularly its provisions relating to health emergencies.

Working Group on Amendments to International Health Regulations (2005)

4. At the 75th World Health Assembly (WHA75) in May 2022, governments agreed to establish the Working Group on Amendments to the International Health Regulations (WGIHR). Governments acknowledged that the IHR must be strengthened and modernised to improve the early detection, assessment, reporting, and response to future pandemic threats. As such, the WGIHR, comprised of all IHR states parties, was tasked with developing a package of targeted amendments for approval at the 77th World Health Assembly (WHA77) between 27 May and 1 June 2024.
5. Sir Ashley Bloomfield, former Director-General of Health, is the co-chair of the Bureau (comprised of one member state representative from each of WHO's 6 regions) which is coordinating the WGIHR negotiations.
6. The last scheduled WGIHR negotiating session was held during 22 and 26 April 2024 in Geneva. This session has been extended for 2 additional days (16 and 17 May 2024) to attempt to reach consensus on outstanding issues before the WHA77.

Pandemic treaty

7. In 2021, the WHA established an Intergovernmental Negotiating Body (INB) to draft and negotiate a convention or other agreement ('pandemic treaty') under the constitution of the WHO to strengthen pandemic prevention, preparedness, and response. The INB is comprised of all WHO member states, and has a member state-led Bureau to coordinate the negotiations. New Zealand's engagement is led by the Ministry of Foreign Affairs and Trade (MFAT).

Ongoing negotiations

8. The WGIHR process is generally regarded as well-functioning and has made solid progress on most proposed amendments. These are in line with the negotiating mandate provided in February 2024 and set out in CAB-24-MIN-0032.01.
9. s 6(a)
10. Some of these issues are discussed in both the INB and the WGIHR.
11. The INB process is more complex as it has started from scratch and is working to an ambitious timeframe. It is also attempting to address more challenging matters in relation to pandemic prevention, preparedness and response, and the negotiations are not at the same level of consensus as the WGIHR. The final round of scheduled INB meetings is expected to conclude on 10 May 2024, and the pathway forward is unclear. This provides some challenges for concluding the WGIHR and preparing for decisions to be taken at WHA77.
12. As the WGIHR and INB processes are interconnected in important aspects such as financing or equitable access to health products, it is possible that failure to agree on a pandemic treaty may also have negative impacts on the adoption of IHR amendments in some form. This will become clearer during the resumed WGIHR session on 16-17 May 2024.

World Health Assembly

13. The WHA is the annual governance meeting for all WHO Member States. This year's meeting, WHA77, is scheduled to include the final outcomes of the INB and WGIHR negotiations. These would be presented in the form of a report and resolution. Resolutions are typically negotiated through diplomatic channels prior to the WHA. A draft resolution of the WGIHR proceedings and proposed amendments has been circulated to Member States but it is not yet under active discussion.
14. As it is unclear whether the pandemic treaty or all amendments to the IHR will be agreed prior to WHA77, there may be negotiations during WHA77 itself.

Decision making process and mandate

15. New Zealand's position for WGIHR and INB (including and any final (currently unscheduled) negotiations that may occur at WHA77), will continue to be guided by the negotiating

s 6(a)

mandate agreed by Cabinet in February 2024. Ministry of Health officials will also continue to work closely with MFAT.

16. Depending on the direction the negotiation takes, it is possible that the New Zealand delegation (led by the Director-General of Health, Dr Diana Sarfati) may need to seek guidance from you and/or, at your discretion, the group of ministers (the Prime Minister, Minister of Foreign Affairs, Minister of Finance, Minister of Health, and Minister for Trade) to whom Cabinet delegated power to act (in relation to the negotiating mandate).
17. WHA decisions are usually taken unanimously, but in some circumstances where consensus cannot be reached, the WHA votes. If this situation arises, the delegation would again be guided by the negotiation mandate and this is currently considered sufficient to cover any foreseeable outcomes. However, the delegation may need to seek urgent guidance from you and/or from ministers with delegated power to act to inform a voting position.

Possible pathways for the IHR amendments

18. Noting the current uncertainties described above, officials consider there to be several possible pathways forward. For example, the WHA:
 - a. might adopt a complete package of amendments by consensus or a majority vote. This would trigger the 24 months 'entry into force' process (see below)
 - b. might not reach an agreement on the proposed amendments but decide to continue with further negotiations via the WGIHR. If eventually adopted via a subsequent WHA, this would then trigger the 24 months 'entry into force' process
 - c. might adopt a smaller package of amendments which have consensus, and agree to continue negotiations on other remaining amendments. This would trigger the same 'entry into force' process for the amendments adopted at WHA77, and possibly a further process for any amendments that might subsequently be adopted
 - d. might not be able to reach an agreement on any of the proposed amendments. Officials currently consider this unlikely, but is contingent on the INB outcome. If this were to occur, WHA might instead adopt a high-level resolution on the matters where agreement is able to be reached, or through a high-level political declaration at the United Nations General Assembly. This outcome would be a concerning indictment of the process and the multilateral system.

Steps after adoption at the WHA

19. Subject to the adoption of the amendments by WHA77 and/or at any later WHA (and notification of this by the Director-General of WHO), the process for 'entry into force' is triggered. This includes a total of 24 months to prepare the domestic administrative and legislative arrangements necessary for entry into force.
20. Within these 24 months, New Zealand would have 18 months to decide whether or not to be bound by some, or all, of the amendments adopted by the WHA.
21. The process would include preparing a National Interest Analysis on the amendments and completion of New Zealand's Parliamentary Treaty Examination processes. This is the framework within which New Zealand takes final decisions on binding treaty action, and needs to be completed within 18 months.

22. The IHR use a process of tacit acceptance, meaning that unless countries take an active step to 'opt out' they will be bound by amendments adopted by the WHA. There are two ways to 'opt out, completely or partially':
- a. **rejection** – This option would reject the entirety of the package of amendments adopted by the WHA and would see New Zealand continue to be bound by the existing IHR 2005.
 - b. **reservation** – This option would allow New Zealand to 'opt-out' of one or more specified amendments as adopted by the WHA. Where a country reserves against one or more amendments, the country must provide a rationale for each such reservation. Reservations must not be incompatible with the object and purpose of the IHR. WHO will share the reservation(s) and accompanying rationale(s) with other Member States. Other Member States have the prerogative of objecting to a proposed reservation. Depending on the number of member states that object to a reservation, the WHO Director-General may invite the reserving state to reconsider its reservation with a view to withdrawing it. And finally, subject to certain procedural requirements, the proposed reservation(s) may also be considered at a subsequent WHA.
23. After the 18-months period, if New Zealand decided to accept some or all of the amendments, we would have a further 6 months to complete the necessary arrangements to allow commencement.

Amendments rejected in November 2023

24. At the time that New Zealand begins the National Interest Analysis process for any of the substantive amendments associated with the WGIHR (eg, June 2024 at the earliest). We would also include the minor technical amendments related to Article 59 adopted by the WHA in May 2022, which New Zealand rejected in November 2023 as part of the government's 100-Day Plan [CAB-24-MIN-0032.01].
25. **Appendix 1** shows possible decision points and options for the IHR amendments, including the process for New Zealand.

ENDS.

Appendix 1: Decision and process options for the IHR amendments

