

Briefing

Policy approvals for content and timeline, COVID-19 Public Health Response Act 2020 Amendment Bill (No 2)

Date due to MO: 3 March 2021 **Action required by:** 4 March 2021

Security level: IN CONFIDENCE **Health Report number:** 20210500

To: Hon Chris Hipkins, Minister for COVID-19 Response

Contact for telephone discussion

Name	Position	Telephone
Dr Ashley Bloomfield	Director-General of Health	s 9(2)(a)
Maree Roberts	Deputy Director-General, Strategy and Policy	s 9(2)(a)

Minister's office to complete:

- | | | |
|---|------------------------------------|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Decline | <input type="checkbox"/> Noted |
| <input type="checkbox"/> Needs change | <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn | |

Comment:

Policy approvals for content and timeline, COVID-19 Public Health Response Act 2020 Amendment Bill (No 2)

Security level: IN CONFIDENCE **Date:** 3 March 2021

To: Hon Chris Hipkins, Minister for COVID-19 Response

Purpose of report

1. This briefing provides you with an overview of proposed content and a draft timeline for the second COVID-19 Public Health Act 2020 Amendment Bill, for your approval.

Summary

2. In late-2020 you led the legislative process for a minor amendment to the COVID-19 Public Health Act 2020 (the Act). At the time it was noted that a second Amendment Bill would be progressed in the first quarter of 2021 to make further amendments to the Act.
3. You have recently received advice on maximising uptake of the Border Workforce Testing Register (the Register), a record-keeping tool intended to support Persons Conducting a Business or Undertaking (PCBUs) to meet their obligations under the COVID-19 Public Health Response (Required Testing) Order 2020 (the Testing Order) [HR 20210348].
4. You agreed to making use of the Register mandatory for PCBUs and indicated that due to the urgent need to have access to accurate records of who has been tested and when, that this matter should be expedited through a rapid Amendment Bill.
5. There are two other amendments proposed for inclusion (further detail is provided in the body of this briefing):
 - a. the establishment of an infringement regime administered through regulations or Orders; and
 - b. providing for appropriate subdelegating authority.
6. Any matter added to the three amendments indicated above would need to be well developed and simple to draft, to ensure we can meet the proposed timeline.
7. You have identified two other matters that may be included in this Amendment Bill:
 - a. the inclusion of a specific and discrete information sharing issues that have been identified by border agencies as requiring an urgent fix. The Ministry of Business, Innovation and Employment have confirmed that there are no urgent information sharing issues that need to be progressed in this Amendment Bill; and

- b. the potential to include a provision for requiring all tier 1A border workers to be vaccinated against COVID-19, pending Cabinet decision to be made early next week.

Proposed timeline

8. In order to address these issues urgently, it is proposed that these amendments progress through the House under urgency without a Select Committee, with the following milestones:

Milestone/deliverable	Due date
Cabinet paper provided to you for approval to lodge	The morning of Friday 5 March
Consideration by Cabinet for approval to draft	Monday 8 March
Drafting instructions issued to PCO	Monday 8 March
Drafting, with Bill of Rights Act 1990 vetting and agency consultation undertaken iteratively	Monday 8 to Wednesday 17 March
Draft Bill, with an accompanying Health Report, to your office for one day of Ministerial consultation	The morning of Thursday 18 March
Supporting material for Cabinet, Introduction and progression through the House provided to you	Thursday 18 March
Bill and Departmental Disclosure Statement lodged, following approval from your office	Friday, 19 March
Consideration by Cabinet and approval to introduce	Monday 22 March
Progress through the House under urgency	Tuesday 23 to Thursday 25 March
In force	31 March

Recommendations

We recommend you:

- a) **Agree** that a rapid Amendment Bill is progressed under urgency without a Select Committee to amend the COVID-19 Public Health Response Act 2020. **Yes/No**
- b) **Agree** that three issues will be addressed through this Bill:
- i) mandatory use of the Border Worker Testing Register; **Yes/No**
 - ii) the establishment of an infringement regime in regulations and inclusion of an ability to vary the \$300 infringement fee through Orders; and **Yes/No**
 - iii) provision of appropriate sub-delegations. **Yes/No**

- c) **Note** any matter added to the three amendments indicated above would need to be well developed and simple to draft, to ensure we can meet the proposed timeline. **Noted**
- d) **Agree** to progress the Bill under urgency, with the following milestones: **Yes/No**
- Cabinet paper provided to you for approval to lodge the morning of Friday, 5 March
 - Consideration by Cabinet for approval to draft on Monday, 8 March
 - Drafting instructions issued to PCO on Monday, 8 March
 - Drafting through 8-17 March, with Bill of Rights Act 190 vetting and agency consultation undertaken iteratively
 - Draft Bill, with an accompanying Health Report, to you the morning of Thursday, 18 March, for one day of Ministerial consultation
 - Supporting material for Cabinet, Introduction and progression through the House provided to you on Thursday, 18 March
 - Bill and Departmental Disclosure Statement lodged on Friday, 19 March, following approval from your office
 - Consideration by Cabinet and approval to introduce on Monday, 22 March
 - Progress through the House under urgency between Tuesday 23 and Thursday 25 March
 - In force 31 March



Dr Ashley Bloomfield
Director-General of Health
Date: 2/03/2021

Hon Chris Hipkins
Minister for COVID-19 Response
Date:

Policy approvals for content and timeline, COVID-19 Public Health Response Act 2020 Amendment Bill (No 2)

Background

9. In late-2020 you led the legislative process for a minor amendment to the COVID-19 Public Health Act 2020 (the Act). At the time it was noted that a second Amendment Bill would be progressed in the first quarter of 2021 to make further amendments to the Act.
10. The Act remains fit for purpose overall but could be improved. Identified improvements include:
 - a. making a number of technical and procedural fixes;
 - b. providing additional nuance to assist with delivery of the Elimination Strategy and new initiatives developed since the original drafting of the Act (such as mandatory testing of border workers and pre-departure testing requirements); and
 - c. reflecting how managed isolation and quarantine has developed as a system.
11. You have recently received advice on maximising uptake of the Border Workforce Testing Register (the Register), a record-keeping tool intended to support Persons Conducting a Business or Undertaking (PCBUs) to meet their obligations under the COVID-19 Public Health Response (Required Testing) Order 2020 (the Testing Order) [HR 20210348].
12. You agreed to making use of the Register mandatory for PCBUs and indicated that due to the urgent need to have access to accurate records of who has been tested and when, that this matter should be expedited through a rapid Amendment Bill.

Proposal for an urgent COVID-19 Public Health Response Act 2020 Amendment Bill

13. Progressing a rapid Amendment Bill provides an opportunity to include other issues that are well-developed, simple to draft, and would benefit from progressing quickly. Officials have identified two additional issues that meet these criteria for inclusion (discussed below):
 - a. the establishment of an infringement regime administered through regulations or Orders; and
 - b. providing for appropriate subdelegating authority.
14. Any matter added to the three amendments indicated above would need to be well developed and simple to draft, to ensure we can meet the proposed timeline.
15. You have identified two other matters that may be included in this Amendment Bill:
 - a. the inclusion of a specific and discrete information sharing issues that have been identified by border agencies as requiring an urgent fix. The Ministry of Business, Innovation and Employment have confirmed that there are no urgent information sharing issues that need to be progressed in this Amendment Bill; and

- b. the potential to include a provision for requiring all tier 1A border workers to be vaccinated against COVID-19, pending Cabinet decision to be made early next week.

Amendment number one: mandatory use of the Border Worker Testing Register

16. The first matter for inclusion in the Amendment Bill is the need to provide greater assurance that border workers who are required to be tested regularly for COVID-19 are in fact being tested as required, and that records of this can be quickly and easily accessed for contact tracing purposes. You have been provided advice separately on this issue and have been advised of the need for an Amendment to the Act to address this issue [HR 20210348 refers].
17. It is proposed that this issue is addressed through drafting a new provision in the Act. This new provision will state that for the purposes of border workers subject to the COVID-19 Public Health Response (Required Testing) Order 2020, that "Persons Conducting a Business or Undertaking" will be required to enter their staff testing and medical examination records into the Ministry of Health's Border Worker Testing Register. This would meet their obligations to hold records under clause 11 of the Order.

Amendment number two: establishing an infringement regime

18. The second matter proposed for inclusion in the Amendment Bill is the need to ensure that the infringement regime empowered by the Act provides an appropriate deterrent effect for breaches of Orders. As the current limit for an infringement fee is set at a low \$300, and because there is no other option for having different levels of fees based on the types of offences or offending (such as offending by an individual versus a corporation), this is arguably not a deterrent for non-compliance with requirements like pre-departure testing (where the test alone can cost more than \$300).
19. The infringement fee regime will be strengthened and made fit for purpose by;
 - a. amending section 26(4)(a) of the Act to state that a person who commits an infringement offence is liable to a \$300 infringement fee unless otherwise specified, and;
 - b. creating an empowering provision to draft regulations or Orders (the mechanism is to be confirmed following consultation with PCO, but the effect of both is the same) for the purposes of establishing an infringement fee regime.
20. This is supported by the Ministry of Justice's Offences and Penalties team, as this follows best practice for the creation of infringement offences in legislation.

Amendment number three: providing for appropriate sub-delegations

21. The third proposed matter is to address an identified issue that the empowerment provision in section 12 of the Act for the delegation of decisions to the Director-General provides only for the ability to grant exemptions and does not provide the ability to specify people, groups or countries to whom conditions will apply.
22. This is not ideal as, in instances like the establishment of pre-departure testing requirements, it is prudent to have decisions that made quickly. Similarly, some decisions may need to be changed at short notice. To provide for this they would ideally be delegated to the Director-General of Health rather than you as the Minister for COVID-19 Response, to enable this agility of response.

23. PCO have advised that this issue can be addressed by amending sections 12(1)(c) and (d)(i) of the Act. This would provide that an Order made under the Act or by an authorised person may exempt or exclude any person or thing, or class of persons or things, from compliance with an Order.
24. This amendment would also address issues recently identified by the Regulation Review Committee.

Proposed timeline

25. In order to address these issues urgently, it is proposed that these amendments progress through the House in an urgent Bill, with the following milestones:

Milestone/deliverable	Due date
Cabinet paper provided to you for approval to lodge	The morning of Friday 5 March
Consideration by Cabinet for approval to draft	Monday, 8 March
Drafting instructions issued to PCO	Monday, 8 March
Drafting, with Bill of Rights Act 1990 vetting and agency consultation undertaken iteratively	8 to 17 March
Draft Bill, with an accompanying Health Report, to your office for one day of Ministerial consultation	The morning of Thursday, 18 March
Supporting material for Cabinet, Introduction and progression through the House provided to you	Thursday, 18 March
Bill and Departmental Disclosure Statement lodged, following approval from your office	Friday, 19 March
Consideration by Cabinet and approval to introduce	Monday, 22 March
Progress through the House under urgency	Tuesday 23 to Thursday 25 March
In force	31 March

Equity

26. There are no equity considerations associated with this briefing. The upcoming Cabinet paper will address the impacts of the individual amendments on people with different levels of advantage, including a full Bill of Rights Act 1990 analysis.

Next steps

27. Following your approval of the content and timeline for the proposed Bill, officials will continue to draft a Cabinet paper requesting approval to draft and a Regulatory Impact Statement, and will provide you with the Cabinet paper for approval to lodge on the morning of Friday, 5 March.

ENDS.

PROACTIVELY RELEASED