

Departmental Disclosure Statement

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| COVID-19 Public Health Response Amendment Bill |
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Health.

The Ministry of Health certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

27/11/2020

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Part One: General Policy Statement

The purpose of this Bill is to amend COVID-19 Public Health Response Act 2020 (the principal Act) in order to ensure the Act better aligns with the new COVID-19 Response portfolio, and provide for less restrictive measures under Alert Levels to be applied sooner.

The Bill meets these objectives by:

- replacing references to the Minister of Health as a decision-maker under the Act and subsequent COVID-19 Orders with references to the Minister responsible for the administration of the Act; and
- enabling the requirement to provide 48 hours' notice when changing orders to be disapplied if it would enable less restrictive measures to apply sooner

These changes are consistent with the overall purpose of the principal Act, which is to support a public health response to COVID-19.

Part Two: Background Material and Policy Information

Published reviews or evaluations

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| 2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill? | NO |
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Relevant international treaties

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| 2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty? | NO |
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| 2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty? | NO |
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Regulatory impact analysis

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| 2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill? | NO |
| The Treasury has determined that this policy is exempt from providing a Regulatory Impact Statement as it is intended to alleviate the short-term impacts of the declared emergency event of the COVID-19 outbreak (in accordance with CAB-20-MIN-0138). | |

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| 2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements? | NO |
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| 2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements? | NO |
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Extent of impact analysis available

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| 2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill? | NO |
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| 2.5. For the policy to be given effect by this Bill, is there analysis available on: | |
| (a) the size of the potential costs and benefits? | NO |
| (b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth? | NO |
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| 2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by: | |
| (a) the level of effective compliance or non-compliance with applicable obligations or standards? | YES |
| (b) the nature and level of regulator effort put into encouraging or securing compliance? | YES |
| <p>The nature of COVID-19 is such that if measures imposed to manage an outbreak under Alert Levels are not complied with then the intended public health benefits will not be realised.</p> <p>One of the ways to increase compliance with the requirements is to ensure they are only as restrictive as is strictly necessary to achieve the public health objective, and that they are only applied for as long as is necessary for the same objective. The change to not require 48 hours' notice if restrictions are decreased will increase acceptance of the conditions by the New Zealand public and adherence to those conditions while they apply.</p> <p>Additionally, the regulator effort in monitoring compliance with Alert Level requirements will be decreased, if those requirements are removed sooner – for example, if face masks are no longer required on public transport.</p> | |

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

This Bill does not affect New Zealand's international obligations.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The content of the Bill does not specifically impact rights and interests of Māori protected by the Treaty of Waitangi, and in the case of customary interests, also protected at common law.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

The Ministry of Justice will provide advice to the Attorney-General. This is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

3.4.1. Was the Ministry of Justice consulted about these provisions?

NO

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?

NO

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| 3.5.1. Was the Privacy Commissioner consulted about these provisions? | NO |
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External consultation

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| 3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill? | NO |
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Other testing of proposals

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| 3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete? | YES |
| The proposals have been developed in consultation with a wide range of Crown organisations including, the Ministry of Justice, the Crown Law Office, Ministry of Business Innovation and Employment, Ministry of Transport, New Zealand Customs Service and the Department of the Prime Minister and Cabinet. | |

Part Four: Significant Legislative Features

Compulsory acquisition of private property

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| 4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property? | NO |
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Charges in the nature of a tax

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| 4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax? | NO |
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Retrospective effect

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| 4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively? | NO |
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Strict liability or reversal of the usual burden of proof for offences

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| 4.4. Does this Bill: | |
| (a) create or amend a strict or absolute liability offence? | NO |
| (b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding? | NO |
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Civil or criminal immunity

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| 4.5. Does this Bill create or amend a civil or criminal immunity for any person? | NO |
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Significant decision-making powers

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| 4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests? | YES |
| The Bill changes the principal Act to provide the Minister responsible for the administration of the Act with the power to make section 11 orders. Section 11 orders allow for a broad range of measures to be imposed as set out in sections 11 and 12. | |

Powers to make delegated legislation

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| 4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation? | NO |
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| 4.8. Does this Bill create or amend any other powers to make delegated legislation? | YES |
| The Bill amends section 33A of the principal Act so that the Minister responsible for managed isolation and quarantine facility cost recovery must consult the Minister who is responsible for the Act (rather than the Minister of Health) before recommending the making of regulations for that cost recovery. | |

Any other unusual provisions or features

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| 4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment? | NO |
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