



Public Health Law Reform

Modernising the Cook Islands Public Health Act (2004)

CONSULTATION

Te Marae Ora, Crown Law Office, and WHO.

Lead: TMO Steering Committee

November 2020

Overview

- **Objective:**

- modernise public health laws to ensure the Cook Islands is better equipped to respond to current and emerging public health challenges

- **How:**

- review and reform the *Public Health Act 2004*
- some minor amendments to other laws may be necessary

- **Timeframe:**

- Consultation on draft Policy - Nov 2020
- Cabinet submission to approve Policy and drafting instructions - Dec 2020
- Bill to parliament - Mar 2021
- Implementation - Jul 2021

- **Resources:**

- Te Marae Ora, Crown Law Office, WHO technical advice

The need for reform

- The Act is not fit to address the current and emerging health challenges
 - Outdated, traditional approach to public health
 - Does not address rising NCD epidemic
 - Does not deal with new and emerging issues:
 - COVID-19, climate change, antimicrobial resistance
 - Communicable disease and emergency measures inconsistent and difficult to apply in practice – COVID-19 (special law required)
- National Health Strategic Plan 2017-2021 calls for a review of the Public Health Act 2004 by 2021.

Aims for the new law

Outcomes-focused

- Addresses public health risks based on actual and potential harm

Future-proof

- Equips Cook Islands to address health challenges over coming years and decades

Protects

- Protects Cook Islands against serious public health risks, including pandemics and other emergencies

Prevents

- Prevention is better than cure – supports health promotion and whole-of-society action on NCDs

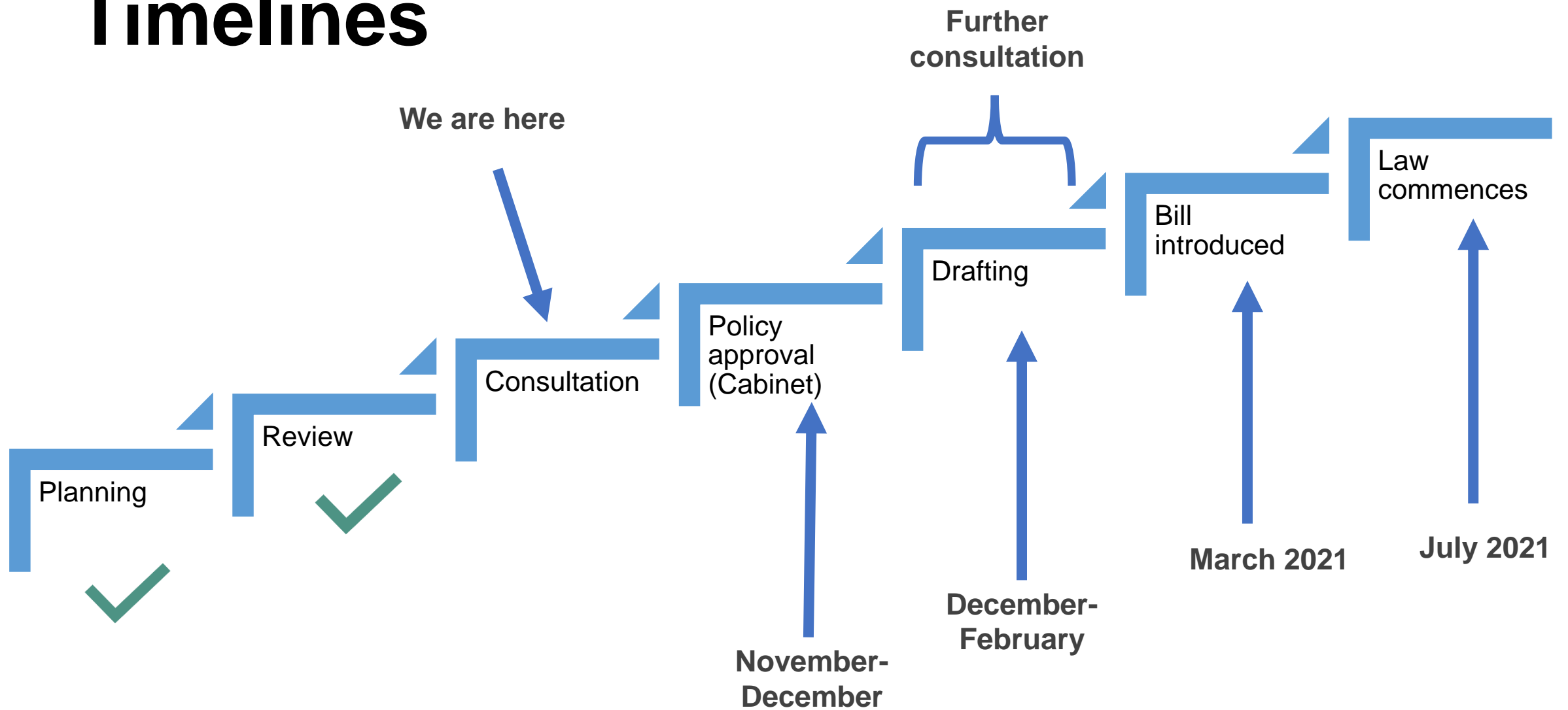
Participatory

- Individuals and communities empowered to take part in decisions to protect and promote health

Project update

- WHO planning mission: Rarotonga, 24-28 February 2020
- Planning mission report submitted to TMO with recommendations
 - TMO Steering Committee reviewed recommendations and made comments
- COVID-19... plans had to be revised, same objectives but new priorities and lessons learned
 - New workplan developed
 - Target: Bill for introduction in Parliament by March 2021
 - Working in coordination with Crown Law Office

Timelines



Draft policy paper

- Contains 47 policy measures, organised into 5 chapters
- Presented to TMO Steering Committee last week
 - Positive feedback
- Will be used for consultation with internal and external stakeholders
- To be accompanied by other materials – summary of proposed changes, questions for consideration

PART 1

Governance & Cross-cutting issues

Governance

- Public health is complex – dynamic policy and practice
- Evolving in response to changes in epidemiological, economic, social, and environmental conditions
- COVID-19
 - SARS-CoV-2 - deforestation, wildlife farming, biosecurity, economic growth (Sth. China)
 - Global transmission – trade and travel, globalisation
 - Local impact – social, cultural, economic factors
- Governance – responsive, subject to clear direction and leadership, involves all relevant sectors (ultimately, all of society)
- Parts 1 & 2 of Act – limited framework.

Objectives & Principles

- Included in the new Act
 - guide implementation
- Objectives:
 - The Act's goals – reflect values of Cook Islands community and the country's overarching health objectives
- Principles:
 - To guide complex decisions affecting individuals and communities – **precaution, proportionality, equity, participation**

Human rights

- Included in the New Act
 - Incorporate safeguards throughout
- A framework to advance health while protecting, respecting, and fulfilling the rights of individuals and communities
- Actions in public health often limit rights and freedoms
 - COVID-19 shows respect for HR vital to effective public health response

Functions and Powers

- Current Act (part 2) assigns functions to:
 - Secretary of Health
 - Health inspectors
 - Medical Director
 - Port Health Officer

- New Act will outline functions and powers of:
 - Minister
 - Secretary
 - Public Health Officers/Authorised Officers
 - Medical Officer of Health
 - Island Governments

Whole of Society

- National Public Health Committee
 - Multi-sectoral
 - Chaired by Secretary of Health
 - Reports to Minister of Health
 - Promote action across sectors and society, contribute to national plans
- Island Health Plans - 5-yearly, developed with community

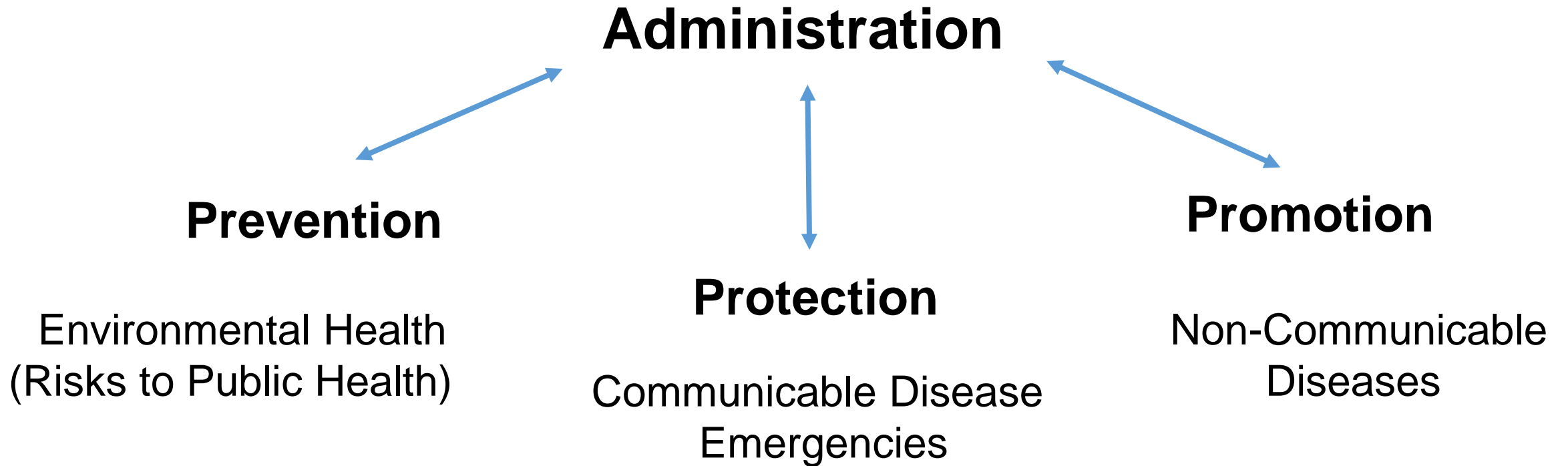
Health impact assessments

- Public health impacted by actions outside health sector
 - Housing
 - Transport
 - Gender equity
 - Environment
- HIA's evaluate health impact of government actions and proposals – not binding, but a tool for decision makers
- Minister able to direct TMO to undertake a HIA

Strengthen compliance

- Public health laws only as effective as their implementation
- Relevant powers in Parts 12, 13
- New Act will look to strengthen compliance:
 - Implementation plan to train and build capacity of officials
 - Streamline powers
 - Spot fines
 - Visual authority

New Public Health Act



PART 2

Health protection & Communicable diseases

Communicable diseases & emergencies (current Act)

- Parts 9, 10, 11, 13, 14 of the Public Health Act
- International Health Regulations implemented under the Ministry of Health Act
- COVID-19 Act
- Disaster Risk Management Act

Communicable diseases & emergencies (new Act)

- Guiding Principles
- Communicable Diseases (notification, management of individuals) & Quarantine
- Emergencies (Pandemics & Population focused controls)
- Vaccine Preventable Diseases
- IHR Regulations

Serious Incidents

- The Secretary may declare a serious incident has occurred..
- The Secretary can take whatever measures are reasonably necessary to respond to the incident including
 - restricting access to or egress from any premises, etc;
 - assisting persons affected by the incident;
 - entering land or premises
 - seizing and destroying property as is necessary.

PART 3

Environmental health & general risks to public health

Environmental health (current Act)

- Buildings (part 3)
- Water (part 4)
- Mosquitoes and other regulated vectors (part 5)
- Waste (part 6)
- Human remains (part 7)
- Offensive trades and nuisances (part 8)

Environmental health (new Act)

- General Duty to Protect Public Health
- Offence of Causing a Risk to Public Health
- Specific areas (Water, Disease vectors, Waste)
- Serious Risks to Public Health
- Regulations, Codes and Guidelines

General duty to protect public health

- a person engaged in an activity must comply with any applicable standard or requirement established under this Act
- and take all **reasonable and practical precautions** necessary to avoid or minimise any resulting risk to public health

Has there been a breach of the general duty?

- is the risk *unreasonable*; and
- is the remedial action required by the notice is *proportionate to the risk* being addressed and is *appropriate* in the circumstances.

Causing a risk to public health

- A person must not cause or allow a serious or significant risk to public health
- An **activity is a risk to public health** if the activity has caused or may cause harm
- **Harm** either physical or mental harm and includes possible or potential harm as well as actual harm

Guiding principles for new approach

- We must ensure that current issues and problems are still properly covered
- We must also ensure that new and emerging issues can also be properly covered
- We need a general approach focusing on the risk
- We also need to be able to be specific in our requirements when we can be though Guidelines and Codes

PART 4

Health promotion

Health promotion

- Objects and TMO lead actor in dealing with NCDs
- Codes of Practice (NCDs and medical conditions)
- Warning Statements
- Notification of specific NCDs and conditions

Health promotion objects

- Optimise the physical, spiritual, mental, social and economic wellbeing of Cook Islanders;
- Promote health equitably across its population (taking into account vulnerable populations and communities); and
- Create an environment where healthier choices are the easier choices

Health promotion measures

- Objects and TMO lead actor in dealing with NCDs
- Codes of Practice (NCDs and medical conditions)
- Warning Statements
- Notification of specific NCDs and conditions

PART 5

Emerging issues

Existential threats:

- COVID-19 pandemic
- NCD epidemic
- Climate change
- Anti-microbial resistance

Climate Change

- Climate change will generate new and exacerbate existing threats, and put pressure on systems
- Act will require plans relating to public health address changing risks associated with climate change and report to Parliament on health impacts of climate change
- Health, environment and other sectors to cooperate through information sharing and
- Can also be addressed via public health duty and health impact assessments

Anti-microbial resistance (AMR)

- Significant and growing public health concern
- Requires comprehensive ‘whole of society’ response
- Framework will include:
 - Co-ordination plan to address practices and requirements across health system, agriculture etc
 - Plan to be monitored and risk continuously assessed
 - Minister may regulate if plan not being applied or insufficient
 - All known cases of AMR infections notified promptly to Health

Personal data and surveillance

- Public health surveillance essential to planning, implementation and evaluation – COVID-19 has demonstrated (contact tracing, epidemiology etc)
- Use of digital technology (apps, artificial intelligence, machine learning) maximises potential but also creates new and changes existing risks
- Need lawful basis to undertake activities, but also duty to protect and not unnecessarily interfere with **privacy** - a valued individual right

QUESTIONS