



## Proactive Release

The following documents have been proactively released by the Department of the Prime Minister and Cabinet (DPMC), on behalf of Hon Andrew Little, Minister of Health:

### Health and Disability System Reform Briefings

The following documents have been included in this release:

**Title of paper:** Health Reform Strategy and Approach to Legislation

**Title of paper:** Health Reforms: Implementation and Transition Cabinet Paper

**Title of paper:** Health Reforms: Planning and Accountability Framework

**Title of paper:** Health Reforms: Implementation of a Consumer Voice Framework

**Title of paper:** Health Reforms: Legislation Cabinet Paper Summary and Talking Points

**Title of paper:** Health Reform: Legislation and Transition Update

**Title of paper:** Health Reforms: Legislating for Public Health Structures

**Title of paper:** Health Reforms: Legislating Intervention Powers and Obligations Relating to Health New Zealand

**Title of paper:** Health Reforms: Final Decisions for Legislation

**Title of paper:** Health Reforms: Implementation Cabinet Paper Summary and Talking Points

**Title of paper:** Confirming Hauora Māori System Settings

**Title of paper:** Health Reforms: Employment Relations Settings

**Title of paper:** Further Policy Decisions for the Health Reform Bill: Cabinet Paper Summary and Talking Points

**Title of paper:** Health Reforms: Development of the NZ Health Charter and Associated Legislative Provisions

**Title of paper:** Health Reforms: Independent Alcohol Advice and Research Function and Levy

**Title of paper:** Health Reforms: Remaining Transitional and Consequential Provisions for Decision

**Title of paper:** Joint Te Kawa Mataaho/ Health Transition Unit Report: Māori Health Authority – Proposed Application of Crown Entities Act 2004 and Public Service Act 2020

**Title of paper:** Health Reforms: Draft Cabinet Paper to Approve Bill for Introduction and Health System Principles

**Title of paper:** Pae Ora (Healthy Futures) Bill: Approval for Introduction at Cabinet



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- section 9(2)(a), to protect the privacy of individuals;
- section 9(2)(f)(iv), to maintain the confidentiality of advice tendered by or to Ministers and officials;
- section 9(2)(g)(i), to maintain the effective conduct of public affairs through the free and frank expression of opinion; and
- section 9(2)(h), to maintain legal professional privilege.

# Briefing

## HEALTH REFORMS: EMPLOYMENT RELATIONS SETTINGS

To: Hon Andrew Little, Minister of Health; Hon Peeni Henare, Associate Minister of Health

Date	19/08/2021	Priority	Medium
Deadline	3/09/2021	Briefing Number	DPMC-2021/22-196


### Purpose

This briefing provides you with initial advice on the future of employment relations settings.

### Recommendations

- a. **Note** that the foremost objective in designing our future employment relations architecture is to embed a more strategic approach to bargaining, to improve sustainability, equity, fairness, productivity, and the lived experience of our workforce.
- b. **Agree** that the Ministry of Health should develop a high-level workforce strategy, either as part of the NZ Health Strategy or separately, which alongside the Government Policy Statement and NZ Health Plan will inform Health NZ's approach to employment relations; to be developed in partnership with the Māori Health Authority and Health NZ. **Yes / No**
- c. **Agree** that in the future system, the Ministry of Health, Health NZ and Māori Health Authority should look to establish accords with unions to outline the medium-term expectations and goals of parties through employment relations, and build trusted, sustainable relationships. **Yes / No**
- d. **Agree** that a cross-agency Steering Group, including representation from the Ministry of Health, Health NZ, Māori Health Authority, Public Service Commission and the Treasury should manage major health employment relations challenges that sit across agencies' portfolios. **Yes / No**
- e. **Agree** that Health NZ lead the development of a strategic employment relations plan, and the strategic plans and parameters for individual bargaining rounds, subject to consultation with the Ministry of Health and Public Service Commission, and with the Māori Health Authority (on overall employment relations strategic plan only). **Yes / No**

- f. **Agree** that Health NZ be required to seek agreement from the Minister of Health on their strategic employment relations plan, and on the fiscal parameters for specific bargaining rounds. **Yes / No**
- g. **Agree** that Health NZ otherwise be able to lead employment relations activities, within the parameters of agreed employment relations strategic plans, and bargaining strategic plans and parameters, without requirements of consultation or approval from other agencies – including settling bargaining events within agreed parameters. **Yes / No**
- h. **Agree** that the Minister of Health’s agreement be required for Health NZ to settle any bargaining event outside the agreed fiscal parameters for that event, and that seeking such agreement be subject to consultation with the Ministry of Health and Public Service Commission. **Yes / No**
- i. **Agree** that Health NZ be required to consult with the Ministry of Health and Public Service Commission in settling any bargaining event outside any agreed non-fiscal parameters for that event. **Yes / No**



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Stephen McKernan  
Director  
**Health Transition Unit**

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19/08/2021

Hon Andrew Little  
Minister of Health

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**Contact for telephone discussion if required:**

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Stephen McKernan	Director, Transition Unit	s9(2)(a)	
Tom O’Brien	Policy Manager, Transition Unit	s9(2)(a)	✓

# HEALTH REFORMS: EMPLOYMENT RELATIONS SETTINGS

## Context

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1. In December 2020 we provided you with initial advice on the future of our health workforce [DPMC-2020/21-344 refers]. You have since made a series of decisions, confirmed by Cabinet, as to our future health system operating model.
2. This paper is the second in a suite of four on the future of our health workforce – and is focused on how we can strengthen employment relations settings into the future. We anticipate that we will provide you with further advice on employment relations between now and the end of the year, linked to advice on wider accountability settings for the health system (to ensure alignment), and to the establishment of the interim Health NZ, which will play a leading role in the management of employment relations during the transition period.
3. In addition, the Director-General of Health, the Chief Executive of TAS and the Chief Executive of Taranaki DHB (the lead DHB CE for workforce and employment relations) have commissioned the Chief Executive / System Lead for Pay Equity, Gráinne Moss, to undertake a review of current employment relations settings in the health system.
4. We are providing you this advice now to ensure you have early visibility of key challenges and how we might strengthen our employment relations settings, particularly through the relative roles and responsibilities of agencies. Officials from the Transition Unit have met with Ms Moss who intends to provide a report in late August or early September. Following that report, we will provide you with any updates to or commentary on our advice as required – though we understand the overall direction and themes of Ms Moss' findings are well aligned to our advice.

## Our goals for employment relations

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5. In the future health system, Health NZ's roles as employer of the government health workforce and as a commissioner of services which employ around 150,000 further health workers will offer significant opportunities for a more strategic, consistent approach to employment relations. If employment relations works better in future, we can:
  - a. make greater progress towards wider government employment relations goals and strategic priorities
  - b. ensure fairness and equity in conditions – formal and informal – across our health workforce, regardless of employing entity
  - c. ensure our workforce is sustainable in its capacity, capability and human capital
  - d. work more strategically with our workforce to ensure that negotiations maximise the excellence and impact of our workforce, such as by pursuing opportunities to improve efficiency



- e. reframe relationships with unions from a cycle of operational bargaining to one that is more strategic, and builds faith and trust over time – which does not just focus on bargaining outcomes but reinforces a constructive engagement approach to employment relations
  - f. ensure fiscal sustainability and predictability of settlements – including maintaining the ceiling of multi-year settlements – and manage the wider economic implications of settlements.
6. At the same time, the scale of the health workforce means that decisions made about employment settings – including conditions and rates of pay – will always be economically impactful for NZ, and will have flow-on effects to other sectors (including both the private and funded health sectors and the wider public sector). These risks need to be managed by the way we approach employment relations.
7. To achieve this:
- a. Ministers need to have levers to set strategic direction, including manifesto and other priorities for the health workforce, and to ensure the costs of bargaining do not exceed the government’s fiscal capacity and the funding path agreed by the NZ Health Plan
  - b. agencies responsible for stewarding public finances, the public service and the health system need appropriate levers to ensure operational practice reflects strategic priorities, and to ensure that decisions made in the health portfolio do not have adverse effects for the wider public sector
  - c. Health NZ needs a clear mandate for employment relations, including to set operational strategies for how they tackle bargaining and employment relations more generally; sufficient flexibility to bargain in good faith within their agreed financial mandate; and the power to manage the day-to-day demands of managing a large and diverse workforce.

## **Ensuring a strategic approach to employment relations**

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8. While Health NZ must have autonomy to operate as a good-faith and effective employer, it is also important that:
- a. Ministers are able to set system direction and the fiscal parameters within which employment relations occur
  - b. as the Minister of Health’s chief advisor and system steward, and as the agency responsible for Vote Health, the Ministry of Health can influence the strategic approach Health NZ takes to employment relations
  - c. the Māori Health Authority plays a role ensuring employment relations practice drives fairness and equity for Māori
  - d. the Public Service Commission is able to advise on and assure Ministers that employment relations decisions made in health have positive or manageable implications for the wider public service (e.g. pay levels set during bargaining rounds), and are advancing wider system goals for the public sector.

9. This is a fine balance to strike. In doing so, the overall approach we recommend is that a wider range of agencies be involved early in the planning process for employment relations activity – such as in setting an employment relations strategy and approving bargaining parameters – but that Health NZ can then operate within those agreed parameters. We discuss this approach in further detail below.
10. We know that at present, embedding a strategic approach to employment relations has faced challenges:
- a. By and large, bargaining is largely transactional and not well connected to workforce productivity initiatives. This has tended to increase pressure on the health system over time, without realising opportunities to both improve system performance and improve health workers' experiences in the workforce.
  - b. DHBs have been fragmented and have competing accountabilities to their boards and to Ministers, which does not always incentivise consideration of the system impacts of employment relations decisions. For example, the implications for other parts of the country, the private sector or other public sector workforces is not always given sufficient consideration when employment relations decisions (e.g. pay, contract terms) are made.
  - c. Good information about the costs and flow-on implications of employment relations decisions is not always available to agencies and Ministers, so decisions may understate full system costs.
  - d. Translating strategic objectives into concrete action is not always simple, particularly in a bargaining environment – which can mean strategic priorities have lower priority than immediate pressures of each relationship or workforce.
  - e. s9(2)(j)  
[Redacted text]
  - f. Employment relations and policy are rarely seen as connected; meaning that opportunities may be missed to use policy levers to improve the experience of our workforce, or to trade-off changes in pay, conditions or ways of working against desired policy changes.
  - g. Relationships between the agencies involved in bargaining can be made fraught by divergent priorities and focus, without shared strategic direction.
11. In tackling these challenges, we consider three broad types or phases of employment relations activities:
- a. Overarching policy. This includes the development of the Government Policy Statement (GPS), letters of expectation, the NZ Health Plan, the Māori Health Plan and the NZ Health Charter as high-level policy and culture-shifting artifacts which will shape the employment relations portfolio.
  - b. Operating frameworks. This encompasses measures designed specifically for employment relations activity, including an overall employment relations strategic plan for the health system, and strategic plans for individual bargaining rounds (including formal parameters).

- c. Operational employment relations activities. This includes the day-to-day business of employing staff, the conduct of bargaining rounds, and the delivery of policies with employment relations features.
12. All agencies will collaborate to some extent in delivering each of these, though relative roles and weightings will vary. We explore each area in further detail below.

## Overarching policy

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13. The future system operating model is premised on much stronger, more strategic policy direction which then influences the activities of all health agencies. This direction will flow through:
- a. the GPS, which acts as the Minister of Health's primary policy mechanism to direct the operations of the health system to meet Ministerial expectations
  - b. letters of expectation, which may further outline Ministerial priorities for specific organisations
  - c. the NZ Health Plan, which will set out what the health system as a whole is expected to deliver for New Zealanders, and will be the basis for funding received by health agencies
  - d. the Māori Health Plan, agreed between the Māori Health Authority and Health NZ, which will identify areas of particular focus and improvement for Health NZ
  - e. the NZ Health Charter for the health workforce which will guide the culture, leadership and ways of working for the sector
  - f. the Government Workforce Policy Statement, which sets the government's wider employment relations strategy and goals (beyond just the health system).
14. Some areas of employment relations will always be outlined by these central documents – for example, s9(2)(f)(iv) [REDACTED] and the GPS is likely to outline broad expectations for how employment relations activities will be approached (e.g. general principles) in most instances. In other cases, the degree of detail offered by these documents will vary depending on the strategic priorities of different Ministers and agencies from year to year.
15. As per advice to date, the development of these documents will be led by a combination of the Ministry of Health, Māori Health Authority and Health NZ with the agencies largely working in partnership. These vehicles will offer a useful steer on the Government's broad strategic objectives; for example, the GPS would be a good vehicle to encourage Health NZ to work towards more consistent, fair terms and conditions. However, it will not be a document which goes to the detail of employment relations practices, bargaining approaches, or fiscal management of cost pressures through bargaining.
16. To ensure that the difficulties of the current employment relations context do not come to define future employment relations settings, we recommend supplementing the GPS and other planned tools with additional mechanisms to ensure Health NZ takes a strategic approach to employment relations:



a. Either as part of a NZ Health Strategy or separately, the Ministry of Health should develop a strategic approach to our health workforce, including high-level priorities for employment relations. This should complement the GPS and inform the NZ Health Plan, focusing on medium- to long-term system priorities. It should be developed in partnership with the Māori Health Authority and Health NZ, to set system priorities beyond those highlighted in the GPS or NZ Health Plan.

b. s9(2)(f)(iv) [Redacted]

[Redacted]

[Redacted]

17. We would not anticipate legislating for the above mechanisms, to preserve flexibility for them to adapt and evolve over time, and to ensure that interim agencies have a hand in shaping the institutions which will govern employment relations settings. As we provide you with advice on accountability settings over coming months, we will advise on any intersection between the proposed mechanisms above and those settings, and whether any modifications are required to ensure accountability settings are coherent across the system.

## Operating frameworks

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18. As noted above, one of the deficiencies of our current employment relations environment is the relatively weak connection between strategic intention and policy and the conduct of employment relations in practice. In the future system, this risks driving increased costs, and poorer use of employment relations levers to effect strategic change (e.g. in conditions or ways of working) where that is desired by the GPS and NZ Health Plan.

19. In particular, there is a delicate balance to be struck in defining (and adhering to) the formal parameters for separate employment relations events, which set the area within which Health NZ is empowered to negotiate. Most importantly, these

parameters set the multi-year funding limits for any given bargaining event, which will have significant implications for whether overall funding ceilings are maintained.

20. As the lead agency for employment relations, we recommend that Health NZ be responsible for leading the development of strategic operating frameworks for employment relations. The two key mechanisms for this would be:
  - a. The development of an overall employment relations strategic plan. This would be expected to reflect the GPS, NZ Health Plan and the high-level workforce strategy discussed above, and would articulate how these broad directions come together with Health NZ's operational demands to produce a coherent, practical approach to managing employment relations activities. This would include overall approaches to good employer obligations, bargaining, conditions, safety and key relationships (e.g. with unions). Following development by Health NZ, this would be approved by the Minister of Health, on the basis of consultation with the Ministry of Health (considering alignment to GPS, NZ Health Plan and workforce strategy), Māori Health Authority (delivery for Māori health equity) and Public Service Commission (alignment to any issued guidance, wider public service expectations and government employment relations goals).
  - b. The development of specific bargaining strategic plans and parameters as specific bargaining rounds arise. These documents would be much more operational, and would set out hard parameters for the conduct of that bargaining event – mainly relating to overall cost. They would also signal any key non-fiscal priorities for Health NZ to work towards, out of the overall employment relations strategic plan (e.g. if there was a desire to align terms and conditions, or permit greater flexibility of employee hours). These strategic plans and parameters would be subject to consultation with the Ministry of Health, as steward of Vote Health and the health system, and by the Public Service Commission, focused on the flow-on implications of settlements. The Minister of Health should approval fiscal parameters for bargaining events.
21. These two sets of documents would set parameters for Health NZ's major employment relations activities. The approach proposed has the benefit of clearly connecting operational employment relations activities with overarching policies and strategies, ensuring that Health NZ has an opportunity to articulate how it intends to respond to those demands, as well as the operational and employment pressures it will manage day-to-day.
22. This approach would shift the current consultation rights of the Director-General of Health, which tend to result in consultation as bargaining events near settlement, where there are few opportunities to shape strategic direction. Consultation in the development of a strategic plan and parameters would provide earlier opportunities to contribute to Health NZ's approaches, but would then free Health NZ to negotiate freely within parameters.
23. It will be vital to ensure that Health NZ is not overburdened by this framework, and has the operational flexibility needed to perform. However, we consider that the above framework is commensurate with the very significant implications of Health NZ's employment relations functions – including the multi-billion dollar costs associated with bargaining, and even greater flow-on implications of settlements and employment relations activities for the wider public sector.

24. If such a framework were to be imposed, it would be critical that Health NZ would then have freedom and autonomy to act without fetter within that framework – adopting a ‘tight-loose-tight’ approach to managing expectations. This would free Health NZ to get on with its role in employment relations activities, operating within already-agreed parameters.

## **Operational employment relations activities**

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25. This operational autonomy will be critical to Health NZ’s success, as a very large employer and commissioner of staff. We anticipate that as a general rule, Health NZ ought to be able to manage independently within the parameters of its employment relations strategic plan and strategic plans for specific bargaining rounds (insofar as those negotiations are concerned) – though noting that Health NZ will remain subject to the usual powers of the Māori Health Authority and Ministry of Health to monitor performance.
26. We anticipate that Health NZ would be monitored using usual accountability levers (on which you will receive further advice over the next two months) for its performance against the overall employment relations strategic plan, and against wider system expectations for its performance. We expect that this will give sufficient operational flexibility to allow Health NZ to adopt a range of approaches of its choosing, subject to overall strategic priorities. This will require access to quality, up-to-date data and information, which will be a feature of the future health system.
27. In relation to bargaining, however, it is possible that Health NZ may sometimes need to settle a bargaining event outside the parameters agreed. These parameters will be set with a mind to ensuring that the overall costs set aside for settlements are not exceeded, and to mitigate flow-on costs to the wider public sector. If parameters are regularly exceeded – as is the case today – we risk both systematic overruns of Vote Health, and a perpetuation of a culture which encourages union pressure and strike action because of a perceived flexibility of funding envelopes.
28. We therefore recommend that where Health NZ intends to exceed fiscal parameters for a particular bargaining round, they must consult with the Ministry of Health and Public Service Commission, and seek the agreement of the Minister of Health. This would both allow for the modelling of any implications of such a breach, and will encourage Health NZ to adhere to parameters wherever possible. We anticipate that the Minister of Health would consult with the Minister of Finance where the sought breach of parameters risked breaching the overall funding ceiling for the multi-year settlement, or created significant financial precedents or impacts for other portfolios.
29. Where Health NZ proposes a settlement in breach of non-fiscal parameters, we recommend that they be required to consult with the Ministry of Health and Public Service Commission, but not seek Ministerial approval; this retains their ability to bargain as an employer in good faith, and recognises the more operational character of these other parameters (e.g. allowances, leave arrangements).

## **Employment relations during the transition period**

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30. During and immediately following the transition period, Health NZ will face a range of immediate employment relations challenges, including integrating disparate contracts and working conditions from various DHBs, and working with unions to manage

changes in practice resulting from health reforms. The approach taken to this will need to be owned by Health NZ. Health NZ is also likely to face significant bargaining events with major workforces early after its establishment.

31. We therefore propose to provide you with further advice on transitional arrangements once an interim Health NZ Chief Executive has been appointed, so that Health NZ has ownership of planned approaches to employment relations during the transition period. Health NZ is likely to establish a relationship with TAS early to ensure its stewardship of key, strategic employment relations functions during the transition.

## **Consultation**

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32. The Ministry of Health, Public Service Commission and Treasury have been consulted on this paper.

## **Next steps**

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33. Officials will be available to discuss this advice with you at upcoming policy meetings. Subject to your feedback, we will progress this advice through our work with the Ministry of Health and interim agencies on future system features, functions and ways of working.