



## 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.



# Briefing

## HEALTH REFORMS: REMAINING TRANSITIONAL AND CONSEQUENTIAL PROVISIONS FOR DECISION

To: Hon Andrew Little, Minister of Health

Date	10/09/2021	Priority	Routine
Deadline	14/09/2021	Briefing Number	DPMC-2021/22-307

### Purpose

This briefing seeks decisions on outstanding matters to be drafted in the Health System Reform Bill (the Bill) that include provisions to be retained from the New Zealand Public Health and Disability Act 2000, transitional provisions, and consequential amendments to other pieces of legislation.

It partners a parallel joint paper to you and the Minister for Public Service relating to elements of the Crown Entities Act 2004 and Public Service Act 2020 to be applied to the Māori Health Authority [DPMC-2021/22-308 refers].

### Recommendations

- Note** that as part of developing new health system legislation, it is worthwhile replicating a series of minor and technical provisions from existing health legislation, and there are some transnational, savings, and consequential provisions required to ensure that the health system runs smoothly.
- Note** that the Social Wellbeing Committee has authorised you to issue drafting instructions to the Parliamentary Counsel Office on other policy matters that arise during the development of the Bill including provisions from the New Zealand Public Health and Disability Act 2000 that are to be retained, and consequential amendments to other legislation, such as the Health Sector (Transfers) Act 1993 [SWC-21-MIN-0107 refers].
- Agree** that the following provisions from the New Zealand Public Health and Disability Act should be replicated in the Bill: **YES/NO**
  - certain provisions relating to non-DHB Crown entities;
  - alcohol functions and the alcohol levy;

- c. certain regulation-making powers; and
  - d. disability savings provisions.
4. **Agree** that in relation to the alcohol functions and alcohol levy at 3(b), the functions and levy should pass to the Public Health Agency **YES/NO**
5. **Agree** that the following provisions from the New Zealand Public Health and Disability Act should not be replicated in the Bill: **YES/NO**
- a. general provisions relating to DHBs and outdated administrative provisions;
  - b. optional Ministerial Committees;
  - c. inquiries; and
  - d. arrangements relating to consistency of payment notices.
6. **Agree** that the following consequential amendments and transitional provisions should be drafted in the Bill: **YES/NO**
- a. transitional arrangements relating to the transfer of employees; and
  - b. consequential amendments to the Health Sector (Transfers) Act 1993 to include:
    - i. the Māori Health Authority and Health New Zealand as publicly-owned health and disability organisations; and
    - ii. recent provisions from the Income Tax Act 2007.
7. **Agree** to discuss the contents of this briefing at the regular policy officials' meeting on Tuesday 14 September or at your request. **YES/NO**



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Stephen McKernan  
Director  
**Health Transition Unit**

10 / 09 / 2021

Hon Minister Andrew Little  
**Minister of Health**

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**Contact for telephone discussion if required:**

Name	Position	Telephone	1st contact
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**Minister's office comments:**

- Noted
- Seen
- Approved
- Needs change
- Withdrawn
- Not seen by Minister
- Overtaken by events
- Referred to

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# HEALTH REFORMS: REMAINING TRANSITIONAL AND CONSEQUENTIAL PROVISIONS FOR DECISION

## Purpose

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1. This briefing seeks decisions on outstanding matters to be drafted in the Health System Reform Bill (the Bill) that include provisions to be retained from the New Zealand Public Health and Disability Act 2000, transitional provisions, and consequential amendments to other pieces of legislation.

## Context

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2. In March 2021, Cabinet agreed to significant reforms of New Zealand's publicly funded health system and invited you to issue instructions to the Parliamentary Counsel Office in order to give effect to the decisions, which included the repeal of the New Zealand Public Health and Disability Act 2000 (the NZPHD) [CAB-21-MIN-0092 refers].
3. Since then, the new structures have been drafted into the Bill, which is nearing completion. However, there are some outstanding policy matters to be included in the drafting before the Bill is ready for Cabinet approval.
4. On 7 July 2021, the Cabinet Social Wellbeing Committee authorised you to issue drafting instructions to the Parliamentary Counsel Office on other policy matters that arise during the development of the Bill. Such matters may include provisions from the NZPHD that are to be retained, and consequential amendments to other legislation, such as the Health Sector (Transfers) Act 1993 (the HSTA) [SWC-21-MIN-0107 refers].
5. To reflect your discussions with officials, we have prepared the following briefing that seeks your decisions on the following matters for drafting in the Bill:
  - a. provisions that should be replicated from the NZPHD;
  - b. provisions that should not to be replicated from the NZPHD; and
  - c. other transitional and consequential matters.

## Key transitional, savings, and other provisions in the Bill

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### Provisions that should be replicated from the NZPHD

#### *General replication of provisions relating to non-DHB Crown entities*

6. In the paper titled "*Health and Disability System Reform – Legislating for the reforms*", you advised Cabinet of your intention to replicate provisions in the NZPHD that apply to non-DHB health Crown entities (specifically, Pharmac, the Health Quality and Safety Commission, and the New Zealand Blood and Organ Service). These provisions have been largely replicated without amendment. Provisions related to the Health Quality and Safety Commission have been modified to reflect decisions about the Commission's role with respect to the consumer voice.

*Alcohol functions and alcohol levy*

7. Following your recent direction in discussion with officials on earlier advice [DPMC-2021/22-263 refers], we propose that provisions relating to the Health Promotion Agency's alcohol functions and levy be amended to place the alcohol functions and the levy with the Public Health Agency. As a business unit of the Ministry of Health, this will mean that accountabilities will sit formally with the Ministry, although the functions can be vested in the Agency.

*Regulation-making powers*

8. We propose to carry over powers from the NZPHD that relate to the functions of the new health system structure. Some of these existing powers were given effect through Ministerial direction, while others were regulation-making powers. Some will need to be modified to reflect the new arrangements. In addition to powers previously advised such as the power to amend the list of Iwi-Māori Partnership Boards. We intend for regulation-making powers to enable the government to prescribe:
  - a. who is eligible for publicly funded health services (in order to replicate the existing Eligibility Direction under regulations in the Bill);
  - b. that certain services must be provided, with any specified conditions such as co-payments (not to be applied to services for specific individuals) – this would enable relevant elements of the existing Service Coverage Document to be continued under regulations;
  - c. procedures to manage disputes between health statutory entities, and between those entities and iwi-Māori partnership boards;
  - d. requirements for accountability documents and business processes; and
  - e. requirements for the New Zealand Health Plan.
9. We also intend to replicate the regulation-making powers relating to health entitlement cards (such as the community services card).

*The New Zealand Disability Strategy and the National Ethics Advisory Committee*

10. As you have discussed with officials, the outcome of the review of disability support services will be known by October, meaning we will be unable to incorporate any provisions required to respond to that review in time for the scheduled introduction of the Bill in early October. However, we understand it is unlikely to have significant legislative implications for our work. We anticipate new legislation will be made in due course to give effect to decisions about disability support services and any necessary consequential amendments to health legislation will be made as part of that work.
11. There are two provisions to be carried over from the NZPHD relating to disability. There is a current New Zealand Disability Strategy made as required by that Act. We will include a savings provision in the Bill that will effectively ensure the strategy will continue as if the empowering provision was still in force. This will ensure that a disability strategy will continue to be in effect while new legislative arrangements are made as part of the review.
12. The National Ethics Advisory Committee, which will be continued, is formally the national advisory committee on health and *disability support services* ethics. We consider that it

should be maintained in the Bill in its current state, to be amended by legislation giving effect to new disability support services arrangements if appropriate.

#### *Minor provisions*

13. There are two minor provisions to be carried over from the NZPHD. Section 87 provides that the validity of any contract entered into or obligation assumed by the Crown or a government health entity is not affected by the failure of the Crown or the entity to comply with a legislative or regulatory provision. Clause 43 of Schedule 3 of the Act provides that a DHB may not sell, mortgage or otherwise dispose of land without the Minister's approval. We consider both these provisions should be replicated in the Bill in relation to Health New Zealand.

#### **Provisions that should not be replicated from the NZPHD**

14. There are a number of provisions in the NZPHD that we recommend are not carried forward into the Bill as, while they deal with pertinent subject matter, the overall statute book and general practice have evolved since the NZPHD was passed and these specific provisions are no longer necessary.

#### *General provisions relating to DHBs and outdated administrative provisions*

15. Naturally, due to their planned disestablishment, all general provisions relating to DHBs have not been replicated in the Bill. There are also several administrative provisions that reflect the NZPHD was developed before the Crown Entities Act 2004, which have also not been replicated. These include for example, provisions setting out rules for how Boards may delegate authority, and how a delegate may exercise authority. These issues are now provided for in the Crown Entities Act, and do not need to be separately legislated for.

#### *Optional Ministerial Committees*

16. The NZPHD states that the Minister may establish the National Advisory Committee on Health and Disability (National Health Committee) or a Health Workforce Advisory Committee, and the relevant provisions set out what the Committees' functions are.
17. We recommend that these provisions are not replicated in the Bill. This is because they do not confer any additional power on the Minister - who already has the general power of any minister to establish ministerial advisory committees. The NZPHD provisions in fact restrict this ability by prescribing how a Committee might achieve its purpose in legislation.

#### *Inquiries*

18. We recommend that the inquiries provisions in the NZPHD are not replicated in the Bill. Since the NZPHD, the Inquiries Act 2013 has come into effect and provides for the powers and procedures related to public inquiries. To date, the inquiries provisions in the NZPHD are yet to be used and we consider the Inquiries Act provisions will sufficiently serve this purpose should they be required.

#### *Arrangements relating to consistency of payment notices*

19. We recommend the provision requiring Ministerial approval of new or varied payment notices from DHBs is not replicated in the Bill. The new legislation will retain the power to issue notices providing for the terms and conditions of the purchase of a good or service (section 88 notices), exercisable by the Māori Health Authority, Health New Zealand, or

the Crown. However, the NZPHD states that amendment or revocation of a notice requires Ministerial agreement and must be published in the Gazette.

20. This provision was intended to ensure national consistency between DHBs and is unnecessary in the new health system with a single operational agency buying services of any particular kind. While the Māori Health Authority and Health New Zealand may purchase similar services, the two entities have a sufficiently different focus that the need for consistency would not arise.

## **Other transitional and consequential matters**

### *Employment relations and the transfer of employees*

21. Advice on employment relations matters, including any legislative provisions needed, will come to you in the week beginning 13 September 2021. This advice has been delayed by the immediate focus on workforce matters resulting from the COVID-19 outbreak. The advice will cover a range of employment relations matters: the key issue is the replacement for the collective bargaining provisions in the NZPHD, and proposals to improve the current consultation requirements.
22. This is in addition to the initial advice you have already received on the employment relations system and settings on 19 August 2021 [DPMC-2021/22-196 refers]. The forthcoming paper will progress certain elements of that previous advice. We do not anticipate that significant legislative elements will be required to give effect to the proposals.
23. The Bill also contains transitional provisions relating to the transfer of employees to the new statutory entities. We are currently working through these provisions with the Parliamentary Counsel Office to ensure that the Bill reflects more recent practice that has developed since the employee transfer provisions in the Health Sector (Transfers) Act 1993 were passed.

### *Application of the Crown Entities Act 2004 to the Māori Health Authority*

24. We have been working with the Public Service Commission on what provisions of the Crown Entities Act will apply to the Māori Health Authority. You and the Minister for the Public Service will receive separate advice on this shortly through a joint briefing from the Public Service Commission and the Transition Unit.

### *Consequential amendments to other enactments*

25. As you are aware, the Bill makes several consequential amendments to the Health Act 1956 in order to give effect to decisions about the Public Health Agency. Cabinet will consider these decisions with the paper titled "*Health and Disability System Review: Further Policy Decisions*".
26. The Bill makes the following consequential amendments to the Health Sector (Transfers) Act:
  - a. replaces DHBs and the Health Promotion Agency in the definition of publicly-owned health and disability organisation with the Māori Health Authority and Health New Zealand in order for the transfer provisions to apply to the new statutory entities; and

- b. updates the provision regarding taxation consequences of transferring assets and liabilities to include more recent provisions of the Income Tax Act 2007 so that transfers do not incur any unintended tax liability.

## **Next steps**

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27. Once we receive your decisions, we will issue drafting instructions to the Parliamentary Counsel Office.
28. We will be available to discuss the contents of this briefing at the regular policy officials' meeting on Tuesday 14 September 2021, or at your request.

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