Runanga Whakapiki ake i te Hauora o Aotearoa
HEALTH PROMOTION FORUM
of New Zealand

Submission on the Ministry of Health's Draft Instruction on Public Health Contracts and Non-Governmental Organisations

From the

Health Promotion Forum of New Zealand
Runanga Whakapiki ake i te Hauora o Aotearoa
PO Box 99064
Newmarket, Auckland

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I. About the Health Promotion Forum and its Membership

1. The Health Promotion Forum of New Zealand - Runanga Whakapiki ake i te Hauora o Aotearoa is a national umbrella organisation funded by the Ministry of Health to provide national leadership and support for good health promotion practice consistent with Te Tiriti o Waitangi and the Ottawa Charter for Health Promotion.

2. The Forum provides information, coordination, training and skills development to both members and the health promotion workforce at large. We contribute to policy development and undertake advocacy on behalf of health promotion in Aotearoa-New Zealand.

3. The Forum is an incorporated society with a membership of 189 organisations. Membership of the Forum is open to any organisation with similar aims and objectives and who receive no revenue or gain from either the tobacco industry or companies with a financial interest in the tobacco industry. The range of member organisations includes community groups; non-governmental organizations (NGOs); MoH funded and independent health promotion agencies and public health units; Iwi, urban and Marae based Maori health providers; Pacific community health providers; academic departments; specific issue focused and advocacy organisations; government departments and policy units and local authorities.

4. Most receive some form of government funding from the public purse through contracts with government agencies. Some also have non-government sources of funding as well.

5. This submission is based on information from discussions at meetings the Forum has attended or convened and other communication with the membership and workforce.

II. Summary of Submission and Recommendations

6. The Forum appreciates the opportunity to comment and does so as an umbrella group on behalf of and in support of the work of member organizations and health promotion practice in general. It makes the following points that are elaborated on in the body of the submission.

- The Forum does not support the draft instruction as presented by the Ministry of Health as either a philosophically acceptable or pragmatically workable solution to the Ministry's concerns over the funding of NGOs and lobbying.

- In the past year the impact of this issue on the climate of public health and work of providers has been substantial, producing uncertainty, anxiety and frustration at the potential compromise on achieving good health outcomes.

- Worldwide, evidence suggests the achievement of good health and social outcomes for all peoples is helped through governance that welcomes and fosters open, robust and unfettered engagement in policy development processes. Governments and their agencies can support this through providing leadership and endorsement of such engagement. This includes accepting and supporting organisations that receive government funding to use their good judgement to engage in normal and relevant policy development processes.

- The Forum understands and supports that the Ministry and other government agencies must not breach the public service code of conduct and cannot direct or fund organizations to promote a government sponsored bill.

- This requirement must not impinge on the lawful work of NGOs or other agencies and their legitimate ability to engage in normal democratic policy-making processes with Parliament, and in other settings, in the same way that any other individual or group can.

Recommendations

- The Forum recommends an alternative option to the draft instruction along the lines that the Ministry of Health instructs its staff *that they will not require, ask or fund providers to take a specified or particular position or action on a government bill nor will they require providers to try to influence Members of Parliament on a specified position on any legislation.* Any accountability matters over this should be able to be identified in normal reporting procedures between funder and service provider. The Forum also supports the thinking and intent of the alternative draft instructions put forward by the Wellington and Auckland Branches of the Public Health Association. We are happy to be available for further input on this.

- The basis of funding of providers such as NGOs should be that they are expected to base their work as any contractor should, on competent skills and knowledge, good strategic and operational judgement and procedures to identify and undertake the most helpful strategy or approach to support good health and social outcomes. Financial and contractural accountability can be exercised through normal contractural and reporting processes and structured reviews to monitor that the organisation is helping achieve the Government's public health goals.

- The Forum strongly recommends that the Ministry of Health continue to fund advocacy in public health contracts. It is a legitimate and essential process for health professionals and citizens to engage in as part of increasing control over the determinants of health. Advocacy involves a broad range of activities and processes, not just providing evidence-based information, and it is recommended these be enabled and not limited by any instruction or Ministry funding policy.

III. Submission

7. The Ministry's draft instruction states:

> The Ministry of Health recognises and respects the independence of NGOs including their broad role in society and their right within the law to use resources not funded by government to lobby for change to policy.
>
> The following instruction to Ministry of Health staff is designed to ensure that the Ministry does not fund NGO's ***lobbying*** activities.
>
> ***"The Ministry does not fund lobbying activity and such activity will not be included in any contracts".***
>
> For the purpose of this instruction ***lobbying*** is defined as seeking to influence MPs of whatever party, over specific legislation under consideration by

> Parliament or targeting MPs on the development or implementation of policy (as distinct from providing evidence based information or advocacy to the "public" in general of which MPs are a part). ***Lobbying*** also includes making submissions to Parliamentary Select Committees, and otherwise petitioning Parliament.

8. The Forum does not support the draft instruction presented by the Ministry of Health as either a philosophically acceptable or a practical workable solution to the Ministry's concerns over the funding of NGOs and lobbying.

A. Restricting engagement in normal and effective policy development processes risks compromising health outcomes

9. The Ministry of Health's statement identifies that the Ministry "recognises and respects the independence of NGOs including their broad role in society and their right within the law to use resources not funded by government to lobby for change to policy."

10. NGOs have the right to use resources not funded by government to 'lobby' for changes to policy and the MOH respects and recognises that. The Forum is concerned however, about the position being taken in this instruction: that NGOs do not, by implication, have a right to use resources funded by government to 'lobby' for change to policy. In effect, it is instructing NGOs funded by government sources to <u>not</u> engage in normal national policy-making processes such as contact with Members of Parliament or select committees.

11. This position will compromise the ability of governments and Parliament to discharge their governance responsibilities on behalf of the citizens who elect them. These institutions need to know if the implementation of policy is working well or requires attention or if there are new issues emerging that require some action. The *Framework for Relations between the Ministry of Health and Health/Disability NGOs* notes that "NGOs will aim to assist the MOH in understanding the key issues and trends affecting NGOs, share information and research with the MOH and provide NGO intelligence for input into policy development." In general, NGOs have a crucial role in informing governments and MPs about issues impacting on communities and groups in a range of social and health areas. This is part of the mix of advice and information that democratic governments rely upon in order to put forward possible resolutions. The instruction will make it less likely NGOs will be able to raise concerns or suggestions with policy makers such as MPs.

12. Achieving social wellbeing and health in all population groups of society, especially those that suffer disproportionately from structural inequalities in health, requires considerable hard work and resources by NGOs, government agencies and other organisations. Part of that work involves communication on what is working well, what needs attention and generally engaging in frequent and ongoing dialogue. Worldwide, efforts of groups to bring to government's attention the health risks of such issues as smoking and alcohol use and engage in policy development, have helped achieve a public policy environment more supportive of improving health outcomes than might otherwise have occurred.

13. To be able only to bring such matters to the attention of the government or Parliament out of non-government funding risks significantly compromising this dialogue and the ability to participate in it. If NGOs are trestricted in this ability because of the current draft instruction, they will not be able to fulfil their duty of care or responsibility to their own constituencies or communities of people on whose behalf they work. Community based public health providers are reliant on building a relationship of trust and standing with community members, so they can act

on their behalf in raising and negotiating on public health issues. Some of these providers have indicated this relationship will be compromised if their community of interest think community views and expertise will not be heard, because of uncertainty over what is permissible action for organisations to undertake around raising issues with Members of Parliament or other policy makers, or in responding to requests for help and advice from them.

14. This is an equity issue – organizations articulating the needs and issues of vulnerable and powerless communities do not have access to substantial funds. Governments need to support their voice being heard as part of a whole of government response, rather than rely on hearing it through voluntary efforts. The rich and powerful voice should not be privileged in a society that prides itself on achieving human rights, dignity and social justice. The Report of the Community and Voluntary Sector Working Party *Potential for Partnership: Whakatopu Whakaaro* published in April 2001, included a vision for participatory processes which was 'Strong, healthy, vigorous communities which are actively engaged in constructive and dynamic relationships with government.' The Forum suggests that the Ministry of Health and other government agencies should foster such relationships and processes that support communities rather than try to limit them.

15. Placing limits on the ability of NGOs to participate in policy making will make it more difficult for governments to act in the best interests of the country's citizens and to understand and take into account the diversity of their interests and needs. A government risks denying itself information it may well need, even if not always wanted, to make good decisions. Members of Parliament will be denied that information also. It also compromises a basic democratic principle of New Zealand society: that there should be free flow of information and expression of views and opinions. This principle should be nourished, embraced and extended as fundamental to a healthy and health promoting democracy. It should not be fettered either deliberately, or through the consequences of trying to manage a perceived risk. The Ministry's instruction may elevate the risks to governments and to Parliament of not getting the information they should have. It will also restrict the ability of citizens to access their parliamentary representatives through the auspices of NGOs who act on their behalf. It is particularly important for vulnerable and powerless groups (for example children exposed to passive smoking) in all sectors to have such a voice. The Ministry of Health draft instruction is setting a disturbing precedent in restricting access.

B. Restrictions on engaging with Members of Parliament as key policy decision-makers

16. The draft instruction suggests that if NGOs are to comply with the Ministry's contract requirements they can *"provide evidence based information or advocacy to the 'public' in general of which MPs are a part"*. Members of Parliament by their very reason for existence in representing their constituencies are constitutionally charged with making good law on behalf of their constituencies. They are therefore the key stakeholders with whom the public, or organisations acting on behalf of particular interests or concerns of the public, need to and would seek to interact with. To require NGOs to relate to MPs in this way as relegated to 'being a part of the public' is to risk tampering with that basic democratic and constitutional function.

17. Such a requirement also denies MPs the ability to engage openly and freely with NGOs and the communities of interest or services they represent as part of their job. It is untenable that agencies funded by the Ministry of Health to help achieve government policy around good health and social outcomes, as under the New Zealand Health Strategy, could not then engage freely as

they see fit. This is usually through such lawful normal democratic processes involving meeting MPs to discuss the development and implementation of policy, making submissions to Parliamentary Select Committees and otherwise petitioning Parliament. MPs and parliamentary processes such as Select Committee hearings are key decision making elements and therefore an organisation would expect engagement with them as a normal and anticipated aspect to policy making. To not do so would be neglectful.

C. Administrative and compliance issues

18. The Forum has received feedback from organizations working in public health that indicate the draft instruction will be difficult to interpret and administer for both NGOs and the Ministry. During the past 12 months providers have sought Ministry clarification on what is acceptable engagement in policy development processes. It has been stated by officials of the Ministry of Health that it is 'business as usual' while further consultation and discussion took place on the funding of advocacy or lobbying. However providers reported variable interpretations from Ministry officials on what activities they were able to undertake around advocacy. For example, a provider was advised not to send MPs a letter bringing to their attention 'evidence based' results from recent health related national surveys. Uncertainty around this issue and the likely need to check out with portfolio managers on whether or not a proposed action breaches the draft instruction raises considerable logistical, administrative, and control and power concerns between funder and services. In the past year the impact of this issue on the climate of public health and the work of providers has been substantial, producing uncertainty, anxiety and frustration at the potential compromise on achieving good health outcomes. It is feared the draft instruction may contribute to this uncertain environment continuing.

19. The accountability and compliance costs may be significant for agencies that are funded by government sources or by both government and non-government sources. NGOs are faced with the need to identify and split out the resources (eg hours, equipment and finance used to write submissions or to 'provide evidence based information to the public of which MPs are a part').

20. One of the difficulties raised by providers in the public health system is that it is difficult to delineate their work out to satisfy such a requirement. The work and views of an entire organization and its staff can help inform a submission or discussion on policy with MPs. Several people may contribute to the writing of a submission. This process may be difficult to account. Should the organization separate out for non –government funding just those direct writing hours, even though the experience and weight of evidence provided in its submission is built upon services that happen to be government funded? Or should it separate out for non-government funding, just the travel and oral presentation time in front of a Select Committee? What should an NGO do if an MP contacts it as an expert in its field for advice and assistance on a private members bill, or for assistance with developing government legislation? Will the MP be regarded as acting as a member of the 'public,' even though his or her position means they have an extra-ordinary interest over and beyond that of the public? Should the government funded-only NGO decline to meet them, because its evidence-based advice might be interpreted as 'lobbying' or seeking to influence the MP? Will the Ministry consider discussions on policy issues that NGOs may be involved in via the media as trying to influence MPs on particular policy or legislation? How will this be determined, given the media may select 'sound bites' or quotes out of context? These questions have been raised because they have practical and administrative consequences and also raise issues of control around the work and judgement of NGOs. Uncertainty and risk management strategies on these may curtail the effectiveness of NGOs and government departments to respond or be proactive about a health related issue.

21. The instruction as it is worded may result in counterproductive, increased risk rather than diminish it. It will be logistically and administratively difficult for providers to have to check with Ministry staff on what specific activities may be acceptable. 'Seizing the moment' in advancing a health issue may be lost as responses are waited upon, significant time and energy will be consumed which would be better expended on undertaking the work on behalf of the public. Who will define when and what is acceptable activity? Often it is the funding agency who determines these parameters in the end because of a perceived risk to its own institution or role. The draft instruction may expose the Ministry of Health to increased risk of being seen as censoring work and being an agent of social control.

D. Funding and employment issues for NGOs

22. Some providers have noted suggestions have been made that NGOs undertake these activities outside of government-funded time or resources. For those who are predominantly funded through government sources, the options may include staff undertaking such work (volunteering) their own time, or using volunteers to undertake lobbying, as defined by the draft instruction, or finding funds from other sources.

23. There are difficulties with these options. Relying on staff volunteer time as government policy may contradict policy and legislation relationship regarding the rights of workers to be paid for their work and Department of Labour policy initiatives around work and life balance. Relying on non-staff volunteers to undertake advocacy or lobbying is also not a sustainable option. This is partly because in general, organizations and groups across society are having increasing difficulties in recruiting and maintaining volunteers, and the contract funding and compliance culture with its increased pressure and workload has also contributed to a decline in volunteering (Wilson, C, The Changing Face of Social Service volunteering: A Literature Review, Ministry of Social Development, December 2001). The complexity of some of the issues and the mechanisms through which they impact on health requires the training, experience and resources of professional staff as well as the views and experience of community or interest group members.

24. Many NGOs do source funds from non-governmental sources and this could be a possibility for others. However there is a huge call on available philanthropic funds to meet a significant range of social, health and environmental needs. Is it acceptable that it becomes government policy to require NGOs to draw on charitable sector funds in order to engage in 'lobbying' or dialogue about government policy or legislation?

E. The contested nature of policy developments in public health and the role of vested interests

25. The uncertain environment and the curtailment of NGO involvement in normal policy development processes in relation to health has other ramifications around achieving government policy and good health outcomes.

26. In contested policy areas such as alcohol, tobacco, and food, public health interests frequently find themselves in conflict with commercial vested interests over what are effective ways of reducing or preventing harm from their products. The latter have significantly more resources, often global, to present their views, push for change or the status quo and attempt to discredit the work of public health organisations.

27. Public health agencies must be accountable for the quality of the work they do on behalf of the public good. Nevertheless, given the contested nature of some of that work, its potential impact on the financial interests of private industries and the tactics used by some vested interests, the Forum is concerned that if the draft instruction is implemented, significant public health resources will have to be diverted to responding to questions about particular use of funds or modes of policy interaction, even when the processes include normal legitimate and open interaction and advice. This could be used as a tactic to divert and tie up the legitimate efforts of agencies engaging in the normal policy process. Contracts may also be subject to ongoing review and amendment as a risk management response by the Ministry.

28. The contested nature of evidence, knowledge and approaches to improve health is an ongoing aspect of the democratic policy making territory. It will never diminish. It is a healthy and robust process. However part of the strategies of the contest is to question the approaches of government and other agencies. Rather than try to use a broad brush approach and put constraints on the legitimate role of engaging in normal, democratic policy processes, the Forum asks that agencies such as the Ministry of Health publicly acknowledge and welcome this as part of a healthy and robust democracy and defend the role of public health organisations in engaging in parliamentary processes, such as making submissions to select committees or meeting with MPs.

29. The Forum understands that the Ministry and other government agencies must not breach the public service code of conduct. The Report 'Contracts with Non-Government Organisations – Compliance with Public Service Standards" written in November 2004 for the Ministry of Health, noted: *"The MOH is subject to public service rules and Code of Conduct. One of its prime obligations is to be scrupulous in maintaining its political neutrality. This means it must not seek to influence the opinions of Members of Parliament or to arrange for NGOs to undertake this function on its behalf."* The wording of a small number of contracts (5 out of approximately around 400) was considered to compromise that position.

30. The Forum believes the draft instruction as written goes too far in its definition of lobbying activity. The problem is that Ministry staff inadvertently breached the code in a small number of contracts. The solution should not spill over into affecting the ability of a large number of NGOs, Primary Health Organisations or Public Health Units in District Health Boards to lead or participate in policy development and implementation work to achieve good health and social outcomes.

F. Advocacy in Public Health Contracts

31. The Forum notes that the draft instruction mentions the word 'advocacy' within the brackets: *(as distinct from providing evidence based information or advocacy to the "public" in general of which MPs are a part.)* and is pleased to see it included as it is an internationally recognised and adopted element in health promotion.

32. The importance of advocacy in achieving health was included in the Ottawa Charter for Health Promotion and has been restated in the four subsequent World Health Organisation conferences on health promotion (Adelaide, Sundsvall, Jakarta and Mexico). Ministers of Health , including a New Zealand representative, who signed the Mexico Ministerial Statement for the Promotion of Health saw advocacy as important. They said:

i. "Advocacy is an important tool and includes lobbying, political organization and activism, overcoming bureaucratic inertia, identifying a champion for the cause, enabling community leaders and mediating to

manage conflict. " (pg 3, Ministerial Statement, Fifth Global Conference on Health Promotion, Mexico City, June 5-9, 2000).

34. Advocacy as an internationally recognised concept, process and tool of the professional health promotion and allied occupational fields has specific technical meanings. From a professional public health perspective it is not inter-changeable with lobbying.

35. Health promotion is defined as the process of enabling people to increase control over their health and thereby improve their health. It has been noted that:

> *"a healthy society is defined not only by morbidity but also by well-being, and the degree to which the society protects and advances cherished shared values like democracy and equity. These qualities in turn facilitate and advance the health and well-being of individuals and societies. Policy advocacy in health promotion is not just a question of identifying and acting upon the more clearly visible and direct determinants of morbidity, but also of advancing the healthy society which creates the conditions both for reduced morbidity and enhanced well-being. The Ottawa Charter takes yet an additional step. Advocacy for healthy public policy does seek to alter policies in order to achieve identified health and well-being outcomes. But it is also about changing the means by which policy is made, [emphasis in original] in particular by: • advancing democratic values • empowering people as participants in the polity • facilitating the capacities of communities and vulnerable populations to make their needs and interests known • increasing peoples' participation more substantively in processes allocating societal resources and values among its members."* [1]

36. Carlisle [2] suggests there are two main goals underpinning health advocacy: "…that of protecting people who are vulnerable or discriminated against; and that of empowering people who need a stronger voice by enabling them to express their needs and make their own decisions."

37. The first goal involves advocacy on behalf of (involving protection). The second goal involves advocacy with (emphasising strategic partnerships, facilitational roles, capacity building). These activities are considered health promoting in themselves because they support increased participation and other aspects of the processes involved in health promotion. In short, undertaking advocacy is integral to the practice and processes involved in public health.

38. Public health advocacy is often used to refer to the process of overcoming major structural (as opposed to individual or behavioural) barriers to public health goals. [3] These barriers include political philosophies that devalue health and quality of health at the expense of economic outcomes; political and bureaucratic opposition or inertia to health promoting legislation, regulation and policies; opposition to participation of consumers in health care planning; marketing of unsafe and unhealthy products often by transnational corporations of immense

[1] McCubbin, M. Labonte, R., Dallaire, B. (2001) Advocacy for healthy public policy as a health promotion technology. Centre for Health Promotion (online archives). Available: http://www.utoronto.ca/chp/symposium.htm.

[2] Carlisle, S. (2000) Health promotion, advocacy and health inequalities: A conceptual framework, Health Promotion International, 15, 369-376.

[3] Chapman , S and Lupton D (1994) The fight for public health: Principles and practice of media advocacy. London: BMJ.

influence and wealth; and the pervasiveness of racism and sexism, expressed through institutional values, personal attitudes and behaviours.

39. In Aotearoa-New Zealand, Te Tiriti o Waitangi has paramount relevance to health promotion. Honouring and operationalising the articles of Kawanatanga (governance) Tino Rangatiratanga (Maori control and self-determination) Oritetanga (equity) and the principles of protection, partnership and participation requires public health organisations and practitioners to use the skills, knowledge and values of advocacy to ensure that Maori health-related aspirations are achieved and the disproportionate negative health related statistics suffered by Maori are turned around.

The Forum was concerned that the November 2003 Report 'Contracts with Non-Governmental Organisations – Compliance with Public Service Standards' recommended that the Ministry of Health avoid contracting for any 'advocacy' role on health and disability issues. It is pleasing to see the Ministry of Health has decided to include the word in the instruction. However we are concerned that it may be equated with providing evidence based information. As noted above, it involves a much broader range of activities and processes and the Forum recommends that these be enabled and not limited by any instruction or Ministry funding policy.

G. Recommendations

- If draft instruction must be written, the Forum recommends that it should be a statement along the lines that

  " the Ministry of Health instructs its staff not to require, ask or fund providers to take a specified or particular position or action on a government bill, nor will they require providers to try to influence Members of Parliament on a specified position on any legislation."

  We also support the thinking and intent of the alternative draft instructions put forward by the Wellington and Auckland Branches of the Public Health Association.

  We are happy to be available for further input on this.

- The basis of funding of providers such as NGOs should be that they are expected to base their work as any contractor should, on competent skills and knowledge, good strategic and operational judgement and procedures to identify and undertake the most helpful strategy or approach to support good health and social outcomes. Financial and contractural accountability can be exercised through normal contractural and reporting processes and structured reviews to monitor that the organization is helping achieve the Government's public health goals.

- The Forum strongly recommends that the Ministry of Health continue to fund advocacy in public health contracts. It is a legitimate and essential process for health professionals and citizens to engage in as part of increasing control over the determinants of health. Advocacy involves a broad range of activities and processes, not just providing evidence-based information, and it is recommended these be enabled and not limited by any instruction or Ministry funding policy.