

Delegation to Wellington

The UN and WHO Pandemic Treaties

2 November 2023

Attorney-General
Crown Law Office
Parliamentary Counsel Office
Wellington

By email D.Parker@ministers.govt.nz

Attention: Hon David Parker

Dear Hon Mr Parker

UN and WHO new and amended Pandemic Treaties

1. We write as a group of concerned New Zealanders. We raise with you concerns we have about four treaties and accords of international significance (**Treaties**) that are currently being prepared and updated by the United Nations (**UN**) and the World Health Organisation (**WHO**) following the recent public health response to the COVID-19 pandemic.
2. What is proposed in these Treaties, if tacitly accepted by New Zealand, will mean:
 - 2.1 we are bound without reservation to significant obligations,
 - 2.2 forfeit the right to make decisions as a country with respect to health emergencies;
 - 2.3 be required to amend and implement domestic legislation in accordance with the new Treaties.
3. We seek from your office confirmation that you and your office are aware of the four Treaties and are considering how they will impact on the laws of New Zealand as well as the international human rights instruments we are a party to.
4. The four Treaties are at various stages of completion. One has already been adopted at the Seventy-fourth World Health Assembly (**WHA**) held May 2022; Article 59 IHRAs. The Article 59 IHRAs require express rejection by New Zealand no later than **27 November 2023** otherwise acceptance is by acquiescence and the amendments become binding on New Zealand. We expand on the status of the Article 59 IHRAs in section 6 below.

5. The four Treaties are:

- 5.1 **The UN's [Political Declaration on Pandemic Prevention, Preparedness and Response Manifesto- Zero Draft \(UN PPPR Manifesto\)](#)** – provisionally adopted at the UN High-Level Meeting on [20 September 2023](#) with eleven (11) nations opposing. This document identifies the requirement for US\$30 billion for pandemic preparedness. The WHO's current 2 yearly budget is US\$11 billion. The UN PPPR Manifesto also sets out the requirements for amendments to the 2005 International Health Regulations (**2005 IHRs**) and the creation of the Pandemic Treaty or WHO CA+ (**WHO CA+**) for adoption at the Seventy-seventh WHA end of [May 2024](#) (PPPR Call to Action, paragraph OP44).

The WHO's proposed amendments to the 2005 International Health Regulations (IHRAs) - are in two parts (5.2 and 5.3):

- 5.2 [Article 59 IHRAs](#) - This Treaty proposes reducing the timing for rejection or implementation of any future proposed IHRAs (from 18 to 10 months, and 24 to 12 months respectively). The Article 59 IHRAs were adopted by the WHA on 27 May 2022 - there is 18 months to reject these and they must be expressly rejected by [27 November 2023](#) (1 December 2023 is noted regularly and could reflect 18 months from the day the Director General notified the State Members) otherwise the timeframes will become much shorter for rejection and implementation of any future amendments. We expand in section 6 below.
- 5.3 [307 IHRAs](#) are being worked on by the [IHR Working Group](#) (Co-chaired by Sir Ashley Bloomfield) but are well advanced and propose significant, substantive, binding recommendations on the Member State parties. On 15 December 2023, the separate IHR Review Committee will reconvene to review the package of amendments agreed by the Working Group, with final technical recommendations to be submitted to the Director General of the WHO by mid-January 2024, for adoption end of May 2024 as per the UN PPPR Manifesto (paragraph OP44).

However, the Working Group has indicated it will not be able to meet this date and has sought advice exempting the Working Group from complying with this timeframe and obligation under Article 55, which appears to have been granted, see advice given by Stephen Solomon ([WHO Secretariat legal counsel](#)) at 27:00 or transcribed [here](#) for your convenience.

- 5.4 The WHO's drafting of an entirely new Pandemic Treaty, the [WHO CA+](#) is well advanced, currently being worked on by the [Intergovernmental Negotiating Body](#). The parties aim for adoption at the end of May 2024 as per the UNPPPR Manifesto. This new Treaty proposes significant obligations on parties to it and is more akin to a trade agreement as it sets up international supply networks which will be overseen by the WHO, outlines new funding obligations and sets up a new governing body and at least three new committees dealing with compliance, pandemic-related products and benefit-sharing.

6. Article 59 IHRAs – future timeframes drastically reduced unless the Article 59 IHRAs expressly rejected

Current status of the Article 59 IHRAs:

An Official Information Act 1982 response of 4 September 2023 (H2023030545) confirmed that matters are with Cabinet who are continuing to meet and intend to produce a paper on or before 16 October 2023:

Cabinet is still continuing to meet and will do so until the General Election, which is usual in this part of the election cycle. Cabinet is currently considering the minor administrative amendments to IHR, including public consultation. As such, your request is refused under section 18(d) as information requested will soon be publicly available. The relevant Cabinet paper is currently being prepared for proactive release and it is estimated it will be made publicly available on or before 16 October 2023 on the Ministry of Health website here: www.health.govt.nz/about-ministry/information-releases/release-ministerial-decision-making-documents.

Subsequently on 19 October 2023 Ministry of Health proactively released:

Cabinet material and briefings: [Minor Amendments to the International Health Regulations 2005](#): Approval for Binding Action Ministerial decision-making documents: which agrees to the tacit approval of the Article 59 IHRAs.

We are concerned that Cabinet only considered the Article 59 IHRAs on their own, without reference to any of the other three Treaty documents (which we appreciate are currently being worked on, but are all at stages of significant advancement (or completion UN PPPR), so as to be informative for Cabinet).

Further, we note Cabinet's dismissed the Maori Health Authority's concerns about the limited time frames under the Article 59 IHRAs on the basis that the Authority can start reviewing the 307 IHRAs in advance. However, that is not possible, given the extension the IHR Working Group has been given to continue to negotiate the 307 IHRAs beyond January 2024 (see 5.3 above).

Why we are concerned with the Article 59 IHRAs:

The practical impacts of the Article 59 IHRAs are large as there will be significantly reduced new timeframes in which New Zealand will have to consider, reject and/or implement future IHRAs, for example the 307 IHRAs (where 307 is the number of *substantive* amendments to the 2005 IHRs).

The UN PPPR Manifesto (OP44) states that the WHO CA+ is “an ambitious legally binding convention” adopted under “[Article 19 of the Constitution](#) of the World Health Organization” (or other provisions); and the 307 IHRAs is one of the “other initiatives to support the central endeavour”. Where the treaty's legally binding ambition is realised New Zealand will have significantly reduced latitude in managing epidemic infections under WHO jurisdiction.

The Treaties are a culmination of the UN PPPR Manifesto ambition. The significant limitations on timeframes under the Article 59 IHRAs will make any timeframe to consider, reject and/or implement future IHRAs not just ambitious, but it will not provide sufficient time for fulsome consideration of the impact and breadth of the IHRAs by New Zealand. Nor will the compressed timeframe allow for proper consultation with the New Zealand democracy. The question has to be – what is the rush, and also how and why does this benefit New Zealand?

These timeframes in the Article 59 IHRAs need to be expressly rejected as the proposed reductions in time means that New Zealand will only have 10 months to consider the significant legal ramifications on our domestic legislation that the 307 IHRAs will require. Additionally New Zealand needs to consider the parallel WHO CA+ and its implications as both treaties deal with similar matters.

We reiterate the Maori Health Authority’s concerns with the reduction in timeframes proposed under Article 59 IHRAs as expressed in the 19 October 2023 Cabinet Paper: Minor Amendments to the International Health Regulations 2005.

Further, given the 307 IHRAs will continue to be negotiated up until the Seventy-seventh world Health Assembly in May 2024, then we strongly recommend that the Article 59 IHRs be rejected pursuant to Article 61, or at the least reservations made pursuant to Article 62 to allow opportunity to consider the impacts of the future IHRAs, such as the 307 IHRAs.

7. The legally binding aspects of the WHO’s 307 IHRAs and the WHO CA+

There is a clear implication in the Treaties that if not actively responded to, New Zealand will have to amend vast arrays of its domestic legislation, to comply with very significant amendments to the 2005 IHRs and the new WHO CA+, such as the:

- 7.1 legally binding nature as per Article 1 of the 307 IHRAs; and paragraph OP44 of the WHO CA+;
- 7.2 express amendment to laws as per Articles new 13A(3), 43, 44, and 45 of the 307 IHRAs;
- 7.3 implied amendment to laws as per Articles 2 (potential impact to health), 3 (removal of individual human rights), 4 (establishment of National Competent Authority) of the 307 IHRAs;
- 7.4 implement new legislation to indemnify pharmaceutical companies and limit their liability with respect to vaccine injuries as per Article 15 WHO CA+ as well as establish “regional or international vaccine injury compensation scheme(s) for injuries resulting from the use and/or administration of vaccines developed for response to pandemics”.

These are by no means a complete list of the Articles or amendments that could impact New Zealand domestic laws as set out in the UN PPPR Manifesto, 307 IHRAs and the WHO CA+.

8. **The very real consequences of the legally binding aspects of the WHO's 307 IHRAs and the WHO CA+**

When these issues are raised, we are regularly reassured that:

“While the exact form of the instrument is yet to be determined, if Member States agree to proceed with a legally binding instrument (for example, a treaty) standard New Zealand treaty-making processes, including Cabinet approval and parliamentary treaty examination, will be required before New Zealand could become party to the treaty.

New Zealand government representatives are participating in negotiations in both the INB and WHR. Any decision to become party to a new treaty will be decided by the government once negotiations are concluded and would be subject to New Zealand's treaty-making processes, including Cabinet approval, parliamentary treaty examination, and the passing of legislation if required.”

We appreciate and understand the position being advanced. However, the reassurances are, with respect, disingenuous. By acquiescing to the 307 IHRAs and/or becoming a party to the WHO CA+, New Zealand will be promising to implement what it has agreed to in those international instruments. By acquiescing to the Article 59 IHRAs New Zealand will severely constrain the time able to be given to undertake its standard treaty-making process.

It is important to acknowledge that in giving those promises New Zealand is pledging to the UN and the WHO, as well as the international community, its intention to ratify and enshrine those instruments in our domestic law. It is also important to ask the question; what would be the consequences of our failure to do so?

Further, when making new laws, or amending existing ones, Parliament (both current and future) have a positive onus to take into account all international covenants, treaties and instruments New Zealand is a party to. If New Zealand is a party to the 307 IHRAs and the WHO CA+, could Parliament selectively choose to legislate the international instruments articles it has agreed to and ignore the remainder?

This is why these Treaties cause concern, and why these concerns cannot be ignored.

The 2005 IHRs, to which New Zealand is already a party and which are legally binding, at Article 59, sub 3 makes clear, that:

“If a State is not able to adjust its domestic legislative and administrative arrangements fully with these Regulations within the period set out in paragraph 2 of this Article, that State shall submit within the period specified in paragraph 1 of this Article a declaration to the Director-General regarding the outstanding adjustments and achieve them no later than 12 months after the entry into force of these Regulations for that State Party.”
(emphasis added)

The words could not be more clear. If this is the case, then 10 months to consider any future IHRAs such as the 307 IHRAs, and a further 12 months to implement them, will be impossible and

consequently could result in legitimate consequences such as geopolitical sanctions and other international pressures for failure to comply and/or implement. Alternatively the constrained time period might impel New Zealand to consideration under Urgency curtailing proper examination and public consultation and agreement.

9. New Zealand's human rights

These Treaties shall also impact New Zealand's human rights policy agenda. Examples of those impacts have been outlined in the letter addressed to the Human Rights Commissioner and copied to your office with this letter.

10. Our questions for the Attorney-General's office are as follows:

10.1 What preparatory work has your office undertaken in respect to the four Treaties (listed and linked in section 5 above), which have the potential to adversely impact on the human rights of New Zealanders? Reference to "human dignity and rights" are proposed to be removed from Article 3 of IHRAs.

10.2 If New Zealand were to acquiesce to the Treaties, what will be the effect on the operation of New Zealand sovereignty, domestic laws, international law and human rights [obligations](#)?

10.3 Cabinet's review of the Article 59 IHRAs, appears to the cosigners of this letter, to be conducted in a vacuum without reference to the other significantly advanced Treaties. We propose your office issue a direction; for Cabinet to consider the Article 59 IHRAs and conduct an inquiry to examine Article 59 IHRAs as against the 307 IHRAs, WHO CA+ and the UN PPPR Manifesto. While these are still being negotiated and prepared, they are well enough advanced for Cabinet to understand their intended meaning. The timeframe for this is short, as the date for express rejection of the Article 59 IHRAs is as soon as 27 November 2023.

10.4 If, as noted above, New Zealand's ability to manage its own responses and domestic policy in relation to any future health emergency whilst upholding New Zealand's human rights obligations will be compromised, we ask that your office sends letters of deferment to the Prime Minister and Cabinet.

We would be more than willing to meet with your office, otherwise and in the meantime we look forward to hearing from you as soon as possible.

Sincerely,

The Delegation:

Dr Simon Thornley, Faculty of Medical and Health Sciences, Epidemiology and Biostatistics, University of Auckland

Martin Lally, Director, and former Associate Professor in Finance at Victoria University of Wellington

Peta Joyce (Researcher)

Greg Rzesniowiecki (Researcher)

Jodie Brunning (Journalist)

Keri Molloy (Journalist)

Katie Ashby-Koppens, Qualified Barrister and Solicitor of New Zealand