

Policy Measures

Current Public Health Act

New Public Health Act

Part 1: Governance and cross-cutting issues

<p>1. Anchor the public health law in clear objectives</p>	<p>Current objects are to protect and safeguard the health of people in the Cook Islands (s 2). Provides limited guidance on implementation of the Act and exercise of powers in practice.</p>	<p>A blend of broad and specific objects that align with government vision for health to guide action under the Act. Will include prevention and promotion, addressing non-communicable diseases (NCDs), and reducing health inequities.</p>
<p>1.1. Protect and promote human rights</p>	<p>No express human rights provisions.</p>	<p>Human rights principles and safeguards will be incorporated into the new Act through the objectives and decision-making processes. This will include principles and processes to ensure public health measures are necessary, proportionate and no more restrictive than required.</p>
<p>1.2. Articulate guiding principles</p>	<p>No principles guiding public health decisions.</p>	<p>The new Act will include principles based on accepted scientific and public health approaches – such as precaution, population-focus and proportionality - as well as community expectations and norms. This will guide decision-making that involves careful balancing of rights and interests.</p>
<p>2. Promote governance for public health</p>	<p>Limited governance provisions and uncertain relationship with <i>Ministry of Health Act 2013</i>.</p>	<p>The new Act will ensure that functions are distributed through the health system and guided by national leadership and direction, and also provide avenues for local government and community involvement in public health planning and activities.</p>
<p>2.1. Clarify the roles and responsibilities of key actors in public health</p>	<p>Part 2 outlines role of Secretary of Health and health inspectors and allows for appointment of the Medical Director and Port Health Officer. In practice, appointments of the latter two are not in place and other officers fill these functions.</p>	<p>The new Act will outline the role of the Minister and Secretary of Health, and authorised officers (including public health officials) and establish functions for Island Governments to contribute to public health at a local level. It will also allow for the appointment of a special public health advisor to ensure government has access to specialist public health expertise. The roles of port health officer and medical director will be performed by authorised officers and the Secretary of Health’s delegates.</p>

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2.2. Establish national public health committee	The <i>Ministry of Health Act 2013</i> allows the Minister to appoint technical, regulatory, or advisory boards or committees.	The new Act will establish the National Public Health Committee to promote public health across sectors and society, develop strategies and programmes for multi-sectoral coordination, and make recommendations to government. The Committee will be headed by the Secretary of Health and include members across government, the private sector, and community.
2.3. Empower local planning for public health	No provisions for Island Government or local-level involvement in health.	Island Governments and Te Marae Ora are to prepare five-yearly island public health plans for each island in consultation with the community. The plans will identify public health issues at a local level and strategies to address those in partnership.
3. Provide for health impact assessments	No provisions allowing health authorities to assess public health impact of actions taken outside health sector.	The Minister will be able to direct Te Marae Ora to undertake health impact assessments (HIAs) of any proposed or existing government action that may have an impact on health in the Cook Islands. HIAs are designed to support evidenced-based decision-making and will not be legally binding.
4. Strengthen compliance	Compliance and enforcement powers contained in Parts 13, 15 and 16 and spread across multiple laws, including the Ministry of Health Act. Tools available under the Public Health Act to promote compliance are limited.	The new Act will expand the compliance tools available and enable further collaboration between Te Marae Ora and compliance and enforcement agencies such as the Police. A detailed implementation strategy will train and build capacity of officials to implement their new powers.
4.1. Align compliance and enforcement powers	Compliance and enforcement powers spread across multiple laws. Relationship and powers available are not always clear.	The new Act will look to streamline and align the powers of officials with respect to public health laws as much as possible. This may require some consequential amendments to other laws to ensure alignment.
4.2. Expand available compliance tools, including use of spot fines	Compliance tools available to officials under the Public Health Act are limited and focus on serious and coercive powers such as criminal prosecution.	The new Act will provide for more intermediate measures including the use of warnings and cautions, which are also available under the Ministry of Health Act. It will also allow regulations to be made implementing 'spot fines' once systems and capacity are in place to effectively implement this.
4.3. Provide visual authority to public health officials and other authorised officers	Health inspectors are appointed under Part 2 but not required to carry any form of identification or authority.	Officers exercising compliance and enforcement powers will be required to hold visual authority – such as identification cards – to enhance accountability and community recognition of authority.

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Part 2: Health protection and communicable diseases

<p>5. Streamline and strengthen measures to manage communicable diseases</p>	<p>Dealt with in parts 9, 11 and 12, and for emergencies, part 14. Other laws also relevant, including <i>MOH IHR Regulations 2014</i> and <i>COVID-19 Act 2020</i>. Powers are mostly limited to coercive/intrusive measures – such as detention – and are difficult to apply in practice.</p>	<p>The new Act will consolidate provisions within the Public Health Act and provide Te Marae Ora with a suite of powers that will be able to be scaled-up according to the risk. This will ensure that Te Marae Ora can take the least restrictive option to effectively protect public health.</p>
<p>5.1. Outline guiding principles for managing communicable diseases</p>	<p>No guiding principles.</p>	<p>The new Act will authorise the exercise of significant powers and restrictions on personal liberties. It will contain guiding principles to help decision-makers make these complex decisions and properly balance individual and community interests.</p>
<p>5.2. Ensure appropriate procedures will be applied when imposing restrictive public health orders on individuals</p>	<p>Restrictive orders include some procedural requirement designed to ensure fairness and accountability, such as requiring a court order to continue detaining a person for more than 48 hours.</p>	<p>Additional procedural requirements will need to be complied with when restrictive public health orders are imposed, including informing a person about their rights and obligations and, where appropriate, less restrictive options (such as counselling) are attempted prior to exercising more restrictive options (such as isolation). Procedural requirements that are impractical in the Cook Islands will be removed.</p>
<p>5.3. Expand notification obligations</p>	<p>Sections 80 and 81 requires medical practitioners to notify the Medical Director if they ‘form the opinion’ that a person is infected with a notifiable disease (listed in Schedule 2).</p>	<p>Obligations to notify will now include managers/heads of pathology laboratories and other classes of health professionals if required by the Secretary of Health. Notification will be required in cases where the person being diagnosed has, <i>or may have</i>, a notifiable condition. The Secretary will also have the power to request additional information from the notifier where necessary.</p>
<p>5.4. Update list of notifiable and vaccine-preventable conditions</p>	<p>The diseases listed in Schedule 2 include communicable and non-communicable conditions and must be amended by Order in Executive Council. There is no provision for emergency listing or for the listing of suspect conditions.</p>	<p>The list of notifiable and vaccine-preventable conditions will be updated according to the International Classification of Diseases. The lists will be amended via an Order in Executive Council, but the Minister can add to the list in urgent circumstances.</p>
<p>6. Strengthen monitoring and surveillance</p>	<p>There are no formal provisions in the current Act to facilitate this.</p>	<p>The Act will require Te Marae Ora, the National Environment Service, and the Ministry of Agriculture to develop arrangements to facilitate the</p>

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		reciprocal reporting of diseases and other potential public health threats when detected from human, animal, or environmental sources.
6.1. Outline express powers for contact tracing	The current Act does not provide specific contact tracing powers.	A contact tracing framework will be developed that: <ul style="list-style-type: none"> • outlines the purpose of contact tracing, what it involves and who may undertake it; • clarifies the process; and • specifies the obligations of the persons contacted.
7. Enhance measures to promote vaccination	Part 10 deals with vaccine preventable conditions and provides for court orders for compulsory vaccination and related provisions. School principals are required to maintain pupils' vaccination records and notify the Secretary of Health in the cases of unvaccinated pupils and any suspected case of a vaccine preventable condition at the school.	The new Act will enhance current arrangements that encourage the vaccination of school-aged children. These will include provisions to maintain vaccination records and close schools in the event of an outbreak. It will also focus on measures that facilitate vaccination by strengthening, monitoring and ensuring ready availability and access to vaccines. The capacity to seek orders requiring vaccination in the event a parent/guardian refuses will be retained.
8. Update and modernize quarantine and border health measures	Quarantine arrangements are fragmented. The current Act does make provision for quarantine (Part 9) but the regulations giving effect to the <i>International Health Regulations 2005</i> are in the <i>Ministry of Health Act 2013</i> . The <i>COVID-19 Act 2020</i> also has provisions relating to quarantine.	The new Act will: <ul style="list-style-type: none"> • revise measures dealing with quarantine and border health and integrate the matters dealt with in the <i>MOH IHR Regulations 2014</i> within the Public Health Act; • will encourage cooperation between agencies operating at points of entry; • provide for contingency plans, as required by the International Health Regulations.
9. Create a comprehensive framework to manage serious incidents and emergencies	The current Act contains public health emergency provisions that are difficult to implement in practice, and were not sufficient to manage COVID-19.	The new Act will contain two separate sets of powers. One will relate to 'serious incidents', (an event with major impacts but within a local area) the other to 'emergencies' (an event with extensive, widescale and prolonged impacts). The Act will contain a suite of response powers that are scalable according to the risk and gravity of the event.
9.1. A framework to respond to serious incidents	The current Act does not provide for this.	A serious incident will be defined as an occurrence falling short of an emergency or a national disaster, but nevertheless presenting a serious risk to public health. The Secretary of Health can take whatever measures are reasonably necessary to respond to the incident including - restricting access to an area; restricting activities normally undertaken in the area;

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		providing assistance to persons affected by the incident; entering land or premises; and seizing and destroying property as is necessary
9.2. A modern public health emergency framework	The current arrangements do not deal with emergencies in a coherent or consolidated way and the existing provisions have been made more complex by the <i>COVID-19 Act 2020</i> .	The new Act will contain a public health emergency framework that draws on the lessons learned from the COVID-19 pandemic. The emergency response powers will be modernised and will operate in harmony with the general communicable disease controls, the ‘serious incidents’ powers and the <i>Disaster Risk Management Act 2007</i> . The emergency powers will also be exercised subject to guiding principles that seek to balance the rights of individuals affected by the powers with the need to protect the community.
Part 3: Environmental health and general risks to health		
10. A modern approach to public health risks	The environmental health provisions in the Public Health Act adopt a very traditional ‘issue by issue’ approach that identifies specific matters that have long been of public health concern under six separate parts in the Act (Parts 3-8) – Buildings, Water, Mosquitoes and Vectors, Waste, Human Remains, Offensive Trades and Nuisances.	Public health laws traditionally operated by providing remedies for a range of specific and well understood environmental health issues. The new Act will replace this prescriptive treatment and create a flexible approach that will ‘future-proof’ that Act and allow Te Marae Ora to respond to new and emerging threats to public health.
10.1. Adopt and outcomes-based approach	The current Act is focussed on specific requirements enforced by way of an abatement notice issued under Part 12.	The new approach to addressing public health risks will be focussed primarily on the ‘outcome’ of a person’s actions, namely whether or not that outcome presents a risk to public health.
10.2. Impose a general duty to protect public health	The current Act does not contain a general duty.	The basis of this new approach will be the creation of a general duty on all persons to protect public health, and to ‘take all <i>reasonable and practical precautions</i> necessary to avoid or minimise any resulting risk to public health. Persons in breach will be issued with a compliance notice and it will be an offence not to comply with the notice.
10.3. Enable the use of guidelines	The current Act does not provide for the use of Guidelines as proposed for the new Act.	In many cases, the risks to public health from particular activities are well understood and the Act will provide for the preparation of guidelines documents that will set out advice designed to assist persons to comply with their general duty. Guidelines will not be mandatory, but will give

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		assurance that if a person follows the guideline they will not be in breach of their general duty.
10.4. Create an offence for causing public health risks	The current Act does not contain an offence of causing a public health risk.	While risks to public health will usually be resolved by compliance orders, there may be cases where it is appropriate to prosecute the person causing the risk. The new Act will contain an offence where a person ‘causes or allow a serious or significant risk to public health.’ The penalty will be determined by the nature and impact of the risk namely whether it is ‘material’ or ‘serious’ (the terms will be defined) and a due diligence defence of, will also apply.
11. Repeal the list of offensive trades and allow licensing by regulation	These are dealt with in Part 8 and are set out in Schedule 1 of the current Act. Persons undertaking an activity must obtain an offensive trade permit, issued subject to specified conditions. The Part also establishes an offence of ‘nuisance’ and sets out a list of conditions that might amount to a nuisance. There are rarely implemented in practice.	The provisions relating to offensive trades are no longer appropriate and will be repealed. Where particular trades or activities do continue to present public health concern, they will be controlled through the general duty and where necessary through specific regulations. The prescriptive ‘nuisance’ provisions will be repealed in favour of the outcomes based general obligation
12. Streamline building standards	Part 3 seeks to regulate the ‘standard of buildings’ to safeguard the health of their users and others. It establishes broad requirements relating to the ‘adequacy’ of the sanitary, lighting, space and ventilation aspects of buildings. Dwelling houses cannot be used, sold or let unless they meet standards and are fit for human habitation. There is some overlap with the Building Code, administered by Infrastructure.	All building standards, including those of public health concern will be consolidated in the general Building Code and the Minister will be able to recommend changes to any standard that has a public health significance. Where existing structures present a risk to public health or are unfit for human habitation, the Secretary of Health can issue a compliance order under the general duty.
13. Strengthen water quality protections and clarify responsibilities	Part 4 seeks to ensure the safe use of water in reticulated supplies and public swimming places. The Secretary must issue a public health warning concerning any water source the Secretary believes is a health hazard. Proprietors of public swimming pools are required to ensure water meets any prescribed standard or is not otherwise likely to be injurious to health.	The new Act will clarify responsibilities of Te Marae Ora with respect to water quality in line with the National Water Policy 2016. The new Act will also impose a duty on the Secretary to take steps to support cooperation and shared management of water resources and will contain powers to: <ul style="list-style-type: none"> • incorporate drinking water quality guidelines and standards; • test, close or impose requirements on the use of any source of water that may present a risk to public health; • prohibit or impose standards in relation to the discharge into any water source, including wastewater;

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		<ul style="list-style-type: none"> impose standards and requirements in relation to the treatment and use of wastewater; make regulations requiring water suppliers and sewage operators to be licensed and comply with specific requirements.
14. Apply general public health risk frameworks to mosquitos and other vectors	Part 5 imposes obligations on occupiers of buildings, public places etc to remove conditions that might facilitate the breeding or harbouring of mosquitoes. Part 5 also allows regulations to be made which provide a broad range of prohibitions and requirements designed to minimise the public health threat of 'regulated vectors' (mosquitoes, and any other declared vector), though no such regulations have been made.	The new Act will repeal specific provisions dealing with mosquitoes and other vectors and manage their public health risks through the 'outcomes approach.' Persons whose actions encourage the breeding of populations, will be in breach of their general duty under the new Act and a 'clean up' notice will be issued. Guidelines can be prepared to assist people with compliance and eradication obligations.
15. Apply general public health risk frameworks to waste	Part 6 focuses on the safe management of domestic waste and allows for regulations covering waste and wastewater management (including water and sewage treatment plants). The <i>Public Health (Sewage and Wastewater Treatment and Disposal) Regulations 2014</i> provide detailed requirements relating to the construction and operation of these systems, currently applying only to Rarotonga and Aitutaki.	Where the handling, storage or accumulation of waste amounts to a public health risk it will be covered by the general duty. Waste caused by littering is better seen as an environmental issue and is dealt with under the Environment Act. Where particular types of waste, such as asbestos or clinical waste, present specific management issues or public health risks they can be subject either to regulations or a mandatory Code of Practice.
16. Apply general public health risk frameworks to human remains	Part 7 requires human remains to be disposed of 'promptly and safely.' Requirements for prompt burial or cremation are imposed and burials generally are regulated. The current Act also prevents the unauthorised removal of remains from a grave. Regulations may be made, though none have been.	The burial of human remains does not usually present a public health risk and is better regulated though other means such as planning controls in the case of locating cemeteries or marine protection laws in the case of sea burials. If there was an instance where human remains might present a risk to public health, the general duty or the communicable diseases provisions would apply.
Part 4: Health promotion		
17. Expand the scope of the Public Health Act to include health promotion	The current Act makes no reference to health promotion.	NCDs present a significant threat to the health and wellbeing of Cook Islanders. For this reason, health promotion strategies and initiatives should be an important part of public health practice, and will be supported in the new Act

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17.1. Te Marae Ora to lead action on NCDs	The current Act does not provide for this.	<p>It is proposed that the Secretary of Health will have responsibility for leading national efforts to address NCDs and their risk factors. Including;</p> <ul style="list-style-type: none"> • taking steps to develop plans and strategies to address NCDs; • convening actors across sectors to coordinate multisectoral action; • working with communities to develop and implement local strategies.
18. Allow the Secretary of Health to issue warnings regarding unhealthy products and activities	The current Act does not provide for this.	<p>The Secretary of Health will have the power to issue warning statements through the media etc. A warning statement can be issued where the Secretary believes that an activity or product ‘presents a potential risk to public health.’ This could apply to a potentially dangerous consumer product or an outbreak of food poisoning where the Secretary suspects a particular batch of food to be the source.</p>
19. Enable codes of practice addressing risk factors	The current Act does not provide for this.	<p>The Minister will be able declare a disease or a medical condition that the Minister believes presents a threat to the health and wellbeing of Cook Island residents and issue a Code of Practice designed to address the threat. Codes of Practice will not attract penalties for breach, but the Minister will be empowered to publish reports on the extent of compliance and name any person on company that has failed to comply.</p>
Part 5: Emerging issues		
20. Plan for the public health impact of climate change	There is no specific focus on climate change in the current Act.	<ul style="list-style-type: none"> • The general public health duty and the power to undertake health impact assessments can contribute to mitigating the public health risk arising from climate change. • The new Act will also require the Minister of Health to ensure that plans relating to public health address changing risks associated with climate change and report to Parliament on the health impacts of climate change. • The Secretary of Health will be required to cooperate with other sectors in relation to the health impacts of climate change.

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21. Establish a framework to respond to anti-microbial resistance	The current Act makes no reference to anti-microbial resistance.	<ul style="list-style-type: none"> • The Secretary of Health will prepare a plan to address anti-microbial resistance at a whole of government level, which will consider current practices and uses of antibiotics and assess the potential risk to public health presented by these practices. • The Secretary will monitor the effectiveness of the plan and report to the Minister. • If there are gaps or failures in the current arrangements, the Minister will have power to regulate and cover them. • Cases of antibiotic resistant infections will be notified to Te Marae Ora.
22. Protect and regulate the use of personal data	Section 87 protects information relating to whether a person is or was infected with a transmissible notifiable condition. The Act does not deal with other information collected under it.	The Act will provide a consistent set of principles in relation to protecting personal information (any information likely to identify a person) but allow its release to third parties for specified and carefully defined purposes
22.1. Establish a general obligation to protect personal information	Section 87 protects information relating to whether a person is or was infected with a transmissible notifiable condition.	There will be a general obligation to maintain the confidentiality of personal information collected under the Act. The obligation will be broader than the current Act and apply to all relevant data that has been obtained by persons administering the Act, working within Te Marae Ora or a health service, or acting in compliance with obligations under the Act (such as persons required to notify communicable diseases).
22.2. Allow the use and disclosure of personal information for a public health purpose	Section 87 allows disclosure of information relating to a transmissible notifiable condition in some circumstances.	The new Act will also specify purposes for which release can occur, including - with the person's consent, for routine record sharing, when formally required by a court, 'to contain the risk of infection,' to 'lessen or prevent a serious threat to the life, health or safety of any person,' or to avoid a 'serious threat to public health or safety.'
22.3. Allow disclosure of personal information for certain research purposes	Section 87 does not allow release for research purposes.	Personal information can be released for research purposes in certain cases, where an Ethics Committee and the Secretary of Health both agree that the release of data is beneficial and outweighs privacy considerations, but any release will be subject to strict conditions.