

Proactive Release

15/08/2022

The following Cabinet papers and related Cabinet minutes have been proactively released by the Minister of Health and the Minister of Foreign Affairs

Title	Reference
Report of the Cabinet Business Committee: Period Ended 7 July 2023	CAB-23-MIN-0304
Pandemic Treaty and Amendments to the International Health regulations 2005: Negotiating Mandate	CBC-23-MIN-0013
Pandemic Treaty and Amendments to the International Health regulations 2005: Negotiating Mandate	

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the OIA). Where this is the case, the relevant sections of the OIA that would apply have been identified. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Key to OIA redaction codes:

- 6(a): to avoid prejudicing the security or defence of New Zealand or the international relations of the New Zealand Government;
- 9(2)(j): to avoid prejudice to negotiations.



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Report of the Cabinet Business Committee: Period Ended 7 July 2023

On 17 July 2023, Cabinet made the following decisions on the work of the Cabinet Business Committee for the period ended 7 July 2023:

Out of scope

CBC-23-MIN-0013

Pandemic Treaty and Amendments to the International Health Regulations 2005: Negotiating Mandate

Portfolios: Health / Foreign Affairs

CONFIRMED

Out of scope

Rachel Hayward
Secretary of the Cabinet



Cabinet Business Committee

Minute of Decision

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Pandemic Treaty and Amendments to the International Health Regulations 2005: Negotiating Mandate

Portfolios Health / Foreign Affairs

On 3 July 2023, the Cabinet Business Committee:

Background

- 1 **noted** that following the COVID-19 pandemic, there are two parallel negotiations taking place at the World Health Organization:
 - 1.1 amending the International Health Regulations 2005;
 - 1.2 developing a new Pandemic Treaty;
- 2 **noted** that both processes are led by member States of the World Health Organization, and aim to be concluded by the World Health Assembly in May 2024;

Proposed mandate

- 3 **agreed** that Aotearoa New Zealand's positions in these two negotiations should be consistent with the following objectives:
 - 3.1 Overarching goal:
 - 3.1.1 seek international rules that strengthen the ability of States and international institutions to prevent and mitigate future acute public health events (e.g. potential pandemics);
 - 3.2 Coherence:
 - 3.2.1 Aotearoa New Zealand should support a coherent pandemic prevention preparedness and response system that builds on existing elements, addresses gaps, and rectifies deficiencies observed during the COVID-19 pandemic, and strengthens the performance of the World Health Organization;
 - 3.2.2 Aotearoa New Zealand should support coherence between:
 - 3.2.2.1 the new Pandemic Treaty and the International Health Regulations;

- 3.2.2.2 the mandate of the World Health Organization and other relevant international organisations;
- 3.3 Prevention:
- 3.3.1 Aotearoa New Zealand should support an approach where States are required to take reasonable and proportional measures to identify, prevent and control the spread of infectious diseases and other hazards;
- 3.3.2 Aotearoa New Zealand should support an approach to prevention based on established international legal principles (including the duty of cooperation, due diligence, proportionality and the precautionary approach);
- 3.3.3 Aotearoa New Zealand should support proposals that encourage States to work cooperatively to assess and contain threats with pandemic potential;
- 3.4 Equity and capacity building:
- 3.4.1 Aotearoa New Zealand should support approaches that recognise that, in order for effective global pandemic prevention preparedness and response, all countries need functional health systems and capacity. Equity must be a key strategic priority for both instruments;
- 3.4.2 Aotearoa New Zealand should advocate for equity at the community, national and international levels underpinned by respect for human rights;
- 3.4.3 Aotearoa New Zealand should support the recognition of the differences in capacity between States in pandemic prevention preparedness and response, and support a focus on capacity building to assist countries, to ensure that all States are able to fulfil their obligations under the Pandemic Treaty and the International Health Regulations;
- 3.4.4 Aotearoa New Zealand should support the identification and development of an appropriate funding mechanism, particularly building on the existing Pandemic Fund within the World Bank;
- 3.5 Human rights, including the rights of Indigenous Peoples:
- 3.5.1 the Pandemic Treaty and amended International Health Regulations must recognise that equity in pandemic prevention preparedness and response should be founded on the respect for human rights, including the right to enjoy the highest attainable standard of health without distinction of race, gender, sexual orientation, religion, political belief, economic or social condition;
- 3.5.2 Aotearoa New Zealand should support equitable outcomes for Indigenous Peoples, ethnic minorities, women and disabled people, with full consideration to their social, cultural and geographic realities;
- 3.6 Transparency:
- 3.6.1 Aotearoa New Zealand should encourage the timely and free flow of information in relation to pandemic prevention preparedness and response, including surveillance of and intelligence on emerging

pathogens, public health threats and information about public health responses;

3.6.2 Aotearoa New Zealand should promote transparency between and within States. Lack of scientific certainty should not be used as a reason for withholding information on pathogens, risk assessments and response measures;

3.7 A One Health approach:

3.7.1 Aotearoa New Zealand should support a One Health approach to pandemic prevention preparedness and response being embedded in the International Health Regulations and Pandemic Treaty, which means acknowledging that human health, animal health, and ecosystems are fundamentally interconnected;

3.7.2 Aotearoa New Zealand should support a focus on prevention, early detection, risk assessment and response that takes account of the connection between animal and human health, and the environment;

3.8 Timely access to pathogens and to medical counter-measures:

3.8.1 Aotearoa New Zealand should support the transparent, safe and timely sharing of novel pathogens (e.g. viruses), associated genetic data, and clinical and other relevant information between States to support the development of public health responses, including medical counter-measures;

3.8.2 Aotearoa New Zealand should support the development of an appropriate multilateral mechanism which recognises that an enhanced pandemic prevention preparedness and response system is the key benefit of an equitable and timely access and benefit sharing regime in the global health context;

3.9 Governance:

3.9.1 Aotearoa New Zealand should support governance and procedural mechanisms which facilitate effective implementation by States and promote accountability in respect of the International Health Regulations and Pandemic Treaty;

3.10 Trade:

3.10.1 Aotearoa New Zealand should support approaches that are consistent with international trade law obligations;

3.10.2 Aotearoa New Zealand should seek to recognise the important role of trade in effective pandemic prevention preparedness and response (e.g. resilient supply chains and trade in pandemic prevention preparedness and response products);

3.10.3 Aotearoa New Zealand should support approaches that encourage innovation, research and development, while also encouraging technology transfer;

Janine Harvey
Committee Secretary

Present:

Rt Hon Chris Hipkins (Chair)
Hon Carmel Sepuloni
Hon Kelvin Davis
Hon Grant Robertson
Hon Dr Megan Woods
Hon Jan Tinetti
Hon Dr Ayesha Verrall
Hon Willie Jackson
Hon Damien O'Connor
Hon Andrew Little
Hon Nanaia Mahuta
Hon Rachel Brooking

Officials present from:

Office of the Prime Minister
Department of the Prime Minister and Cabinet

Proactively Released by the Minister of Health
and the Minister of Foreign Affairs

In Confidence

Offices of the Ministers of Health and Foreign Affairs

Cabinet Business Committee

Negotiating Mandate for the Pandemic Treaty and Amendments to the International Health Regulations 2005

Proposal

- 1 This paper directs officials on how to approach two negotiations taking place between World Health Organization Member States:
 - Amendments to the International Health Regulations 2005 (IHR); and
 - A new ‘Pandemic Treaty’.

Relation to government priorities

- 2 The proposals in this paper support continuing to keep New Zealanders safe from COVID-19 and laying the foundations for a better future by keeping New Zealanders safe from future pandemics.

Executive Summary

- 3 All World Health Organization (WHO) members are currently engaged in negotiations to improve the WHO legal frameworks which apply to acute public health risks (e.g. pandemics). There are two concurrent negotiations:
 - 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; and
 - A new ‘Pandemic Treaty’ which will likely address the broader systemic inequities in the response to COVID-19 and to strengthening cooperation between countries
- 4 A range of independent reviews have identified a number of shortcomings in the global response to COVID-19. The negotiations provide an opportunity to build on the lessons identified from COVID-19 and enhance the ability of States and the WHO to prevent and mitigate future acute public health risks. The negotiations are complex and overlapping – there are over 300 proposed amendments to the IHR. While the breadth of proposals to the Pandemic Treaty remains to be resolved, the Treaty’s scope is broad and will need to address issues as diverse as trade, genetic information, financing and capacity building.
- 5 Given the breadth and scope of these issues, this paper seeks an objectives-based negotiating mandate from Cabinet across both negotiations to enable Aotearoa New

Zealand to engage effectively. ^{s9(2)(j)}

- 6 If negotiations conclude successfully, final decisions on whether Aotearoa New Zealand will be bound by the outcomes will be made by Cabinet and subject to Parliamentary scrutiny.

Background

Amendments to the International Health Regulations 2005 (IHR)

- 7 The IHR are the principal legal framework for preventing and controlling the spread of disease and other public health hazards between countries. This binding framework creates obligations for countries to maintain a certain minimum level of preparedness for acute public health events, and standardises processes for assessing such events, reporting them and making risk management decisions. Currently the IHR are focussed on the detection and containment of outbreaks and potential public health emergencies at risk of spreading internationally, rather than prevention and all of government responses.
- 8 The COVID-19 pandemic made it apparent that the IHR, and in particular its provisions relating to health emergencies, were insufficient for a full pandemic response. The IHR did not work as intended to coordinate countries' national responses. Proposed amendments to the IHR provide an opportunity to improve them by striking a better balance between public health and the maintenance of international traffic and trade, and by strengthening cooperation between States.
- 9 At the 75th World Health Assembly in May 2022, Member States agreed a process for negotiating amendments to the IHR, with a view to these being agreed at the 77th World Health Assembly Meeting in May 2024. The IHR negotiations are co-chaired by Sir Ashley Bloomfield.

A new 'Pandemic Treaty'

- 10 In November 2021, WHO Member States established an Intergovernmental Negotiating Body (INB) to negotiate a new "convention, agreement or other international instrument to strengthen pandemic prevention, preparedness and response" – referred to in this paper as a 'Pandemic Treaty'. A new treaty was also a key recommendation of the Independent Panel for Pandemic Preparedness and Response co-chaired by Rt Hon Helen Clark in 2021. Like the amendments to the IHR, it is intended that the Pandemic Treaty be agreed at the 77th World Health Assembly in May 2024.
- 11 The Pandemic Treaty will seek to address some of the broader political, development and equity issues in pandemic prevention preparedness and response (PPPR). The negotiations will consider proposals to create new mechanisms for financing, capacity building, and access to medicines and vaccines (a particular focus for developing States).

Analysis

- 12 While separate, negotiations on the IHR and Pandemic Treaty involve the same States and are closely linked. The IHR negotiations provide a more streamlined process for achieving practical and timely change. The new Pandemic Treaty will have a ratification process and is therefore expected to take longer to enter into force.
- 13 s9(2)(j)
- 14 Both negotiations will need to address:
- enhanced transparency including stronger commitments to identify and report new and emerging pathogens;
 - measures to stop zoonotic spill-over from animals to humans;
 - measures to restrict the spread of those diseases; and
 - information-sharing (including genetic information) to enable the development of medical countermeasures, such as diagnostics, treatments and vaccines (a particular concern for developed States).
- 15 Accordingly, we seek Cabinet's agreement to:
- an objectives-based negotiating mandate that will apply across both sets of negotiations; and
 - s9(2)(j)

Objectives-based mandate for the negotiations

Overarching goal for negotiations

- 16 We propose Aotearoa New Zealand's overarching goal for the negotiations on amendments to the IHR and the Pandemic Treaty should be to:

Seek international rules that strengthen the ability of States and international institutions to prevent and mitigate future acute public health events (e.g. potential pandemics).

Specific objectives for negotiations

- 17 We propose Aotearoa New Zealand pursue the following objectives in the negotiation and implementation of the IHR and Pandemic Treaty:

Coherence

- Aotearoa New Zealand should support a coherent PPPR system that builds on existing elements, addresses gaps and rectifies deficiencies observed during the COVID-19 pandemic, and strengthens the performance of the WHO.
- Aotearoa New Zealand should support coherence between:
 - the new Pandemic Treaty and the IHR.
 - the mandate of the WHO and other relevant international organisations.

- 18 The reforms being discussed in both the Pandemic Treaty and IHR negotiations touch on complex global health issues, involving a range of actors at different levels, sectors and industries. The outcomes across both negotiations need to form a practical and coherent package that prevents duplication of functions across the international system.
- 19 Aotearoa New Zealand should seek international rules that strengthen and promote the WHO's central role, while ensuring coherence with, and respecting the mandates of, other international institutions (e.g. World Organisation for Animal Health, World Trade Organisation, Food and Agriculture Organisation).

Prevention

- Aotearoa New Zealand should support an approach where States are required to take reasonable and proportional measures to identify, prevent and control the spread of infectious diseases and other hazards.
- Aotearoa New Zealand should support an approach to prevention based on established international legal principles (including the duty of cooperation, due diligence, proportionality and the precautionary approach).
- Aotearoa New Zealand should support proposals which encourage States to work cooperatively to assess and contain threats with pandemic potential.

- 20 Strengthening the system to enable States to prevent pandemics from occurring is one of the key opportunities arising in these negotiations. We learned from COVID-19 that a lack of scientific certainty in the early stages, combined with the restrictive nature and poor implementation of existing IHR provisions, contributed to a lack of effective precautionary measures. This in turn contributed to the global spread of COVID-19.
- 21 These negotiations provide an opportunity to change States' approach. Since the current IHR were agreed in 2005, international law has evolved to see widespread acceptance

of “the precautionary approach”¹ and the requirement of “due diligence”.² We propose that Aotearoa New Zealand advocate for text that aligns with these legal concepts, recognising that States may act in a reasonable, precautionary manner to protect the public when faced with a pandemic risk.

Equity and capacity building

- Aotearoa New Zealand should support approaches that recognise that in order for effective global PPPR, all countries need functional health systems and capacity. Equity must be a key strategic priority for both instruments.
- Aotearoa New Zealand should advocate for equity at the community, national and international levels underpinned by respect for human rights.
- Aotearoa New Zealand should support the recognition of the differences in capacity between States in PPPR and support a focus on capacity building to assist countries, to ensure that all States are able to fulfil their obligations under the Pandemic Treaty and the IHR.
- Aotearoa New Zealand should support the identification and development of an appropriate funding mechanism, particularly building on the existing Pandemic Fund within the World Bank.

22 The COVID-19 pandemic revealed weaknesses and inequities between States. While no country was fully prepared to face a pandemic, the response to the COVID-19 pandemic failed to adequately consider the different capacities of countries, especially developing States.

23 Developing States have requested support from developed States to build capacity both in their health systems generally and to supplement their domestic resources for PPPR. If these inequities are not addressed, these negotiations will be limited in their ability to reduce the risk of or better manage a future pandemic. The negotiations involve proposals for new financing mechanisms which would more effectively meet their capacity building needs.

24 s9(2)(j)

Aotearoa New Zealand should engage constructively to support options with the possibility of reaching consensus.

¹ Precautionary approach means States should be permitted to take precautionary measures aimed at preventing or controlling the spread of disease even where there is a lack of scientific certainty.

² Due diligence means States must take reasonable measures to prevent harm from occurring to other states as a result of activities under their jurisdiction and control.

Human rights including the rights of Indigenous Peoples

- The Pandemic Treaty and amended IHR must recognise that equity in PPPR should be founded on the respect for human rights including the right to enjoy the highest attainable standard of health without distinction of race, gender, sexual orientation, religion, political belief, economic or social condition.
- Aotearoa New Zealand should support equitable outcomes for Indigenous Peoples, ethnic minorities, women and disabled people with full consideration to their social, cultural and geographic realities.

25 These negotiations provide an opportunity to recognise the full spectrum of rights enshrined in international human rights treaties. The new Pandemic Treaty and the amended IHR should draw from these experiences and recognise that effective PPPR must be grounded in the right to health.

26 The COVID-19 pandemic exposed and worsened inequities between States and also within States. For Aotearoa New Zealand, it is particularly important to prevent disproportionate impacts on Māori, Pasifika and disabled people.

Transparency

- Aotearoa New Zealand should encourage the timely and free flow of information in relation to PPPR, including surveillance of and intelligence on emerging pathogens, public health threats and information about public health responses.
- Aotearoa New Zealand should promote transparency between and within States. Lack of scientific certainty should not be used as a reason for withholding information on pathogens, risk assessments and response measures.

27 The report of the Independent Panel for Pandemic Preparedness and Response identified transparency as one of the key failings during the COVID-19 pandemic. Amendments to the IHR and the development of a Pandemic Treaty with enhanced transparency provisions would address this failing. Prompt sharing of information on 'pathogens with pandemic potential' enables timely responses on the basis of the best available science and provides the best opportunity to prevent a situation from evolving into a pandemic. States should also be encouraged to share information widely to enable proportionate responses and mitigations to be coordinated across the public and private sectors and civil society. Sharing information with the public also reduces risks of misinformation.

A One Health approach

- Aotearoa New Zealand should support a One Health approach to PPPR being embedded in the IHR and Pandemic Treaty, which means acknowledging that human health, animal health, and ecosystems are fundamentally interconnected.

- Aotearoa New Zealand should support a focus on prevention, early detection, risk assessment and response that takes account of the connection between animal and human health, and the environment.

- 28 The WHO defines One Health as “an integrated, unifying approach that aims to sustainably balance and optimise the health of people, animals and ecosystems.” A One Health approach is essential as most new pathogens are zoonotic (i.e. animal) in origin, driven in part by changes in land-use such as deforestation and intensive farming. Environmental degradation and climate change also create conditions that are favourable for pathogens of zoonotic origin to emerge and for disease vectors to spread and establish. A One Health approach was not adequately implemented prior to or during the COVID-19 pandemic. This compromised surveillance of pandemic risks of zoonotic origin which would have helped with early detection and response.
- 29 A One Health approach should be incorporated into the IHR and Pandemic Treaty as it is central to preventing the next pandemic. This includes surveillance of pathogens of pandemic potential, especially in high-risk environments.

Timely access to pathogens and to medical countermeasures

- Aotearoa New Zealand should support the transparent, safe and timely sharing of novel pathogens (e.g. viruses), associated genetic data, and clinical and other relevant information between States to support the development of public health responses, including medical countermeasures.
- Aotearoa New Zealand should support the development of an appropriate multilateral mechanism which recognises that an enhanced PPPR system is the key benefit of an equitable and timely access and benefit sharing regime in the global health context.

- 30 Early sharing of pathogen information enables more time to assess risk and develop medical countermeasures in response to an infectious disease outbreak. One of the central proposals for the Pandemic Treaty would be a new approach for sharing pathogen information in exchange for associated benefits, referred to in the negotiations as access and benefit-sharing (ABS) mechanism.

- 31 We propose that the focus of any ABS mechanism in the context of pathogens should be public health focused, including ensuring early access to pathogen information, and facilitating the development and equitable distribution of medical countermeasures. An ABS mechanism for pathogens that prioritises public health will enhance global preparedness and response to public health emergencies.

- 32 In the most recent negotiating round for the Pandemic Treaty in April 2023, the EU proposed an ABS mechanism where States would ensure the rapid sharing of pathogen samples, and in return require manufacturers of medical countermeasures to set aside a percentage of those countermeasures for developing countries. ^{s9(2)(j)}

s9(2)(j)

33 s9(2)(j)

Governance

- Aotearoa New Zealand should support governance and procedural mechanisms which facilitate effective implementation by States and promote accountability in respect of the IHR and Pandemic Treaty.

34 Effective governance is essential to achieving all the strategic priorities in the Pandemic Treaty and the amended IHR. Transparent, accountable decision-making by States with input from and participation by civil society, industry and other bodies involved in PPPR is necessary for bringing greater equity, inclusivity and coherence to the global health architecture. The governance frameworks should strengthen and maintain the WHO's constitutional role in the global health system.

Trade

- Aotearoa New Zealand should support approaches that are consistent with our international trade law obligations.
- Aotearoa New Zealand should seek to recognise the important role of trade in effective PPPR (e.g. resilient supply chains and trade in PPPR products).
- Aotearoa New Zealand should support approaches which encourage innovation, research and development while also encouraging technology transfer.

35 Trade has an important role to play in helping countries prepare for and respond effectively to health events. Aotearoa New Zealand has been served well by current international trade law which allows governments to take non-discriminatory measures necessary to protect health while also incentivising the development of goods and services useful for protecting health. During the Pandemic, Aotearoa New Zealand took a leading role, including as part of APEC, in encouraging countries to take measures in support of resilient supply chains and to steer away from measures which distort trade in PPPR products.

36 There are of course contentious areas of international trade law such as the role of intellectual property (IP) rights in responding to pandemics. Existing IP rules play a critical role in incentivising innovation, facilitating collaboration and the transfer of technology. However some countries contend that these same IP rules impede

developing countries from securing swift access to vaccines and other pandemic products.^{56(a)}

In relation to COVID-19, Aotearoa New Zealand took a forward-leaning position supporting a waiver in response to developing country concerns about the role of IP in limiting access to vaccines. Discussions on this issue are ongoing within the WTO which is the appropriate forum for dealing substantively with matters of trade law.

- 37 It will be important for the success of these two health negotiations that any language on trade stays focused on the WHO's mandate and responsibilities and is consistent with international trade law (including law on IP).

Matters excluded from scope

- 38 Neither legal instrument will require Aotearoa New Zealand to give up control to the WHO during a pandemic. Neither legal instrument will cover lockdowns or vaccine mandates. Neither the Pandemic Treaty nor the revised IHR will undermine state sovereignty. They will also not address broader domestic health policy settings. It will be for Aotearoa New Zealand to decide whether or not to ratify the Pandemic Treaty or 'opt out' of the IHR amendments, which will require Cabinet approval.

Financial Implications

- 39 There are no direct financial implications arising from the result of this paper. If negotiations on the IHR and Pandemic Treaty conclude successfully, it is likely there would be some financial implications for Aotearoa New Zealand. However, it is difficult to estimate what these will be at this early stage in the negotiations.
- 40 If negotiations conclude successfully, the financial implications would need to be scrutinised by Cabinet and considered as part of the National Interest Analysis and parliamentary examination.

Legislative implications

- 41 Given the early stage of the parallel negotiations it is difficult to predict the final shape of the amended IHR and the Pandemic Treaty as well as the likely form and content of any implementing legislation which might be required. If implementing legislation is required for the IHR amendments this would need to be completed within two years of WHO notifying Member States of their adoption at which point the amended IHRs come into effect, unless we opt out. For the Pandemic Treaty we would have as long as we require to introduce implementing legislation and Cabinet would be informed of this in a paper seeking approval to ratify or accede to the treaty.

Regulatory impact analysis

- 42 An extended National Interest Analysis (incorporating a Regulatory Impact Analysis) will be presented to Cabinet when negotiations for both instruments have concluded and approval is sought to become party to the Pandemic Treaty and amended IHR.
- 43 In the interim, if and when decisions from Ministers are sought that require consideration of legislative or regulatory options for implementation, assessments of

regulatory impact will be provided. Depending on the progress of negotiations, this may occur as more specific guidance from Ministers is sought.

Population implications

- 44 Successful conclusion of these negotiations will likely help protect New Zealanders from the effects of future acute health events. Any ratification or adoption process for either product will require adequate recognition of the impact on Māori and Te Tiriti o Waitangi.

Human Rights

- 45 There are no expected inconsistencies with the Human Rights Act 1993 or the New Zealand Bill of Rights Act 1990.

Consultation

- 46 The following agencies were consulted on this paper: Te Whatu Ora, Te Aka Whai Ora, Pharmac, Ministry for Primary Industries, Treasury, Ministry of Business Innovation and Employment, Taumata Arowai, Whaikaha/Ministry of Disabled Peoples, New Zealand Customs Service, Maritime New Zealand, Ministry of Transport, Fire and Emergency New Zealand, Department of the Prime Minister and Cabinet, Ministry for Women, National Emergency Management Agency, Civil Aviation Authority of New Zealand and Aviation Security Service and Te Puni Kōkiri.
- 47 Between 12 July and 11 August 2022, the Ministry of Foreign Affairs & Trade sought feedback from New Zealanders on how Aotearoa New Zealand should engage in negotiations on a new Pandemic Treaty. The consultation was publicised on social media. Overall the submissions reflected mixed views both in favour of and opposed to the Pandemic Treaty.
- 48 Key priorities included: ensuring any new instrument is disease agnostic, but draws on the COVID-19 experience to apply lessons learned; addressing the root causes of zoonotic diseases; ensuring clear linkages and coordination with other international agreements; and incorporating a One Health approach along with concerns over the cost of a new treaty and the effectiveness of the WHO. Some submissions were either based on or contained misunderstandings, misinformation, or factually incorrect information. There was also a concern in some submissions that a new Pandemic Treaty would require Aotearoa New Zealand to relinquish control of our domestic decision making processes to the WHO during a pandemic. Suggestions from public submissions have been taken into account in developing this Cabinet paper.

Communications

- 49 As the two negotiations progress, updates are being provided on the Ministry of Health and Ministry of Foreign Affairs & Trade websites (including by proactively releasing relevant ministerial briefings). WHO is also providing publicly available updates.

Proactive Release

- 50 We propose to proactively release this Cabinet paper, excepting those parts that would undermine Aotearoa New Zealand's negotiating position or prejudice our international relations.

Recommendations

The Minister of Foreign Affairs and the Minister of Health recommend that the Committee.

- 1 **Note** that following the COVID-19 pandemic there are two parallel negotiations taking place at the World Health Organization:
- 1.1 amending the International Health Regulations 2005 (IHR) and
 - 1.2 developing a new Pandemic Treaty.
- 2 **Note** that both processes are led by member states of the World Health Organization and aim to be concluded by the World Health Assembly in May 2024.
- 3 **Agree** that Aotearoa New Zealand's positions in these two negotiations should be consistent with the following objectives:
- 3.1 *Overarching goal*
 - 3.1.1 Seek international rules that strengthen the ability of States and international institutions to prevent and mitigate future acute public health events (e.g. potential pandemics).
 - 3.2 *Coherence*
 - 3.2.1 Aotearoa New Zealand should support a coherent pandemic prevention preparedness and response system that builds on existing elements, addresses gaps and rectifies deficiencies observed during the COVID-19 pandemic, and strengthens the performance of the WHO.
 - 3.2.2 Aotearoa New Zealand should support coherence between:
 - the new Pandemic Treaty and the IHR.
 - the mandate of the WHO and other relevant international organisations.
 - 3.3 *Prevention*
 - 3.3.1 Aotearoa New Zealand should support an approach where States are required to take reasonable and proportional measures to identify,

prevent and control the spread of infectious diseases and other hazards.

3.3.2 Aotearoa New Zealand should support an approach to prevention based on established international legal principles (including the duty of cooperation, due diligence, proportionality and the precautionary approach).

3.3.3 Aotearoa New Zealand should support proposals which encourage States to work cooperatively to assess and contain threats with pandemic potential.

3.4 *Equity and capacity building*

3.4.1 Aotearoa New Zealand should support approaches that recognise that in order for effective global pandemic prevention preparedness and response, all countries need functional health systems and capacity. Equity must be a key strategic priority for both instruments.

3.4.2 Aotearoa New Zealand should advocate for equity at the community, national and international levels underpinned by respect for human rights.

3.4.3 Aotearoa New Zealand should support the recognition of the differences in capacity between States in pandemic prevention preparedness and response and support a focus on capacity building to assist countries, to ensure that all States are able to fulfil their obligations under the Pandemic Treaty and the IHR.

3.4.4 Aotearoa New Zealand should support the identification and development of an appropriate funding mechanism, particularly building on the existing Pandemic Fund within the World Bank.

3.5 *Human rights including the rights of Indigenous Peoples*

3.5.1 The Pandemic Treaty and amended IHR must recognise that equity in pandemic prevention preparedness and response should be founded on the respect for human rights including the right to enjoy the highest attainable standard of health without distinction of race, gender, sexual orientation, religion, political belief, economic or social condition.

3.5.2 Aotearoa New Zealand should support equitable outcomes for Indigenous Peoples, ethnic minorities, women and disabled people with full consideration to their social, cultural and geographic realities.

3.6 *Transparency*

3.6.1 Aotearoa New Zealand should encourage the timely and free flow of information in relation to pandemic prevention preparedness and

response, including surveillance of and intelligence on emerging pathogens, public health threats and information about public health responses.

3.6.2 Aotearoa New Zealand should promote transparency between and within States. Lack of scientific certainty should not be used as a reason for withholding information on pathogens, risk assessments and response measures.

3.7 *A One Health Approach*

3.7.1 Aotearoa New Zealand should support a One Health approach to pandemic prevention preparedness and response being embedded in the IHR and Pandemic Treaty, which means acknowledging that human health, animal health, and ecosystems are fundamentally interconnected.

3.7.2 Aotearoa New Zealand should support a focus on prevention, early detection, risk assessment and response that takes account of the connection between animal and human health, and the environment.

3.8 *Timely access to pathogens and to medical countermeasures*

3.8.1 Aotearoa New Zealand should support the transparent, safe and timely sharing of novel pathogens (e.g. viruses), associated genetic data, and clinical and other relevant information between States to support the development of public health responses, including medical countermeasures.

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3.9.1 Aotearoa New Zealand should support governance and procedural mechanisms which facilitate effective implementation by States and promote accountability in respect of the IHR and Pandemic Treaty.

3.10 *Trade*

3.10.1 Aotearoa New Zealand should support approaches that are consistent with our international trade law obligations.

3.10.2 Aotearoa New Zealand should seek to recognise the important role of trade in effective pandemic prevention preparedness and response (e.g. resilient supply chains and trade in pandemic prevention preparedness and response products).

3.10.3 Aotearoa New Zealand should support approaches which encourage innovation, research and development while also encouraging technology transfer.

4 s9(2)(j)

Authorised for lodgement

Hon Nanaia Mahuta
Minister of Foreign Affairs

Hon Dr Ayesha Verrall
Minister of Health

Proactively Released by the Minister of Health
and the Minister of Foreign Affairs