

In-Confidence

Office of the Minister for COVID-19 Response

Cabinet Social Wellbeing Committee

MANAGEMENT OF POLICE CHECKPOINTS DURING RESTRICTED MOVEMENTS UNDER COVID-19 RESPONSE

Proposal

- 1 This paper seeks Cabinet approval to give enforcement officers the power to stop vehicles at roadblocks and checkpoints.

Executive Summary

- 2 This paper proposes an amendment to the COVID-19 Public Health Response Act 2020 (the Act) so that enforcement officers may stop vehicles under the supervision of a constable at road blocks and checkpoints established for the purpose of enforcing or monitoring compliance with COVID-19 Public Health Orders (Orders) made under section 11 of the Act that restrict movement.
- 3 The COVID-19 Public Health Response Amendment Bill that is currently being drafted, provides a timely opportunity to progress additional changes to improve the operating model for managing restricted movements under Orders, and make sure the legislation is fit for purpose now and in the future. This will better enable Police to enforce movement restrictions in Orders.

Relation to government priorities

- 4 This proposal relates to the ongoing response to COVID-19.

Background

- 5 On 17 May 2021, Cabinet agreed to proposed amendments to the Act to future-proof and strengthen the current legislative framework for responding to COVID-19 [SWC-21-SUB-0067 and CAB-21-MIN-0167 refer]. Accordingly, the COVID-19 Public Health Response Amendment Bill 2021 (the Bill) is currently being drafted.
- 6 The proposed amendments in the Bill recognise that the Act was developed at pace, and at the time, there was uncertainty around how long the COVID-19 response would need to last or how complex and comprehensive the system would become. Police has since established a better understanding of what provisions are required to manage traffic when movement is restricted under Orders and identified where further changes could be made to the Act.
- 7 Section 5 of the COVID-19 Public Health Response Act defines an enforcement officer as:
 - 7.1 the Director-General of Health;
 - 7.2 a medical officer of health;
 - 7.3 a constable; and

7.4 in relation to any function or power, a person authorised to perform that function or power under section 18 of the Act or a person in a class of persons authorised to perform that function or power under section 18.

8 On 25 March 2021, the Commissioner of Police received a delegation from the Director-General of Health under section 18. This delegated power enables the Commissioner to authorise enforcement officers to assist Police with the management of Alert Level boundaries that have been mandated by any Order. The Commissioner may only authorise suitably trained and qualified persons, or class of persons, who are employed or engaged by the Crown or a Crown entity.

Enforcement officers currently have limited powers under the COVID-19 Public Health Response Act 2020

9 Enforcement officers have various powers in the Act including under section 22(2) of the Act. This section states that an enforcement officer, acting under the authority and supervision of a constable, can assist with prohibiting or restricting public access, with or without vehicles, to any road or public place within an area specified in an Order.

10 This means enforcement officers can assist Police with establishing and maintaining roadblocks or checkpoints for the purpose of enforcing or monitoring compliance with Orders which provide for the total or partial prohibition of public access to a road or public place.

11 Under section 22(3), the legislation specifies that for the purpose of an Order that provides for restriction of movement, only a constable may stop a vehicle. In contrast to section 22(2), it does not explicitly authorise the assistance of enforcement officers to stop a vehicle.

12 Restriction of movement is enforced through checkpoints and involves stopping vehicles to manage traffic movements. Checkpoints are put in place as required under Alert Level Orders either when areas are:

12.1 at Alert Level 3 or 4 – where there are restrictions on movement within the area; or

12.2 at different Alert Levels when there is a prohibition on travel in and out of the area at the higher Alert Level – e.g. in August 2020 and February 2021 when Auckland was at Alert Level 3 and the rest of the country was at Alert Level 2.

13 In August 2020, the Tāmaki Makaurau Police District experienced significantly reduced capacity when required to enforce Alert Level boundaries during the community outbreak of COVID-19. The level of resource required means there are fewer officers available to monitor movement restrictions within the Alert Level 3 area and to meet other policing demands.

Police have relied on other groups to support the effective management of checkpoints, but these powers do not allow for stopping vehicles.

14 Police has managed checkpoints most effectively in the past where additional assistance was provided by New Zealand Defence Force (NZDF) staff. NZDF staff were not allowed to stop vehicles but supported Police by initiating conversations with drivers entering the checkpoint and undertaking an initial review of exemption documentation.

- 15 In addition to NZDF, Police have also previously worked with individuals from iwi and communities to manage checkpoints, which has resulted in a more collaborative approach. This helps to support community buy-in for travel restrictions and public health conditions as community involvement helps to reinforce the need to do the right thing for New Zealanders.
- 16 The benefits provided by enforcement officers supporting Police at checkpoints could be further enhanced with the ability to stop vehicles at checkpoints in addition to other duties currently authorised under 22(2) of the Act.

The COVID-19 Public Health Response Amendment Bill could be amended to allow enforcement officers to stop vehicles at a checkpoint when assisting Police

- 17 The Bill provides a timely opportunity to progress additional changes to improve the operating model for managing restricted movements under Orders, and make sure the legislation is fit for purpose now and in the future.
- 18 I recommend amending the Act to enable enforcement officers, acting under the supervision of a constable, to assist Police with the management of Orders that provide for restricted movements by stopping vehicles at roadblocks and checkpoints.

Iwi and community groups have expressed an interest in working with Police to more effectively manage vehicles at a checkpoint

- 19 Multiple iwi and communities have expressed an interest in collaborating with Police, specifically to assist managing checkpoints due to welfare concerns for whānau living in isolated communities. Revised provisions around the use of enforcement officers would enable Police to work with iwi and communities to identify appropriate enforcement officers to stop vehicles and provide support to vulnerable communities, and effectively deliver its Te Tiriti obligations. It would also increase capacity and enable the sustainability of any future and subsequent controls where movement restrictions exist.

There are some risks associated with allowing enforcement officers to stop vehicles

- 20 Providing enforcement officers with the power to stop vehicles at checkpoints and assist with vehicle movements raises risks around health and safety of enforcement officers. Additionally, there may be risks around a public perception of individuals from the community being given powers to stop vehicles.
- 21 There is also a potential risk around the perception of iwi having the ability to stop others from moving around the region. Importantly it will be individuals, not iwi, that are authorised by the Commissioner to be enforcement officers who would exercise the power to stop vehicles at checkpoints. Enforcement officers must be suitably trained and qualified and employed or engaged by the Crown or a Crown entity in line with the authorisation process. Individuals who are not Crown employees would be “engaged” by the Police.
- 22 In order to mitigate further associated risks, the Police will develop a robust implementation plan. This will include a thorough selection process with criteria for appointment, vetting, assessment, consultation with iwi and training for individuals who are put forward for the role of enforcement officers.

Police propose a thorough process for appointing enforcement officers

- 23 There will be a selection process to manage the nomination, assessment, and recommendation of enforcement officers. Police is proposing a six-stage process to guide the consideration and confirmation of enforcement officers. This process will consist of:
- 23.1 A nomination process – agencies, such as Māori Wardens Pasifika or Community Patrollers, will be invited to consider the nomination of individuals to be considered by Police for an enforcement officer role.
 - 23.2 An application process – nominated individuals will need to complete an application form that requires information around their ability to undertake the duties required (e.g. any health vulnerabilities for the individual or their household).
 - 23.3 Police vetting – part of the application process will involve a requirement to undertake a Police vet.
 - 23.4 An assessment process – Police will consider all of the supporting information and make a determination on the person's suitability to undertake the role of an enforcement officer.
 - 23.5 Training requirements completed – all suitable persons will be required to complete the training requirements.
 - 23.6 A recommendation for appointment as an enforcement officer under the COVID-19 Act will be made to the Commissioner of Police.
- 24 There are currently no authorised enforcement officers. Additional support has been provided by New Zealand Defence Force staff as needed. The delegation for the Commissioner of Police to appoint enforcement officers was only provided in March 2021. Since March, no section 11 Orders that restrict movement have been issued, therefore, the use of enforcement officers has not been required during this time.
- 25 The number of enforcement officers to be appointed is still to be determined and would need to remain flexible to the changing environment. Numbers will be dependent on factors such as the location of the demand for additional support at checkpoints, and whether there are specific interests from Iwi and communities. With the 24/7 nature of checkpoints, a sufficient number of enforcement officers will need to be authorised to support Police staff.
- 26 As enforcement officers work under the supervision of a constable, it is anticipated that there would be a ratio of 4 or 5 enforcement officers for each constable. If an arrest needed to take place, this would be carried out by a constable and not by enforcement officers.
- 27 During the February 2021 outbreak in Tāmaki Makaurau, the region was placed into Alert Level 3 while the remainder of the country was in Alert Level 2. Approximately 60 Police constables were required to cover each shift across a total of 10 checkpoints. If the proposed ratio were to be applied in a similar scenario, we could reasonably expect that for a shift of 10 Police constables, around 40 to 50 enforcement officers would be deployed to assist.

Enforcement officers will be required to undergo training to clearly understand their roles and associated risks

- 28 The role of enforcement officers will be clearly communicated to appointees as part of a requirement to undergo a minimum standard of training. Through the training, enforcement officers will understand what their role will entail (and what functions can be exercised only by Police), including limits of the powers available to them.
- 29 Training will include a strong focus on health and safety requirements to support the safe management of checkpoints. This will cover topics such as familiarising appointees with risk management plans and controls for specific sites, the safe and effective use of PPE, tactical communication skills for constructive conversations at the roadside and methods for safely managing traffic.
- 30 Ratios of constables to enforcement officers on each site will also be carefully considered to ensure an appropriate level of supervision is provided at all times. The number of enforcement officers at specific checkpoints and ratio to Police constables will be assessed locally to reflect geographical location, traffic volumes and other circumstances specific to that checkpoint.
- 31 All decision-making powers will still sit with Police constables. Enforcement officers will not have the ability to make decisions as to the eligibility for moving through an area (i.e. confirming exemption eligibility) nor decisions around turning vehicles away. The duties of enforcement officers will be modelled on those performed previously by New Zealand Defence Force staff, and will be limited to initiating conversations with drivers to ascertain the purpose of their travel, and an initial review of exemption documentation, and with the amendment, the addition of general traffic management duties.

While there are alternative options for improving the management of checkpoints and roadblocks none solve the problem

- 32 Other options to improve the management of checkpoints include:
 - 32.1 the reallocation of policing resources from other districts during a local lockdown, or from other roles if it is a national lockdown;
 - 32.2 the continued or increased use of the NZDF personnel; and
 - 32.3 increased communication about movement restrictions to discourage people attempting to travel unlawfully between regions or areas at different Alert Levels.
- 33 Reallocating Police resources will continue to put a strain on Police operations, as there will still be fewer officers available to monitor movement restrictions and to meet other policing demands.
- 34 NZDF staff will also still need to obtain authorisation to become enforcement officers, and under current legislation are still unable to support Police officers to stop vehicles.
- 35 Increased communication around movement restrictions is on-going and I consider that although these options will be considered in any future response, in and of themselves they do not solve the problem faced by Police. Allowing enforcement

officers to perform this role is the most effective way of supporting Police to effectively manage roadblocks and checkpoints.

Financial Implications

36 There are no financial implications arising from this paper.

Legislative Implications

37 This paper proposes amendments to the COVID-19 Public Health Response Act 2020 through the COVID-19 Public Health Response Amendment Bill, which is currently being drafted and which is intended to be introduced in August. The Bill currently holds a category 2 priority on the legislative programme.

Impact Analysis

Regulatory Impact Statement

38 Treasury's Regulatory Impact Analysis team has determined that the proposal to amend the COVID-19 Public Health Response Act 2020 to enable enforcement officers to stop vehicles at checkpoints is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

Climate Implications of Policy Assessment

39 There are no expected climate change implications arising from this paper.

Population Implications

40 The increased capacity provided by enforcement officers' ability to stop vehicles will support a more collaborative approach between Police, iwi, and communities.

41 Te Puni Kōkiri supports the proposed amendment to the Act as it will provide legal clarity in support of iwi involvement to assist Police in rural and isolated areas where there remain significant concerns about the impacts from COVID-19.

42 Enabling enforcement officers to stop vehicles at checkpoints and roadblocks to enforce Orders has the potential to reduce delays for the movement of freight including livestock and could have positive benefits for rural communities.

43 This initiative supports a collaborative partnership between the Crown and iwi and aims to strengthen relationships by working together to identify and train enforcement officers that can be involved in supporting the response to COVID-19. It supports and enables iwi to protect the welfare of their communities, particularly whānau in isolated areas. This aligns with the Treaty principles of partnership and self-determination as envisaged by Article 2 of Te Tiriti o Waitangi.

Human Rights

44 The proposal in this paper is to expand the group of people who can enforce aspects of Orders to include enforcement officers. While Orders may have human rights implications (which are the subject of assessment and advice at the time they are made), the policy proposal here does not of itself create human rights implications.

Likewise, the power to enforce those aspects of Orders is already contained in the Act; this is simply an expansion of who has that power to enforce (acting under the supervision of a constable).

- 45 If approved by Cabinet, this proposal will be included in the COVID-19 Public Health Response Act Amendment Bill which will be vetted under the New Zealand Bill of Rights Act 1990 by the Ministry of Justice.

Consultation

- 46 New Zealand Police, the Ministry of Business, Innovation and Employment, Ministry of Justice, Te Puni Kōkiri, Crown Law Office and the Ministry of Health were consulted in the development of this paper.

Communications

- 47 The proposed changes will be publicised as appropriate once the Amendment Bill has been passed.

Proactive Release

- 48 This paper will be proactively released, with any appropriate redaction where information would have been withheld under the Official Information Act 1982, when the Bill is passed.

Recommendations

- 49 The Minister for COVID-19 Response recommends the Committee:
1. note that section 22(3) of the COVID-19 Public Health Response Act 2020 only enables constables to stop a vehicle and this limits Police's ability to effectively implement Orders under the Act that restrict movement.
 2. agree to amend the COVID-19 Public Health Response Act 2020 so that enforcement officers, acting under the supervision of a constable, may stop vehicles at roadblocks or checkpoints established for the purpose of enforcing or monitoring compliance with Orders that restrict movement.
 3. authorise Ministry of Health officials to instruct PCO to include an amendment in the COVID-19 Public Health Response Amendment Bill to give effect to recommendation 2.

Authorised for lodgement

Hon Chris Hipkins

Minister for COVID-19 Response