



Proactive Release

The following documents have been proactively released by the Department of the Prime Minister and Cabinet (DPMC), on behalf of Hon Andrew Little, Minister of Health:

Health and Disability System Reform Briefings

The following documents have been included in this release:

Title of paper: Health Reform Strategy and Approach to Legislation

Title of paper: Health Reforms: Implementation and Transition Cabinet Paper

Title of paper: Health Reforms: Planning and Accountability Framework

Title of paper: Health Reforms: Implementation of a Consumer Voice Framework

Title of paper: Health Reforms: Legislation Cabinet Paper Summary and Talking Points

Title of paper: Health Reform: Legislation and Transition Update

Title of paper: Health Reforms: Legislating for Public Health Structures

Title of paper: Health Reforms: Legislating Intervention Powers and Obligations Relating to Health New Zealand

Title of paper: Health Reforms: Final Decisions for Legislation

Title of paper: Health Reforms: Implementation Cabinet Paper Summary and Talking Points

Title of paper: Confirming Hauora Māori System Settings

Title of paper: Health Reforms: Employment Relations Settings

Title of paper: Further Policy Decisions for the Health Reform Bill: Cabinet Paper Summary and Talking Points

Title of paper: Health Reforms: Development of the NZ Health Charter and Associated Legislative Provisions

Title of paper: Health Reforms: Independent Alcohol Advice and Research Function and Levy

Title of paper: Health Reforms: Remaining Transitional and Consequential Provisions for Decision

Title of paper: Joint Te Kawa Mataaho/ Health Transition Unit Report: Māori Health Authority – Proposed Application of Crown Entities Act 2004 and Public Service Act 2020

Title of paper: Health Reforms: Draft Cabinet Paper to Approve Bill for Introduction and Health System Principles

Title of paper: Pae Ora (Healthy Futures) Bill: Approval for Introduction at Cabinet



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 Act). Where this is the case, the relevant section of the Act that would apply has been identified. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Key to redaction codes:

- section 9(2)(a), to protect the privacy of individuals;
- section 9(2)(f)(iv), to maintain the confidentiality of advice tendered by or to Ministers and officials;
- section 9(2)(g)(i), to maintain the effective conduct of public affairs through the free and frank expression of opinion; and
- section 9(2)(h), to maintain legal professional privilege.



Aide-Mémoire

PAE ORA (HEALTHY FUTURES) BILL: APPROVAL FOR INTRODUCTION AT CABINET

To	Minister of Health, Hon Andrew Little	Report No	DPMC-2021/22-588
From	Stephen McKernan, Director Health and Disability Review Transition Unit	Date	15/10/2021

Purpose

1. This aide-mémoire provides you with a summary of your paper titled "*Pae Ora (Healthy Futures) Bill: Approval for introduction*", which is to be considered at Cabinet on Monday 18 October 2021. It also provides you with:
 - a) suggested talking points to support you at Cabinet (**Attachment A**);
 - b) talking points for the stakeholder event you intend to host on Wednesday 20 October (**Attachment B**);
 - c) the Legislative Statement for the Bill, for you to forward to the Leader of the House (**Attachment C**);
 - d) a response to the letter you received from Hon Willie Jackson on provisions of the Bill relating to hauora Māori (**Attachment D**); and
 - e) a summary of headline Q&A on the Bill and related reforms, to support stakeholder and media engagement following introduction (**Attachment E**).

Cabinet paper

Purpose of the paper

2. You are seeking Cabinet's approval to introduce the *Pae Ora (Healthy Futures) Bill*. The paper highlights and reminds Cabinet of its previous decisions and the key features and provisions of the Bill as well as seeking a small number of additional policy decisions.

Key features of the Bill

3. In particular, the paper highlights that the Bill:

- a. disestablishes the district health board structure and the Health Promotion Agency;
 - b. establishes and sets out the functions for new health entities Health New Zealand (HNZ) and the Māori Health Authority (MHA);
 - c. formally recognises and sets out expectations for iwi-Māori partnership boards;
 - d. requires Health New Zealand to establish localities for the purpose of commissioning health services and engaging with communities;
 - e. establishes a single set of health system principles to guide all actions and decisions made in the system;
 - f. gives effect to the principles identified by the Waitangi Tribunal in its Health Services Outcomes (Wai 2575) Inquiry via:
 - i. a set of specific provisions (such as the establishment and functions of the Māori Health Authority), set out in a descriptive Treaty provision; and
 - ii. the incorporation of key concepts from the Wai 2575 inquiry into the health system principles;
 - g. requires the Minister to establish a Hauora Māori Advisory Committee for the purpose of advising on the exercise of Ministerial powers in relation to the MHA;
 - h. re-establishes existing entities (Pharmac, the Health Quality and Safety Commission, and the New Zealand Blood and Organ Service);
 - i. strengthens the role of the Ministry of Health and the establishment of the Public Health Agency as a business unit within the Ministry; and
 - j. requires the Minister to establish an expert advisory committee on public health, and the continuation of the National Ethics Committee.
4. The paper also highlights that the Bill provides a framework of new strategic, accountability, and monitoring documents, which are the Government Policy Statement, national health strategies (for New Zealand, hauora Māori, Pacific peoples, and disability health), the New Zealand Health Plan, locality plans, the New Zealand Health Charter and the Code of Consumer Participation. It also provides for a continuation of the existing New Zealand Disability Strategy.

Outstanding policy decisions

5. The paper seeks policy decisions on three outstanding issues that are likely to attract specific comment and debate during the Parliamentary process:
 - a. the application and legal weighting for the health system principles;
 - b. the specific reference to “opportunities for Māori to exercise decision-making authority on matters of importance to Māori”; and
 - c. the proposed reference to rangatiratanga in the descriptive Treaty clause.

Application and legal weighting of the health system principles

6. The paper sets out the arguments for and against various legal weightings, emphasising that the weighting chosen needs to provide a substantial impact for the principles without over-prescribing or determining the actions and decisions of health entities in particular circumstances.
7. The paper proposes that the weighting of ‘*be guided by*’ is the most appropriate weighting for introduction of the Bill, as it ensures the principles must be given substantive weight, but could still be outweighed by other legitimate factors in particular circumstances. It also notes that health entities must be guided by the principles:
 - a. as far as reasonably practicable, having regard to all the circumstances, including any resource constraints; and
 - b. to the extent applicable to each entity and its functions.
8. The paper also seeks approval for the principles to be applied to the Ministry of Health, but not to the Minister.

Māori decision-making authority

9. The paper highlights a key principle that “the health system should provide opportunities for Māori to exercise decision-making authority on matters of importance to Māori”. This principle is an important demonstration of the Crown’s commitment to incorporate the Treaty principle of partnership, and meaningfully provide for the exercise of rangatiratanga in the health system. It wraps around the specific provisions for Maori interests (such as the establishment and functions of the Māori Health Authority and iwi-Māori partnership boards), by placing a wider obligation to engage Māori in decision-making at all levels of the system.
10. The paper highlights that the principle is intended to provide for the possibility that some functions or decisions in the health system (outside those prescribed in specific provisions) may warrant joint or delegated decision-making, but proposes that the principle must be applied in a way that has regard to both —
 - a. the strength or nature of Māori interest in a matter; and
 - b. the interests of other health consumers or the Crown in the matter.

s9(2)(f)(iv), s9(2)(g)(i)

[Redacted text block]

Talking points (including other potential matters of interest)

12. Suggested talking points on these outstanding policy issues are provided in **Attachment A**.
13. These talking points also cover issues that have been decided by Cabinet, but which may still generate discussion amongst your colleagues, including the points the Minister of Māori Development has raised with you about the broader approach to the Treaty clause, the accountability of the Māori Health Authority, and representation of Maori communities of interest on iwi-Māori partnership boards.
14. The talking points emphasise that the strength and nature of views on these issues will become clearer following the receipt of submissions, and suggest that Cabinet should defer adopting definite public positions until that time.

Next steps

15. If approved, the Bill would be introduced on Wednesday 20 October.
16. If introduction is approved, you plan to host an online stakeholder event with Minister Henare on the same day as introduction for which talking points are provided (see talking points at **Attachment B**).
17. The Bill will have its first reading on Tuesday 26 October. During the first reading you will make a special motion in the House for the Bill to be referred to a special select committee made up of members from the Health Committee, and the Māori Affairs Committee. We will provide you with supporting materials for the House.

pp:



Stephen McKernan
Director, Transition Unit
Department of the Prime Minister and Cabinet

Date: 15 / 10 / 2021

ATTACHMENT A

Suggested talking points for Cabinet

Case for reform

- As a government we have committed to undertake a long-term programme of reform to build a stronger health and disability system that delivers for all, drawing on the recommendations of the Health and Disability System Review.
- After announcing the intended reforms to the health system in April of this year, I seek Cabinet's approval to introduce legislation that will make the fundamental changes needed to reform New Zealand's public health system, and put equity at the heart of all decision-making.
- It is unacceptable that where a person lives, or their ethnicity, determines the quality of care that they are able to access. By creating a single national health system that serves the needs and aspirations of all at a local level, we can work to achieve pae ora – healthy futures for all.

Likely points of interest once the Bill is announced

- We've seen public comment and I've received correspondence about several issues we can expect to come up at select committee. In particular, concerns about special treatment for Māori, over-centralisation, and why we're doing this during the pandemic.
- On creating a two-tier health system: my response to these has been and will continue to be that we've got a two-tier system now, and this reform is intended to fix it and create a single system for all New Zealanders.
- On centralisation: we *are* centralising some things that have previously been decided by district health boards, and we've seen inconsistent availability of services across the country. But a large part of this reform is making sure that people can have a genuine say in how the health system works for them. Through locality plans, local views and preferences can be responded to in a flexible way that suits the needs of the people in a particular locality.
- On why change during a pandemic: the case for change is clear and urgent. The problems are evident and will only worsen. We have already put off change for too long. Structural change will take place mid next year, by which time we expect sufficient vaccine coverage that there will be a minimal impact on the health system.

Provision for Treaty obligations/Māori health outcomes

- As noted in the paper, I expect the legislative provisions relating to Treaty obligations and hauora Māori outcomes to attract significant feedback, including:
 - the 'descriptive' approach taken to the 'Treaty clause' (and why this is different from the 'operative' approach in the RMA reforms);
 - the legal weighting and content of the health system principles (which aim to incorporate key concepts from the Wai 2575 principles) – some submitters

(particularly Māori) are likely to view this weighting as too low, while other health entities may not wish to see it increased;

- the proposed reference to rangatiratanga in the Treaty provision;
 - the organisational form of the Māori Health Authority and its accountability to Māori, particularly the role of the Hauora Māori Advisory Committee and appointments to the board of the Authority;
 - the specific functions/powers to be exercised by iwi-Māori partnership boards (we have chosen to omit these from the Bill to allow the interim Māori Health Authority to further develop the thinking on this question); and
 - how the IMPBs will achieve a broad representation of Māori interests at the local level (there may be some interest by urban Māori health authorities and Māori health providers as to how they are likely to be represented).
- The strength and nature of views on these issues will become clearer following the receipt of submissions, and I recommend we defer adopting definite public positions until that time.
 - In the short term, I have prepared communications points on these issues, and propose to emphasise that:
 - there is no one-size fits all approach to Treaty clauses s9(2)(f)(iv)
 - the Treaty clause has been designed to reflect the unique context of the health system, and the fact that substantive involvement by the Courts (which would occur under a strong operative clause) is not likely to be the most appropriate way of making complex social value trade-offs in the provision of health services;
 - the package of specific provisions in the Bill as a whole (relating to the Health system principles, the Māori Health Authority, iwi-Māori partnership boards) are intended to 'give effect to' the Treaty principles in a clear, practical way;
 - we remain open minded about the content of and legal weighting for the health system principles, but any weighting needs to provide a substantial impact for the principles without over-prescribing or determining the actions and decisions of health entities in particular circumstances;
 - striking a better balance between kāwanatanga and rangatiratanga has been an established part of Government policy processes for decades now, s9(2)(f)(iv)
 - the organisational form of the MHA aims to balance the accountability of the Authority to both Māori (for its representation of Māori needs and aspirations) and Parliament for its holding of significant public funds;
 - we have asked the interim Māori Health Authority to lead a process with existing boards and the wider Māori community to advise on the powers and functions that boards should have in the new system, and that we are prepared to make changes to the Bill at Select Committee to reflect this. I will

also ask the interim MHA to consider any representation issues raised by Māori communities.

Media and proactive release

- I intend to release the Cabinet paper in full.
- I will host a virtual stakeholder event on Wednesday 20 October (the day of introduction), with the Associate Ministers of Health.

Next steps

- If approved, I plan for the Bill to be introduced on Wednesday 20 October and have its first reading on Tuesday 26 October.
- During the first reading I will make a special motion in the House for the Bill to be referred to a special select committee made up of members from the Health Committee, and the Māori Affairs Committee.

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