



10 November 2021

Minister of Foreign Affairs
Minister of Health

For approval by 17 November 2021
For approval by 17 November 2021

World Health Assembly Special Session (November 2021): pandemic treaty and reform of the global health architecture

BRIEFING Decision Submission

PURPOSE To seek approval for Aotearoa New Zealand's approach at the World Health Assembly Special Session in November 2021 as well as in ongoing discussions in the WHO Working Group on Pandemic Preparedness and Response.

Tukunga tūtohua – Recommended referrals

Prime Minister	For information by	10 November 2021
Minister for COVID-19 Response	For information by	10 November 2021
Minister for Trade and Export Growth	For information by	10 November 2021
Minister of Agriculture	For information by	10 November 2021
Associate Minister of Health (Pacific Peoples)	For information by	10 November 2021
Associate Minister of Health (Public Health)	For information by	10 November 2021

Mā te Tari Minita e whakakāi – Minister's Office to complete

Approved

Noted

Referred

Needs amendment

Declined

Withdrawn

Overtaken by events

See Minister's notes

Comments

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Taipitopito whakapā – Contact details

NAME	ROLE	DIVISION	WORK PHONE
Victoria Hallum	Chief International Legal Advisor	Legal Division	s 9(2)(a)
Salli Davidson	Group Manager	Global Health	s 9(2)(a)

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Pito matua – Key points

- World Health Organisation (WHO) Member States have agreed to hold a Special Session of the World Health Assembly (WHA) this year from 29 November - 1 December. At this session, New Zealand and other Member States will consider the benefits of developing a WHO convention, agreement, or other international instrument on pandemic preparedness and response.
- The Special Session responds to recommendations for strengthening global health architecture, including those made by the Independent Panel for Pandemic Preparedness and Response (IPPR) co-chaired by Rt Hon Helen Clark. Alongside discussions on a pandemic treaty, Aotearoa New Zealand is engaging on other recommendations, including in negotiations to better resource and strengthen the WHO, as well as proposals to establish new pandemic financing mechanisms. **Out of scope**
- In June 2021 Ministers agreed Aotearoa New Zealand's overall approach ('mandate' submission) in global discussions on pandemic preparedness and response, prioritising active engagement on (i) a new pandemic treaty or equivalent legally-binding instrument, as well as (ii) WHO strengthening and (iii) improved global surveillance.
- Following intense preparatory work in Geneva by WHO Member States, we now seek Ministerial approval of a more substantive position to enable Aotearoa New Zealand to fully engage in November's Special Session and the negotiations that will follow on the form and function of any new instrument, leading up to the World Health Assembly in May 2022. Our priorities are to ensure that any new instrument is fit-for-purpose, mobilises political will, addresses health system strengthening, and provides for all-of-government coordination. In the interests of equity (a key global health priority for Aotearoa New Zealand), the rapid development and equitable distribution of vaccines, diagnostics and supplies is also a high priority.
- At the Special Session, it will be important to engage actively, to ensure momentum in building a coherent pandemic preparedness and response system is maintained. Officials propose that Aotearoa New Zealand should (i) support the establishment of a process to develop a new legally binding instrument, alongside (ii) improvements to existing elements such as the International Health Regulations (IHRs). Aotearoa New Zealand should also remain flexible on the form of any new instrument (or 'treaty') s 9(2)(i)
- Aotearoa New Zealand should also support proposals that can be immediately implemented through existing mechanisms or actions of individual states. This includes measures to improve the implementation of existing rules, such as the IHRs.
- Our key guiding principles are explained in the body of this submission, along with substantive changes which we propose Aotearoa New Zealand should support. These could include improvements to the international alert system, requirements for all-of-government pandemic plans, and requirements regarding international laboratory standards.
- In terms of process ahead, the Special Session will be held in Geneva in virtual and in-person format, and Ministers will be afforded the opportunity to address the Assembly (as Minister Little did at the May 2021 Assembly, delivering Aotearoa New Zealand's national statement by pre-record). We will explore options with your offices for Aotearoa New Zealand to be similarly represented at the Special Session. At officials level, we anticipate concerted activity after the November meeting, in the lead-up to the Executive Board

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meeting in January 2022 and World Health Assembly (when major outcomes on reform of the global health architecture are anticipated).

Deborah Geels
for Secretary of Foreign Affairs and Trade

Dr Ashley Bloomfield
Director-General of Health

PROACTIVELY RELEASED

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Tūtohu – Recommendations

It is recommended that you:

- | | | |
|---|--|-----------------|
| 1 | Note that an updated mandate is required to guide Aotearoa New Zealand participation at the upcoming Special Session of the World Health Assembly; | Yes / No |
| 2 | Note that Aotearoa New Zealand's priorities are to ensure that any new instrument is fit-for-purpose, mobilises political will, addresses health system strengthening and provides for all-of-government coordination; | Yes / No |
| 3 | Agree that Aotearoa New Zealand should support the establishment of a negotiating process to develop a new legally binding instrument (i.e. a treaty), alongside improvements to existing elements such as the International Health Regulations; | Yes / No |
| 4 | s 9(2)(i) [REDACTED] | Yes / No |
| 5 | Agree that Aotearoa New Zealand should advocate for the inclusion of rules and measures which are in accordance with the principles of One Health, equity, due diligence in the prevention of harm, transparency, regulatory coherence, and precaution (as set out in Annex 1); | Yes / No |
| 6 | Agree that Aotearoa New Zealand should advocate for the substantive measures set out in Annex 2 to be considered as part of any new instrument; | Yes / No |
| 7 | Refer a copy of this submission to the Prime Minister, the Minister for COVID-19 response; the Minister for Trade and Export Growth, the Minister of Agriculture, the Associate Minister of Health (Pacific Peoples), and the Associate Minister of Health (Public Health). | |

Hon Nanaia Mahuta
Minister of Foreign Affairs / Minita Take Aorere

Hon Andrew Little
Minister of Health

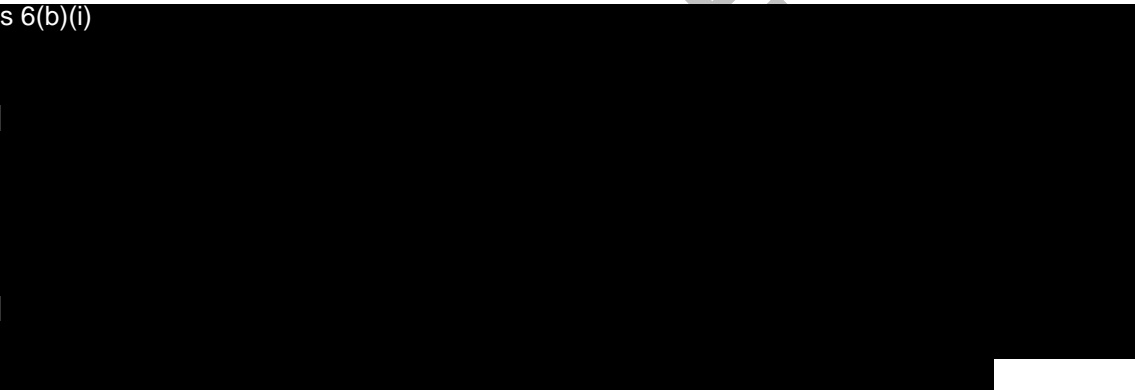
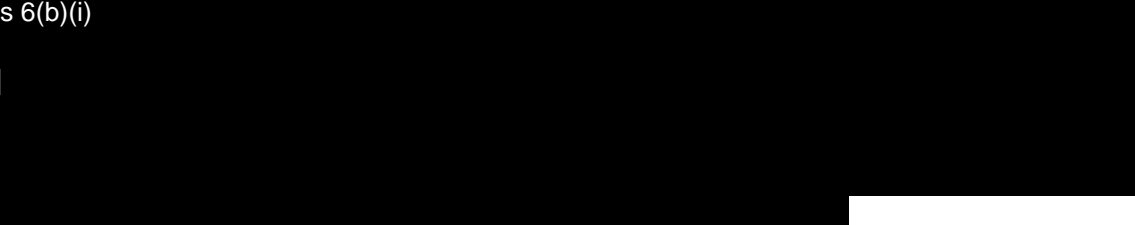
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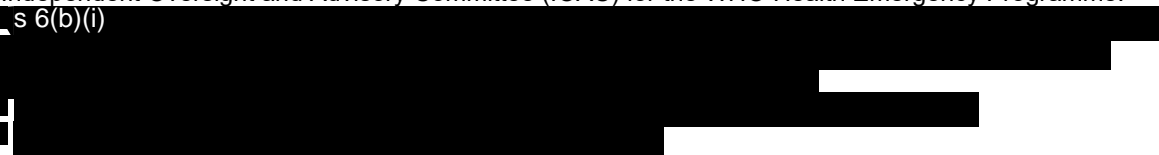
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Pūrongo – Report

Background

1. In May 2021 the WHO established the Working Group on Strengthening WHO Preparedness and Response to Health Emergencies (WGPR) to consider the findings and recommendations of three review panels¹ and assess the benefits of developing a WHO convention, agreement or other international instrument on pandemic preparedness and response. The benefits of a new instrument will be considered at a Special Session of the World Health Assembly, from 29 November - 1 December 2021 “with a view to establishing an intergovernmental process to draft and negotiate such an instrument”.
2. The WGPR has met (virtually) in four sessions through June – November 2021. Discussions have been well-attended and constructive, and Aotearoa New Zealand has been actively engaged. There is global consensus that the current international health system is inadequate to prevent, prepare for and respond to pandemics, and that significant changes to this system are required. However, Member States have expressed mixed views on both the form of the changes required (whether a new treaty, amendments to the IHRs, a political-level instrument, or some combination of these) and the substance of these changes.
3. s 6(b)(i)

4. s 6(b)(i)

5. Aotearoa New Zealand has actively engaged in the preparatory work for the Special Session, and guided by the mandate for engagement agreed by Ministers in June 2021 (see June 23 submission) we have:

¹ The Independent Panel for Pandemic Preparedness and Response (IPPR co-chaired by Rt Hon Helen Clark); the Review Committee on the Functioning of the International Health Regulations; and the Independent Oversight and Advisory Committee (IOAC) for the WHO Health Emergency Programme.

s 6(b)(i)


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- Expressed support for a new instrument that is fit-for-purpose, mobilises political will, and addresses health system strengthening and all-of-government coordination, as well as the rapid development and equitable distribution of medical countermeasures.
 - Indicated support for a new legally binding instrument which builds on existing elements, while remaining open to alternative and parallel options, including a political declaration or action-plan supported by targeted amendments to, or improved implementation of, the IHRs.
6. Our starting point is that any system improvements should be coherent and build on the existing elements of the system that already work well. Improving governments' implementation and compliance with the existing rules is also highly important (recognising this was a key failing of the early COVID-19 response, at the advent of the pandemic, as highlighted by the IPPR and IHR Review Committee reviews).
 7. To ensure our evolving positions are coordinated and working in concert with other key Member States, New Zealand has also engaged closely with s 6(b)(i) on this subject and WGPR progress to date. This engagement has proved useful as an opportunity to further circulate our thinking on the substance of targeted amendments to the IHRs or a legally-binding instrument, as well as the form of these proposed changes.

Aotearoa New Zealand position for the Special Session

8. A special session of the WHA will be held from 29 November 2021 to 1 December 2021 in a hybrid virtual and in-person format. At this session, states will decide whether to establish an intergovernmental process to draft and negotiate a treaty or other international instrument. The Special Session is expected to include national statements delivered at high level.
9. In the lead up to the Special Session and at the session itself, officials recommend that Aotearoa New Zealand should work to ensure a positive outcome that maintains momentum; promotes a coherent pandemic prevention, preparedness and response system that builds on existing elements and addresses the gaps and deficiencies observed in the current pandemic; including appropriate strengthening of the WHO. Our assessment is that while the international system for pandemic preparedness and response is based on sound foundations (the IHRs), the international rules and architecture are under-developed compared with equivalent legal regimes covering other transboundary and global commons challenges (such as climate change). Existing global health rules and mechanisms lack the coherence and profile of these other regimes, and there are significant gaps to be filled if we are to ensure a more coherent international response to preventing and responding to a future pandemic.

Form issues

10. For these reasons, officials recommend that Aotearoa New Zealand should support the establishment of a negotiating process to develop a new legally binding instrument (i.e. a treaty status instrument) alongside improvements to existing elements such as the IHRs. However, given that some Member States may be unwilling to support such an outcome, officials recommend that Aotearoa New Zealand remain open on the question of the ultimate form of the instrument, prioritising a negotiating process which is:
 - **Empowered** to consider reforms to pandemic prevention, preparedness and response, including improvements to the existing frameworks.

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- **Inclusive, transparent**, and providing maximum opportunity for engagement of other relevant international organisations and relevant non-state actors.
- **Efficient**: in line with the urgency and importance of these issues in the context of the COVID-19 pandemic, the negotiating process should have an ambitious timeline to deliver results within a short period of time.

Guiding principles & substance: approach to the Special Session

11. It is not yet clear to what extent the decision of the Special Session will define the scope of the reforms that could be considered by a new negotiating process and included in a new legal instrument, and/or reforms to the IHRs. The best outcome is likely to be an inclusive list of items that may be considered on a non-commitment basis.
12. With this in mind, officials recommend that Aotearoa New Zealand continues to advocate for international pandemic prevention, preparedness and response guided by a set of key principles and approaches. These are a “One-Health” approach, equity, a responsibility for due diligence in the prevention of harm, transparency, coherence and precaution (see Annex One). Aotearoa New Zealand should also advocate for recognition of the importance of universal health care, the Sustainable Development Goals and independent scientific advice in successful pandemic prevention, preparedness and response.
13. On substance, officials recommend Aotearoa New Zealand support inclusion of substantive elements consistent with the principles above. These could include, for example, a new emphasis on prevention and early detection, improvements to the international alert system, requirements for all-of-government pandemic plans, and requirements regarding international laboratory standards. Officials further recommend that Aotearoa New Zealand support better global adoption of “one health” approach and cross-sectoral communication on pandemic prevention, explicit requirements to share samples and pathogen data, and equitable process to maintain supply chains for essential goods. A more detailed list of substantive proposals that Aotearoa New Zealand would support for inclusion in the scope of a future negotiation process is included at Annex Two).

Links to other Pandemic-related work

14. Officials are also engaging in parallel discussions on finance through the WHO Working Group on Sustainable Finance (WGSF) ^{Out of scope}

15. While it remains unclear how the specific work programmes of WGPR and WGSF, as well as any favourable outcome of the WHA SS, will link together, additional financing demands on Member States are highly likely, and it will be critical that there is coherence between various pandemic financing proposals playing out globally (including within the WHO, and more widely). s 6(a), s 6(b)(i)

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16. Ultimately, however, the form and process for these initiatives (as well as Aotearoa New Zealand's expected financial contributions) are still to be determined. There are also a number of initiatives underway at the United Nations (UN) in New York, including a planned meeting on vaccines to be convened in April by the President of the UN General Assembly (UNGA) and talk of a potential UNGA Special Session leading to a possible political declaration on future pandemic preparedness and response. These discussions are at an early stage, and it will be important to ensure coordination between each of them, as well as with WHO processes, including the Special Session.

17. Discussions on global health and pandemic response are also underway in the WTO as it prepares for the upcoming Ministerial Conference 12, to be held 30 November – 3 December.

s 6(a), s 9(2)(j)

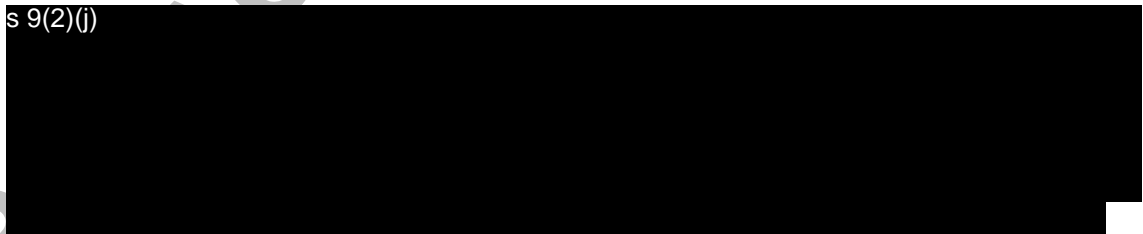


Looking to the future: an ever-changing context for global response to COVID-19 and future pandemics


18. Looking to the future, it is clear governments and global health authorities have little certainty over the trajectory of COVID-19 - whether by mutation into new variants of concern or with regards to the length of the current pandemic. The WHO speaks of the potential for both new pandemics (new novel pathogenic virus) or a 'pandemic within a pandemic' (elongation of the current situation).

19. It is in this very uncertain context that governments are looking to commence negotiations on a treaty (or other new instrument) to guide future pandemic prevention, preparedness and response, including reform of the global health architecture. Public policy responses – including those at the global level – will need to remain flexible and nimble enough to cope with the demands of new and changing (mutating) pandemics.

20. s 9(2)(j)



21. s 9(2)(j)



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Annex One: Guiding Principles & Approaches Aotearoa New Zealand has promoted in the WGPR

International pandemic prevention, preparedness and response should be guided by a set of key principles and approaches as follows.

- A **“One-Health” approach** focusing on upstream prevention that takes account of the animal, human and environment interface. Human health, animal health, and environmental health are fundamentally interconnected. The One-Health approach to pandemic prevention, preparedness, and response requires states to take account of this interconnectedness and to take an integrated approach at both the national and international level. This requires effective coordination and collaboration between agencies and at the national and international level in identifying and addressing these risks.
- Placing **equity** at the centre of prevention, preparedness, and response at both at the national and international levels, including with regard to protecting the most vulnerable and ensuring access to medical countermeasures. Equity in pandemic prevention, preparedness and response is founded on the fundamental human right to enjoy the highest attainable standard of health without distinction of race, religion, political belief, economic or social condition. Inequitable approaches to promotion of health and the control of disease are ineffective in responding to the risks of pandemics and represent a common danger.
- **The responsibility to exercise due diligence in the prevention of harm.** In our measures to prevent, prepare and respond to pandemics, all states must show due regard for the rights and interests of others and exercise due diligence in the prevention of harm to their people. This includes a responsibility to exercise due diligence to prevent infectious diseases from spreading beyond their territory and endangering foreign populations, and to work cooperatively to contain pandemic threats and reinforce health systems.
- **Transparency.** States should not impose measures to prevent the free flow of information about risk and emerging pathogens. In keeping with the precautionary approach lack of scientific certainty should not be used as a reason for withholding information.
- **Coherence** in response measures. The principle of coherence requires that there be a rational relationship between the method or measures chosen to respond to health risks and the objectives that the measure is intended to achieve.
- **Precaution.** It is legitimate to take precautionary measures when the science and outcomes are uncertain in order to minimise or prevent the spread of infection and keep more options open for the future. A precautionary approach reinforces the vital need for early detection and action by States and the WHO. A precautionary approach to the prevention and response to pandemics and health risks with the potential to develop into pandemics will be particularly justified where novel pathogens are involved.

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Annex Two: Substantive proposals for reform that Aotearoa New Zealand should support

Summary	
<p>Reforms to the global health architecture which are consistent with our guiding principles and approaches (above) may include:</p> <ul style="list-style-type: none"> • A “one-health” prevention obligation on states which requires improved coordination across relevant sectors; • Commitments to develop and apply international standards for laboratories handling pathogens; • A requirement for Member States to have realistic, fully-exercised and fully funded all-of-government pandemic plans as part of broader emergency planning, as well as to have a whole-of-government national focal point; • Regional exercises and a formal review process for implementation of commitments; • Greater ability for independent scientific input to WHO processes and investigation of emerging risks; • Improvements to the alert levels and systems, including an escalation process that leads to a determination of a pandemic; • Explicit requirements to share samples and pathogens linked to reciprocal processes to ensure rapid, universal and equitable access to diagnostics, vaccines and therapeutics; • Equitable processes to maintain global supply chains for the production and distribution of essential supplies; • Processes to review the overall system and adopt improvements in response to reviews (including potentially accelerating the entry into force of IHR amendments). 	
Potential reforms ‘by stage of pandemic’	
Stage 0	<p><i>Prevention and early detection</i></p> <ul style="list-style-type: none"> • A One Health” prevention obligation to better monitor the animal, human and environment interface as it relates to diseases with pandemic potential and to do so in a coordinated way across relevant national and international organisations. • Improved coordination between health and non-health agencies at the national and international level. • Commitment to develop and apply consistent international standards for labs handling pathogens, as well as requirements around disclosures and international audits. • States to commit to enhanced surveillance of risks.
Stage 1	<p><i>Prepare to respond</i></p> <ul style="list-style-type: none"> • A formal review process of implementation of pandemic system commitments (such as a UPHR) and state party reporting on implementation, with recommendations resulting from this process being linked to capacity building and assistance. • Strengthen requirements for all states to have realistic, fully-funded and exercised all-of-government pandemic plans, as part of overall emergency planning. • Regional exercises to test core public health capacities, communication channels, and interoperability off border controls and technologies.

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	<ul style="list-style-type: none"> • Enable states to seek funding for both preparedness and response purposes (possibly through linkages to funding sources outside of the WHO such as the proposed Financial Intermediary Fund)
Stage 2	<p><i>Alert and risk management</i></p> <ul style="list-style-type: none"> • Requirement to have a whole of government National Focal Point and national authority responsible for overall pandemic preparedness and response. • Consider new expert scientific and independent group within WHO with stronger powers to request information, investigate emerging risks, and make recommendations. • Explicit commitments to share of pathogens, specimens and genome sequence information and a multilateral framework for all states to have access to this, linked to reciprocal commitments on rapid, universal and equitable access to diagnostics, vaccines and therapeutics. • Improvements to the composition and processes for the IHR Emergency Committee, and accelerated entry into force of IHR amendments. • The creation of new intermediate and regional alert levels under the IHRs.
Stage 3	<p><i>Early response and containment</i></p> <ul style="list-style-type: none"> • The declaration of a Public Health Emergency of International Concern (PHEIC) to be a trigger point for moving to the readiness phase for WHO collective processes for countermeasures, and the creation of possible mechanisms to handle this. • Potential right of assistance for affected states (which might involve strengthening the provision in Article 13 of the IHRs) • Clarification that measures recommended by the Director General WHO and national measures taken by states under Art 43 of IHRs can legitimately take a precautionary approach. • Stronger provisions within the IHRs on rapid response teams, expert missions and deployments.
Stage 4	<p><i>International spread and pandemic management</i></p> <ul style="list-style-type: none"> • The creation of a new escalation process leading to a determination of a pandemic, with definition. • Better provision for the mobilisation of health workers in pandemic conditions. • Provision for activation of processes for rapid, universal and equitable access, development and distribution of countermeasures. This may include activation of a pre-negotiated COVAX-type platform for diagnostics, therapeutics and vaccines. • Provision for activation of processes to maintain global supply chains for countermeasures • Provision for scaling up global production capacity to meet pandemic-level demand for countermeasures.
Stage 5	<p><i>Recovery – Eradication or endemic disease management</i></p> <ul style="list-style-type: none"> • The creation of a regular review and “lessons learned process”. • Provision for regular conference of the parties COP forums (which could also be sessions of the World Health Assembly) to make adjustment of the system and rules in response to reviews.