

Delegation to Wellington

The UN and WHO Pandemic Treaties

2 November 2023

Human Rights Commissioner
PO Box 10424
Wellington

By email infoline@hrc.co.nz
paul.hunt@hrc.co.nz

Attention: Hon Paul Hunt

Dear Hon Mr Hunt

United Nations and World Health Organisation Pandemic Treaties and their effect on Human Rights

1. We write as a group of concerned New Zealanders. We raise with you concerns we have about four treaties/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. These Treaties, if accepted by New Zealand, will mean we are bound without reservation to comply with and implement significant obligations, responsibilities and incur substantial costs including the requirement to significantly review, change and implement domestic legislation in accordance with the new documents.
3. The four Treaty documents are at various stages of completion, and one has already been adopted at the Seventy-fourth World Health Assembly (**WHA**) held May 2022. This requires express rejection by New Zealand no later than **27 November 2023** otherwise acceptance is by acquiescence and the amendments become binding on New Zealand.
4. **The four Treaties are:**
 - 4.1 **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 [22 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 WHO CA+ (paragraph OP44).

The WHO's proposed amendments to the 2005 International Health Regulations (IHRAs) - are in two parts (4.2 and 4.3):

4.2 **Article 59 IHRAs** - This Treaty proposes reducing the timing for rejection or implementation for 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 be 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 further on the status and effects of these proposed Article 59 IHRAs under their own heading below.

4.3 **307 IHRAs** are being worked on by the IHR Working Group at present. The 307 IHRAs propose significant changes to the 2005 IHRs including being legally binding in nature (Article 1) and requiring significant changes to our domestic legislation Articles 2 (potential impact to health), 3 (removal of individual human rights), 4 (establishment of National Competent Authority).

Pursuant to Article 55 of the IHRs, the text of any amendments is to be provided at least four months before the Health Assembly at which it is proposed for consideration. That is, the 307 IHRAs are to be submitted to the Director General of the WHO by mid-January 2024 for anticipated adoption at the Seventy-seventh WHA at the end of May 2024 as per the UN PPPR Manifesto (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.

4.4 The WHO's drafting of an entirely new **WHO CA+** is **currently** being worked on by the Intergovernmental Negotiating Body. The WHO CA+ sets out significant new requirements under what is effectively a trade agreement for pharmaceutical products and medical and surveillance technology. New requirements include member states implement new legislation to indemnify pharmaceutical companies and limit their liability with respect to vaccine injuries as (Article 15). In addition Article 15 requires nation states to establish "no-fault vaccine injury compensation scheme(s)". The WHO CA+ is also anticipated to be adopted at the Seventy-seventh WHA at the end of May 2024 as per the UN PPPR Manifesto (OP44).

5. **Article 59 IHRAs – future timeframes drastically reduced unless the Article 59 IHRAs are expressly rejected**

Current status of the Article 59 IHRAs:

An Official Information Act 1982 request 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 is only considering 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 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 4.3 above).

Why we are concerned with the Article 59 IHRAs:

While the number of changes in the Article 59 IHRAs are small in number, their practical impacts 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. The significant limitations on timeframes under the Article 59 IHRAs will constrain the time available to properly consider, reject and/or implement (at least) future IHRAs. The shortened timeline 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 NZ 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 within a similar timeline, New Zealand needs to consider in parallel the WHO CA+ and its implications.

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.

6. The Treaties and the HRC

We seek from the Human Rights Commission confirmation that you are aware of the Treaties and are considering their impact on the laws of New Zealand as well as the serious human rights implications.

The proposed Treaties undermine New Zealand Government’s long-established commitment to protect, promote and preserve traditional rights and freedoms, including but not limited to, freedoms pertaining to speech, opinion, association, and movement. It is a mystery why international bodies and institutions would derogate from human rights that are [guaranteed](#) through treaties, customary international law and other sources of international law. For example, the Treaties seek to:

- 6.1 routinise a globally interoperable system for digital ‘health certificates’ as a pre-condition for any cross border travel (307 IHRAs, Articles 18, 23, 31, 35, 36), which is likely to lead to interference with numerous human rights, among them the right to health (Article 12 of the ICESCR);
- 6.2 deny the principle of informed consent and the right to access safe and effective medical products, as well as the right not to be subjected without free consent to medical or scientific experimentation (Article 7 of the ICCPR);
- 6.3 entrench the WHO’s infodemic management activities (WHO CA+ Articles 1 and 18) interferes with, among other things, the right to freedom of expression and to receive and impart information (Article 19, ICCPR; Article 10, ECHR) and the rights to health and science (Article 15(1)(b) ICESCR);

- 6.4 deny the right to privacy and data protection concerns (Article 17 ICCPR; Article 8 ECHR) are given only scant consideration in the proposals, even though those proposals contemplate the digital sharing and surveillance of health data, including genomic data (WHO CA+ Articles 5, 6 and 12);
- 6.5 amend IHR *Article 3 Principles* as follows; *The implementation of these Regulations shall be.. removing the following words: **with full respect for the dignity, human rights and fundamental freedoms of persons;***
- 6.6 deny the **non derogation clause Article 4.2 ICCPR** which is engaged when any emergency is proclaimed including a PHEIC by WHO;
- 6.7 *Article 4.2 - No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.*

7. The Role of the Human Rights Commission

The HRC’s statutory duty is to ensure that the functions of the Commission... “to advocate and promote respect for, and an understanding and appreciation of, human rights in New Zealand society”.¹ Of those functions,² several are relevant here, including inquiring “into any matter, including any enactment or law, or any practice, or any procedure, whether governmental or non-governmental, if it appears to the Commission that the matter involves, or may involve, the infringement of human rights:”, “to report to the Prime Minister on any matter affecting human rights, including the desirability of legislative, administrative, or other action to give better protection to human rights and to ensure better compliance with standards laid down in international instruments on human rights:”, “to inquire generally into any matter, including any enactment or law, or any practice, or any procedure, whether governmental or non-governmental, if it appears to the Commission that the matter involves, or may involve, the infringement of human rights”, “to promote and monitor compliance by New Zealand with, and the reporting by New Zealand on, the implementation of international instruments on human rights ratified by New Zealand.”³

- 8. It is imperative that the Commission considers the Treaties in light of its statutory functions noted above, and that it takes action accordingly to ensure the human rights of New Zealand citizens are protected and preserved.
- 9. We encourage you to make enquiries about actively rejecting or reserving New Zealand’s position on the Article 59 IHRAs.
- 10. This letter has also been provided to the Attorney-General alongside a similar letter addressed to that office (**attached**). That letter should also be read with this letter.

1 *Human Rights Act 1993 s 5.*
 2 *Human Rights Act 1993 s 5.*
 3 *Human Rights Act 1993 s 5.*

11. 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