

Briefing

COVID-19 Public Health Response (Required Testing) Amendment Order (No 2) 2021 for ministerial consultation

Date due to MO:	14 May 2021	Action required by:	21 May 2021
Security level:	IN CONFIDENCE	Health Report number:	20211099
To:	Hon Chris Hipkins, Minister for COVID-19 Response		

Contact for telephone discussion

Name	Position	Telephone
Maree Roberts	Deputy Director-General, System Strategy and Policy	s 9(2)(a)
Steve Waldegrave	Group Manager, COVID-19 Policy Response, System 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 Withdrawn | |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:

COVID-19 Public Health Response (Required Testing) Amendment Order (No 2) 2021 for ministerial consultation

Security level: IN CONFIDENCE **Date:** 14 May 2021

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

Purpose of report

1. This report recommends that you consult with the Prime Minister, the Minister of Justice and the Minister of Health on the attached draft COVID-19 Public Health Response (Required Testing) Amendment Order (No 2) 2021 (the Order). The draft Order ensures that non-regulated health workers are legally required to be tested weekly, bringing them in line with the same testing cycle as regulated health practitioners in the same settings.
2. This report discloses all relevant information and implications.

Summary

3. In report HR20210994 we highlighted that there are non-regulated health workers administering COVID-19 tests who are not on the same weekly testing schedule as regulated health practitioners. This is because the current definition of 'health practitioner' in the COVID-19 Public Health Response (Required Testing) Order 2020 (the Order) does not cover non-regulated health workers.
4. On 4 May 2021, you agreed to address this issue by amending the Order to ensure that non-regulated health workers are legally required to be tested weekly in line with regulated health practitioners [HR20210994 refers.]
5. The purpose of this report is to give effect to that decision by proposing to amend the Order by inserting a definition of 'health worker' under the definition of 'health practitioner' to ensure that all workers involved in testing are tested weekly.
6. Specifically, the proposed amendments are:
 - a. to add a definition of 'health worker' as "a person who tests or examines an affected person who is required to undergo testing and medical examination"
 - b. to change the references to 'health practitioners' in Schedule 2 of the Order to 'health workers'.
7. Following Ministerial consultation, officials and the Parliamentary Counsel Office will finalise the Order and provide you with a final version of the Order for your signature on

25 May 2021. This timing would allow the Order to come into force at 11:59pm on 31 May 2021.

Recommendations

We recommend you:

- a) **Note** the attached draft COVID-19 Public Health Response (Required Testing) Amendment Order (No 2) 2021 inserts a definition of 'health worker' under the definition of 'health practitioner' to ensure the health care assistant workforce undertaking testing and/or symptom checking work are tested weekly, in line with the risk of exposure of health practitioners in the same settings
- b) **Note** that advice from the Director-General of Health is that the COVID-19 Public Health Response (Required Testing) Amendment Order (No 2) 2021 is in line with the purposes of the COVID-19 Public Health Response Act 2020, to prevent, and limit the risk of, the outbreak or spread of COVID-19
- c) **Agree** to consult with the Prime Minister, Minister of Justice, and Minister of Health on the attached draft COVID-19 Public Health Response (Required Testing) Amendment (No 2) Order 2021 ☒ **Yes** ☐ **No**
- d) **Note** following Ministerial consultation, officials will finalise the Order and provide you with a final version of the Order for your signature on 25 May 2021 to come into force at 11.59 pm on 31 May 2021.



Maree Roberts

Deputy Director-General

System Strategy and Policy

Date:



Hon Chris Hipkins

Minister for COVID-19 Response

Date: 20/5/2021

COVID-19 Public Health Response (Required Testing) Amendment Order (No 2) 2021 for ministerial consultation

Background / context

1. The COVID-19 Public Health Response (Required Testing) Order 2020 (the Order) has been in place since 29 August 2020. The purpose of the Order is to prevent and limit the risk of the outbreak or spread of COVID-19, by ensuring specified border workers at risk of exposure to COVID-19 are tested on a regular basis.
2. The Order has been amended previously to bring in further groups of workers, change testing frequencies to reflect changing risks in border settings, and implement measures to facilitate compliance with the testing requirements. Health practitioners are required to be tested weekly.
3. It has recently become apparent that some non-regulated health workers, such as health care assistants, have been involved in testing and symptom checking work, particularly in Managed Isolation and Quarantine Facilities. These non-regulated workers are required to be tested fortnightly.
4. The Ministry of Health's Clinical Chief Advisors of Nursing and Infection Prevention and Control advise that it is clinically appropriate for non-regulated health workers to undertake this work under the supervision of a suitably qualified health practitioner.
5. However, the definition of 'health practitioners' in the Order does not cover non-regulated health care assistants currently involved in testing and/or symptom checking.
6. To address this issue, on 4 May 2021, you agreed to further amend the Order to ensure that non-regulated health care assistants involved in testing work are tested weekly, in line with the risk of exposure of health practitioners in the same settings [HR20210994 refers.]
7. The Ministry's current guidance strongly recommends that these workers be tested weekly while this minor amendment to the Order is made.

Contents of the draft amendment Order

8. We propose amending the Order by inserting a definition of 'health worker' under the definition of 'health practitioner' to ensure that all workers undertaking testing and/or symptom checking are tested weekly.
9. Specifically, the proposed amendments are:
 - a. to add a definition of 'health worker' as "a person who tests or examines an affected person who is required to undergo testing and medical examination"
 - b. to change the references to 'health practitioners' in Schedule 2 of the Order to 'health workers'.

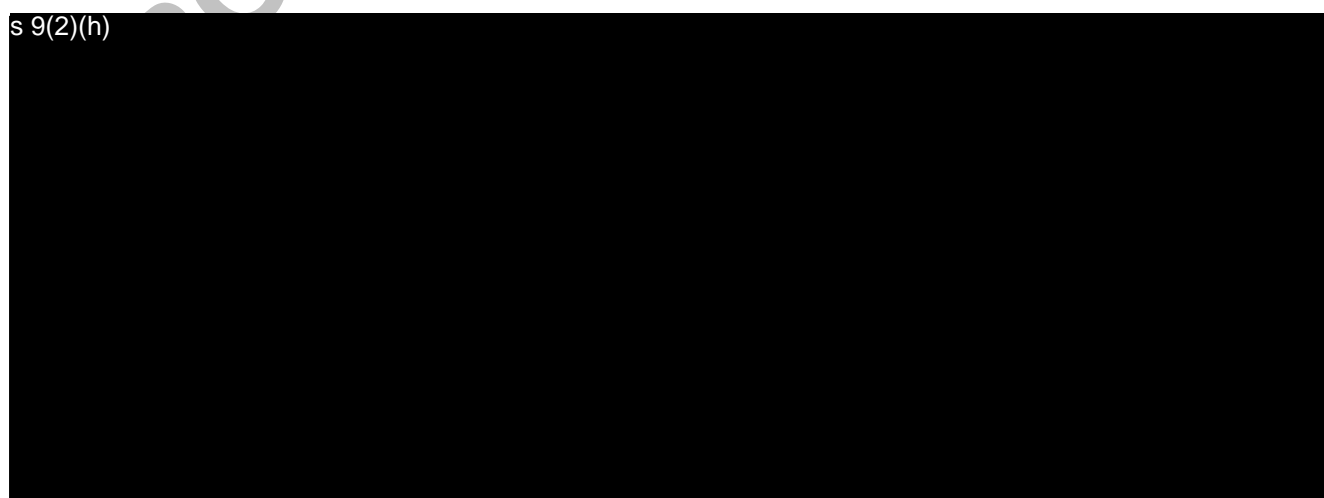
Process for making a section 11 Order

10. Under the COVID-19 Public Health Response Act 2020 (the Act), an Order may be made if either:
 - a. a state of emergency has been declared (under the Civil Defence Emergency Management Act 2002);
 - b. an Epidemic Notice is in force (under the Epidemic Preparedness Act 2006); or
 - c. it has been authorised by the Prime Minister.
11. There is currently an Epidemic Notice in place, which allows Orders to be made under section 11 of the Act.
12. As the Minister for COVID-19 Response, you may make Orders under section 11 of the Act.
13. To make an Order under section 11 you must:
 - a. have received advice from the Director-General about:
 - b. the risks of the outbreak or spread of COVID-19; and
 - c. the nature and extent of measures that are appropriate to address those risks; and
 - d. be satisfied that the proposed Order does not limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990 (NZBORA); and
 - e. consult with the Prime Minister, the Minister of Justice, Minister of Health, and any other Ministers you think necessary; and
 - f. be satisfied that this Order is appropriate to achieve the purposes of the Act.
14. Public health advice about the risks of the outbreak or spread of COVID-19 and the nature and extent of measures that are appropriate to manage those risks was previously provided [HR20210994 refers] and is also set out below.

Amendments to the Order will have New Zealand Bill of Rights Act 1990 implications – legally privileged

15. The Act requires the Minister to be satisfied that the Order does not limit or is a justified limit on rights and freedoms under the New Zealand Bill of Rights Act 1990 (BORA). An Order that is inconsistent with BORA is unlawful.

s 9(2)(h)



Equity

25. The impacts of COVID-19 are felt differentially across New Zealand communities. Māori and Pacific communities and those living with disabilities, in lower socio-economic groups and crowded or institutional settings bear a greater portion of both health and economic impacts and risks. The mandatory border worker testing regime has been a key part of the response to prevent the outbreak or spread of COVID-19 to the community, particularly those communities with many workers in border settings.

26. We do not anticipate that this proposal involves any equity concerns as it is a minor amendment that reflects an existing policy decision [HR20210339 refers].

Next steps

27. Following Ministerial consultation, officials and the Parliamentary Counsel Office will finalise the Order and provide you with a final version of the Order for your signature on 25 May 2021. This timing would allow the Order to come into force at 11:59pm on 31 May 2021.

ENDS.

PROACTIVELY RELEASED

IN CONFIDENCE

COVID-19 Public Health Response (Required Testing) Amendment Order (No 2) 2021

This order is made by the Minister for COVID-19 Response under section 11 of the COVID-19 Public Health Response Act 2020 in accordance with section 9 of that Act.

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Order

1 Title

This order is the COVID-19 Public Health Response (Required Testing) Amendment Order (No 2) 2021.

2 Commencement

This order comes into force at 11.59 pm on 31 May 2021.

3 Principal order

This order amends the COVID-19 Public Health Response (Required Testing) Order 2020 (the **principal order**).

4 Clause 4 amended (Interpretation)

In clause 4, after the definition of **health practitioner** insert:

health worker means person who tests or examines an affected person who is required to undergo testing and medical examination under clause 7

5 Schedule 2 amended

- (1) In Schedule 2, item 2.3,—

- (a) after “health practitioners”, insert “and health workers”; and
 - (b) replace “22 April 2021” with “1 June 2021”.
- (2) In Schedule 2, item 3.13,—
- (a) after “health practitioners”, insert “and health workers”; and
 - (b) replace “22 April 2021” with “1 June 2021”.
- (3) In Schedule 2, item 5.2,—
- (a) after “health practitioners”, insert “and health workers”; and
 - (b) replace “22 April 2021” with “1 June 2021”.

Dated at this day of May 2021.

Minister for COVID-19 Response.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order, which comes into force at 11.59 pm on 31 May 2021, amends the COVID-19 Public Health Response (Required Testing) Order 2020. The amendments add health workers to the groups of affected persons who are required to undergo testing and medical examination at least once every 7 days.

A failure to comply is an infringement offence under section 26(3) of the COVID-19 Public Health Response Act 2020 (the Act) for which a person is liable to an infringement fee of \$300 or a fine not exceeding \$1,000.

This order must be approved by a resolution of the House of Representatives before the expiry of the period described in section 16(2) of the Act. If this does not happen, the order is revoked on the expiry of that period.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*:

This order is administered by the Ministry of Health.