NEW ZEALAND
FOREIGN AFFAIRS & TRADE
Manatū Aorere

MINISTRY OF HEALTH
MANATŪ HAUORA

8 June 2023

Minister of Health	For action by	29 June 2023
Minister of Foreign Affairs	For action by	29 June 2023

Health Briefing Number: H2023026609

Paper to Cabinet Business Committee on Negotiating Mandate for Pandemic Treaty and Amendments to the International Health Regulations (2005)

BRIEFING	Cabinet Paper Covering Submission
PURPOSE	To provide you with a paper to be considered by the Cabinet Business Committee on 3 July 2023 seeking Cabinet's agreement with a high-level negotiating mandate to direct Aotearoa New Zealand's engagement in two parallel negotiations taking place in the World Health Organization.

Tukunga tūtohua – Recommended referrals

None.

Whakaritenga wātaka - Timing requirement

Complete consultation	By 10 am on 19 June 2023
In Cabinet Office	By 10 am on 26 June 2023
For Cabinet Business Committee (CBC) meeting	on 3 July 2023

Taipitopito whakapā – Contact details

NAME	ROLE	DIVISION	WORK PHONE
Andrew Williams	Chief International Legal Adviser (acting)	Legal Division, Ministry of Foreign Affairs and Trade	s 9(2)(a)
Dr Andrew Old	Deputy Director-General	Public Health Agency, Ministry of Health	
Andrew Forsyth	Manager	Public Health Strategy, Public Health Agency, Ministry of Health	
Lucy Cassels	Manager	Global Health, Public Health Agency, Ministry of Health	

Negotiating mandate for Pandemic Treaty and amended International Health Regulations

Pito mātua – Key points

- This report provides you with a paper to be considered by the Cabinet Business Committee (CBC) on 3 July 2023.

- A range of independent reviews have identified a number of short-comings in the global response to COVID-19. In response, all World Health Organization (WHO) Member States are currently engaged in two negotiation processes to improve the WHO legal frameworks which apply to public health risks including pandemics:

  - Amendments to the International Health Regulations 2005 (IHR) which is the principal legal framework for preventing and controlling the spread of disease and other public health hazards between countries. The Working Group on Amendments to the IHR (WGIHR) is tasked with developing a package of targeted amendments to the IHR.

  - A new 'Pandemic Treaty' will likely seek to address the broader systemic inequities in the response to COVID-19 and to strengthen cooperation between countries. An Intergovernmental Negotiating Body (INB) is tasked with with drafting and negotiating this instrument.

- The draft CBC paper seeks Cabinet's agreement for a high-level negotiating mandate to direct Aotearoa New Zealand's engagement in the two concurrent negotiations. Both negotiating bodies are expected to present their final outcomes to the 77th World Health Assembly (WHA77) in May 2024.

- Aotearoa New Zealand's engagement in these negotiations is led jointly by Manatū Hauora and the Ministry of Foreign Affairs and Trade (MFAT), with Manatū Hauora leading policy development for the WGIHR and MFAT leading our engagement in the INB.

Cabinet paper: Negotiating mandates for Pandemic Treaty and Amendments to the IHR (2005)

- This paper has been jointly prepared by MFAT and Manatū Hauora. This close coordination is in keeping with both agencies' method of working since June 2021, when WHO Member States first started to consider independent recommendations to strengthen the global health architecture for pandemic prevention, preparedness and response (PPPR).

- While separate, both negotiations deal with a number of complex and contentious overlapping issues (including sovereignty, equity between and within countries and timely access to pathogens and genetic information and the equitable sharing of the medical countermeasures derived from them). These issues are detailed further in Appendix 2. Given the close links between the WGIHR and INB processes, you will note that the paper proposes an objectives-based mandate that will apply across both sets of negotiations. s 9(2)(j) [redacted]

- During the development of the paper, MFAT and Manatū Hauora have ensured that Te Whatu Ora, Te Aka Whai Ora and Pharmac have been consulted on the proposed strategic objectives and content of the paper itself.

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- If required, talking points for the CBC meeting are attached at Appendix 1.

Equity

- The impacts of infectious diseases are usually experienced inequitably. In Aotearoa New Zealand, Māori, Pacific peoples, young, older and disabled people and people with pre-existing health conditions are more likely to experience inequitable health, economic, and social outcomes associated with infectious disease events, and our responses to them. This was seen throughout the COVID-19 pandemic.
- Accordingly, any ratification or adoption process for the WGIHR or INB's products will require adequate recognition of the impact on Māori and Te Tiriti o Waitangi and consideration of equity implications.

8 June 2023

Victoria Hallum
for Secretary of Foreign Affairs and Trade

7 June 2023

Dr Diana Sarfati
Director-General of Health
Te Tumu Whakarae mō te Hauora

Tūtohu – Recommendations

It is recommended that you:

1 **Note** that MFAT and Manatū Hauora have worked on the development of this paper in close consultation with Te Whatu Ora and Te Aka Whai Ora.

2 **Lodge** the CBC paper with the Cabinet Office by 10am on 26 June 2023. **Yes / No**

Hon Nanaia Mahuta
Minister of Foreign Affairs / Minita Take Aorere

Hon Dr Ayesha Verrall
Minister of Health

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Appendix 1: Talking points for Cabinet Business Committee

- The global response to the COVID-19 pandemic underscored gaps in the global system for pandemic prevention, preparedness and response (or 'PPPR').
- There is clear agreement amongst global health leaders and World Health Organization (WHO) Member States that we can and should do better to prevent and if necessary, respond to, the next pandemic.
- As a result, WHO Member States are currently engaging in two parallel negotiation processes with the shared aim of strengthening the international system to prevent, prepare for and respond to acute public health threats:
    - amending the International Health Regulations (2005) (or IHR) to ensure they reflect the lessons of the last three and a half years; and
    - the development of a new 'Pandemic Treaty' under the WHO Constitution.
- Officials from the Ministry of Health and Ministry of Foreign Affairs & Trade are actively engaged in these negotiations and working constructively towards the goal of successful outcomes by May 2024.
- In order to support Aotearoa New Zealand's engagement, an official negotiating mandate from Cabinet is required.
- As the two negotiations are closely linked, officials have also proposed an overarching aim and a set of strategic objectives that will apply across our engagement in both processes.
- This approach will allow Aotearoa New Zealand to remain flexible and give careful consideration to cross-cutting sensitive issues across the negotiations, as work progresses through to May 2024.
- MFAT has led preparation of this paper in conjunction with the Ministry of Health and in consultation with Te Whatu Ora, Te Aka Whai Ora and Pharmac.

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Appendix 2: Background information regarding the proposed strategic objectives

This appendix provides examples of provisions and measures currently under discussion in both the INB and WGIHR which relate to Aotearoa New Zealand's proposed strategic objectives, for your information.

Coherence

- In order to ensure that the global system for PPPR is coherent with the World Health Organization (WHO) at its centre,both the INB and WGIHR processes are negotiating text to reinforce the central role of the WHO as the United Nations expert body on global health and the key coordinating multilateral body in the context of an acute public health risk.
- Coherence is also essential between the two instruments (the revised IHR and the future 'Pandemic Treaty') – for example, the proposed treaty text includes requirements for Parties to take prevention and surveillance measures that are consistent with and supportive of the effective implementation of the IHR.

Transparency

- Examples of measures to support increased transparency in the global response to acute public health risks include the draft treaty text's requirement for states to undertake collaborative surveillance and outbreak detection investigation and control, through interoperable early warning and alert systems and timely notification.
- In the context of the WGIHR, amendments have been proposed require more timely reporting to the WHO by State Parties (and, more broadly, between IHR State Parties) on potential public health risks occurring within a state's territory.

Prevention

- Obligations relating to prevention under negotiation in the INB include requirements for each Party to develop multisectoral national infection prevention and control measures, plans and programmes (including those addressing zoonotic diseases and pathogens).
- In the context of the IHR, examples include amendments proposing the introduction of an intermediate public health alert to State Parties where an event has not yet met the criteria of a public health emergency of international concern (PHEIC).

Capacity building

- In the INB, Member States have proposed specific obligations for Parties to support the transfer of technology and know-how for the production of pandemic-related products between developed and developing countries – this is viewed as a crucial aspect of strengthening national and regional preparedness for acute public health risks, as well as a means of addressing the inequities around access to medical countermeasures observed between states in the context of COVID-19.
- Examples of capacity building-related amendments in the WGIHR include a requirement for States Parties to collaborate and assist each other (particularly developing countries) in strengthening their regional planning, preparedness and response.

One Health Approach

- Proposals to strengthen the implementation of a One Health Approach in the new Pandemic Treaty include a commitment for Parties to regularly assess their One Health capacities as they relate to PPPR. Such measures are important to ensure primary prevention in relation to risk factors for zoonotic spillover, adequate surveillance of

pandemic risks of zoonotic origin and, ultimately, strengthen our capacities to detect threats and respond early.

Equity

- Recognising the problem of inequitable outcomes across populations (including indigenous peoples and ethnic minorities) *within* countries, the draft treaty text includes proposed requirements for Parties to reinforce health functions for the continued provision of quality routine and essential health services during pandemics. This is echoed in proposed amendments to the IHR.
- In order to address inequitable access to medical countermeasures *between* countries, negotiating Member States have put forward a number of proposals to strengthen international collaboration around the distribution of pandemic-related products.
- Similar proposals are being considered in the WGIHR, including amendments which seek to expand the current scope of the IHR by seeking to ensure they facilitate the provision of equitable access to medical countermeasures.

Access and benefit-sharing

- Arguably one of the most complex aspects of the negotiations, an access and benefit-sharing (ABS) mechanism is predominantly being discussed in the INB – although certain proposed amendments to the IHR do seek to create a transactional relationship between the exchange of pathogens of pandemic potential (and related genetic and other information) and the countermeasures developed from such samples / information.
- For your background information, the WHO has already adopted an ABS mechanism to increase global preparedness to respond to pandemic influenza: the Pandemic Influenza Preparedness Framework for the Sharing of Influenza Viruses and Access to Vaccines and Other Benefits ("PIP Framework"). Under the PIP Framework, countries share influenza viruses with pandemic potential with the WHO laboratory network (the Global Influenza Surveillance and Response System, "GISRS"). In return, recipients (such as companies) that obtain samples from GISRS commit to providing benefits related to their use, which are shared multilaterally by the WHO with particular regard to the needs of developing countries. For example, an influenza vaccine manufacturer may choose to donate a percentage of its vaccine production to the WHO in the event of a pandemic, or grant royalty-free licenses to vaccine manufacturers in developing countries.
- The current, likely most viable, proposed structure of an ABS mechanism is outlined in the attached Cabinet paper.

Governance

- A Conference of the Parties (COP) governance arrangement is being considered for the draft Pandemic Treaty. In the interest of ensuring a coherent global health architecture for PPPR, the proposed COP would be closely linked to the functions of the World Health Assembly and any potential implementation and compliance mechanisms that may be established via the revised IHR.

Trade

- Examples of trade-related provisions in the draft Pandemic Treaty include proposals that Parties support time-bound waivers of intellectual property rights that can accelerate or scale up manufacturing of pandemic-related products during a pandemic.

Issues of interest to the public

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Sovereignty

- Since the INB and WGIHR's negotiations began in February 2022 and November 2022 respectively, there has been significant public interest in the potential impacts of the negotiations on Aotearoa New Zealand's sovereign decision making and the rights of New Zealanders.
- As outlined in the Cabinet paper, neither the pandemic treaty nor the revised IHR will undermine state sovereignty or address broader domestic health policy settings. International treaties are not directly enforceable in and of themselves within Aotearoa New Zealand. As you are aware, the government's practice is to ensure that domestic law is compatible with a treaty's obligations before Aotearoa New Zealand becomes bound by it. If new legislation is needed, it must be passed by Parliament prior to the ratification of the treaty. Furthermore, amendments to the IHR are subject to an "opt out" process, whereby Aotearoa New Zealand retains the option to "opt out" of any amendments adopted by the World Health Assembly.