



Aotearoa New Zealand Submission to the Intergovernmental Negotiating Body April 2022

Aotearoa New Zealand is pleased to support the work of the Intergovernmental Negotiating Body (INB) to strengthen pandemic prevention, preparedness and response (PPPR), as established at the Special Session of the World Health Assembly from 29 November – 1 December 2021.

The devastating effects of COVID-19 have made it clear that the international system to respond to pandemic risks is underdeveloped. While the international system has many sound elements, such as those established under the International Health Regulations (IHR), the existing rules are not fit for purpose and lack the coherence and status that they need to address the common threat posed by pathogens of pandemic potential.

Aotearoa New Zealand is committed to playing an active role in global efforts to strengthen the international system around PPPR and improve our global health security. The system improvements should be coherent and build on existing elements that already work well. For this reason we support a new legally binding instrument (or an instrument that contains legal binding obligations), alongside improvements to existing elements such as the IHR.

Aotearoa New Zealand has outlined below some general principles, rights and obligations, as well as some specific provisions and institutional elements we would like to see reflected in the negotiation of a World Health Organization (WHO) convention, agreement or other international instrument (Instrument). These have been framed in terms of objectives and elements for inclusion. They are not intended to be an exhaustive list, and do not cover all the elements that would need to be covered in the Instrument.

A - General Principles

Objective: To set out general principles to be applied or taken into account by all States and other relevant participants engaged in PPPR.

Elements:

- **Equity:** the principle that equity should be at the centre of PPPR, both at the national level *within* States and at the international level *between* States. The purpose is to achieve equitable health and societal outcomes for all, which requires specific measures to protect the most vulnerable individuals and communities, including depending on the context: elderly, people with disabilities, people with underlying health conditions, women, children, indigenous peoples, LGBTQIA+ communities, migrant and refugee communities, and front line workers.

- **Prevention of harm:** the principle that in PPPR, States should exercise due diligence in the prevention of harm both to their own populations and those of other States, and due regard for the interests and rights of other States and their populations.
- **Transparency:** the principle that States and other relevant participants in PPPR should promote transparency and should not impede the free flow of information about emerging pathogens and other health risks. In keeping with the precautionary approach, lack of scientific certainty should not be used as a reason for withholding information. This principle also recognises multi-sectoral and inter-sectoral transparency is necessary to improve health and well-being for all.
- **Regulatory coherence in response measures:** the principle that there should be a rational relationship between the methods or measures chosen to respond to health risks and the objective that the measure is intended to achieve. This requires evidence-based decision-making and effective coordination between relevant government agencies at the domestic level and relevant intergovernmental organisation and other actors at the international level.
- **Precaution:** the principle that it is legitimate to take precautionary measures when the science and outcomes are uncertain to minimise or prevent the spread of infection, and keep more options open for the future.

B - General Rights and Obligations

1) Obligation to prevent harm

Objective: To encapsulate a range of existing obligations on States from global health law, human rights law and general international law in the context of PPPR, and to articulate this as a general rule to prevent harm. This obligation should operate both as a general rule but also be given effect to through the more specific provisions of the Instrument.

Elements:

A “One Health” prevention obligation to monitor the animal, health and environment interface as it relates to pathogens with pandemic potential including:

- Improving domestic practices to optimise the health of the environmental, animal and human health domains, including supporting research to this end.
- Upstream surveillance to identify, mitigate, and prevent potential spillover events.
- Better coordination of agencies responsible for human, animal and environmental health at the national and international level.

- Whole-of-government and whole-of-society approaches.

The obligation to take measures to protect populations from pandemic health risks as part of States' responsibilities for the health of their peoples and human rights to the highest attainable standard.

The obligation to have due regard for the interests of other States and their populations.

2) Right of assistance

Objective: To recognise all States' common interest in, and shared responsibility for, an effective response to pandemic health risks by providing a right of assistance to affected States in certain circumstances. This right is the corollary of the general obligation to prevent harm (above) and should operate as a general right, but also be given effect to through the more specific provisions of the Instrument. This is important to encourage the ongoing, routine and rapid reporting of information and ensure that States are not penalised for providing such information.

Elements:

- Affected States which lack the capacity to adequately respond to pandemic health risks and outbreaks have a right of assistance from the international community.
- Rationale – "No one is safe until all are safe".
- Threshold for triggering the right – events that are likely to lead to a PHEIC and an affected State considers it lacks capacity to adequately respond and meet its obligations.
- Links to parts of the Instrument that deal with development and equitable access to countermeasures.
- Links to parts of the Instrument dealing with capacity building for general implementation of obligations and access to finance for this purpose.

C - Specific Provisions

1) Laboratory Standards and Accreditation

Objectives:

- To ensure that laboratories handling pathogens and other samples of pandemic potential do so safely and in line with international best practice.

- To encourage compliance and transparency, accreditation and audit of laboratories should occur in line with international best practice, with reporting obligations to the WHO.

Elements:

- A mechanism for the creation of common global guidelines for laboratories handling pathogens and other samples of pandemic potential.
- An obligation for States to ensure that domestic laboratories handling pathogens and other samples of pandemic potential follow common global guidelines, including a mechanism for the accreditation and audit of laboratories, with annual reporting to the WHO.
- Information sharing and capacity building between laboratories should be encouraged to aid compliance.

2) Whole-of-Government and Whole-of-Society Pandemic Plans

Objective: Strengthen requirements for States to have realistic, fully-funded, and exercised whole-of-government and whole-of-society pandemic plans, as part of overall emergency planning.

Elements:

- An obligation for States to create, test, regularly adapt and fund pandemic plans which encompass whole-of-government and whole-of-society responses during a pandemic. Plans should be fit for purpose and reflect practical capabilities of States to respond to pandemics.
- Plans to include a whole of government National Focal point and a national authority responsible for overall PPPR.
- To ensure transparency and enable rapid responses to be developed, the obligation should also extend to reporting to the WHO when States trigger a pandemic plan.
- Regional exercises to test core public health capacities, communication channels, and interoperability of border controls and technologies could also be considered.

3) Pathogen Sharing

Objective: To ensure routine, rapid and safe sharing and availability of pathogens, specimens and genetic sequence information (GSI) to support PPPR. This includes the detection and characterisation of new and emerging threats to global health and

support for the development of and equitable access to countermeasures in the shortest possible time.

Elements:

- An obligation or rule to ensure the routine, rapid and ongoing sharing of pathogens, specimens, GSI and associated material for the benefit of global health outcomes.
- States required to provide such material to a specialised agency or body within the WHO (which could be modelled on the new BioHub or the current influenza sharing facility), with specific rules around further dissemination to States or other private/public bodies involved in the identification and development of countermeasures.
- This could be seen as a specialised application of the Nagoya Protocol principles to pandemic health risks, under which the benefits being shared are the global health benefits and the eventual development of countermeasures (whether preventative, therapeutic or risk reduction). If considered necessary, this part of the Pandemic Instrument, and any implementing arrangements, could be a Specialist International Instrument under the Nagoya Protocol.
- Recognition that existing IHR requirements and current informal sharing practices can continue and are not impeded.
- Links to sections of the Instrument that address rapid, universal and equitable access to diagnostics, vaccines and therapeutics as well as parts of the Instrument dealing with capacity building and scientific exchange.
- Decisions will need to be taken about how much detail to cover in the Instrument and how much to develop in subsidiary implementing arrangements.

4) Equitable Access to Countermeasures

Objective: To provide for development of, and equitable access to, countermeasures in the shortest possible time, to ensure equitable health outcomes for all (including the protection of those most in need and most vulnerable), to avoid the prolongation of health crises.

Elements:

- Strong principles on equitable access to medical and risk reduction countermeasures. Links to the general right of affected States to assistance.
- A permanent end-to-end mechanism global for the development, and effective and equitable distribution, of vaccines, therapeutics, diagnostics and other medical supplies.

- The mechanism could be modelled on ACT-A and COVAX and have the ability to contract for countermeasures on behalf of low-income and other eligible States.
- The mechanism needs to be able to access immediate funding when required, either through advance commitments by States or pre-negotiated access to a multilateral fund.

5) Supply Chain Resilience

Objective: To ensure that export restrictions and other measures taken by States during pandemics that impact on supply chains do not impede equitable access to countermeasures and other essential goods.

Elements:

- Recognition of the necessity of keeping global markets open, and supply chains working, to make available essential goods and services needed to respond to pandemics.
- Emergency trade measures to respond to pandemics be used only when necessary and should be targeted, proportionate, temporary, reflect the need to protect the most vulnerable, ensure equity, not create unnecessary barriers to trade or disruption to supply chains and be consistent with existing rules established under the WTO. Such measures should be notified to the WTO and WHO.
- Export restrictions only be used with the utmost restraint and should not affect shipments of essential countermeasures and material necessary to support humanitarian and equitable access.

D) Institutional Provisions

1) Funding

Objective: To address the specific funding needs connected with strengthening PPPR capacity and effective implementation of the Instrument through a direct connection with PPPR funding mechanisms that have been, or are in the process of being, established.

Elements:

- Recognising ongoing discussions in other forums to address challenges related to financing PPPR, the Instrument should utilise PPPR financing mechanisms that

have been, or are in the process of being, established to enable States to implement the new commitments they have assumed under the Instrument.

- The Instrument should also provide a “normative anchor” for these PPPR funding mechanisms.
- The institutions established under the Instrument should have the capacity to provide “needs assessments” to inform and facilitate funding requests from States to PPPR funding mechanisms.

2) Formal Review Process of Implementation

Objective: To encourage and assist States’ full implementation of the Instrument (and other elements of the Pandemic system such as the IHR) through a formal review process which is linked to capacity building and assistance.

Elements:

- A formal review process for implementation of pandemic system commitments and State reporting on implementation.
- Recommendations from the review process to be linked to capacity building and assistance.

There are different ways to achieve this objective. One option would be a Universal Periodic Health Review process, similar to that operating under international human rights Instruments (building on the WHO Universal Health Preparedness Review currently being trialled). Option two would be a facilitative compliance committee, similar to that operating under the Paris Agreement on Climate Change.

3) Institutions

Objective: To enable regular dialogue and ongoing collaborative work under the framework of the Instrument, and to ensure sufficient ongoing political level engagement in PPPR.

Elements:

- A regular Conference of the Parties with responsibility for monitoring progress on PPPR; developing frameworks, action plans and implementing arrangements; and the ability to make adjustments the rules and system in response to reviews.
- The institutional arrangements need to have sufficient convening power to attract attendance when necessary from high-level political actors, as well as the capacity to lead and guide more operational and technical work.

- Consistent with the “One Health” approach and the other principles underlying the Instrument, the institutions need to be provide meaningful participation from the full range of other intergovernmental organisations and civic society actors encompassing the whole-of-government and whole-of-society approach.
- The institutional provisions could also include an independent expert scientific group with powers to request information, investigate emerging risks and make recommendations.

PROACTIVELY RELEASED