National Council of
Women of New Zealand
Te Kaunihera
Wahine O Aotearoa

National Office
Level 4 Central House
26 Brandon Street
PO Box 25-498
Wellington 6146
(04) 473 7623
www.ncwnz.org.nz

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Submission to the Health Select Committee on the Public Health Bill (177-1)

NCWNZ is an umbrella organisation representing 47 Nationally Organised Societies and National Members. It has 28 Branches throughout the country attended by representatives of those societies and some 150 other societies.

NCWNZ has been involved in discussing and promoting public health issues for more than a century. However, a document as complex as this requires careful consideration and sufficient time to enable our membership to respond to calls for comment. The Public Health Bill was released near Christmas which is during the period when NCWNZ branches do not meet; therefore a limited number of responses have been received from the membership. We have drawn on NCWNZ resolutions and on submissions made to the various discussion papers on which this Bill is based.

General Comment

Current legislation is both outdated and fragmented. The proposed Bill takes into account factors unique to the 21st century such as the changing face of international travel, which has the potential to give rise to new health security risks at our borders, and will bring New Zealand in line with international regulations. This Bill is seen as bringing all areas of public health together under one umbrella and seeking to 'future-proof' public health legislation through a more open framework that can be applied to whatever the current situation demands.

While the provisions in the Bill to manage threats to public health from communicable diseases, border controls and tracing of contacts, are commendable, the new guidelines that are aimed at reducing risks of non-communicable diseases such as diabetes, for example, raise concerns for privacy and human rights issues. Safeguards are needed to preserve the right for individuals to make their own choices with regard to food, for example.

The responses from the membership all support the opportunity for the establishment of non-binding regulations to cope with modern situations such as pandemics. The incursions of AIDS, the Hong Kong flu, SARS and other viruses are representative of what we didn't previously have in NZ.

NCWNZ believes that the public good should always have priority over individual rights where there is real or perceived risk accrued to some disease or condition that the individual may have or transmit to others. The tension in the legislation is to balance the rights of the individual for privacy and the right of businesses to operate without interference, against the need for the community to be protected from avoidable health risks. The legislation also needs to provide mechanisms that enable easy reporting that is not administratively burdensome to the medical professionals who must provide the details.

Part 1 Preliminary provisions, roles and responsibilities
Subpart 1 preliminary provisions
Clause 3 Purpose

NCWNZ members are pleased to see the purpose of the Bill clearly articulated in 3(1) "to improve, promote, and protect public health in order to help attain optimal and equitable health outcomes for Māori and all other population groups" and that it aims (3(2)(c)) "to reduce health inequalities by improving health outcomes for Māori and other population groups".

Reducing health inequality for Maori is closely related to the environment (eg shellfish gathering). It is therefore somewhat puzzling that there are few indications of the processes that will reduce the inequalities for Māori and other population groups, though the Explanatory Notes assure us that the proposed legislation is consistent with the New Zealand Health Strategy, the New Zealand Disability Strategy, and He Korowai Oranga (Māori Health Strategy).

It is appreciated that this legislation mandates for government consultation with Māori (3(3)(a) and 239(2)) when developing and implementing public health policies and measures. So too must local body legislators consult with Māori when drafting their public health bylaws, regulations and guides, and this should also be explicit in the proposed legislation. While the Local Government Act 2002 (eg s4, 81) mentions involvement of Maori in decision-making processes, there does not appear to be a specific mention to consult with Māori on public health issues.

Subpart 3 Functions of Director-General – Health districts
Clause 14 Health districts

The membership debated whether the public health districts should align with those of the District Health Boards or with the territorial authorities.

The majority view was that public health districts should remain aligned with the territorial authority boundaries as the territorial authorities are far more responsive to community needs. The geographical area is compact in comparison to the broader Health Board areas.

Part 2 Health information, notification, reporting and cervical screening

There is support for the changes to notifications, and the provision of a more flexible framework that enables the gathering of information about new and emerging conditions.

Subpart 3 Notification and reporting
Clauses 31 – 36

NCWNZ agrees with the extension to existing notifications that mean reporting will include "a condition, or a cluster or outbreak has occurred" and there is a risk to public health (clause 31) or "the presence of a notifiable contaminant in that sample" (clause 34) and that this reporting must be undertaken by medical practitioners (clause 32), laboratory managers (clauses 33 and 34), a person who obtained results of a test performed outside New Zealand (clause 35), or a veterinary surgeon (clause 36).

In our 2003 submission[1], the membership generally agreed that the broader term 'condition' should be used instead of the narrower 'disease'.

[1] NCWNZ. 2003. Submission to the Ministry of Health on Public Health Legislation: Promoting public health, preventing ill health and managing communicable diseases. S03.27.

Clause 38 Temporary specification of notifiable conditions or epidemic disease

The use of temporary specification also has support as a risk-based mechanism to protect the community, especially as this mechanism is time bound to a maximum of six months.

Subpart 4 National Cervical Screening Programme (NCSP)

NCWNZ established its first policy in relation to cervical screening in 1987, and has advocated for the implementation and extension of the cervical screening programme. We support clauses 44-78 "to reduce the incidence and mortality rate of cervical cancer by providing for the continuation of the NCSP" and to facilitate the operation and evaluation of the programme.

Part 3 Non-communicable diseases

Currently the two leading causes of death in New Zealand are non communicable, ie heart disease and cancer. While it is necessary to tackle such growing issues as obesity that can lead to heart disease and diabetes, the nature and extent of state intervention needs to be closely monitored. It is far preferable to resource, support and encourage changes to lifestyle living rather than impose restrictions. Further, changes to lifestyle such as diet highlights the growing concern for the plight of families living on a low income with insufficient money for purchasing good nutritious food. With food prices continuing to rise, healthy food options move further out of reach. The link between this 'food poverty' and obesity is one of the major reasons that 2003 figures from the Ministry of Health show 60% of Maori women and 76% of Pacific women are either overweight or obese[2]. Legislation and regulation cannot exit in a vacuum – their implementation must be supported with initiatives for low income families.

Subpart 3 Codes of practice and guidelines
Clauses 81-88

It is pleasing to see that the Director-General may issue a code of practice or guidelines (clause 81), that these must be available for inspection, and there must be prior consultation (clause 82). Some disappointment was expressed that the use of these codes or guidelines is voluntary and not mandatory. Perhaps the review (clause 88) could assess the need for the codes to be mandatory.

One response to this submission saw voluntary codes and guidelines as a disincentive for industries to make meaningful changes.

Subpart 4 Review of this part
Clause 88 Report to the Minister

Reporting back by the Ministry of Health on the efficacy of codes or guidelines just once, within three years after the implementation of this Act (and then with the option of indefinite deferral) is not adequate. There should be ongoing review, perhaps on a three-yearly cycle.

Part 4 Management of conditions posing health risks
Clauses 90-125

NCWNZ supports the wider powers provided under this Bill to protect against the spread of known disease or newly emergent conditions. By legislating for the least restrictive option (clause 91) we are encouraged to believe that the intent is to minimise the intrusion on the individual to protect the greater community.

[2] Public Health Association of New Zealand. Government obesity response won't help most at risk'. Press release, 27 Nov 2007. Available http://www.pha.org.nz/media/071127govtobesityresponse.pdf

There appear to be sufficient safeguards such as appeals (clauses 96, 103, 115, 122 and 123) and time restrictions (clauses 96, 107, 115 and 116), as well as options that permit the medical officer of health to intervene given reasonable grounds (clause 97) and act under urgency (clause 106). Early intervention and quick action are both justifiable damage limitation when there is a risk to the health of others.

Subpart 4 Offence to recklessly spread notifiable disease or other notifiable condition
Clauses 126-127

NCWNZ supports this subpart that clearly identifies the offence of recklessly spreading a notifiable disease.

Subpart 6 Contact tracing
Clauses 137-152

NCWNZ supports the ability to trace contacts to limit or prevent the spread of a condition as a necessary risk mitigation technique to protect the health of the wider community. While members considered that the community's right to protection had precedence over an individual's right to privacy, the loss of that privacy should be very seriously weighed before it was destroyed – the need for this destruction of privacy must be well established.

Part 5 Public health role of territorial authorities

In general, the members believe that the protection of the community must be paramount. Commercial enterprises that are involved in any process which could ultimately affect the health of the public must be required to operate at a standard which protects the public. This stance is however tempered by a public resistance to a prohibitively restrictive environment. Regulations cannot be viewed in isolation from wider sociological implications – using the local fast food outlet is often more than simply for the food, it is a social experience.

Subpart 3 Control of nuisances
Clauses 166-183

Territorial authorities have an obligation to regularly inspect for nuisances (as defined in clause 166) but there is no mention of reporting to their constituents on the type of nuisances investigated and their resolution. People mooted that there should be some form of annual or biennial reporting defined in general terms perhaps in the same way as the requirements for drinking water reporting. However, if the requirements were too prescriptive it could become administratively burdensome.

Environmental health has been covered in the Resource Management Act and the Hazardous Substances and New Organisms Act. The focus in these Acts is on nuisance rather than public health. While the Bill defines nuisance as an activity that "is, or is likely to be, injurious to public health" (clause 166), some did not believe this was strong enough for future-proofing the legislation against circumstances unforeseen today. Impact assessments reports are a requirement for resource consents, and it is important that the human health of the community is addressed in these assessments as part of environmental health. Some concern was expressed that Clause 183 may be too vague, particularly when new information on the implications of the activity on human health becomes available during or after a resource consent process.

Part 8 Miscellaneous provisions

Clause 328 Examination of children at early childhood centres and schools

Concern was expressed about the requirement in 328(2) where provision is made to not screen children unless there is consent from the parents. The preference is that children should be screened unless refusal was received from the parents. That is, this should be an opt out rather than an opt in mechanism, especially as the only alternative given where consent is refused is for the advice to be given to the parent or guardian and educational establishment and that the child is referred to a medical professional. There is no mandating that the child is examined by a medical professional.

374 Regulations about public health generally

Concerns were raised about subclause (x) regarding powers to legislate in the area of non-communicable diseases. While we accept that a behaviour change is not achieved by education or information alone, there is a risk with this subclause that the government could interfere at an unacceptable level on issues that it determined. It could legislate against what food we eat, or it could mandate the use of fluoridation. The positive uses of this clause could include the requirement for responsible food advertising. NCWNZ members were unanimous in their view that the public requires good information to make informed choices. Education should begin in early childhood centres and schools so people are not left to make their choices based only from what they see or hear in the media.

Schedule 3 Regulated activities

There was some puzzlement at the inclusion of the activities listed as regulated, particularly the Class 2 activities of microwave ovens and plastic wrapping. Given the way that Part 6 is written, it would appear that anyone who used plastic wrapping would be in line for a substantial fine if they did not have a public health risk management plan approved for the activity (clause 195).

Also, while the regulations are named Plastic Wrapping Regulations (SR 1979/272) they refer to the use of plastic bags, and not the cling film that is used with food.

> 2 Certain plastic bags to be labelled with warning to children
>
> (1) Except as provided in sub clause (2) of this regulation, no person shall, in the course of any business, use, for the packing in connection with the sale or delivery or return to a customer of any commodity that is in domestic use, any wrapping in the form of a bag made of polyethylene or similar plastic material of a thickness of 0.025 mm or less, unless there is conspicuously printed on the bag the following warning:

Conclusion

NCWNZ supports the risk-based principles of this proposed legislation to intervene only when necessary to protect the health of New Zealand's population. In most cases, the responses to this submission stressed that any changes in the legislation should be monitored for their social and economic effects.

Christine Low
National President

Beryl Anderson
Convener, Parliamentary Watch Committee

Oral Submission to the Health Select Committee on the Public Health Bill (177-1)

Date: 23 April 2008, 11.55am
Presenters: Beryl Anderson, Jean Fuller
Committee:
Coleman, Jonathan (N)
Kedgley, Sue (G) chair
Soper, Lesley (L)
Stewart, Barbara (NZF)
Wall, Louisa (L)

My name is Beryl Anderson; I am convener of the Parliamentary Watch Committee for the National Council of Women of New Zealand. With me is committee member, Jean Fuller.

The submission you have before you was written by us after consultation with the members of NCWNZ on just a few of this issues raised in the legislation. The Council embraces a wide range of women's groups, and supports the risk-based principles of this proposed legislation.

The members support the intention of the Bill to future-proof New Zealand against new health security risks, and that it will bring New Zealand in line with international regulations.

The membership discussed the need to balance the rights of the individual for privacy and the right of businesses to operate without interference, against the need for the community to be protected from avoidable health risks. The consensus was that the public good should always have priority over individual rights where there is real or perceived risk accrued to some disease or condition that the individual may have or transmit to others. However, any loss of individual privacy should be very seriously weighed before it is destroyed.

The membership also expressed strongly the need for the legislation to provide mechanisms that enable easy reporting that is not administratively burdensome to the medical professionals who must provide the details.

The issues relating to non-communicable diseases (Part 3) were raised by all members. There needs to be a holistic approach to interventions. Healthy food choices are not always an option for those on low incomes. The preference is to resource, support and encourage changes to lifestyle living rather than impose restrictions. Legislation and regulation cannot exit in a vacuum – their implementation must be supported with initiatives for low income families.

Question
Sue Kedgley asked Beryl for details of what positive uses that we saw for section 374 subclause x. as mentioned in our submission.

Beryl responded that we felt this clause could be used to encourage advertising that would promote healthy eating, and to encourage the provision of information on which people could base their decisions.

NB We followed two highly emotive presentations and the Committee was somewhat overwhelmed by the earlier presenters.