



## Proactive Release

The following items have been proactively released by the Rt Hon Jacinda Ardern, Prime Minister:

**Paper: COVID-19 Public Health Response Bill – Approval for Introduction**

**Minute of Decision: COVID-19 Public Health Response Bill – Approval for Introduction**

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant section of the Act that would apply has been identified. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

### Key to redaction code:

- 9(2)(h), to maintain legal professional privilege

Office of the Attorney-General

Cabinet

## **COVID-19 Public Health Response Bill – Approval for Introduction**

### **Proposal**

- 1 This paper seeks agreement to introduce the COVID-19 Public Health Response Bill to the House of Representatives.
- 2 This paper also proposes the COVID-19 Public Health Response Bill be referred to the Finance and Expenditure Committee for consideration, and enacted by Wednesday 13 May. Noting that only the equivalent of one working day (split across two days) has been provided for the Finance and Expenditure Committee's consideration of the COVID-19 Public Health Response Bill, I propose that Cabinet authorise the Attorney-General, in consultation with the Prime Minister, to approve any minor amendments to the Bill arising from the select committee process.

### **Policy**

- 3 The COVID-19 Public Health Response Bill is necessary to provide a different legal basis for restrictions under the lower Alert Levels. It also causes the Minister of Health to be the person to make future orders, rather than the Director-General of Health.
- 4 We have consistently sought to maximise voluntary compliance with the Alert Level restrictions through education, proportionate measures, and clear guidance. This has been highly successful, and our experience at Level 4 and Level 3 show that almost everyone has complied with restrictions. However, we also know from experience that some people and businesses will choose to ignore the rules, particularly as we move between levels.
- 5 In cases of serious or persistent non-compliance, enforcement action may be required and these must be based on clear legal powers. Under Alert Level 4 and 3, those powers were provided for by an Epidemic Notice issued by the Prime Minister, the Health Act 1956, and the Civil Defence Emergency Management Act 2002. Whilst the Government is confident in the legal basis for restrictions under Alert Level 4 and 3, it is necessary to provide a different legal basis for restrictions under the lower Alert Levels.
- 6 By establishing these new powers, we are not moving away from our focus on maximising voluntary compliance. However, voluntary compliance is enhanced when there are clear legal powers underpinning restrictions, and when we have the ability to deal with serious or persistent non-compliance that threatens the public health objective.
- 7 The COVID-19 Public Health Response Bill provides for an infringement regime which is (and is perceived to be) a more proportionate way to respond to certain offences rather than relying immediately on imprisonable offences.

8 Although the immediate need for the COVID-19 Public Health Response Bill is at Alert Level 2, the COVID-19 Public Health Response Bill is also an opportunity to update the legal framework underpinning the public health response to COVID-19 and the wider Alert Level Framework, by:

- 8.1 Providing for appropriate rules to be in place and for a graduated enforcement approach where necessary;
- 8.2 Recognising the centrality of health factors in the measures we need to take;
- 8.3 Providing that the Minister of Health become the decision maker on the exercise of powers;
- 8.4 Providing a more transparent basis to how the rules work and what sorts of powers can be exercised;
- 8.5 Also providing for economic and social factors to be taken into account in determining appropriate measures.

9 All of the above features are relevant at all Alert Levels and allow for the appropriate public health measures to be put in place that is proportionate the level of outbreak or spread of COVID-19. In this way, the COVID-19 Public Health Response Bill will strengthen the entire Alert Level framework should we need to move back to higher levels.

10 For those reasons, the Government has acted quickly to:

- 10.1 Direct officials to report back on any legislative change needed to implement Alert Level 2 [CBC-20-MIN-0049];
- 10.2 Agree to draft a new COVID-19 Public Health Response Bill for urgent introduction to the House [SWC-20-MIN-0022];
- 10.3 Agree to the key components and design features of the new COVID-19 Public Health Response Bill, including the inclusion of an infringement regime [SWC-20-MIN-0034].

11 I am now seeking Cabinet's approval to introduce the COVID-19 Public Health Response Bill, attached as Appendix One.

### **Summary of the COVID-19 Public Health Response Bill**

12 I have issued drafting instructions that cover the following key features, after consulting with SWC:

- 12.1 **Change of decision-maker.** The COVID-19 Public Health Response Bill enables the Minister of Health to issue orders after receiving advice from the Director-General of Health, considering any Cabinet decision on the Government's approach to the response (for example, the decision on when to go down to Alert Level 2), and in consultation with other relevant Ministers. The Director-General may also make orders that apply only

within the boundaries of a single territorial authority district when the order is urgently needed.

**12.2 Appropriate safeguards:**

12.2.1 The Minister of Health must not make an order without receiving advice from the Director-General of Health, considering any Cabinet decision on the Government's approach to the response (for example, the decision on when to go down to Alert Level 2), and after consulting specified Ministerial colleagues;

12.2.2 Providing for public notice prior to the order coming into effect;

12.2.3 Orders will be approved by the House on a streamlined process (similar to confirmation but made more flexible following advice from the Clerk of the House);

12.2.4 Orders will be legislative and disallowable instruments;

12.2.5 Requirement for ongoing review.

**12.3 An infringement regime that allows for a proportionate response to offences.** The new legislation specifies new infringement offences for failing to comply with certain orders under the new legislation. The Minister of Health will specify which measures within the orders may incur infringement offences.

**12.4 Other additional powers that are essential for achieving the public health objective:**

12.4.1 a warrantless power for enforcement officers to enter premises other than dwelling houses and marae should they have reasonable grounds to believe a COVID-19 offence has occurred;

12.4.2 a power to direct people to stop particular activity that is in contravention of the order or take any action to prevent or limit the extent of non-compliance;

12.4.3 a warrantless power of entry into premises including dwelling houses and marae to effect the above power of dispersal, should Police have reasonable grounds to believe a person is contravening an order about restricting gatherings.

12.4.4 a power for enforcement officers to give directions if there are reasonable grounds for believing that a person is contravening or likely to contravene an order.

**12.5** Marae are included alongside dwelling houses to provide them with the same level of protection from warrantless entry (more limited circumstances where this can occur) as private homes.

- 12.6 **the COVID-19 Public Health Response Bill also provides a power for enforcement officers to close business premises for 24 hours** if businesses fail to implement measures required under an order
- 13 I wish to draw to Cabinet's attention that the following features have changed since SWC considered this on 6 May:
- 13.1 The COVID-19 Public Health Response Bill no longer provides for the Order to be sent in advance to the Regulations Review Committee. After discussions with the Office of the Clerk, we have confirmed that providing advance notice to the Regulations Review Committee is not necessary to support the disallowance process. If there is time, the Attorney-General may still use the existing Standing Orders process to submit a draft of the order to the Committee for consultation before it is made.
- 13.2 We have more explicitly enabled the Minister of Health to have regard to the Cabinet decision on how to respond to the COVID-19 outbreak, which will take into account social, economic, and other factors.
- 13.3 Following consultation with officials the following additional powers have been included in the Bill:
- 13.3.1 Any enforcement officer can order individuals to disperse, not just Police (but only Police will be able to enter a dwelling for this purpose, as per paragraph 12.4.3 above);
- 13.3.2 The Director-General of Health is given the power to authorise suitably qualified and trained people to be enforcement officers;
- 13.3.3 Police are given a power to close roads and require vehicles to stop (to enable, for example police checkpoints to monitor inter-regional travel restrictions), with additional corresponding offences for non-compliance;
- 13.3.4 Enforcement officers are given a power to direct people to provide identifying information to assist with the enforcement of orders.
- 14 I also wish to draw Cabinet's attention to the implementation of the infringement regime. While the COVID-19 Public Health Response Bill provides for the creation of an infringement regime, I do note that there are administrative challenges in setting up such a regime. It may take some time – up to four weeks for some agencies, and longer for other agencies - to put the appropriate systems in place. However, given the advantages of an infringement regime I do not consider these challenges provide a reason not to enact an infringement regime. The implication of this is that for a period of time while the infringement regime is set-up, infringement notices will not be available as part of a graduated enforcement response; in the meantime the other enforcement measures will still apply. I note that imprisonable offences are for intentional contraventions of the orders, whereas infringement notices can be issued without the contravention being intentional.

- 15 While this advice is focused on the legislative aspects of the Alert Levels framework, I note that there will continue to be a substantial amount of work undertaken to implement restrictions at Alert Level 2. On 13 May 2020, agencies will report to the Social Wellbeing Committee with a plan for a concerted, coordinated, and visible approach to education and enforcement in the first days of Level 2.

**The COVID-19 Public Health Response Bill amends the Civil Defence Emergency Management Act 2002 in relation to the COVID-19 response**

- 16 On 6 May, I indicated to SWC that officials were considering whether and how to include provisions relating to changes to the Civil Defence Emergency Management Act 2002 (CDEM Act).
- 17 Further work has now been undertaken on provisions to change the CDEM Act to help ensure a nationally consistent approach to the COVID-19 response and to better deal with concurrent emergencies while a state of national emergency or national transition period is in place.<sup>1</sup>

Minister of Civil Defence approval to declare a state of local emergency or local transition period for COVID-19 related matters

- 18 When the state of national emergency (or any national transition period) is lifted, it will be possible for Civil Defence Emergency Management Groups to declare their own states of local emergency or local transition periods in relation to COVID-19. This could make it more difficult to ensure a nationally coordinated approach to COVID-19 across all alert levels.
- 19 To avoid this situation, it is recommended that a provision is added to the CDEM Act to require approval from the Minister of Civil Defence prior to any state of local emergency or local transition period being declared by Civil Defence Emergency Management Groups in relation to COVID-19.
- 20 A precedent for this proposal already exists in the CDEM Act, as ministerial approval is required in order to give notice of a local transition period, if there is no prior state of emergency.
- 21 This change will help ensure that we continue to have a nationally consistent approach to dealing with COVID-19 across the Civil Defence Emergency Management sector.

Concurrent emergency events with COVID-19

- 22 The CDEM Act prevents a declaration of a state of local emergency whilst a state of national emergency is in force for the same area (s68(5)). This means if a local area faced a flood or earthquake while a state of national emergency for COVID-19 was in place, the local CDEM Group would need to request the Minister of Civil Defence amend the existing declaration of state of national emergency to include the new emergency in order to access the necessary

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<sup>1</sup> A transition period supports the transition from response to the initial recovery phase and provides for access to powers designed to assist with recovery.

powers response under the CDEM Act. This could result in delays in accessing the powers in the CDEM Act to respond to the new emergency, increasing risks to life safety.

- 23 It is essential that Civil Defence Emergency Management Groups have quick access to the full range of powers available under the CDEM Act to respond to any other emergencies that may impact their communities while we are also dealing with COVID-19.
- 24 To avoid this situation, I recommend that the CDEM Act is amended to enable states of local emergency to be declared for non-COVID-19 emergencies (for example floods or earthquakes), even while there is a state of national emergency in place for COVID-19. This allows access to powers that may be needed to deal with a concurrent emergency such as requiring persons to evacuate an unsafe area due to threat of tsunami, flood or an earthquake.
- 25 I also recommend that the CDEM Act is amended to allow for any non-COVID-19 related local state of emergency to remain in place if a new state of national emergency is declared for a COVID-19-related reason.
- 26 Another issue relating to concurrent emergencies is that if a national transition period is in place for all of New Zealand for COVID-19-related reasons, it could be terminated by a state of local emergency being issued for a non-COVID-19 event.
- 27 I therefore recommend that the CDEM Act is amended to ensure that CDEM Groups are able to declare local states of emergency for other emergency events (non-COVID-19 related), without terminating any national transition period in force for COVID-19.
- 28 I therefore seek Cabinet's approval for the COVID-19 Public Health Response Bill to amend the CDEM Act 2002 to give effect to these objectives.
- 29 The Minister of Civil Defence has been consulted on these changes and agrees with the approach.
- 30 On 6 May, I also indicated to SWC that I would report back on other proposed provisions from the New Zealand Customs Service. Having considered these, advice from officials is not to include further additional provisions.

**The COVID-19 Public Health Response Bill updates the threshold for the exercise of powers**

- 31 The COVID-19 Public Health Response Bill provides that the Minister of Health will be able to issue orders so long as one of the following tests has been met:
- 31.1 An Epidemic Notice has been issued under the Epidemic Preparedness Act 2006, or
- 31.2 A state of emergency has been declared under the Civil Defence Emergency Management Act 2002 related to COVID-19, or

31.3 Authorisation by the Prime Minister.

**Impact Analysis**

**Regulatory Impact Statement**

32 The Treasury has determined that this is a direct COVID-19 response and has suspended the Regulatory Impact Assessment requirements (in accordance with CAB-20-MIN-0138).

**Compliance**

33 The COVID-19 Public Health Response Bill complies with:

- 33.1 the principles of the Treaty of Waitangi;
- 33.2 the rights and freedoms contained in the Human Rights Act 1993 and the New Zealand Bill of Rights Act, to the extent that any amendments that limit those human rights are justified in the circumstances;
- 33.3 the disclosure statement requirements;
- 33.4 the principles and guidelines set out in the Privacy Act 1993; and
- 33.5 relevant international standards and obligations;

34 The Acting Attorney-General (with a warrant to be issued) will consider advice from the Ministry of Justice and the Crown Law Office about the consistency of the COVID-19 Public Health Response Bill with the New Zealand Bill of Rights Act 1990.

35 Officials consulted with the Legislation Design and Advisory Committee on the Bill, who supported the shift of decision-maker to the Minister. Due to the urgency of the Bill, we would benefit from having the Legislation Design and Advisory Committee also providing any comments to the select committee on the drafting of the Bill that they wish to make.

s9(2)(h)

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**Consultation**

- 44 The following government departments and agencies have been consulted on the COVID-19 Public Health Response Bill: the Ministry of Health, Ministry of Justice, Ministry of Business, Innovation & Employment, the National Emergency Management Agency, the Department of the Prime Minister and Cabinet, Parliamentary Counsel Office, and New Zealand Police.
- 45 The Crown Law Office has been consulted and does not consider that the Cabinet paper and Bill raises any issues.

**Binding on the Crown**

- 46 The COVID-19 Public Health Response Bill will be binding on the Crown. In future, as Orders are made, parts of the Crown can be excluded, as appropriate, from the measures imposed by those Orders.

**Allocation of decision-making powers**

- 47 The COVID-19 Public Health Response Bill makes the Minister of Health the decision-maker in relation to the exercise of powers. This is a re-allocation of power from an official (the medical officer of health) to a Minister of the Crown (the Minister of Health). The COVID-19 Public Health Response Bill does not affect the allocation of decision-making powers between the executive, the courts, and tribunals.

**Associated regulations**

- 48 The COVID-19 Public Health Response Bill does not require regulations in order to come into force.

**Other Instruments**

49 The COVID-19 Public Health Response Bill provides for the creation of orders under section 10 (section 10 orders). Section 10 orders may be made for the purpose of the COVID-19 Public Health Response Bill.

50 All orders will be disallowable instruments.

#### Definition of Minister/department

51 The COVID-19 Public Health Response Bill does not define any Ministry or Department.

#### Commencement of legislation

52 The COVID-19 Public Health Response Bill will come into force the same day that it receives Royal Assent (13 May).

#### Parliamentary Stages

53 The COVID-19 Public Health Response Bill should be introduced to Parliament on 12 May 2020 and considered by the Finance and Expenditure Committee on the afternoon of 12 May, and the morning of 13 May, before being enacted on 13 May 2020.

#### Proactive release

54 I will release this paper proactively, subject to redactions as appropriate under the Official Information Act 1982, including sections subject to legal professional privilege.

#### Recommendations

The Attorney-General recommends that the Committee:

- 1 **Note** the attached COVID-19 Public Health Response Bill authorised by the Social Wellbeing Cabinet Committee with Power to Act [SWC-20-MIN-0034];
- 2 **Note** the Bill no longer provides for the Order to be sent in advance to the Regulations Review Committee, this will be managed under Standing Orders;
- 3 **Note** that the Minister of Health may have regard to any Cabinet decision on how to respond to the COVID-19 outbreak (for example, the Alert Level framework), which will take into account social, economic, and other factors;
- 4 **Note** following consultation with officials the following additional powers have been included in the Bill;
- 5 **Agree** any enforcement officer can order individuals to disperse, not just Police;
- 6 **Agree** to the Director-General of Health being given the power to authorise suitably qualified and trained people or classes of person to be enforcement officers;

- 7 **Agree** to Police being given the power to close roads and public places, establish road blocks and stop vehicles, with additional corresponding offences being imposed for non-compliance;
- 8 **Agree** enforcement officers are given a power to direct people to provide identifying information to assist with the enforcement of orders;
- 9 **Agree** that the COVID-19 Public Health Response Bill should include amendments to the Civil Defence Emergency Management Act 2002 to ensure a nationally consistent approach to dealing with COVID-19 and to better deal with concurrent emergencies during the COVID-19 response;
- 10 **Agree** the following amendments to the Civil Defence Emergency Management Act 2002 where the state of emergency or transition period relate to the same area (or part area):
- 10.1 require Civil Defence Emergency Management Groups to obtain approval from the Minister of Civil Defence to declare a state of local emergency or local transition period for COVID-19 related matters;
  - 10.2 allow for states of local emergency to be declared for non-COVID-19 emergencies when a state of national emergency or national transition period is in place for COVID-19 related matters;
  - 10.3 allow for a local transition period to be given for non-COVID-19 emergencies when a national transition period is in place for COVID-19 related matters;
  - 10.4 allow for any non-COVID-19-related local state of emergency to remain in place if a new state of national emergency is declared for a COVID-19-related reason;
  - 10.5 allow Civil Defence Emergency Management Groups to declare local states of emergency for other emergency events which are not related to COVID-19, without terminating any national transition period that may be in force for COVID-19
- 11 **Note** that there may be minor technical changes to the COVID-19 Public Health Response Bill prior to introduction;
- 12 **Agree** that the attached COVID-19 Public Health Response Bill is introduced to the House on 12 May 2020;
- 13 **Note** my intention to refer the COVID-19 Public Health Response Bill to the Finance and Expenditure Committee for consideration on the afternoon of 12 May, and the morning of 13 May 2020 in view of enacting the COVID-19 Public Health Response Bill by 13 May 2020;
- 14 **Agree** to include a provision binding the Crown;
- 15 **Note** that I will commission the advice outlined in paragraphs 42 and 43 above;

- 16 **Authorise** the Attorney-General, in consultation with the Prime Minister, to approve any amendments to the COVID-19 Public Health Response Bill arising from the select committee process.

Authorised for lodgement

Hon David Parker  
Attorney-General

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Appendix One: COVID-19 Public Health Response Bill

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# Cabinet

## Minute of Decision

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*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

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### COVID-19 Public Health Response Bill - Approval for Introduction

Portfolio                      Attorney-General

On 11 May 2020, Cabinet:

- 1        **noted** that on 6 May 2020, the Cabinet Social Wellbeing Committee took a series of decisions for inclusion in a COVID-19 Public Health Response Bill [SWC-20-MIN-0034];
- 2        **noted** that the Bill no longer provides for the Order to be sent in advance to the Regulations Review Committee, but that this will be managed under Standing Orders;
- 3        **noted** that the Minister of Health may have regard to any government decision on how to respond to the COVID-19 outbreak (for example, the Alert Level framework), which will take into account social, economic, and other factors;
- 4        **noted** that following consultation with officials the following additional powers set out in paragraphs 5 to 8 have been included in the Bill;
- 5        **agreed** that any enforcement officer can order individuals to disperse, not just Police;
- 6        **agreed** that the Director-General of Health be given the power to authorise suitably qualified and trained people or classes of person to be enforcement officers;
- 7        **agreed** that Police be given the power to close roads and public places, establish road blocks and stop vehicles, with additional corresponding offences being imposed for non-compliance;
- 8        **agreed** that enforcement officers be given a power to direct people to provide identifying information to assist with the enforcement of orders;
- 9        **agreed** that the COVID-19 Public Health Response Bill include amendments to the Civil Defence Emergency Management Act 2002 to ensure a nationally consistent approach to dealing with COVID-19 and to better deal with concurrent emergencies during the COVID-19 response;
- 10       **agreed** to the following amendments to the Civil Defence Emergency Management Act 2002 where the state of emergency or transition period relate to the same area (or part area):
  - 10.1    require Civil Defence Emergency Management Groups to obtain approval from the Minister of Civil Defence to declare a state of local emergency or local transition period for COVID-19 related matters;

- 10.2 allow for states of local emergency to be declared for non-COVID-19 emergencies when a state of national emergency or national transition period is in place for COVID-19 related matters;
- 10.3 allow for a local transition period to be given for non-COVID-19 emergencies when a national transition period is in place for COVID-19 related matters;
- 10.4 allow for any non-COVID-19-related local state of emergency to remain in place if a new state of national emergency is declared for a COVID-19-related reason;
- 10.5 allow Civil Defence Emergency Management Groups to declare local states of emergency for other emergency events which are not related to COVID-19, without terminating any national transition period that may be in force for COVID-19;
- 11 **noted** that there may be minor technical changes to the COVID-19 Public Health Response Bill prior to introduction;
- 12 **approved** for introduction the COVID-19 Public Health Response Bill [PCO 22923];
- 13 **agreed** that the Bill introduced to the House on 12 May 2020 and passed through all stages under urgency;
- 14 **agreed** to include a provision binding the Crown;
- 15 **noted** that Attorney-General will seek further advice on the issues concerning compensation and immunity;
- 16 **agreed** that the Attorney-General consult key stakeholders on an exposure draft of the Bill;
- 17 **authorised** the Attorney-General, in consultation with the Prime Minister, to approve any amendments to the COVID-19 Public Health Response Bill arising from further consultation.

Michael Webster  
Secretary of the Cabinet