

Briefing

NEXT STEPS: COVID-19 RESPONSE BILL

To	Attorney-General		
From	COVID-19 All-of-Government Policy Strategy and Co-ordination Unit	Date	2/05/2020

Purpose

- 1 This briefing sets out the process and timeframe to introduce a COVID-19 Response Bill (the Response Bill). The earliest date the Response Bill can be introduced is 14 May 2020.
- 2 Officials seek guidance on several key questions to enable the Response Bill to be developed in time for this introduction deadline.

Recommendations

We recommend that you:

- 1 **Note** that on 29 April 2020 the Social Wellbeing Committee (SWC) agreed to draft and introduce a COVID-19 Response Bill [SWC-20-MIN-0022];
Noted
- 2 **Note** that SWC invited you, with the support of the All-of-Government COVID-19 Policy and Strategy Group, to issue drafting instructions to Parliamentary Counsel to reflect Cabinet's decision;
Noted
- 3 **Note** that SWC also instructed officials to report-back to the Committee on the case for, and design features of, an infringement regime;
Noted
- 4 **Note** that officials are seeking your agreement on several key elements of the Response Bill including, inter alia:
 - 4.1 The decision-maker in relation to the exercise of powers.
 - 4.2 The inclusion of an infringement regime.

Noted

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- 5 **Note** that in relation to the decision-maker on the exercise of powers, your decision will be reflected in the drafting instructions to Parliamentary Counsel;

Noted

- 6 **Note** that in relation to the infringement regime, this briefing contains preliminary advice on the key features of an infringement regime, and we can reflect your decision in a report-back to SWC before it is included in drafting instructions to Parliamentary Counsel;

Noted

In relation to the decision-maker on the exercise of powers:

- 7 **Agree** to the following option, either:

Option 1: The Director-General of Health may issue orders having regard to a government strategy set by Ministers (**Not recommended**)

Yes / No

OR

Option 2: that the Minister of Health may issue orders on the recommendation of the Director-General of Health and in consultation with other relevant Ministers (**Recommended**);

Yes / No

In relation to additional mechanisms for enforcement:

- 8 **Note** the graduated response model focusing on education but extending to written formal warnings and prosecutions from Police has worked well to enforce Covid-19 restrictions;

Noted

- 9 **Note** that infringement offences could provide a proportionate response to minor offending between education and prosecutions

Noted

- 10 **Note** that Police have advised it would take 3-4 weeks to amend their systems and infrastructure to enable the anticipated volumes of police-only issued Covid-19 infringement notices.

Noted

- 11 **Note** that Police have also advised that should they be asked to support the issuing of infringement notices from other agencies then it would take 3-4 months to establish this system.

Noted

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12 **Agree** in relation to the infringement offences to either

12.1 rely on existing mechanisms for enforcing the new powers in the Bill (i.e. without an infringement system).

Yes / No

OR

12.2 create infringement offences for the behaviour set out at [31] and

12.3 that the fee be set at \$300 and the corresponding fine be set at \$1,000.

Yes / No

13 **Agree** that the following other powers be provided for

13.1 Power for Police office to direct individuals not complying with alert level restrictions to disperse, prosecutable under section 72 of the Health Act (which carries a penalty of 6 months' imprisonment and/or a \$4000 fine).

Yes / No

13.2 Power for warrantless entry into homes or marae to enable the dispersal power to be applied in those places.

Yes / No

13.3 Power for enforcement officer to close an establishment for 24 hours which is not complying with alert level restrictions with the ability for a manager to apply to the District Court to have the closure overturned

Yes / No

14 **Agree** that a business operating in breach of an order per [13.3] above should be an offence with a fine of up to \$10,000 on conviction.

Yes / No

In relation to other aspects of the Response Bill:

15 **Note** that the Bill will include safeguards to improve the settings for the orders, but these need to be fit-for-purpose given the urgent nature of the orders

Noted

- 16 **Note** officials are investigating a streamlined confirmation option because the usual process of confirmation by Parliament would be ineffective because it usually happens only once per year;

Noted

[REDACTED]

[REDACTED] s9(2)(f)(iv)

- 19 **Note** there are three options to manage timing risks that arise from the Response Bill:

Option A: Delay the commencement of Level 2 until the Response Bill received Royal Assent (anticipated to be on 20 May).

Option B: Complete all stages under Urgency on 14 May (no select committee).

Option C: Introduce the legislation on 12 May, complete the Select Committee process in one day, and complete the remaining stages on 14 May. Officials will investigate the feasibility of this option.

Noted

- 20 **Note** that officials will provide further advice on timing options once more information is available on Monday 4 May or Tuesday 5 May.

Noted



Dr Peter Crabtree
**COVID-19 AoG Policy Strategy and Co-
ordination unit**

2/5/2020



Una Jagose QC
Solicitor-General

2/5/2020

Hon David Parker
Attorney-General

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Background

- 1 On 29 April 2020, the Social Wellbeing Cabinet Committee (SWC) with “power to act” agreed to draft and introduce a COVID-19 Response Bill (“the Response Bill”) to create a comprehensive legal framework which better reflects the Alert Levels system and is based on sound law-making principles [SWC-20-MIN-0022].
- 2 SWC invited you, with the support of the All-of-Government COVID-19 Policy and Strategy Group, working with relevant agencies including the Ministry of Health, to issue drafting instructions to Parliamentary Counsel to reflect Cabinet’s decision.
- 3 Officials will base those drafting instructions on:
 1. Decisions by SWC on 29 April, relating to:
 - 3.1.1 Principles for the proposed legislation;
 - 3.1.2 Proportionate powers designed for a precautionary strategy;
 - 3.1.3 The ability to use powers flexibly to respond to changing risks and developments; and
 - 3.1.4 Appropriate safeguards; and
 2. Your guidance on several key ‘building blocks’ for the legislation set out in this briefing.
- 4 SWC also instructed officials to report-back to the Committee on the case for, and design features of, an infringement regime. This briefing contains preliminary advice on that regime and its potential inclusion in the legislation.
- 5 On 11 May 2020, Cabinet will review and make a decision regarding our alert level settings.
- 6 This briefing has been prepared by the All-of-Government COVID-19 Policy and Strategy Group in conjunction with Crown Law, PCO, New Zealand Police, Ministry of Justice, Department of the Prime Minister and Cabinet, National Emergency Management Agency, and the Ministry of Health.

Key features of the Response Bill

The proposed Response Bill strengthens the legislative framework underpinning the Alert Levels system

- 7 In order to introduce the Response Bill by 14 May, officials are working quickly to identify and get Ministerial agreement on critical outstanding issues. In the interests of time we have taken a high bar to including issues here and take as agreed, the principles and approach set out in the advice considered by SWC on 29 April.

- 8 The core of the government's response to COVID-19 is the Alert Level framework and its graduated set of measures. Underpinning this is a proactive and precautionary approach to managing public health risks. To date, section 70 notices (issued under the Health Act 1956) in conjunction with the state of national emergency under the Civil Defence Emergency Management Act (CDEMA) and the Epidemic Preparedness Act (EPA) have provided the bulk of the powers used to implement Alert Levels 4 and 3.
- 9 Our experience during this process has demonstrated the Alert Levels Framework is an effective approach for managing COVID-19 risks. However, it has also demonstrated that there are a number of respects in which the legislative framework provided by the Health Act can be modernised, clarified and better fitted to the continued implementation of the Alert Levels and reduce legal risks, while retaining the policy intent of the existing framework. Cabinet has also indicated specific situations where it is seeking new powers should enforcement be required (such as gatherings). The COVID-19 Response Bill supports the continuity of the Alert Levels Framework by modernising its underlying legal framework.
- 10 The Response Bill does not change the policy of existing health and safety regulation and regulators, such as Health and Safety at Work, Employment Standards, Building Regulation and Food Regulation. The Response Bill provides the means to implement the COVID-19 Alert Levels framework, and enforce restrictions where necessary, alongside these existing regulatory systems and without obstructing or compromising their operation.

Objectives of the proposed Response Bill

- 11 Officials are therefore proceeding on the basis of the Response Bill simply giving legislative effect to the policy decisions that Cabinet has made on the Alert Levels Framework. The legislation will:
 1. enable, not change, the approach Cabinet has agreed to under the Alert Level Framework;
 2. enable the government to deliver the current Alert Level Framework with continuity, flexibility and reduced legal risk;
 3. maintain the ability to take a precautionary approach (with appropriate safeguards e.g. oversight, transparency, accountability and proportionality);
 4. allow for effective enforcement;
 5. be specific to the response to COVID-19

Key elements of the Response Bill

- 12 The proposed key elements of the Response Bill are set out in Annex One. The critical issues where we are seeking further decisions are set out below.

- 13 The proposed new powers would be broadly similar to the existing powers in the Health Act 1956 but would be better tailored to dealing with the public, sections of the public or businesses. The existing powers may be said to be better suited for dealing with individuals but less so when dealing with the entire population or particular classes of it. Under the proposed new regime there would also be an ability to impose conditions on the public or particular sections of it. Conditions could include, for example, requirements for spatial distancing and contact tracing.

We recommend that the Minister of Health be the decision-maker on the exercise of powers

- 14 There are a range of considerations that need to be balanced in determining the appropriate decision-maker. We have focussed on 2 possible options for implementing the current framework within more robust settings. These operate in the context of an Epidemic Notice issued by the Prime Minister.
- 15 **Option 1:** The Director-General of Health may issue orders having regard to a government strategy set by Ministers. Under this option, Cabinet would continue to set the strategy for responding to COVID-19 with the different alert levels, and criteria for moving between them. The Director-General would have regard to that strategy in deciding what orders are needed and proportionate to issue to limit the risk of the outbreak or spread of COVID-19.
- 16 **Option 2:** The Minister of Health may issue orders on the recommendation of the Director-General of Health and in consultation with other relevant Ministers. Under this option, Cabinet would continue to set the alert level strategy (as under option 1), but the Minister of Health would decide which orders are needed and proportionate to issue to limit the risk of the outbreak or spread of COVID-19. In doing so, the Minister of Health would have regard to the health-based advice of the Director-General of Health and work in consultation with other key Ministers.
- 17 Under option 2, the Director-General of Health would be able to exercise these powers in limited circumstances with the prior approval of the Minister of Health. This flexibility would be designed to enable cluster decisions, for example, to be dealt with more directly and at the appropriate level (taking into account their urgency and the effects) by the Director-General of Health or medical officers of health.
- 18 Within both options, there would be flexibility to delegate to a limited degree needed to effectively operationalise the orders in practice.
- 19 There are a range of considerations to balance in choosing between these options, which are set out below.

Which option is more consistent with existing legislative conventions?

- 20 Although Option 1 is closest to the current approach under the Health Act, Option 2 is closer to usual legislative conventions. The scale and wide-ranging implications (health, economic and social) of the decision-making

lends itself to Ministerial-level accountability, where a wider range of Ministerial portfolios can have input.

Keeping public health expertise at the centre of decision-making

- 21 Option 1 offers the most obvious guarantee that public health will be at the centre of decision-making.
- 22 However, there are effective mechanisms that will ensure Option 2 preserves the critical importance of public health, for instance by providing that the Minister of Health will be the ultimate decision-maker, by requiring that the Minister consider the advice of the Director-General of Health, and consult with relevant Ministerial colleagues (such as the Minister for Economic Development and Minister of Finance). The advice of the Director-General of Health will be focussed on the public health needs and medical expertise, and as a result will have the necessary independence from the balancing of broader factors.
- 23 Option 2 would also allow for the Director General of Health to exercise powers in limited circumstances only with the approval of the Minister of Health.

[REDACTED]

[REDACTED] s9(2)(h)

Safeguards for powers

- 25 The Bill will include safeguards to improve the settings for the orders, but these need to be fit-for-purpose given the urgent nature of the orders. This should include:

Before making

- 26 Any proposed order must be provided to the Regulations Review Committee 48 hours before the time it is intended to come into effect. This is designed to facilitate the Committee's early consideration of the orders under the usual grounds for disallowance. It would not apply if the order needed to be made urgently.
- 27 Any proposed direction must be published on the Department's website 48 hours prior to the time it is intended to come into effect. This is not intended to be a form of consultation, but is designed to give a minimum notice period to allow people to plan and prepare. It would not apply if the order needed to be made urgently.

Post-making

- 28 The usual scope for disallowance will apply (for example, if the Regulations Review Committee considers there had been an unexpected use of the powers).
- 29 We are investigating a further streamlined confirmation option (to enable the fuller policy consideration of the order). The usual process for confirmation by Parliament would be ineffective as a safeguard because it happens once per year and any instrument not confirmed, and therefore invalid, would likely be spent within that timeframe in any case. We are seeking advice from the Clerk as to whether an option which would require confirmation by either an Act or House resolution within a shorter time period (for example, 3 months) is workable and not too onerous for the House.

Additional mechanisms for enforcement

Infringement notices

- 31 SWC asked officials to report-back to the Committee on the case for, and design features of, an infringement regime. This section contains officials' preliminary advice on that regime with a further report-back to come in the week of 4 May.
- 32 We note that the graduated response model NZ Police has used to date has worked well. That model focuses on education but can extend to written formal warnings and prosecutions. There are some additional enforcement mechanisms that could strengthen this graduated response. Infringement offences could provide a middle ground between education and prosecution. Infringements are (and are perceived to be) a more proportionate response to minor offending than a criminal conviction.
- 33 Examples where additional graduated enforcement options could be created may include:
- 33.1.1 Limiting inter-regional travel
 - 33.1.2 Preventing gatherings of more than the specified number of people (e.g. 100), and
 - 33.1.3 Maintaining a specified social distance from others (e.g. 1 metre).

What is an infringement offence?

- 34 Infringement offences are non-serious offences resulting in fees of less than \$1000. They do not result in a conviction. Fees are issued 'on sight' by an enforcement officer using an infringement notice. Infringement offences can also result in a fine, which is the higher amount a person is liable to pay should they challenge the infringement notice in Court.
- 35 If you wish to progress an infringement regime, bespoke powers to support these infringement offences may also be required. These are discussed below. We have also noted where a criminal offence may present a credible

alternative to an infringement offence. Risks associated with creating an infringement regime are also set out below.

What could an infringement regime look like?

- 36 The Bill would need to set out a power to prescribe infringement offences, establish a maximum fee/fine and state who can issue infringement notices (e.g. Police officer, health officer, etc.).
- 37 Either the order itself or other regulations could identify the specific prohibitions for which infringement offences are available and set the exact fee/fine level for each offence. This would allow for flexibility on timing.
- 38 We recommend that an appropriate level of fee/fine is \$300/\$1,000. This is based on the below similar conduct and corresponding penalties. That is lower than the following sanctions because the proposed infringement offences represent a limitation on freedom of movement and association and a higher sanction will exacerbate these limitations.
- 38.1.1 Health and Safety at Work Act 2015 infringement fees range from \$300 - \$1000.
 - 38.1.2 Summary Offences Act 1981, section 3 Disorderly assembly: \$2000 fine.

Risks associated with creating an infringement regime

- 39 It is challenging to set up an infringement regime at short notice. An assessment of any enforcement agency's ability to support the regime is required. For example, Police's Infringement Processing system (PIPS) is old and under severe pressure. Adding to it may require significant investment and IT build, with associated timing constraints.
- 40 PIPS allows for the processing of Police-issued notices. It would take 3-4 weeks to amend it to enable anticipated volumes of Covid-19 compliance notices issued by Police alone. To support infringement notices from other agencies (for example, Health) is possible, but would take 3-4 months. An agreement would have to be made in partnership with Waka Kotahi NZTA as PIPS is fully funded through the Road Safety Partnership Programme.
- 41 The behaviours that this regime could prohibit are nuanced and breaches will be difficult to enforce. For example, it may be difficult for an enforcement officer to establish if a person is in their 'home region', or whether a person they are within one metre of is in their bubble, and to issue infringements accordingly. This could lead to challenges being lodged in the District Court.
- 42 Infringements are more likely to be effective on those outside of the normal criminal justice system (i.e. those without a history of offending). Additionally, financial sanctions will disproportionately impact less affluent New Zealanders at a time where they may already face financial pressure. Infringement fees may be perceived as revenue gathering and could push people further into debt and towards the criminal justice system.

Powers needed to support infringement regime

- 43 Creating an infringement regime on its own will not enable enforcement in all scenarios and additional powers will be necessary.
- 44 **Power to seek information:** If an enforcement officer stopped a car and suspected the occupants were not within their 'home' region, the officer would need a power to require information as to the purpose of the travel. This would provide the basis on which an infringement for inter-regional travel would be issued.
- 45 **Warrantless power of entry into home / marae to enforce:** If a gathering of over the specified number of people occurred in a person's home, Police would be unable to enter to issue an infringement. Entry into a home or marae is a significant power, generally only appropriate for emergency situations including to prevent harm or stop evidence being destroyed. Powers of entry do not attach to infringement offences because they are not serious enough to justify entry.
- 46 For suspected Covid-19 breaches, unless there is a bespoke power of entry, Police will only be able to enter a home or marae with consent. This power would be highly unusual and present a significant imbalance between the entry power and the low-level infringement offence needing to be enforced. The Ministry of Justice does not consider such power of entry justified when it relates to the issuing of an infringement. However, we propose such an entry power to facilitate dispersal of groups at paragraph 51 below. We are still considering the relationship between the power of entry required for dispersal and the issuing of infringements within people's homes.
- 47 **Warrantless power of entry into other building to issue infringement:** If, for example, a person in a workplace failed to comply with social distancing, a power to enter to issue an infringement would be required. Conversely to the above, a warrantless power to enter a place could be justified because the privacy expectation is lower than that for a home or marae.

Other additional enforcement mechanisms

- 48 **Strict liability with fiscal sanction:** If a workplace failed to comply with social distancing, a strict liability offence with a larger fiscal sanction could also be used instead of an infringement offence.
- 49 **Power to close establishment:** There is no power to order the closure of an establishment e.g. a restaurant for non-compliance with level 2 restrictions. A power to close a non-compliant establishment may be required. Ordering closure for a period is a visible and costly sanction that could drive compliance as an alternative to issuing of an infringement offence or prosecuting. It would also provide an effective mechanism to immediately disperse people congregating within the establishment in a non-compliant manner (for example people not obeying rules about appropriate distancing).

50 A power of this kind is in section 266 of the Sale and Supply of Alcohol Act 2012. This empowers Police to order closure of premises for 24 hours, for example, in the case of fighting or serious disorder or a significant threat to public health or safety. The manager of the premises may apply to the District Court to have the closure overturned. Continuing to operate in breach of an order can result in fines of up to \$10,000 on conviction.

51 **Power to disperse:** If large crowds of people congregated (whether at home or in public) or failed to maintain physical distance, a Police officer would need a power to direct those individuals to disperse. Failure to follow this direction could be prosecuted under section 72 of the Health Act. Under section 72 it is an offence to obstruct a medical officer of health or people assisting that officer with a penalty of 6 months' imprisonment and/or a \$4000 fine. This offence would be triggered by the epidemic notice under section 70 of the Health Act.

52 If the dispersal power is applied to homes or marae, a warrantless power of entry would be required (for example so that an officer could see the number of people in the home). A specific power of entry (similar to section 71A of the Health Act) would be needed to enable warrantless entry into a home or marae. This will require a decision about whether these powers are justified under the Bill of Rights Act 1990.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

s9(2)(f)(iv)

Next steps

The earliest feasible lodging date is 14 May

58 Officials propose the following timeline:

Date	Stage / deliverable
Friday, 01 May	Briefing to Attorney-General
Week of 4 May	Any further decisions needed by Cabinet
Monday, 4 May	First tranche of drafting instructions sent to PCO
Wednesday, 6 May	Further instructions sent to PCO as decisions made (final cut off date)
Wednesday, 6 May – Friday, 8 May	Cross-party consultation on proposals within Bill
Monday 11 May	Draft Bill available for cross-party consultation and BORA vetting
Monday 11 May – Tuesday 12 May	Cross-party consultation on draft Bill
Tuesday, 12 May	BORA advice to Attorney-General (Acting for this Bill)
Wednesday, 13 May	Cabinet Committee (SWC or DEV) with Power to Act approves introduction of the Bill
Thursday, 14 May	Bill introduced to House, first reading, Bill referred to Select Committee
Friday, 15 May – Tuesday 19, May	Select Committee consideration
Wednesday, 20 May	Bill returned to House to pass through further stages Royal Assent
OR – if Business Committee doesn't agree to House sitting on 20 May	
Friday, 15 May – Thursday, 21 May	Select Committee consideration
Tuesday, 26 May	Bill returned to House to pass through further stages Royal Assent

59 On 11 May 2020, Cabinet will review and make a decision regarding our alert level settings.

60 It is possible that Cabinet's decision on timing could create a gap of several days between the move to Level 2 and Royal Assent of the proposed

Response Bill. During this gap, the issues identified to Cabinet about the suitability of current powers for Level 2 (and which this Response Bill is intended to address), will be present. As noted in that advice [SWC-20-MIN-0022] some of these gaps will be filled by CDEM powers. The gaps could also be addressed, in part, by a transitional section 70 notice and other regulatory regimes such as the Health and Safety at Work Act. Any gap in enforceability has the potential to reduce public confidence that restrictions will be enforced.

- 61 To address the potential for a gap between Level 2 and obtaining Royal Assent, officials have identified three options:
1. Delay the commencement of Level 2 until the Response Bill received Royal Assent (anticipated to be on 20 May).
 2. Complete all stages under Urgency on 14 May (no select committee).
 3. Introduce the legislation on 12 May, complete the Select Committee process in one day, and complete the remaining stages on 14 May. Officials will investigate the feasibility of this option.

Further consultation

- 62 Depending on your decisions on the issues in this briefing, there may be some specific decisions you may wish to refer back to Cabinet.
- 63 In the timeline above, we have built in time for you to undertake cross-party consultation in order to broaden support for the legislation. This would be consistent with the approach taken to the Hurunui/Kaikoura Earthquakes Recovery Act 2016.

Further advice being developed

- 64 Crown Law is developing further advice on several issues, including compensation. These will be raised with you if they present major difficulties for the drafting of the legislation.

Annex One: Key components of the Bill

Note this table is indicative of thinking that are informing instructions, and some detail will be developed iteratively with drafters next week.

Outline of main Bill components	
Draft Purpose and effects	<p>The purpose of the Bill is to provide a framework to continue to limit the risk of the outbreak or spread of COVID-19 (including by a precautionary approach that recognises the asymptomatic and contagious nature of COVID-19) while:</p> <ol style="list-style-type: none"> a) supporting a response that controls, avoids, remedies, or mitigates the actual or potential adverse effects of the COVID-19 outbreak; and b) supporting the voluntary measures and public health and other guidance that are essential to the response to COVID-19.
Nature of the new powers	<p>The new powers will:</p> <ul style="list-style-type: none"> • be broadly based on the powers in sections 70 and 92I of the Health Act (these are attached at Annex Three) • be capable of being exercised in respect of classes of people, businesses and other activities (such as sporting events, weddings, funerals etc), at either a national, regional, or cluster level • allow for the same kind of measures to be put in place that have been imposed under the various Health Act notices to date and that are envisaged under the Alert Levels framework • contain the ability to place conditions on the controls • allow for a degree of delegation to allow for the operationalising of the orders <p>Orders that relate to individuals will continue to be addressed via existing powers in the Health Act.</p>
Trigger for availability of powers	<p>Different triggers will be appropriate depending on who is exercising the powers:</p> <ol style="list-style-type: none"> 1) Option 1: the Director-General of Health as decision-maker - the trigger could be similar to that in section 70 of the Health Act (if authorised by the Minister, SOE declared, or epidemic notice is in force). 2) Option 2: the Minister of Health as decision-maker - then the trigger could be that an epidemic notice is in force;
Safeguards	<p>Substantive and process prerequisites:</p> <ul style="list-style-type: none"> • If Option 1: the Director-General of Health must not make an order unless satisfied that the measures are appropriate to limit the outbreak or spread of COVID-19 after considering the purpose of the Bill. The Director-General of Health must also have regard to Government strategy.

	<ul style="list-style-type: none"> • If Option 2: the Minister of Health must not make an order unless on the recommendation of the Director-General of Health, and after consulting specified Ministerial colleagues. Must be satisfied that the measures are appropriate to limit the outbreak or spread of COVID-19 after considering the purpose of the Bill. <p>Public notice prior to the order coming into effect</p> <ul style="list-style-type: none"> • Except in cases where the order must be made urgently (for instance to respond to a public health issue) any proposed direction must be published on the Department's website 48 hours prior to the time it is intended to come into effect. This is not intended to be a form of consultation, but is designed to give a minimum notice period to allow people to plan and prepare. <p>Early notice to the RRC to facilitate consideration</p> <ul style="list-style-type: none"> • Except in cases where the order must be made urgently (for instance to respond to a public health issue) any proposed order must be provided to the Regulations Review Committee 48 hours before the time it is intended to come into effect. <p>Orders will be confirmable on a streamlined process</p> <ul style="list-style-type: none"> • We are investigating with the Clerk whether it would be workable to require confirmation by Act of Parliament or House resolution of nation-wide orders within a tighter timeframe (3 months) than normally applies to confirmation. <p>The instrument</p> <ul style="list-style-type: none"> • Orders will be legislative and disallowable instruments. They will therefore be published in the Gazette, legislation website, and tabled in the House, and subject to the oversight of the Regulations Review Committee. <p>Requirement for ongoing review</p> <ul style="list-style-type: none"> • Unless the direction has expired earlier, the person making the direction must review it every 30 days and decide if it should be revoked, changed, or remain in place
Other matters to be addressed by the legislation	
<p>Challenges / Appeal</p>	<p>The legislation will not oust Judicial Review, so orders would be subject to Judicial Review. Other legal remedies will also apply (such as BORA challenges and Habeas Corpus).</p> <p>No specific right of appeal from decisions of officers about whether a particular business or activity is allowed for example.</p> <p>Appeals against any convictions and infringement notices in the usual way – no special timing or process is proposed for them.</p>

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<p>Immunities and protections</p>	<p>Public officials should have the same level of protections and immunities for performing functions under the new powers as they do under the Health Act presently.</p> <p>No specific immunity would be granted to the Crown in the legislation [REDACTED] [REDACTED] s9(2)(h)</p>
<p>Transitional matters</p>	<p>Existing proceedings should be unaffected</p> <p>Existing section 70 orders relating to quarantine requirements at the border will continue to apply.</p> <p>It may be appropriate to include a power that allows the decision maker to identify a pre-commencement notice or action taken as being treated as a notice made under the new powers.</p>

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[REDACTED]
[REDACTED]
[REDACTED] s9(2)(f)(iv)

Annex Three: sections 70 and 92I of the Health Act 1956

Part 3 s 70

Health Act 1956

Reprinted as at
11 March 2020**Part 3****Infectious and notifiable diseases****70 Special powers of medical officer of health**

- (1) For the purpose of preventing the outbreak or spread of any infectious disease, the medical officer of health may from time to time, if authorised to do so by the Minister or if a state of emergency has been declared under the Civil Defence Emergency Management Act 2002 or while an epidemic notice is in force,—
- (a) declare any land, building, or thing to be insanitary, and prohibit its use for any specified purpose;
 - (b) cause any insanitary building to be pulled down, and the timber and other materials thereof to be destroyed or otherwise disposed of as he thinks fit;
 - (c) cause insanitary things to be destroyed or otherwise disposed of as he thinks fit;
 - (d) cause infected animals to be destroyed in such manner as he thinks fit;
 - (e) require persons to report themselves or submit themselves for medical examination at specified times and places:
 - (ea) if the spread of the disease would be a significant risk to the public, require people to report, or submit themselves for medical testing, at stated times and places;
 - (f) require persons, places, buildings, ships, vehicles, aircraft, animals, or things to be isolated, quarantined, or disinfected as he thinks fit;
 - (fa) if the spread of the disease would be a significant risk to the public, require people, places, buildings, ships, vehicles, aircraft, animals, or things to be tested as he or she thinks fit;
 - (g) forbid persons, ships, vehicles, aircraft, animals, or things to come or be brought to any port or place in the health district from any port or place which is or is supposed to be infected with any infectious disease;
 - (h) require people to remain in the health district or the place in which they are isolated or quarantined until they have been medically examined and found to be free from infectious disease, and until they have undergone such preventive treatment as he may in any such case prescribe;
 - (i) forbid the removal of ships, vehicles, aircraft, animals, or things from the health district, or from one port or part thereof to another, or from the place where they are isolated or quarantined, until they have been disinfected or examined and found to be free from infection;
 - (j) prohibit the keeping of animals or of any species of animal in any specified part of the health district;

- (k) forbid the discharge of sewage, drainage, or insanitary matter of any description into any watercourse, stream, lake, or source of water supply:
- (l) use or authorise any local authority to use as a temporary site for a special hospital or place of isolation any reserve or endowment suitable for the purpose, notwithstanding that such use may conflict with any trust, enactment, or condition affecting the reserve or endowment:
- (la) by written order to the person appearing to be in charge of the premises concerned, do either or both of the following:
 - (i) require to be closed immediately, until further order or for a fixed period, any premises within the health district (or a stated area of the district):
 - (ii) require to be closed immediately, until further order or for a fixed period, any premises within the health district (or a stated area of the district) in which infection control measures described in the order are not operating:
- (m) by order published in a newspaper circulating in the health district or by announcement broadcast by a television channel or radio station that can be received by most households in the health district, do any of the following:
 - (i) require to be closed, until further order or for a fixed period, all premises within the district (or a stated area of the district) of any stated kind or description:
 - (ii) require to be closed, until further order or for a fixed period, all premises within the district (or a stated area of the district) of any stated kind or description in which infection control measures described in the order are not operating:
 - (iii) forbid people to congregate in outdoor places of amusement or recreation of any stated kind or description (whether public or private) within the district (or a stated area of the district):
 - (iv) forbid people to congregate in outdoor places of amusement or recreation of any stated kind or description (whether public or private) within the district (or a stated area of the district) in which infection control measures described in the order are not operating.
- (n) *[Repealed]*
- (o) *[Repealed]*
- (1A) An order under paragraph (la) or (m) of subsection (1) does not apply to—
 - (a) any premises that are, or any part of any premises that is, used solely as a private dwellinghouse; or

- (b) any premises within the parliamentary precincts (within the meaning of section 3 of the Parliamentary Service Act 2000); or
 - (c) any premises whose principal or only use is as a courtroom or judge's chambers, or a court registry; or
 - (d) any premises that are, or are part of, a prison (within the meaning of section 3(1) of the Corrections Act 2004).
- (1B) An order under paragraph (la) or (m) of subsection (1) may exempt people engaged in necessary work in the premises to which it relates.
- (1C) If the medical officer of health publishes an order under subsection (1)(m) in a newspaper circulating in the health district, he or she must also make reasonable efforts to have the contents or gist of the order published by announcement broadcast by a television channel or radio station that can be received by most households in the health district.
- (1D) The medical officer of health may publish in any other manner he or she thinks appropriate an order under paragraph (la) or (m) of subsection (1) or its gist.
- (2) The medical officer of health, and any environmental health officer or other person authorised in that behalf by the medical officer of health, may at any time, with or without assistants, enter on any lands, buildings, or ships, and inspect the same and all things thereon or therein; and may do, with respect to any persons, places, lands, buildings, ships, animals, or things, whatever in the opinion of the medical officer of health is necessary or expedient for the purpose of carrying out the foregoing provisions of this section.
- (3) In no case shall the medical officer of health, or any environmental health officer or assistant or other person, incur any personal liability by reason of anything lawfully done by him under the powers conferred by this section.
- (4) If satisfied that it is desirable in the circumstances to do so, the Director-General may authorise a medical officer of health to operate in a stated area outside his or her district; and in that case, this section and section 71 apply as if the area is part of both his or her district and the district of which it is in fact part.

Compare: 1920 No 45 s 76

Section 70(1): amended, on 19 December 2006, by section 5(1) of the Health Amendment Act 2006 (2006 No 86).

Section 70(1): amended, on 1 December 2002, by section 117 of the Civil Defence Emergency Management Act 2002 (2002 No 33).

Section 70(1): amended, on 3 November 1964, by section 3 of the Health Amendment Act 1964 (1964 No 34).

Section 70(1)(ca): inserted, on 19 December 2006, by section 5(2) of the Health Amendment Act 2006 (2006 No 86).

Section 70(1)(f): amended, on 19 December 2006, by section 5(3) of the Health Amendment Act 2006 (2006 No 86).

Section 70(1)(fa): inserted, on 19 December 2006, by section 5(4) of the Health Amendment Act 2006 (2006 No 86).

(b) not be made or taken in an arbitrary manner.

Section 92F: replaced, on 4 January 2017, by section 11 of the Health (Protection) Amendment Act 2016 (2016 No 35).

92G Least restrictive alternative

In any case where this Part enables alternative measures to be applied to an individual, preference must be given to the least restrictive measure that, in the judgment of the person or court concerned, will achieve the objective of minimising the public health risk posed by the individual.

Section 92G: replaced, on 4 January 2017, by section 11 of the Health (Protection) Amendment Act 2016 (2016 No 35).

92H Measures to apply no longer than necessary

Measures applied to an individual under this Part must not be applied longer than is necessary to prevent or minimise the public health risk that the individual poses.

Section 92H: replaced, on 4 January 2017, by section 11 of the Health (Protection) Amendment Act 2016 (2016 No 35).

Subpart 2—Directions

Subpart 2 heading: inserted, on 4 January 2017, by section 11 of the Health (Protection) Amendment Act 2016 (2016 No 35).

92I Medical officer of health may give directions to individual posing public health risk

- (1) This section applies if a medical officer of health believes on reasonable grounds that an individual poses a public health risk.
- (2) The medical officer of health may give the individual any direction or directions listed in subsection (4) that the medical officer of health thinks are necessary to prevent or minimise the public health risk posed by the individual.
- (3) If the disease that the individual is believed to have is not a notifiable infectious disease, every direction given to the individual must have the prior approval of the Director-General.
- (4) The medical officer of health may direct the individual to—
 - (a) participate in any of the following that are conducted by a health provider:
 - (i) counselling;
 - (ii) education;
 - (iii) other activities related to the infectious disease;
 - (b) refrain from carrying out specified activities (for example, undertaking employment, using public transport, or travelling within and outside New Zealand) either absolutely or unless stated conditions are observed;

- (c) refrain from going to specified places either absolutely or unless stated conditions are observed;
 - (d) refrain from associating with specified persons or specified classes of persons;
 - (e) take specified actions to prevent or minimise the public health risk posed by the individual;
 - (f) stay, at all times or at specified times, at a specified place of residence, subject to specified conditions;
 - (g) accept supervision by a named person or a person for the time being holding a named office, including, without limitation,—
 - (i) attending meetings arranged by that person; and
 - (ii) providing that person with information on any action, occurrence, or plan that is relevant to the public health risk posed by the individual;
 - (h) comply with instructions to prevent the spread of the infectious disease.
- (5) In no case may a direction require an individual to submit to compulsory treatment.
- (6) Subsection (7) applies if a direction requires an individual to refrain from carrying out a specified activity either absolutely or unless stated conditions are observed and a medical officer of health believes on reasonable grounds that the persons responsible for the activity need to be informed in order to prevent or minimise the public health risk posed by the individual.
- (7) The medical officer of health may contact any person who occupies a position of responsibility in relation to the activity and tell that person about 1 or more of the following matters:
- (a) the direction;
 - (b) the public health risk posed by the individual's engagement in the activity;
 - (c) ways of minimising that public health risk.
- (8) If the Director-General so requires, the medical officer of health must send him or her a copy of all or any of the directions given by the medical officer of health under this section.
- (9) Despite anything in the Privacy Act 1993, if a person requires another person to provide information under this section,—
- (a) the person required to provide the information must comply with the requirement and be advised that the information must be provided for the effective management of infectious diseases; and
 - (b) nothing in this section limits the right of an individual to access or disclose information about him or her under that Act or any other Act.