

Policy to Reform Public Health Laws

October 2020



Minister/Secretary Foreword

[Introduce the policy, why reform is needed and how the policy will help protect and promote health in the Cook Islands]

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Executive Summary

This policy paper proposes a new legal framework for the administration and practice of public health. The existing law, the *Public Health Act 2004*, reflects an outdated approach that is not suited to address current and future public health challenges in the Cook Islands. The COVID-19 pandemic has demonstrated that the Act does not support the strategies necessary to protect and promote the health of Cook Islanders in an emergency.

The need for reform is recognised in Taka'anga Angaanga Tutara A Te Marae Ora (National Health Strategic Plan) 2017-2021, which calls for review of the Act by 2021. After careful review, it is proposed that the current Act is repealed and replaced by a new Act that reflects modern public health approaches and supports the work of TMO and its partners to secure and advance the health of all Cook Islanders. The new Act will have the following features:

1. **Clear objectives and responsibilities.** Set out objects that give the Act a broad scope and encourage community participation in public health planning and implementation. Recognising public health is a whole-of-government and whole-of-society effort, the Act will clarify responsibilities and promote cooperation across sectors.
2. **A modern risk-based approach to public health.** Adopt a modern 'risk-based' approach to public health threats, determined by actual and potential harm, rather than the traditional approach of listing and regulating known public health issues. To achieve this, the Act will establish a general obligation to protect public health and require persons and businesses not to act in ways that may cause harm to others. This approach will 'future proof' the Act, allowing it to respond to new and emerging public health threats as well as established issues of concern. Guidelines or codes can be issued to assist people to comply with their general obligation.
3. **Flexible powers to control risks that can be scaled up to emergencies.** Revise and expand the powers available to respond to pandemics and other serious threats to Cook Islanders, using the COVID-19 Act as a basis. This will provide emergency powers such as quarantine, isolation and closures as well as the more general requirements around notification, testing and vaccination. Guiding principles will assist TMO and others when making orders that have the effect of restricting the rights and liberties of individuals.
4. **Address non-communicable diseases.** The Act's objects will be expanded beyond the traditional domains of public health to include non-communicable diseases. The Act will look to promote the ability of Cook Islanders to make healthy choices, empower TMO to lead and coordinate national efforts, and give the Minister the power to issue codes of practice in relation to the marketing or promotion of unhealthy products.
5. **Respond to new and emerging issues.** The Act will better equip the Cook Islands to respond to new and emerging issues in public health such as climate change, anti-microbial resistance, and the protection of personal information.

Introduction

Te Marae Ora Cook Islands Ministry of Health (TMO) is undertaking a review of the laws that protect and promote public health in the Cook Islands, principally the *Public Health Act 2004* (the Public Health Act). The overarching objective of the review is to modernise the Cook Islands' public health laws to ensure the country is better equipped to respond to current and emerging health challenges and to promote and protect the health of Cook Islanders into the future.

Public health laws are critical to the physical, mental, social, and economic wellbeing of individuals and communities. Evidence-based public health laws – when effectively implemented and enforced – can create the conditions for healthy populations.¹ Indeed, public health laws have been central to some of humanity's biggest health achievements such as vaccination programmes, the control of infectious diseases, and safe and clean environments. The global COVID-19 pandemic has underscored the importance of effective, implementable public health laws to protecting the health of individuals and the public and has highlighted the areas in need of strengthening.

Public health laws in the Cook Islands are the laws that promote and protect the health of the public by securing the conditions for good health and empowering the government to manage public health risks. The primary public health law and the focus of the review is the Public Health Act, which establishes a framework for the management of risks to public health and is administered by TMO. The Act covers a wide range of areas, including water safety, disease vectors, waste management, human burials and remains, quarantine concerning human health, infectious diseases control, vaccine-preventable conditions, and public health emergencies.

Other laws are also relevant to public health, some of which are listed below in Table 1. While these laws are an important part of the public health legal framework in the Cook Islands, they are not the focus of this review and are being considered as part of the review only to ensure consistency with the new Public Health Act and identify any consequential amendments that may need to be made.

¹ Gostin LO, Monahan JT, Kaldor J, DeBartolo M, Freidman EA, Gottschalk K, et al. The legal determinants of health: harnessing the power of law for global health and sustainable development. Lancet Commissions. 2019. [http://dx.doi.org/10.1016/S0140-6736\(19\)30233-8](http://dx.doi.org/10.1016/S0140-6736(19)30233-8).

Public health laws in Cook Islands (not exhaustive)

Public Health Act 2004 – principal law for protection and promotion of health

Ministry of Health Act 2013 – establishes the functions and powers of TMO, including regulation functions concerning human health

COVID-19 Act 2020 – implements measures concerning the COVID-19 pandemic

Constitution of the Cook Islands – establishes the institutions of government and the fundamental rights and freedoms of persons in the Cook Islands

Food Act 1992-3 – controls the importation, processing, packaging, preparation, advertising and sale of food

Tobacco Products Control Act 2007 – regulates the distribution, sale, advertising, labelling and use of tobacco products

Disaster Risk Management Act 2007 – national disaster risk management framework

Environment Act 2003 – establishes framework for the protection, conservation, and management of the environment, and covers certain hazards to human health

Building Control and Standards Act 1991 – regulates the construction and demolition of buildings and calls up building standards as published in a National Buildings Code.

Disability Act 2008 – provides for national disability strategy, anti-discrimination, complaints, and accessibility

Entry, Residence, and Departure Act 1971-2 – provides that a person may not enter Cook Islands if they are suffering from a dangerous condition

Crimes Act 1969 – contains offences related to public health, including criminal nuisance, polluting water, and sale of unwholesome foods and beverages

Customs Tariff Act 2012 – Imposes customs tariffs on goods including alcohol, sugar-sweetened beverage, and tobacco.

Customs Revenue and Border Protection Act 2012 – imposes excise duties on locally manufactured goods including alcohol, sugar-sweetened beverages, and tobacco and requires areas for manufacturing of such goods to be licensed.

Sale of Liquor Act 1991-2 – regulate the sale of liquor to the public, including licensing of liquor establishment

The need for reform

Te Papa Tutara A Te Marae Ora 2017-2036 (the National Health Road Map – ‘NHRM’) recognises the need to regularly review laws and strengthen their implementation and enforcement to address health challenges.²

² Te Papa Tutara A Te Marae Ora (Cook Islands National Health Road Map) 2017-2036. Cook Islands: Te Marae Ora. <https://www.health.gov.ck/national-health-road-map-2017-2036/>

The NHRM identifies public health challenges, including non-communicable diseases and environmental health, as key health challenges for the country to achieve TMO's 2036 vision of:

"A healthy and peaceful Cook Islands that values human rights and dignity through the provision of quality and equitable health care and services based on the principles of Primary Health Care and Universal Health Coverage."

This contributes to the national vision for the development of the Cook Islands articulated in Ta Kaveinga Nui 2016-2020 (the National Sustainable Development Plan – 'NSDP'):

"To enjoy the highest quality of life consistent with the aspirations of our people, and in harmony with our culture and environment."

It is apparent that public health laws in the Cook Islands are not sufficient to address the current and emerging health challenges and achieve the country's 2036 vision. This is recognised in Takai'anga Angaanga Tutara A Te Marae Ora 2017-2021 (the National Health Strategic Plan – 'NHSP'), which calls for review of the Public Health Act by 2021³. The Health Minister presents the review of health legislation as a governance issue, stating the need to review the Public Health Act and other laws to promote health protection and respond to a changing environment.

Despite being enacted in 2004, the Public Health Act reflects an outdated approach to public health and does not support many contemporary interventions and actions. The COVID-19 pandemic demonstrated this. The Act could not provide for the types of public health measures, such as supervised quarantine for inbound travellers, restrictions on gatherings and other physical distancing measures, and contact tracing, all of which were necessary to respond to the emerging threat. Parliament enacted the *COVID-19 Act 2020* to provide a legal framework to temporarily overcome these shortcomings and implement necessary COVID-19 measures.

The review has identified a number of other shortcomings including:

- the Act contains few provisions to protect and promote human rights, and does not integrate human rights principles within its objectives or processes;
- the Act does not include mechanisms to address the rising prevalence of non-communicable diseases and emerging existential threats such as climate change;
- the Act does not facilitate whole-of-government and whole-of-society action on public health, including the engagement of other sectors, island councils, and the community;

³ Takai'anga Angaanga Tutara A Te Marae Ora (Cook Islands National Health Strategic Plan) 2017-2021. Cook Islands: Te Marae Ora. <https://www.health.gov.ck/national-health-strategic-plan-2017-2021>

- the Act contains a limited suite of compliance powers, relying on “command and control” interventions, such as orders and criminal prosecutions, which have proved difficult to implement in practice;
- measures for the implementation of the Cook Islands’ obligations under the International Health Regulations (2005) are difficult to apply in practice and consistently with other laws;
- provisions concerning low level public health risks are framed in terms of ‘nuisance’, an historic concept in public health that is out of step with modern approaches;
- water safety provisions need to be reviewed to ensure consistency with water standards managed by infrastructure authorities;
- building standard provisions need to be reviewed against the contemporary building standards set out in the *Cook Islands Building Code 2019*; and
- waste management provisions need to be reviewed against new wastewater management and sewage policies and regulations.

Consultation within the health sector and with other stakeholders revealed the ways in which these shortcomings limit the implementation of public health measures and reaffirmed the pressing need for reform.

The process of reform

To advance the reforms, TMO has embarked on a legislative development process designed to generate a new law that is enduring and reflects community values. The principal output of the process will be the development of a Bill for a new public health act which will repeal and replace the existing Public Health Act. Minor amendments to other laws may be necessary to ensure alignment and implement certain policy measures. TMO is aiming to introduce the Bill to Parliament during the March 2021 sittings, with the new Act taking effect in the second half of 2021.

TMO is undertaking the review with technical policy and legal support from the World Health Organization Regional Office for the Western Pacific (WHO-WPRO). To help initiate the review, WHO-WPRO conducted a mission in the Cook Islands in February 2020 to support TMO to scope the review, undertake initial consultations, and develop a plan to advance the review. TMO initially targeted the introduction of a Bill to Parliament during the November 2020 sittings, which had to be deferred due to the COVID-19 pandemic.

This policy paper is an important milestone in the reform process. It is the culmination of a thorough review of existing laws, consultation with stakeholders across the health sector, government, and the community, and detailed policy analysis. Once this policy is endorsed by the Cabinet, it will be translated into law and comprehensive plans for implementation, and monitoring and evaluation.

Stakeholder views are being sought through an inclusive consultation process organised into three stages.

Stage 1 occurred alongside the scoping and review phase of the project and focused on problem identification and information-gathering, primarily through interviews and discussion forums with key stakeholders within government and the health sector.

Stage 2 involves the release of a draft policy paper by TMO to a wide range of stakeholders, including the public, to canvass the proposed measures and inform policy development.

Stage 3 will involve further consultation with key stakeholders, including policymakers and senior government officials, in order to refine the policy measures for implementation and support legislative drafting.

The consultation report in Annex A summarises consultation activities and key findings. [To be added after consultation]

The Reforms

Governance and cross-cutting issues

Current law

The Public Health Act contains provisions dealing with the objectives of the law and its governance and administration in parts 1 and 2.⁴ The objectives of the law are outlined in broad terms – to protect and safeguard the health of people in the Cook Islands – which provide limited guidance on the policy purposes of the law including how it promotes equity, protects disadvantaged and vulnerable populations, and contributes to other health objectives. The Act does not provide any other guidance on how it is to be applied in practice, including with respect to human rights nor does it refer to any of the generally accepted public health principles such as the precautionary principle.

The Act vests powers in the Secretary of Health and other officials in TMO, including health inspectors, the Port Health Officer, and the Medical Director, which are supplemented by the *Ministry of Health Act 2013* (MOH Act)⁵. However, the Act does not articulate the overarching functions and responsibilities of these office-holders, which may lead to uncertainty. Powers assigned to these and other officials, such as the Police, include powers to implement the law and deal with noncompliance, such as powers of entry, inspection and seizure, and to contain dangerous conditions. TMO has found it difficult to apply these powers in practice.

The Act does not contain any mechanisms for multisectoral and whole-of-society coordination and collaboration on public health.

Policy measures

1 Anchor the public health law in clear objectives

Public health is a dynamic field of policy and practice, constantly evolving in response to changes in epidemiological, economic, social, and environmental conditions. The application and practice of public health laws will need to evolve in parallel in order to continue to protect and promote the health of Cook Islands people amidst these changes. To support this evolution, the law should be grounded in clear objectives that reflect society's values and the country's overarching health objectives. These objectives should be enduring and capable of being applied to new and emerging health challenges and priorities.

The new Act will outline objectives that reflect the country's vision for health and development espoused in the NHRM and NSDP. These will include:

⁴ *Public Health Act 2004*, pts 1 and 2.

⁵ *Public Health Act 2004*, ss 7-9; *Ministry of Health Act 2013*, pts 2 and 4.

- to promote and protect the public health and wellbeing of Cook Islands people in harmony with its culture and environment;
- to protect individuals and communities, especially vulnerable communities, from public health risks including those arising from non-communicable, communicable diseases and the environment;
- to create and sustain a healthy environment;
- to reduce health inequities by improving population health outcomes for disadvantaged groups and those in the Pa Enua;
- to support Cook Islanders to make healthier choices for themselves, their family, and their community;
- to enable individuals and communities to plan and create the conditions for public health.

1.1 Protect and promote human rights

Human rights provide a framework to advance health while protecting, respecting, and fulfilling the rights of individuals and communities. The right to health, as recognised in international law, provides a foundation for the development of public health.⁶ The right to health requires states to take steps to achieve the realisation of the highest attainable standard of physical and mental health. This encompasses the right to the prevention, treatment and control of diseases as well as rights to a range of underlying determinants of health, including access to safe housing and sanitation, an adequate supply of safe water, healthy working conditions, and access to health-related education, including on sexual and reproductive health.⁷

A range of other human rights support actions by government to improve the health of their populations, including civil and political rights such as rights to liberty and security of the person, liberty of movement, and freedom from discrimination.⁸ The COVID-19 pandemic has revealed the instrumental as well as inherent value of human rights to public health and the ways in which their violation – such as gender based violence and stigma and discrimination - undermine efforts to protect health.⁹

⁶ International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976); Advancing the right to health: the vital role of law. Geneva: World Health Organization; 2017 (https://www.who.int/healthsystems/topics/health-law/health_law-report/en/; accessed 15 April 2020).

⁷ United Nations Economic and Social Council, General Comment No 14: The right to the highest attainable standard of health. United Nations document E/C.12/2000/4 (11 August 2000).

⁸ Advancing the right to health: the vital role of law. Geneva: World Health Organization; 2017 (https://www.who.int/healthsystems/topics/health-law/health_law-report/en/; accessed 15 April 2020).

⁹ Addressing Human Rights as Key to the COVID-19 Response. Geneva: World Health Organization; 2020 (<https://www.who.int/publications-detail/addressing-human-rights-as-key-to-the-covid-19-response>; accessed 1 June 2020).

This reform process is an opportunity for the Cook Islands to incorporate human rights principles and safeguards within its public health legislation. The new Act will incorporate human rights principles into its objectives and decision-making frameworks and establish safeguards to protect human rights against unjustified incursion. This will include principles and processes to ensure that public health measures are necessary, proportionate, and no more restrictive than required and account for the disproportionate impacts they may have on marginalised and disadvantaged populations. It will also include specific measures to protect certain rights while enabling effective public health efforts, such as the right to privacy as it relates to surveillance and the use of health information.

1.2 Articulate guiding principles

Public health actions regularly involve the careful balancing of rights and interests in the context of complex, multifaceted health risks. It is increasingly common for public health laws to articulate principles that are to be used by authorities to guide their decision-making. These principles are usually based on accepted scientific and public health approaches as well as community expectations and norms. An example of the approach is the *Public Health Act 2016* (Western Australia), which contains overarching principles as well as specific principles applying in relation to the management of infectious diseases.¹⁰

The new Act will articulate overarching guiding principles, including:

- **sustainability** – that public health, social, economic, cultural and environmental factors should be considered in decision-making with the objective of improving community wellbeing and taking into account the interests of future generations;
- **proportionality** – that public health measures taken should be proportionate to the public health risk sought to be prevented, controlled, or abated;
- **precaution** – lack of scientific certainty should not be used as a reason for postponing measure to prevent, control or abate that risk;
- **population-focus** - decisions should focus on the health of populations and the actions necessary to protect and improve the health of the community and, in so doing, the protection and promotion of the health of individuals should be considered;
- **accountability** – decisions should be transparent, based on available evidence and sound scientific principles, and clearly communicated to those affected;
- **participation** – individuals and communities should be encouraged to take responsibility for their own health and, to that end, participate in decisions about how to protect and promote their own health and then health of their communities;
- **equity** – decisions and action should not, as far as it reasonably practicable, unduly or unfairly disadvantage individuals or communities and consideration should be given

¹⁰ *Public Health Act 2016* (Western Australia)
(https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a147114.html)

to health disparities between population groups and to strategies that can minimise or alleviate such disparities.

Guiding principles are not simply aspirations, they can have significant practical impact on public health action. For example, a decision-maker faced with a perceived health risk arising from a new industrial practice or commercial product would be entitled to rely on the precautionary principle to justify implementing public health controls even if there is scientific uncertainty concerning the risk.

The new Act will also articulate specific principles to be considered when exercising powers in relation to the management of infectious diseases and health emergencies. This will ensure that the exercise of coercive powers, such as quarantine, isolation, and mandatory testing and treatment, take into account the rights and interests of individuals and the community. The Minister will also be empowered to publish guidelines explaining the principles and their application to everyday decision making.

2 Promote governance for public health

Protecting and promoting public health involves actions throughout TMO and the health system and across sectors and the community. Effective governance structures and processes for public health are needed to support strong leadership, ensure the exercise of powers and functions is transparent and accountable, and enable cooperation and coordination across all the different actors in public health. The new Act will ensure that functions are distributed through the health system and guided by national leadership and policy direction and provide avenues for local government and community involvement in public health planning and activities.

2.1 Clarify the roles and responsibilities of key actors in public health

The new Act will promote governance by outlining core public health functions and clearly assigning those to appropriate authorities and officials in line with the *Ministry of Health Act 2013* and government policies. Public health functions will be allocated as follows:

Minister for Health

The Minister for Health is at the apex of public health in the Cook Islands and will have ultimate responsibility for the protection and promotion of public health, as well as providing national leadership and strategic direction. The Minister's functions will include:

- setting national strategies and plans to promote and protect the health of Cook Islanders,
- advancing policies to protect and promote public health,
- reporting to Parliament on the performance of public health,
- promoting appropriate allocation of resources to public health strategies,
- setting standards and codes of practice relating to public health matters,

- promoting coordination and cooperation across sectors and levels of government,
- cooperating and coordinating with international bodies and action consistent with the objects of the Act, and
- exercising a leading role in the management of public health emergencies, including to set emergency plans, to declare an emergency and to make orders and other directions.

Secretary of Health / Head of TMO

As the Head of TMO, the Secretary is the most senior administrative official in public health and will be responsible for the effective implementation of the Act, for developing policies and programmes to further its objectives, and for exercising powers to manage public health risk and implement regulatory functions. The Secretary's functions will include:

- initiating and developing strategies and plans to promote and protect health (for the approval of the Minister),
- initiating and developing standards and codes of practice,
- developing and implementing policies and programmes to achieve the objectives of the Act,
- overseeing and monitoring the implementation and enforcement of the Act,
- implementing systems to monitor and manage public health risks, including those arising from communicable diseases, non-communicable diseases, and environmental sources,
- exercising powers in relation to the management of public health risks, including making public health orders,
- advising the Minister on matters relating to public health,
- developing and implementing systems to foster collaboration and coordination to promote public health, including across sectors and the community,
- Implementing programmes to support the role of communities to address public health issues,
- acting on behalf of the Ministry, as the National Focal Point for the purposes of the *International Health Regulations 2005*, and
- exercising any other powers or functions conferred by the Act.

Public health officers and other authorised officers

Public health officers are responsible for implementing public health programmes and activities. They work across a wide range of environments and programmatic areas, including quarantine/border health, health promotion, community health, and environmental health. They may also have functions under other laws, such as the *Food Act 1991-92* and the *Tobacco Products Control Act 2007*.

The new Act will recognise their important role in public health by establishing a class of officials known as authorised officers. The role will build upon that currently recognised as health inspectors / enforcement officers under the current law and the Ministry of Health Act but allow the Secretary to designate additional powers to reflect the broader functions many officers perform. The Secretary will have the discretion to designate all or certain powers under the Act to individual officers or classes of officers depending on their responsibilities. For example, public health officers working in the health promotion team may not be given quarantine powers. The Secretary will have all the powers of an authorised officer.

Authorised officers' functions will be specified in the Act and will include:

- exercising quarantine powers such as inspecting vessels and granting pratique,
- undertaking contact tracing,
- exercising powers to control mosquitoes and other vectors,
- undertaking water safety sampling and testing,
- taking preliminary actions to manage public health risks, such as issuing improvement notices, and
- exercising compliance and enforcement powers.

Authorised officers will be subject to the direction of the Secretary in the performance of their statutory functions.

The new Act will also allow the Secretary to appoint authorised officers outside health to perform functions where appropriate. For example, the Secretary may appoint police officers as authorised officers with respect to certain compliance and enforcement powers to assist health compliance activities. The new Act will also allow the Secretary to appoint 'emergency officers' to implement emergency powers. The Secretary will have broad discretion to appoint emergency officers, which may involve personnel from across sectors, to allow for a rapid scale-up of human resources where necessary.

Special public health advisor – Medical Officer of Health

Protecting and promoting public health involves complex and often contentious decisions that require a careful assessment of the benefits and risks to individuals and populations. Good decision-making requires access to and understanding of evidence, including epidemiological and other data, scientific research, ethical principles, and social and cultural context, among other things. Expertise is needed to interpret this information and make informed judgements based on sound public health principles. This need is most acute in times of crisis and emergency where decisions need to be made quickly and often with imperfect evidence.

To address this need, many jurisdictions have created statutory offices – often known as 'Chief Public Health Officers', 'Chief Medical Officers' or 'Medical Officers of Health' - to

provide advice, and in some instances, make decisions and be the independent ‘face’ of public health. Appointees to these offices are generally (but not always) medical practitioners with expertise in public health.

The current Secretary of Health is an experienced public health doctor who is well placed to make difficult public health decisions and advise government during events such as the COVID-19 pandemic. Future heads of the Ministry may not share the same expertise. To ensure the government has access to public health expertise, the new Act will enable the Minister to appoint a Medical Officer of Health to provide advice to the Secretary on public health matters in particular those regarding communicable diseases. The advisor may also advise the Minister in consultation with the Secretary. The advisor could be a person normally resident outside the Cook Islands to accommodate circumstances where there is no available expertise within the country.

Island Governments

Island Governments perform local government functions with respect to each island (or island group) except Rarotonga that include delivering public facilities and services on behalf of the national government, promoting sustainability and environmentally friendly resource management, and encouraging social and cultural development. The governments are composed of a blend of elected officials and traditional leaders. TMO has a strong working relationship with Island Governments, collaborating with them on the provision of health services and the implementation of public health activities.

The new Act will promote the involvement of Island Governments in public health and include a flexible mechanism to empower them to exercise public health functions. Owing to their proximity to the community, Island Governments are likely best placed to address issues of amenity such as littering and the keeping of animals that are not principally issues of public health but may present as public health risks in some instances, particularly if not managed. The new Act will require TMO and Island Governments to pursue partnerships, including through the development of island public health and wellbeing plans and joint implementation of programmes and activities. It will also allow the Minister and Secretary to delegate certain functions where they are satisfied it is in the interest of public health, such as the power to make codes of practice and guidelines concerning risks to public health on the island provided these are approved by the Minister and not inconsistent with any such national standards. Where a function is delegated, section 11 of the Ministry of Health Act will apply to provide legal protections and indemnities to the Island Government and its officers.

2.2 Establish a national public health committee

Public health impacts all aspects of life in the Cook Islands and is influenced by interrelated factors that extend beyond the health sector. Protecting and promoting public health must

involve efforts across society, including government, traditional leaders, the private sector, and the community. Efforts will be most effective where they are coordinated and involve a wide range of sectors and stakeholders.

The new Act will establish a National Public Health Committee whose functions will be to, promote public health within their relevant sectors and across society, develop strategies and programmes for multisectoral coordination and action on public health, make recommendations to the Minister for strengthening public health, and support strategic planning for public health. The scope of the Committee's functions will extend to all areas of public health, including health protection and non-communicable diseases. The Committee will be chaired by the Secretary of Health and comprise senior government officials and representatives from across society. As with any committee its membership will need to be sufficiently wide to include the necessary range of government agencies and community interests without becoming so large as to be unwieldy. In determining membership, the following persons should be considered.

- Heads of relevant Ministries, including Finance, Infrastructure, National Planning, Police, Education, Environment, Customs, Trade (MFAI), Culture, and Agriculture
- Heads of relevant government agencies, including Tourism Corporation and To Tatou Vai (state water supply corporation)
- Executive Officers (or Mayors?) of Island Government, appointed by Minister on rotational basis
- Nominees of the House of Ariki
- Representatives of civil society and the community, such as the Red Cross, National Council of Women, Child Welfare and Family Welfare Association, Te Ipukarea, youth representatives, Religious Advisory Council, appointed by Minister
- Representatives of the private sector, such as Chamber of Commerce, tourism industry, appointed by Minister. The law will preclude membership of representatives of the tobacco or alcohol industries.

The Secretary, as Chair, will also have the power to convene subcommittees to address specific issues, such as non-communicable diseases or Pa Enea public health.

Note that the Minister will also continue to have the power to appoint technical, regulatory, or advisory boards or committees under the Ministry of Health Act.

2.3 Empower local planning for public health

Planning is a crucial component of advancing public health. Good plans use the most recent health information and data to set priorities for public health, guide policy direction and resource allocation, and foster coherence and consistency. This provides leadership and direction and can aid accountability and community participation.

TMO undertakes operational and strategic planning for public health as part of sector-wide planning processes that include annual operational planning, the five-year National Health Strategic Plan, and the 30-year National Health Road Map, each of which is connected to broader government strategic plans including the National Sustainable Development Policy. These planning processes focus on national programmes and strategies, leaving space for further planning at the local level.

The new Act will require TMO and Island Governments to develop five-yearly island public health plan for each island that aligns with national plans, including the National Health Strategic Plan. The plans will identify public health risks at the local level and strategies to address those, identify opportunities and strategies for promoting public health on the island, and outline processes to coordinate public health actions across sectors on the island. Specifically, the plans will look to address local issues that often straddle different sectors, such as local amenities and environmental health, that may present as public health risks, particularly if not managed. TMO and Island Governments will be required to take active steps to enable the participation of the community in the planning process, including their development and review.

3 Provide for health impact assessments

As discussed, the health of Cook Islanders is determined by actions within the health sectors as well as outside it. Actions in areas such as housing, urban planning, transport, gender equity, environmental management, climate change, workplace health and safety, and water and sanitation can have a significant impact on health. For example, the availability and affordability of high-sugar foods and beverages are affected by actions in agriculture, trade, and commerce, and have a significant impact on population health, including diabetes and obesity.

To improve health and reduce the burden on the health system, it is essential that government decision-makers understand the potential health impacts of government actions outside the health sector. Despite this, health considerations are not always taken into account and decision-makers often do not have good information about the potential ramifications of their decisions on health.

To alleviate this, the new Act will allow the Minister of Health to direct TMO to undertake a health impact assessment (HIA) of any proposed or existing government decision, policy, programme, or law that may have an impact on the health of Cook Islanders. HIAs are tools for evidenced-based decision-making that predict the impacts – both positive and negative – of decisions through quantitative, qualitative and participatory techniques. The origins of HIAs were in environmental impact assessments, which have developed into a specialised practice and are undertaken in the Cook Islands under the *Environment Act 2003*. However, HIAs are a flexible mechanism that can be adapted based on capacity and available resources – they can be carried out in a short space of time and in low resource environments. It may

be that in practice an HIA can be incorporated into an environmental impact assessment where one is required under the Environment Act.

4 Strengthen compliance

As with any law, public health laws are only as effective as their implementation. TMO is seeking to strengthen its capacity to implement and secure compliance with public health laws, which has been inhibited by a number of factors, including lack of regulatory capacity and training, community perception of health authority to enforce laws, and difficulty utilising existing compliance tools. The new Act will aim to address some of these issues by expanding the compliance tools available to health officials, aligning compliance and enforcement powers across health laws, and increasing visual authority of officers. The new Act will also allow the Secretary to appoint authorised officers from outside health to enable cooperation and collaboration with enforcement agencies such as the Police. It will also include offences in cases where a person hinders or obstructs an authorised officer in the course of their work. However, the challenges of compliance cannot be overcome solely by legislative change and, as part of the public health law reform process, TMO will be preparing a detailed implementation strategy that will include strategies to train and build capacity of officials to implement the new Act.

4.1 Align compliance and enforcement powers

Compliance and enforcement powers for public health exist across a number of health laws, including the Public Health Act, the Food Act, the Tobacco Products Control Act, and the Ministry of Health Act, which provides broad general powers for health inspectors and enforcement officers. The relationship between these powers is not always clear and officials report uncertainty over what powers they are able to exercise in different situations. The new Act will look to streamline compliance and enforcement powers across these laws and clarify their relationship. This may require some consequential amendments to those other laws to ensure alignment as far as possible.

4.2 Expand available compliance tools, including the use of 'spot fines'

The new Act will expand the compliance tools available to public health officers and authorised officers. Currently, under the Public Health Act, authorised officers have general powers to enter and inspect premises, seize items, and take steps to mitigate health risks include the spread of dangerous vectors. In the event of a breach of the Act, TMO may pursue criminal proceedings.

The new Act will allow the Minister to make regulations permitting the use of infringement notices or 'spot fines' for certain offences. An infringement notice is an administrative action that may be taken to penalise alleged offences as an alternative to prosecution. The person who is issued the notice is given the option to pay a fixed penalty or elect to have the matter dealt with by a court, which may impose the maximum penalty for the offence if convicted.

Infringement notices are generally used for minor and high-volume offences and typically impose a fixed penalty set at a portion (often 20%) of the maximum fine. Other laws in the Cook Islands include infringement notice mechanisms, including the *Maritime Transport Act 2008*¹¹ and the *Biosecurity Act 2008*¹².

The key advantages of infringement notices are that they are more efficient than criminal prosecution, encouraging regulators to respond to noncompliance and freeing up judicial resources, and, while functioning as a sufficient deterrent, they avoid the stigma and other ramifications that can result from criminal conviction. However, infringement notices are not without their potential drawbacks and require systems and capacity to be implemented effectively. As infringement notices dispense with ordinary criminal procedures, they can result in miscarriages of justice if not used fairly and appropriately by enforcement officers. Also, they require processes to be in place to identify the recipient's place of residence, record issued notices, facilitate payment of notices, and follow up on failure to pay, including initiating prosecutions. It is envisaged that the Minister would activate the use of infringement notices by regulation once TMO has the requisite systems and capacity in place.

The new Act will also provide for intermediate tools to encourage compliance such as warnings and cautions, which are also provided for under the Ministry of Health Act, and in some cases, formal compliance notices.

4.3 Provide visual authority for public health officers

The new Act will require public health officers to be issued an identification card that outlines their authority to exercise powers, including those related to compliance and enforcement.

¹¹ *Maritime Transport Act 2008*, ss 144-145.

¹² *Biosecurity Act 2008*, s 96

Health protection and communicable diseases

Current law

The provisions in the Public Health Act that deal with health protection and communicable diseases can be found mostly in parts 9, 10, 11, 13 and 14. These provisions address the overarching objective of the law which is to safeguard the health of Cook Islands' people by applying quarantine measures at points of entry, monitoring and controlling the spread of dangerous conditions, and ensuring that children are appropriately vaccinated.

Part 9 provides the Port Health Officer with the standard powers to impose quarantine on arriving vessels and aircraft. These powers are added to by the *Ministry of Health (International Health Regulations Compliance) Regulations 2014* (MOH IHR Regulations). The relationship between the MOH IHR Regulations and part 9 of the Public Health Act is at times unclear.

Part 10 deals with vaccine preventable conditions and provides for compulsory vaccination and related provisions. School principals also have obligations under this part to notify the Secretary in the cases of unvaccinated children enrolled at the school and also to notify any suspected case of a vaccine preventable condition.

Part 11 establishes a list of transmissible and other conditions which are required to be notified to the Medical Director and imposes obligations on persons who are infected with a transmissible condition and also on people caring for them. Part 11 also imposes confidentiality obligations on any disclosure of information that will identify an infected person unless it is for the official purposes that are specified.

Part 13 provides a number of responsive and preventative measures for dangerous conditions. These are conditions that are transmissible and present an imminent danger to the health of the people in the Cook Islands. They include the conditions listed in Schedule 2, notably HIV, AIDS, poliomyelitis and MRSA. The key powers in part 13 are to order a medical examination¹³, detain persons¹⁴, and declare restricted places¹⁵. The Police are also empowered to enforce compliance in these cases.¹⁶ COVID-19 is dealt with separately and is subject to the provisions set out in the *COVID-19 Act 2020*.

Part 14 provides emergency powers, providing generally for the declaration of an emergency, its duration and revocation.

Public health emergencies and the International Health Regulations

¹³ *Public Health Act 2004*, s 102.

¹⁴ *Public Health Act 2004*, s 106.

¹⁵ *Public Health Act 2004*, s 107.

¹⁶ *Public Health Act 2004*, s 112

Public health emergency provisions are found in a number of existing laws and regulations. The Public Health Act provides some general powers in part 13 and allows for the declaration of a public health emergency with part 14, giving the Minister wide powers to ‘take all measures’ and do ‘such acts and things’ necessary to respond. An emergency declaration can last for up to 28 days unless extended by Parliament, (though that is temporarily subject to the *COVID-19 Act 2020*¹⁷). Emergency regulations may also be made under part 14.

The recently passed *COVID-19 Act 2020* establishes a specific framework to implement measures to protect the Cook Islands from COVID-19. This includes powers for quarantine and isolation, testing, the giving of directions, the power to acquire property and also a provision prohibiting the dissemination of harmful information in relation to the disease.

Public health emergencies can trigger the *Disaster Risk Management Act 2007* which also provides substantial power to respond where a State of Disaster or a State of Emergency is declared by the Prime Minister.¹⁸ The *COVID-19 Act* links in with the Disaster Risk Management Act by providing that should a state of emergency be declared in relation to COVID-19, the ‘Secretary of Health is then deemed to be appointed to the Responsible Executive’ under the Disaster Risk Management Act.¹⁹ The Response Executive has the general responsibility to ‘direct the response’ to the emergency or disaster.²⁰

As a State Party to the *International Health Regulations 2005*, (IHR), the Cook Islands is required to develop, strengthen, and maintain the capacity to respond promptly and effectively to public health risks and public health emergencies of international concern.²¹ National legislation is a vital component for implementing the IHR and strengthening public health capacity generally. In addition to the frameworks described above, the *Ministry of Health (International Health Regulations Compliance) Regulations 2014* (MOH IHR Regulations) contain specific arrangements to implement the IHR. This includes empowering the Secretary to develop an implementation plan for the IHR, enabling collaboration and communication with WHO, providing for health controls over travellers, aircraft, and ships, including quarantine and contact tracing. The scope of the MOH IHR Regulations and their relationship to other laws, particularly Part 9 of the Public Health Act, is often unclear, limiting its practical usefulness.

Policy measures

¹⁷ *COVID-19 Act 2020*, s 27(1)

¹⁸ *Disaster Risk Management Act 2007*, pts 4 to 6.

¹⁹ *COVID-19 Act 2020*, s 26(1).

²⁰ *Disaster Risk Management Act 2007*, s 11(3).

²¹ *International Health Regulations (2005)*, Art 13.

5 Streamline and strengthen measures to manage communicable diseases

The new Act will consolidate measures dealing with communicable diseases into one part that, as with the current arrangements, will be based on a list of known 'notifiable conditions'. The provisions will include clear mechanisms to allow rapid listing in the case of a newly emerging disease threat. The law will provide for notification, testing, and, where necessary, orders restricting a range of behaviours that might place others at risk. These powers will be structured so that their application can be 'staged' and wherever possible the least restrictive option consistent with protecting public health will be given priority. To achieve this framework, the Act will provide that:

- once a person has been diagnosed with a communicable disease, the Secretary can order the person to undergo counselling in relation to their condition and the risk it may present to others;
- If the person continues to present a risk, the Secretary can make further orders in the interests of public health, for example that the person refrains from work or specified activities that may place others at risk or that they undertake a course of medical treatment.
- should the person continue to present a risk, the Secretary can order either that the person be isolated or if necessary be detained in a specified place if isolation is impractical or unlikely to be complied with.

These 'steps' in the application of coercive provisions will ensure that the Secretary has a range of powers and will apply the least intrusive option consistent with the public health risk that the person presents, which will reflect the guiding principles. However, additional restrictive measures may be authorised for high risk diseases while in the case of emergencies, the powers will necessarily be more extensive and far reaching, focusing on whole communities and groups rather than the behaviour of individuals.

5.1 Outline guiding principles for managing communicable diseases

Although the new Act will authorise the exercise of significant powers and restrictions on personal liberties, it is anticipated that formal orders will be imposed only very rarely. Mostly these conditions will be successfully managed through good will and cooperation from all concerned. The only basis on which the new Act will permit an order to be made will be that the person is infected with or has been exposed to a notifiable disease *and* through his or her behaviour or circumstances is presenting a risk to others. However, in some cases, such as the quarantine of inbound travellers, it will be sufficient basis for an order that the person might have been exposed to a notifiable disease.

As indicated, orders will be subject to a set of principles that will guide decisions made under the new provisions and also for the proposed emergency powers and persons making orders under the Act should always aim to adhere to them. The principles will include the requirements that orders be proportionate to the risk and should always be the least

restrictive option consistent with protecting public health. This is also reflected in the staging of the powers (so isolation will be preferred to quarantine wherever that can occur safely and effectively). Persons who are detained or otherwise subject to coercive orders under the Act have not committed any offence and so the restrictions imposed on their rights and freedoms can be justified only to the extent that they are necessary in order to protect the wider community. It follows that the community should therefore have corresponding obligations to provide for the care and treatment of detained or isolated persons and to be respectful of their rights and dignity. This will be emphasised in the principles that will guide all such decisions made under the new Act and is discussed further in 9.2 (below). The new Act will also continue the confidentiality requirements in relation to personal data obtained under the Act.

5.2 Ensure appropriate procedures are applied

The new Act will provide additional procedural requirements when making orders, including that steps are taken to inform the person about their obligations and rights relating to the order. The ability to appeal an order to the High Court will be retained. However, the new Act will dispense with processes, such as requiring a court order for detention lasting longer than 48 hours, that are impractical in a setting such as the Cook Islands.

5.3 Expand notification obligations

Currently, medical practitioners are required to make a report to the Medical Director if they form an opinion that a person they attended was infected with a notifiable condition. The new Act will expand these obligations to include managers/heads of pathology laboratories. It will also allow the Secretary to require other classes of persons to report – which could be used to expand obligations further to other health professionals, such as nurse practitioners, if that is appropriate in the future. The new Act will also alter the threshold for notification to where the practitioner or manager forms the opinion that the person has, *or may have*, a notifiable condition to ensure notifications occur for all suspected cases. The Secretary will have the power to request additional information from the notifier where necessary. It will continue to be an offence to fail to comply with a notification obligation.

5.4 Update list of notifiable and vaccine-preventable conditions

The new Act will update the list of notifiable and vaccine-preventable conditions to ensure currency according to the International Classification of Diseases. The lists will continue to be able to be amended via Order in Executive Council, but the law will also allow the Minister to amend the list in urgent circumstances.

6 Strengthen monitoring and surveillance

The new Act will look to enhance cross-sectoral surveillance of conditions and other health risks that may affect human health. It will require TMO, the Ministry of Environment, and the

Ministry of Agriculture to develop arrangements to facilitate the reciprocal reporting of diseases and other risks from human, animal, and environmental sources.

6.1 Outline express powers for contact tracing

The new Act will also establish a framework for contact tracing by public health officials and other authorised officers. To guide this process, a specific contact tracing framework that:

- 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;

should be prepared. For example, it would outline the circumstances in which a contact tracing official may require information from an employer in order to identify a contact of a confirmed or suspected case.

7 Enhance measures to promote vaccination

TMO administers a strong EPI programme that delivers high immunisation rates. Officials advise that uptake and consent is generally very high. However, there is a small, but growing community of anti-vaccination advocates.

The new Act will enhance current arrangements that encourage the vaccination of school-aged children. It will focus on measures that facilitate vaccination by enhancing monitoring and ensuring ready availability and access. These measures are likely to be more effective than punitive measures, such as the exclusion of unvaccinated children or withdrawal of welfare payments, which also risk exacerbating inequity.

Measures in the new Act will include:

- Requiring the Secretary to enter into arrangements with the Ministry of Education necessary to facilitate the implementation of school measures, including requirements for principals to maintain vaccination records.
- Giving the Secretary the power to order the closure of a school and/or the exclusion of unvaccinated children in the event of an outbreak of a vaccine-preventable condition.
- Empowering public health officials to take steps to contact parents/guardians of children reported by principals as being unvaccinated, counsel the parent on the benefits of vaccination and make vaccination available to the child. The capacity to seek orders requiring vaccination in the event a parent/guardian refuses will be retained.
- Requiring the Minister to ensure that compulsory vaccines are accessible and available to all Cook Islanders without charge (as is currently the case in practice).
- Enabling the establishment of a National Immunisation Register to record and monitor vaccinations (such a register has recently been put in place).

8 Update and modernise quarantine and border health measures

The new Act will revise measures dealing with quarantine and border health and integrate the matters dealt with in the MOH IHR Regulations within the Public Health Act. This will remove uncertainty and clarify processes for public health officials at points of entry. The new Act will also encourage cooperation between agencies operating at points of entry, such as Customs and Biosecurity, including provision for information-sharing, task-sharing where appropriate, and the development of contingency plans, as required by the International Health Regulations.

9 A comprehensive framework to manage serious incidents and emergencies

The new Act will contain two separate sets of powers. One will relate to 'serious incidents', the other to 'emergencies.'

A serious incident is an event which has the potential to cause serious harm to persons exposed to it, for example through the spilling of a hazardous chemical or the overflow of sewage or a toxic material. Although serious in their potential impacts, these events would usually be confined to a particular locality and of relatively short duration.

An emergency is a wide scale and often prolonged event such as a pandemic or extensive cyclone related damage which potentially threatens the health and wellbeing of all Cook Islanders.

In either of these two cases the Act will ensure that health authorities have a suite of powers that are scalable according to the risk and gravity of the event and this is consistent with the 'risk based' approach that the new Act will take (where the response is proportionate to the size of the risk).

Health authorities that only have highly restrictive powers, such as those typically found in emergency provisions, may be reluctant to use their powers to respond to a serious threat falling short of an emergency. Similarly, the absence of powers to respond to a serious threat may cause emergency powers to be activated and retained earlier and for longer than would otherwise be necessary.

The new Act will also clarify the relationship between public health emergency frameworks and other emergency laws, including the *Disaster Risk Management Act 2007*.

9.1 A framework to respond to serious incidents

Specifically, the new Act will include provisions allowing the Secretary to respond to a serious incident and take the actions necessary to contain its impacts and protect the communities that may be exposed or put at risk as a result.

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. This could include a spill of a toxic substance, a devastating storm causing damage to water supplies or sewage systems, or any other incident whose impacts present a serious risk though typically in a confined way that impacts on a local community.

The new Act will contain the following measures:

- Where an incident or event has occurred that in the Secretary's opinion constitutes serious risk to the public health, the Secretary may declare that a serious incident has occurred.
- When making the declaration the Secretary must inform the Minister.
- The declaration must: specify the nature of the incident; identify the area affected by the incident; the action the Secretary proposes to take in order to eliminate or mitigate the risk to public health; and the duration of the declaration.
- The Secretary can take whatever measures are reasonably necessary to respond to the incident including, but not limited to restricting access to or egress from any premises, place or defined area; restricting activities normally undertaken in the area; providing assistance to persons affected by the incident; entering land or premises and seizing and destroying property as is necessary.
- A declaration will last for no longer than 14 days or such lesser time as specified in the declaration. The Secretary can, with the approval of the Minister, extend the declaration for a further 14 days.

9.2 A modern public health emergency framework

The new Act will contain a public health emergency framework that takes the lessons learned from the COVID-19 pandemic and aims to achieve the following:

- A clear trigger for an emergency declaration that allows a rapid response to any developing pandemic emergency or related threat to public health. A declaration will be able to be made either in cases where the threat is imminent or where there is good reason to believe that it may present a threat to the safety and wellbeing of the Cook Islands community.
- Wide powers to do whatever is necessary to respond to the emergency, subject to a set of principles that recognises the rights and dignity of persons affected by the response.
- A framework that operates as seamlessly as possible with the general communicable disease controls and the proposed 'serious incidents' provisions.
- In cases where the emergency also warrants the operation of the Disaster Risk Management Act, makes the necessary links to ensure that the two sets of powers can operate in unison.

The current law provides for emergency and related powers across a range of different enactments and a strong case exists to consolidate and clarify the operation of these controls.

Emergency provisions in the Public Health Act will be revised in the light of the COVID-19 Act with the intention of incorporating all of the powers relating to emergencies and pandemics into a new part that follows on from the more routine communicable disease controls (such as notification of newly diagnosed cases or orders imposed on individuals.). The powers given to the Minister or Secretary during a declared emergency will necessarily be wide reaching and will impose significant constraints on the day to day activities of many residents of the Cook Islands. These may need to include quarantine and isolation, limitations on movement, restrictions on gatherings, the cancelling of events, the closure of businesses and shutting the borders. Where the Disaster Risk Management Act also applies, and in cases where emergency powers are exercised by person outside of the TMO, such as member of the police, the chain of authority and accountability will need to be clearly established.

But however necessary these actions must be to protect public health they must, as much as is possible under the circumstances, be exercised in a way that takes account of and seeks to promote the liberties and rights of the individuals affected by them. To help ensure this, a set of general principles will be established for the Act generally, but specifically in relation to the management of communicable diseases and emergencies. In particular, everyone involved in administering the Act will be required to have regard to the principles as specified and take them into account when making decisions that potentially affect the rights and interests of persons subject to the controls. These include:

- the provision of appropriate and adequate care, support, treatment and sustenance (For example, to those in quarantine facilities or areas);
- respect for the person's dignity and right to be treated without discrimination;
- respect for a person's cultural and religious beliefs wherever possible;
- the general requirement that any restrictions applied to a person in relation to a public health emergency should: only be imposed if they are necessary to eliminate a public health risk and respond to the emergency; be in proportion to the risks the person might present to others; and be the least restrictive means necessary to prevent the spread of disease or worsening of the emergency.

Environmental health and general risks to health

Current law

The environmental health provisions in the *Public Health Act 2004* 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:

- 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)

Parts 3-7 cover areas that have traditionally been dealt with in the public health laws. Part 8 provides a list of conditions or specified activities deemed to be 'offensive or insanitary' and therefore amounting to a 'nuisance or health hazard'. The requirements of these parts are generally enforceable via an abatement notice, which requires a person to undertake specified actions to deal with an identified 'health hazard', or by prosecution.²²

Buildings (part 3)

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' (ie safeguarding the health of users etc) of the sanitary, lighting, space and ventilation aspects of buildings. The Minister has power to make regulations prescribing specific standards, but no such regulations have been made. Dwelling houses cannot be used, sold or let unless they meet standards and are fit for human habitation. A permit requirement (issued by the Secretary) also applies for 'non-normal use' of a building, that is a use for which the building is not 'normally put'.

Beyond the general statements of adequacy, the Public Health Act does not impose construction standards. The *Building Controls and Standards Act 1991* regulates building construction.

Water (part 4)

Part 4 seeks to ensure the safe use of water in reticulated supplies and public swimming places. Health inspectors have powers to sample and arrange for testing of water, the results of which must be publicised by the Secretary. The Secretary must issue a public health warning concerning any water the Secretary believes is a health hazard. Proprietors of

²² *Public Health Act 2004*, pt 12 and s 130

swimming pools are required to ensure water meets any prescribed standard or is not otherwise likely to be injurious to health. Proprietors of 'accommodation houses' (resorts, hotels, guesthouses etc but not long-term rentals) must provide a notice to guests regarding reticulated water if it is not potable.

TMO will administer the Drinking Water Standards, which will be adopted under the *Ministry of Health Act 2013* in November 2020, and which applies to reticulated water supplies in Rarotonga and the Pa Enua, as well as water supplies for community facilities (schools, community halls, water stations) and commercial properties (including resorts and restaurants). Under the Standard, water suppliers are required to develop Drinking Water Safety Plans and ensure water is appropriately treated and monitored. The Standards permit disinfection through chlorination, but a proposal by the state water supplier, Ta Tatou Vai, to chlorinate water supply in Rarotonga has encountered some opposition.

The *Environment Act 2003* prohibits the pollution of waters.²³ A Water Bill concerning the use and management of water resources is being developed by the Ministry of Infrastructure.

Mosquitoes and other regulated vectors (part 5)

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.²⁴ Health inspectors may enter places to eradicate, manage, or prevent the spread of regulated vectors, and the Secretary may also authorise the general application of substances (such as spraying) in a place or area. Despite these powers, breeding grounds for mosquitoes remain a significant compliance issue.

Waste (part 6)

Part 6 is primarily focussed on the safe management of domestic waste and allows for the making of regulations covering waste and wastewater management (including water and sewage treatment plants). The *Public Health (Sewage and Wastewater Treatment and Disposal) Regulations 2014* provide detailed requirements relating to the construction and operation of these systems, currently applying only to Rarotonga and Aitutaki. The regulations are administered by the Sewage and Sanitation Board, chaired by the Director of Public Health and comprising the Director of the National Environment Services, the Building Controller in the Ministry responsible for works, and a representative of the Cook Islands Wastewater and Septic Disposal Association. Island Environment Authorities have the power to exercise the board's functions in the Pa Enua in cooperation with health officials.

²³ *Environment Act 2003*, pt 8

²⁴ *Public Health Act 2004*, s 34

The *Environment Act 2003* also contains extensive requirements relating to waste and wastewater, and litter. This includes giving Island Environmental Authorities the power to prepare guidelines relating to ‘wastewater standards’.²⁵ A Waste Management Bill is being developed by the Ministry of Infrastructure.

Human burials (part 7)

Part 7 requires human remains to be disposed of ‘promptly and safely.’ To that end, the Part imposes requirements for prompt burial or cremation and regulates burials generally. It also prevents the unauthorised removal of remains from a grave. Regulations can also be made though none have been. Sea burials are an emerging issue in the community, with the practice rare but growing, and generating concern among some Cook Islands Māori who consider the practice culturally inappropriate.

Offensive trades and nuisances (part 8)

Part 8 has a twofold purpose: it establishes (in schedule 1) a list of activities such as pig or poultry farming, slaughtering, operating a waste disposal site, scrap metal processing and asbestos removal or processing. Persons undertaking these activities must obtain an offensive trade permit, issued by the Secretary, which can contain specified conditions.²⁶ TMO is aware of offensive trades – such as asbestos removal – occurring and often works closely with the persons carrying them out, but no offensive trade permits have been issued.

Part 8 also provides a general offence of carrying out an activity that is both a ‘nuisance’ and a health hazard.²⁷ The section then lists nine types of activities or conditions such as the keeping of animals, the accumulation of waste or ‘smells or leakages from a drain or toilet’ that are to be regarded as nuisances if they are ‘offensive or insanitary’ (though neither term is defined in the Act). As well as being an offence, the Secretary may issue an abatement notice to require the person to mitigate the hazard. In some respects, the nuisance provisions overlap with local island regulations made under the *Environment Act 2003*.²⁸

Policy measures

10 A modern approach to public health risks

When considered together, parts 3 to 8 cover a range of different issues, all dealt with in different ways. This is not unusual; the Public Health Act follows a structure that can be seen in many public health laws, which have been used as convenient places to add areas of regulation that at the time were not effectively regulated in other laws. In this sense, the Act

²⁵ *Environment Act 2003*, s 12. See for example Part IV of the *Environment (Atiu and Takutea) Regulations 2008*.

²⁶ *Public Health Act 2004*, s 52.

²⁷ *Public Health Act 2004*, s54.

²⁸ See for example, parts 4 of the *Environment (Atiu and Takutea) Regulations 2008* and *Environment (Mitiaro) Regulations 2008*.

reflects a traditional and outdated approach to public health that is in need of modernisation to better manage both current and emerging health risks.

Part 8 provides a good example of this traditional approach. Nuisance and offensive trades have a long history in public health law as broad mechanisms to deal with what were seen to be public health hazards. These ideas arose at a time when risks to health were understood very differently to the way they are today, where smells and offensive conditions and the miasmas associated with them were thought to be the primary causes of disease. The lists of activities and trades deemed to be offensive or constituting a nuisance is now of limited value, especially when the Act needs to respond to new and emerging public health threats that do not fall within these traditional categories. In the cases where offensive trades or nuisances continue to present a risk to public health (for example the handling of asbestos), the risks need to be dealt with in a different and less prescriptive way.

The proposals for new, modern public health controls discussed in this paper will appear to be very different to the current arrangements in the Public Health Act. The object of these changes is to strengthen the capacity of the Act to respond to both existing and emerging issues and to create a robust model of health protection that will continue to work effectively over the coming decades. In achieving this aim the review has been driven by the following guiding principles:

1. The new Act must ensure that current issues and problems (the ones we know about) are still properly covered.
2. The new Act must also ensure that new and emerging issues (the ones we don't know about) can also be properly covered.
3. Decisions made under the new Act must be made from a consistent basis that is concerned with the outcome of an action and the risk to public health (the actual or potential harm) produced by that outcome.
4. In cases where established activities carry well-recognised risks to public health, Guidelines and Codes of Practice can be prepared to set out the specific information necessary to help persons undertaking these activities comply with their general duty to safeguard public health.

10.1 Adopt an 'outcomes-based' approach

The new Act will adopt an outcomes-based approach centred on risk to public health, which has been adopted by jurisdictions in Australia.²⁹ Risk to public health will not be defined by reference to any particular risk or by a list of known and long-established activities thought to present a risk. Rather, it will focus on the *outcome* instead of the activities that might have caused that outcome. This 'outcomes-based approach' will allow the Act to respond to any

²⁹ Specifically, in the *South Australian Public Health Act 2011* and the *Public Health Act 2016* of Western Australia.

risk to public health - the ones we know about (including those listed in parts 3 to 8) and the ones that may emerge in the future.

10.2 Impose a general duty to protect public health

To give effect to the outcomes-based approach, the new Act will impose a general obligation on all persons to protect health. The provision will be expressed in the following general terms:

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.

Persons in breach of their general obligation may be issued with a notice to take whatever action is necessary to deal with the risk. The notice must set out the required action to be taken and the time within which it must be complied with. Before issuing a notice, the Secretary or authorised officer must be satisfied that:

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

It is intended that the general obligation will cover both new and emerging public health issues *and* the long-standing issues in Parts 3 to 8 where they can properly be seen as public health issues and are not more effectively managed in other legislation.

To provide three examples:

- 1) *Current and well-understood risks to public health*: Breeding grounds for mosquitoes are a well-understood risk to public health that are currently regulated by the Public Health Act, principally part 5. These will continue to be considered a risk to public health and persons in control of premises will be required to take all reasonable steps to avoid creating and to eradicate breeding grounds.
- 2) *A new and emerging risk to health*: The impacts of climate change will present a series of potential threats to the health of Cook Islanders (storms, floods and excessive heat) though the exact nature and intensity of those threats have yet to emerge and with those threats will come the challenges of protecting vulnerable communities from its various impacts. In this environment, persons with control over, or responsibilities for, the health and wellbeing of other people will be expected to take all reasonable precautions to safeguard against the risks of exposure to these new environmental impacts.
- 3) *A risk to health not otherwise regulated*: If a new and potentially dangerous cosmetic or pseudo therapeutic procedure were to be introduced into the Cook Islands and was unable to be regulated using existing legislation, the Public Health Act could be applied on the grounds that the person operating the practice is exposing persons who might undertake the procedure to risk of harm in breach of their general duty.

Most importantly, the object of the general duty is to expand and ‘future-proof’ the Act and will *not* in any way reduce its current ability to protect public health.

10.3 Enable the use of codes of practice and guidelines for public health risks

An ‘outcomes based’ approach to public health is necessarily more general and less specific than the Public Health Act’s current prescriptive approach. Persons administering the Act or undertaking activities that might present a risk to public health will need clear advice on how they can satisfy their obligation. It is proposed that this can be done in a number of ways.,

- The Minister will be given the power to issue *Codes of Practice* in particular areas of concern. These will spell out the actions necessary to comply with the general duty and will specify that failure to comply can amount to a breach of the duty and the issuing of a compliance notice.
- The Minister will also be empowered to issue *Public Health Guidelines*. These will not have the same formal legal impact as a Code of Practice but could cover a particular activity and set out ways in which persons undertaking the activity can comply with their general duty. While failure to comply with a guideline will not in itself attract a compliance notice, it will provide assurance that if a person follows the guideline they will not breach of their General Duty.

The Act will also include the power to make a regulation requiring a person undertaking a specified ‘public health risk activity’ to be licensed and the power will be broad enough to allow licensing regulations that can impose conditions on the licence and where necessary the qualifications or experience need to obtain the licence.

The implementation strategy for the new Act will include training, guidance, and other capacity development activities to build the skills and confidence of public health officials to implement the new outcomes-based approach.

10.4 Create an offence of causing public health risk

While public health laws generally are administered by the issuing of compliance or abatement notices, there may be occasions where a person undertakes an action which causes a risk to public health that is so significant or serious that it should attract a court-imposed penalty. It is suggested that the general duty is accompanied by an offence of causing a risk to public health, which will apply whether or not the harm has occurred (whether or not the risk has in fact led to actual damage or injury). And since the impacts of some risks are more substantial than others, the offence could be in two steps, namely, where the risk is significant (where it is more than trivial) and where it is serious (where its actual or potential impacts are substantial or widespread).

The offence would be structured in the following general terms:

- A person must not cause or allow a serious or significant risk to public health.
- The following categories of penalty will apply:

- In cases where the risk is significant - a lower penalty but higher than for breach of a regulation;
- In cases where the risk is serious - a substantial penalty.
- An activity is a *risk to public health* if the activity has caused or may cause harm.
- An activity is a *material risk* to public health if a court is satisfied on the evidence that its actual or potential impacts whether direct, cumulative or long term, are significant and more than trivial
- An activity is a *serious risk* to public health if a court is satisfied on the evidence that its actual or potential impacts whether direct, cumulative or long term, are:
 - wide scale;
 - protracted; or
 - reasonably likely to endanger life
- *Harm* will include physical or mental harm to the health of any member of the public and will also include possible or potential harm as well as actual harm.

It will be a defence to prove that the person took all reasonable precautions and exercised all due diligence to prevent the commission of the offence, including complying with a Code of Practice or Guideline or putting in place reasonable systems or safeguards.

11 Repeal the list of offensive trades and allow licensing by regulation

The listing and licensing of offensive trades has been an aspect of many long-established public health laws and predates development of the environmental protection laws. The list of activities in Schedule 1 of the Public Health Act for which a permit is required includes industries whose impacts such as noise, odour or air pollution are more properly seen as environmental amenity or land use planning issues, with little if any public health significance. Part 8 can be repealed for the following reasons:

- The issues associated with many of the offensive trades listed in Schedule 1 are more related to amenity and environmental issues, rather than to public health issues. However, should aspects of an activity listed in Schedule 1 raise public health concerns they can be addressed through an order requiring the operator of the activity to comply the general duty.
- In cases where an activity does present a risk to public health, such as the removal and disposal of asbestos, the Public Health Act will contain the power to make a regulation requiring licensing with the ability to impose conditions of operation where this is considered to be the most effective way of protecting public health.

12 Streamline building standards

Building standards, including those currently in the Public Health Act, are best located in the one document. Specifically, in the *Cook Islands Building Code 2019* made under the *Building Controls and Standards Act 1991*, which sets out the standards that builders will be guided by and which already contain public health related sanitation provisions. Parallel building standards, including the general requirements in the Public Health Act, risk creating

inconsistent requirements and causing confusion. If the Building Code is regarded as incomplete from a public health perspective, the response should be to strengthen the Code rather than creating another source of standards in the Public Health Act. However, the new Act will give the Minister the power to recommend new or amended building standards to the Minister for Infrastructure where the Minister believes that they are necessary to protect public health.

The general duty in the new Act will also apply where existing buildings do not meet sanitary or safety standards to the extent that they cause a risk to public health, or where a dwelling becomes unfit for human habitation. Where the resulting risk to occupants is considered significant, it may also be the case that an offence of causing harm has been committed.

13 Strengthen water quality protections and clarify responsibilities

The new Act will clarify responsibilities of health with respect to water quality in line with the National Water Policy 2016. Water quality is typically considered a shared responsibility of public health and environment authorities, with:

- health authorities focusing on human exposure through consumption or via recreational activities and the safe disposal of sewage and wastewater; and
- environmental authorities focusing on regulation of water quality in streams, rivers and lagoons, as well as practices that affect quality, including pollution and discharges into watercourses.

To contribute to multisectoral coordination, the new Act will also impose a duty on the Secretary of Health to take steps to support cooperation and shared management of water resources in the Cook Islands, including through entering into arrangements to cooperate on standards and monitoring of water quality where appropriate.

The new Act will also retain and strengthen existing protections concerning public health risks, including:

- the power to incorporate drinking water quality guidelines and standards, including a framework for drinking water safety plans, into the regulations or a mandatory Code of Practice;
- providing the power to test, close or impose requirements on the use of any source of water that may present a risk to public health;
- to power to prohibit or impose standards in relation to the discharge into any water source, including wastewater, of any material or chemical that may present a risk to public health;
- the power to impose standards and requirements in relation to the treatment and use of wastewater (including through septic tanks), either by regulation or by a mandatory Code of Practice;
- the power to make regulations requiring water suppliers and sewage operators to be licensed and comply with specific requirements.

However, it should be noted that these proposals are subject to the proposed Water Bill.

The new Act will also entrench the principle, reflected in National Drinking Water Standards, that the removal of disease-causing organisms (pathogens) from water should be prioritised over the potential harm that may occur from disinfectants due to the seriousness and acute risk of waterborne infections.

Public Swimming pools or spa pools need not be specifically regulated. Rather, the operator of a pool will have a general duty to manage the pool in such a way as not to cause harm to its users. In practice this will involve a range of precautions including adequate chlorination, monitoring and testing of water quality, and supervising the use of the pool by the public. The Minister could publish a guideline relating to the safe use of the pool to assist the operator to discharge the various aspects of their general duty.

14 Apply general public health risk frameworks to mosquitoes and other vectors

The new Act will repeal specific provisions dealing with mosquitoes and other vectors and instead manage related public health risks through the outcomes-based approach outlined in 10.2 (above). Persons whose actions encourage the breeding of populations, either by leaving water sources uncovered or who allow stagnant water to accumulate around premises would be in breach of their general duty under the new Act, in respect of which a 'clean up' notice can be issued. Guidelines can be issued by the Minister that set out the actions persons should undertake to ensure that they do not create areas favourable for the breeding of mosquitoes and other vectors

The intention of these changes is not to diminish vector control in the Cook Islands, which is a significant public health issue, but to provide TMO and public health officials with broader and more flexible mechanisms to manage the risk which often presents in different ways. The Minister will also have the power to make regulations dealing with any specific issues relating to mosquitoes and other vectors if necessary.

15 Apply general public health risk frameworks to waste

Waste that amounts to a public health risk (either in itself or through its handling or management) should remain the responsibility of TMO. Where the handling, storage or accumulation of waste amounts to a public health risk it will attract the general duty and the issuing of a notice to comply. Waste which is the result of littering is better seen as an environmental issue or a matter for local councils, as currently addressed in Part 7 of the *Environment Act 2003*. 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 to a mandatory Code of Practice.

The new Act will give the Minister the power to make regulations concerning the storage, use, transport and disposal of any waste material or wastewater that may present a risk to public health.

16 Apply general public health risk frameworks to human remains

The new Act would repeal prescriptive requirements dealing with the disposal of human remains and manage any public health risk through the general public health duty. The disposal of human remains is culturally important to all communities. Traditionally the regulation of disposal and burial has been seen as a public health concern, though generally it presents little risk to health. The more significant issues relate to land use and planning (in the location of burial grounds and cemeteries) and environmental issues (in relation to the operation of crematoria).

The requirements relating to burial or cremation times (24 or 48 hours) in part 7 would rarely have public health impacts, and where they do the person responsible for managing the undertaking may be in breach of their general duty, in which case a notice can be issued or potentially an offence committed. Where human remains present a specific public health risk because the person died from an infectious disease and the body continues to be infectious, the Secretary will have specific powers and responsibilities under the communicable disease controls to mitigate the risk.

Applications for disinterment (exhuming remains), currently the responsibility of the Secretary, could be the responsibility of the Attorney General, and in cases where it occurs illegally and without authorisation, be an offence under the *Crimes Act 1969*.

Burials at sea also present cultural concerns for communities who have a special relationship with the ocean. Although the Public Health Act currently allows for regulations that control or prohibit sea burial, none have been made and the better approach is to see this practice as an issue for the regulation of the marine environment and as the responsibility of the environmental regulator responsible for protecting marine waters, in which case the regulations could require permits for each burial and also specify areas of the ocean, with appropriate distances from coasts, reefs and atolls or established fishing grounds, where sea burial can occur. This is the position taken in both New Zealand and Australia where the issue is seen as one of marine protection rather than public health. It may also be a matter dealt with by Island Governments to the extent it interacts with local custom.

17 Overlapping responsibilities: clarifying interaction with other Cook Island laws

Environmental health responsibilities can sometimes overlap the responsibilities of other government agencies and the legislative powers they exercise. For example, the discharge of a toxic material into waters can have the dual effect of polluting the environment, creating an offence under the Environment Act, while also creating a risk to public health. Similarly,

parts of the environmental regulations for individual island communities include a range of local environment and amenity concerns which in some cases can also have a public health impact.

Overlapping responsibilities such as these are not unusual and occur in the laws of many countries. The best way of resolving them is to make it clear that:

- the scope of the new Public Health Act is not to be limited by the existence of laws that appear to be operating in the same area, though for a different purpose;
- nor is it intended to limit the operation of any other Cook Islands law.

Having done that TMO can work towards developing operating principles and guidelines that will allocate administrative responsibilities across government agencies and Island Councils and set out 'demarcations' in areas where overlaps are significant.

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Health promotion

Current law

The view that ‘prevention is better than cure’ is a central principle of public health practice. With it comes the obligations on governments to facilitate the policies and strategies that promote good health by keeping people healthy, improving their quality of life and addressing the causes of ill health. This is particularly important in the case of non-communicable diseases which are the leading causes of death in the Cook Islands contributing to 79% of all causes of death in 2011.³⁰ Despite this, the Public Health Act currently has no provisions relating to health promotion or the capacity to address NCDs. A number of laws seek to address particular risk factors, including:

- *Food Act 1992-93* and *Food Regulations 2014*, which regulates food quality and safety and include mechanisms to set food standards and regulate packaging and labelling. The Regulations allow the Minister to restrict marketing of unhealthy food and non-alcoholic beverages to children and infants, though this framework has not been activated.
- *Tobacco Products Control Act 2007*, which regulates the sale, advertising, and labeling of tobacco products, and imposes smoke free areas.
- *Sale of Liquor Act 1991-92*, which establishes a licensing regime for liquor establishments, and is administered by the Minister for Transport.
- *Ministry of Health Act 2013*, which allows the Minister to make standards and codes of practice relating to any of the Ministry’s functions or powers under the Act, which include regulating matters that adversely affect human health and matters that may cause or contribute to the spread of disease.

Policy measures

18 Expand the scope of the Public Health Act to include health promotion

The new Act will build on and support the work already done in this area by Government with the general aim of advancing policies and strategies that are designed ‘to provide all residents of the Cook Islands with the opportunities to live longer and healthier lives by increasing control over and improving their health.’ It will provide the administrative structures and facilitate ongoing initiatives in promoting healthy home, school, work, play and social environments for healthier populations and prevent ill health. However, specific initiatives, such as tobacco control or the labelling of food should continue to be supported by the ‘special purpose’ laws already in place.

³⁰ Cook Islands NCD Risk Factors STEPS Report. Te Marae Ora Ministry of Health, World Health Organization. 2011.

The expanded scope will be reflected in the objectives of the new Act, as outlined in policy measure 1, which

- seeks to optimise the physical, spiritual and mental wellbeing of Cook Islanders;
- promotes health equitably across its population (taking into account vulnerable populations and communities); and
- creates an environment where healthier choices are easier choices.

Healthy choices are sometimes seen as matters of personal responsibility. If that is the case, it is easier for people to make those choices if they are made in a supportive environment where laws and policies actively discourage the promotion of unhealthy products or behaviours and it is the role of government to help provide these supportive environments. Similarly, commercial entities whose activities can influence these choices should also have a responsibility to ensure that they are not hindering or adversely influencing the capacity of Cook Island residents to make healthier choices.

18.1 TMO to lead action on NCDs

The new Act will give the Secretary the function of leading national efforts to address NCDs and their risk factors. This will include 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, and reporting to the Minister on progress. The Secretary may use his or her power as Chair of the National Public Health Committee to establish a subcommittee on NCDs.

19 Allow use of warnings regarding unhealthy products and activities

The new Act will give the Secretary the power to issue warning statements through the media or in any other way that is likely to come to the attention of as many Cook Island residents as possible. A statement can be issued where the Secretary believes that an activity or product ‘presents a potential risk to public health.’ For example, warning statements could be issued in the case of a potentially dangerous product that might be widely available for sale, or during an outbreak of food poisoning where the Secretary suspects a particular batch of food to be the source. The issuing of a warning statement will not in itself require those undertaking the activity or dealing in the product to take any action, but it may be accompanied by other compliance action taken under the new Act – for example, where the activity or product breaches the general duty concerning public health risk.

While warning statements should always be made with care, there will be cases where the Secretary will have to act on suspicion. Here, the need to protect public health must outweigh the reputational damage to a food company or a restaurant, and it is important that no legal liability should follow for statements made by the Secretary in good faith and in accordance with the objectives of the law.

20 Notification of Non-Communicable Diseases

Strategies and programmes to address the public health burden of NCDs in the Cook Islands are dependent on a clear understanding of their incidence and prevalence across communities. The new Act will facilitate this by requiring the notification of specified NCDs and conditions, with the information obtained added to TMO registries that can then provide the data for health surveillance and planning or for epidemiological studies. A group of NCDs or medical conditions of public health significance (for example cancers) will be declared with the requirement that if diagnosed they must be notified to the Secretary together with the required information within a set period after diagnosis. The diagnosing medical practitioner and the pathology laboratory will both be obliged to make the notification as well as any other relevant class of person specified by the Secretary (such as a nurse practitioner servicing a remote community).

21 Enable Codes of Practice addressing risk factors

It is important that the new Act is a flexible instrument and able to deal promptly with new and emerging concerns including those that are linked to NCDs. As such, the new Act will contain a general power allowing the Minister to declare a disease or a medical condition that the Minister believes presents a threat to the health and wellbeing of Cook Island residents. Having made the declaration, the Minister can issue Codes of Practice or Guidelines addressing the causes of the disease in question.

- *Codes of Practice* will outline standards and practices required to be adhered to in order to comply with the person's general duty to protect health.
- *Public Health Guidelines* will outline the ways in which persons undertaking an activity can minimise risks to public health and contribute to the promotion of health in Cook Islands. While failure to comply with a guideline will not in itself attract a compliance notice, it will provide assurance that if a person follows the guideline they will not breach of their General Duty.

Codes or Guidelines could be made for a very wide range of issues and concerns. They could apply to individuals, to businesses or to particular activities. For example:

- A code designed to address the population health impacts of poor infant feeding could implement measures contained in the International Code on Marketing of Breast-milk Substitutes.
- A guideline focusing on a disease such as diabetes or a condition such as obesity might seek to restrict or control the advertising or marketing of goods or require information or labelling on foods.
- A code designed to address injury could apply to the manufacturing, sale or supply of a particular hazardous product that might pose a threat to public health.

However, codes or guidelines should not overlap with other areas of regulation that already provide an effective control over these activities. Rather, they could be used in new or emerging areas that are not effectively regulated at present.

Unlike Codes, a breach of a guideline should not be an offence. However, the new Act will allow the Minister to publish a report on the extent to which a guideline is being complied with and name any person or company who has failed to comply.

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Emerging issues

Current law

Public health constantly evolves as changes occur in our social and environmental conditions. Shifts in social and cultural practices, the economy, trade, migratory patterns, technology, local and global spread of disease, land use and more have immense impact on the health of populations. A prime example is how globalisation has accelerated the rising burden of non-communicable diseases globally, and most recently in developing countries, through rapid urbanisation, trade and marketing of unhealthy products, changes in dietary habits, and increasingly sedentary lives. The Public Health Act, with its prescriptive focus on traditional public health matters, is ill-equipped to respond to new and emerging risks to public health. The shift to an outcomes-based approach will ensure the new Act is flexible enough to be applied to these risks. In addition, the new Act will contain several specific measures to deal with known emerging risks affecting or likely to affect the health of Cook Islands people.

Policy measures

22 Establish a framework to respond to anti-microbial resistance

Antimicrobial resistance is now seen as a very significant and concerning public health issue for communities globally and one that increasingly is the subject of international action.³¹ The new Act will contain provisions to assist and support initiatives to address this issue in the Cook Islands. The provisions will acknowledge the fact that a comprehensive response to antimicrobial resistance demands an intersectoral approach and the collaboration of a number of sectors, all working under the umbrella of a 'whole of society' plan to address the problem.

The new Act will establish a framework for a response to antimicrobial resistance and require the Secretary to prepare a co-ordination plan that addresses antimicrobial resistance and to monitor the effectiveness of the Plan. However, the Secretary will have powers to regulate the issue directly in cases where the legislation that should most effectively be dealing with particular aspects of the problem (residues in human or animal food, aquaculture or overprescribing) is not being properly applied or where there are gaps that are not being covered.

It is proposed that the Public Health Act will be amended in the following way:

- The Act will contain the requirement that the Secretary is to prepare a plan to address antimicrobial resistance. In preparing and implementing the plan, the Secretary shall consider the following issues, namely current practices and requirements in relation to:

³¹ See for example WHO Antimicrobial resistance: a manual for developing national action plans 2016.

- antibiotic residue limits in food;
 - the inspection of imported foods for possible antibiotic residues;
 - the commercial importation of antibiotic drugs into the Cook Islands;
 - the prescribing, supply and use of antibiotics;
 - primary production controls in relation to the use of antibiotics in animal feed;
 - infection control procedures in hospitals and health care facilities.
- The Secretary must assess the potential risk to public health presented by these practices and requirements.
 - The Secretary will monitor the effectiveness of the plan and report to the Minister
 - If the Minister believes the unnecessary use or prescribing of antibiotics is presenting a risk to public health by promoting antimicrobial resistance and that this is not being effectively addressed by existing legislation, the Minister may by regulation, impose requirements or prohibitions in relation to any of the matters listed above.
 - The Secretary must require that all known cases of antibiotic resistant infections are notified promptly to the Ministry of Health.

23 Plan for the public health impact of climate change

The Cook Islands is particularly vulnerable to the impacts of climate change. Globally, climate change will generate new public health threats, exacerbate existing threats, and put pressure on health systems. In the Cook Islands, this could manifest as rising sea levels reducing access to land and driving internal migration, substantially reduce the availability of fresh water and food crops, increased breeding grounds for mosquitoes and other vectors, and the disruption to health infrastructure, services and supplies caused by extreme weather events.

Te Papa Tutara A Te Marae Ora 2017-2036 (the National Health Road Map) recognises that it is crucial for the health sector to partner with other sectors and, in particular, build resilience and reduce health vulnerability to the impacts of climate change. As such, the new Act needs to empower health authorities to take action to plan and respond to the emerging public health risk.

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 will be required to cooperate with other sectors in relation to the health impacts of climate change, including through sharing information and seeking opportunities for multisectoral coordination. The power to require Health Impact Assessments will also ensure that the climate related impacts of proposed or existing developments or activities are properly considered.

24 Protect and regulate the use of personal data

The collection and use of personal information for public health purposes is an emerging legal and policy issue. Public health surveillance – the ongoing systematic collection, analysis, and interpretation of health-related data – is essential to planning, implementation and evaluation of public health practice. The COVID-19 pandemic has demonstrated the critical role of population and individual data to detect and assess public health risk, target public health interventions, monitor transmission of disease, and track broader epidemiological trends.

It is important that these activities respect and do not unnecessarily interfere with personal privacy. Not only is privacy an important individual right³² and widely valued, respecting privacy has instrumental value to public health, aiding voluntary compliance and cooperation. Experience from elsewhere suggests that persons are more likely to co-operate with public health investigators if they are confident that their rights, and especially their right to privacy, will be respected and that their personal information will remain confidential. The Ministry of Health Act contains general principles relating to medical records and health information collected in relation to health services. Yet, the Public Health Act does not provide a systematic way of protecting the personal data gathered under it and specifying the circumstances under which it can be released.³³

Personal information collected under the Public Health Act such as notifications of disease, information obtained during contact tracing or the results of tests are sensitive and as a general rule must remain confidential, be stored securely and used only for the purposes for which they were obtained. While protecting personal information must be the central goal of this proposal, there will also be occasions where personal information will need to be released for the purposes of administering the Act or on other occasions where the release can be justified in the public interest and the benefit flowing from the release outweighs the consequential breach of privacy. The new Act will allow release under certain carefully defined circumstances.

24.1 Establish a general obligation to protect personal information

The new Act will establish a general obligation to maintain the confidentiality of personal information collected under the Act. The obligation will apply to all relevant data that has been obtained by persons administering the Act, working within TMO or a health service, or acting in compliance with obligations under the Act (such as persons required to notify communicable diseases). ‘Personal information’ will be defined as any information that can,

³² The right to privacy is recognised in a number of international legal instruments, including the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights. Laws in the Cook Islands recognise personal privacy and provide some safeguards, including the *Official Information Act 2008*, the *Telecommunications Act 2019*, and the *Family Protection and Support Act 2017*.

³³ See *Public Health Act 2004*, s87

or is likely to, identify a person. But will *not* include ‘anonymised or de-identified’ data that might be used for the routine reporting of disease trends and incidence, or other related statistical, research or reporting purposes.

24.2 Allow the use and disclosure of personal information for a public health purpose

There will be circumstances where disclosure or use of personal information can and should occur and these will be specified in the Public Health Act. They include circumstances that are well recognised internationally as exceptions to the general protection of privacy including cases where the release is:

- for the necessary administration of public health controls;
- for the ongoing treatment or care of a person;
- for routine sharing of records within a hospital;
- with the consent of the person to whom the information relates or their guardian or representative; or
- as formally required by a court.

There will also be more general cases where disclosure or use is justified if the Secretary considers that it is necessary ‘to contain the risk of infection’ or 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.’ In making a decision to release data in these circumstances, the Secretary will be obliged to weigh the two competing values of protecting the privacy of the individual against the need to protect the wellbeing of the community.

24.3 Allow disclosure of personal information for certain research purposes

In addition to these specific categories, the new Act will allow release for authorised research purposes. For example, where personal health information which may have been collected years before is now part of a retrospective study and personal identifiers are necessary to link the older data with later medical records. In these cases, consent may not be feasible and in order to allow studies such as these whose findings may bring substantial health benefits to proceed, access to personal information could be allowed, but subject to strict requirements. The Act will provide that, as a precondition of release, the TMO Ethics Committee must approve the project overall and the data release in particular. The Secretary must also approve the release. Both the Ethics Committee and the Secretary can impose conditions on the management or use of the information and these must be complied with.

A generally accepted international view of privacy rights is that any release of personal data for research purposes necessarily involves a ‘balancing’ of two competing public interests, that of protecting the privacy of the individual and that of the benefits to the community that can come from research. The new Act will adopt this position and specify that before

agreeing to a release of personal information, the Ethics Committee must 'balance the potential public health or clinical benefits of the research against the principle of protecting personal information' while the Secretary must be satisfied that that the release 'will not be contrary to the person's interests.' The Act will then reinforce the importance of protecting privacy by providing that where information is released, it must not be disclosed except as approved by both the Ethics Committee and the Secretary, and only for the purposes of the study.

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Annexes

Insert annexes – if any. For example, list of consulted stakeholders.

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