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23 August 2022

s 9(2)(a)

By email: **s 9(2)(a)**
Ref: H202208136

Tēnā koe **s 9(2)(a)**

Response to your request for official information

Thank you for your request under the Official Information Act 1982 (the Act) to Manatū Hauora (Ministry of Health) on 20 June 2022. You requested:

Advice received by Director General of Health regarding information received quarterly on how the epidemic was likely to disrupt or continue to disrupt state, government, or business activity in New Zealand significantly due to the effects of the epidemic emergency for each of these Epidemic Preparedness Notices:

*24 March 2020, Notice No. 2020-go1369
23 June 2020, Notice No. 2020-go2681
16 September 2020, Notice No. 2020-go4143
21 December 2020, Notice No. 2020-go5735
17 March 2021, Notice No. 2021-go935
15 June 2021, Notice No. 2021-go2283
8 September 2021, Notice No. 2021-go3885
14 December 2021, Notice No. 2021-go5311
16 March 2022, Notice No. 2022-sl842
5 June 2022, Notice No. 2022-sl2326*

If you are unable to provide this, because it is a large amount of information - can you instead please provide the letters of advice that the DGH delivered to the PM on each of these occasions to advise her to renew the epidemic notices? Perhaps the information from other sectors is contained in this advice?

The Epidemic Preparedness (COVID-19) Notice 2020 (the Epidemic Notice) came into force on 25 March 2020. The Epidemic Notice was last renewed on 16 June 2022, and it will be due for review in September 2022.

Manatū Hauora has identified ten reports within scope of your request, three of which are already publicly available. Please note the reports set out the specific advice that was provided to the Director-General of Health on the making and the renewal of the Epidemic

Notice. Once approved by the Director-General, the reports were sent to the Minister for COVID-19 Response, the Minister of Health and the Prime Minister.

All documents are itemised in Appendix 1 and copies of the documents which have not yet been released are enclosed. Where information is withheld, this is outlined in the Appendix and noted in the document itself. Where information is withheld under section 9 of the Act, I have considered the countervailing public interest in release in making this decision and consider that it does not outweigh the need to withhold at this time.

Copies of the renewal notices are publicly available at: www.health.govt.nz/covid-19-novel-coronavirus/covid-19-response-planning/covid-19-epidemic-notice-and-orders#epidemic.

I trust this information fulfils your request. Under section 28(3) of the Act, you have the right to ask the Ombudsman to review any decisions made under this request. The Ombudsman may be contacted by email at: info@ombudsman.parliament.nz or by calling 0800 802 602.

Please note that this response, with your personal details removed, may be published on the Ministry website at: www.health.govt.nz/about-ministry/information-releases/responses-official-information-act-requests.

Nāku noa, nā



Phil Knipe
Chief Legal Advisor
Health Legal

Appendix 1: List of documents for release

#	Date	Document details	Decision on release
1	March 2020	Giving an Epidemic Notice and Epidemic Management Notices under the Epidemic Preparedness Act 2006.	Some information withheld under section 9(2)(a) of the Act, to protect the privacy of natural persons.
2	June 2020	Renewal of Epidemic Notice under the Epidemic Preparedness Act 2006 – June 2020	Refused under section 18(d) of the Act, as the information is publicly available at: https://covid19.govt.nz/assets/Proactive-Releases/proactive-release-2020-july/HR20-Health-Report-Renewal-of-Epidemic-Notice-under-the-Epidemic-Preparedness-Act-2006-17-June-2020.pdf
3	September 2020	Renewal of Epidemic Notice under the Epidemic Preparedness Act 2006 – September 2020	Some information withheld under the following sections of the Act: <ul style="list-style-type: none"> • Section 9(2)(a); and • Section 9(2)(h), to maintain legal professional privilege.
4	December 2020	Renewal of Epidemic Notice under the Epidemic Preparedness Act 2006 – December 2020	Refused under section 18(d) of the Act, as the information is publicly available at: www.health.govt.nz/system/files/documents/pages/20202097_briefing.pdf
5	March 2021	Renewal of Epidemic Notice under the Epidemic Preparedness Act 2006 – March 2021	Some information withheld under the following sections of the Act: <ul style="list-style-type: none"> • Section 9(2)(a); and • Section 9(2)(h).
6	June 2021	Renewal of Epidemic Notice under the Epidemic Preparedness Act 2006 – June 2021	Refused under section 18(d) of the Act, as the information is publicly available at: www.health.govt.nz/system/files/documents/pages/20211319_briefing.pdf
7	September 2021	Renewal of Epidemic Notice under the Epidemic Preparedness Act 2006 – September 2021	Some information withheld under the following sections of the Act: <ul style="list-style-type: none"> • Section 9(2)(a); and • Section 9(2)(h).
8	December 2021	Renewal of Epidemic Notice under the Epidemic Preparedness Act 2006 – December 2021	

#	Date	Document details	Decision on release
9	March 2022	Renewal of Epidemic Notice under the Epidemic Preparedness Act 2006 – March 2022	
10	June 2022	Renewal of Epidemic Notice under the Epidemic Preparedness Act 2006 – June 2022	<p>Some information withheld under the following sections of the Act:</p> <ul style="list-style-type: none"> • Section 9(2)(a); and • Section 9(2)(h); and • Section 9(2)(g)(i) to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers and officers and employees of any public service agency.

Health Report

Giving an Epidemic Notice and Epidemic Management Notices under the Epidemic Preparedness Act 2006

Date due to MO:	23 March 2020	Action required by:	23 March 2020
Security level:	IN CONFIDENCE	Health Report number:	
To:	Rt Hon Jacinda Ardern, Prime Minister Hon Dr David Clark, Minister of Health Hon Carmel Sepuloni, Minister for Social Development Hon Iain Lees-Galloway, Minister of Immigration		

Contact for telephone discussion

Name	Position	Telephone
Dr Ashley Bloomfield	Director-General of Health	s 9(2)(a)
Jane Kelley	Director COVID-19 Response	

Action for Private Secretaries

Return the signed report to the Ministry of Health.

Date dispatched to MO:

Giving an Epidemic Notice and Epidemic Management Notices under the Epidemic Preparedness Act 2006

Purpose of report

This paper recommends that the Prime Minister give an Epidemic Notice, under the Epidemic Preparedness Act 2006, and seeks agreement from the Minister of Health.

This paper also recommends that the Prime Minister give an Epidemic Management Notice, and seeks agreement from the Ministers of Social Development and Immigration.

Key points

- The Prime Minister must consider the written recommendation of the Director-General of Health prior to giving an Epidemic Notice.
- My recommendation is that the Prime Minister give an Epidemic Notice because the effects of a COVID-19 outbreak are likely to disrupt or continue to disrupt essential governmental and business activity in New Zealand significantly.
- Giving an Epidemic Notice will trigger some self-executing provisions in some enactments.
- As soon as possible after giving an Epidemic Notice, the Prime Minister must present a copy to Parliament.
- Once an Epidemic Notice is given, the Prime Minister, with the agreement of the Minister responsible for the enactment concerned, may give Epidemic Management Notices. Epidemic Management Notices trigger a number of other self-executing provisions in other enactments.
- In addition, once an Epidemic Notice is given, some legislative requirements and restrictions can be lifted via Modification Orders by Ministers making a recommendation to the Governor General.
- I recommend that you discuss this with your Cabinet colleagues on Monday 23 March 2020

I recommend that you:

Evolving COVID-19 situation

- a) **Note** that the global situation regarding COVID-19 is developing rapidly, with 66 confirmed cases and 4 probable cases in New Zealand as at 22 March 2020.

*The Prime Minister's decision to **give** an Epidemic Notice*

b)	Note that the Prime Minister has authority to give an Epidemic Notice, on the recommendation of the Director-General of Health and with the agreement of the Minister of Health.	
c)	Note the Director-General of Health advises that the effects of an outbreak of COVID-19 are likely to significantly disrupt (or continue to disrupt) essential government and business activities in New Zealand and that issuing an Epidemic Notice is justified to mitigate some of the actions the Government is taking to respond to the outbreak.	
d)	Note that the Director-General recommends that the Prime Minister give an Epidemic Notice.	
e)	Minister of Health: Agree with the Director-General's recommendation that the Prime Minister should give an Epidemic Notice.	Yes / No
f)	Prime Minister Agree to give the attached Epidemic Notice under s 5 of the Epidemic Preparedness Act 2006 (attached), effective 25 March 2020.	Yes / No
g)	Note you may wish to discuss this decision with your Cabinet colleagues on Monday 23 March 2020.	
<i>Epidemic Management Notices</i>		
h)	Note that once an Epidemic Notice has been given, the Prime Minister can give Epidemic Management Notices under s8 of the Epidemic Preparedness Act 2006, with the agreement of the Ministers responsible for the legislation concerned	
i)	Minister of Social Development Agree the Prime Minister should give an Epidemic Management Notice (effective 25 March 2020) for the purposes of ss64, 299, 443 of the Social Security Act 2018, to allow emergency grants to be made to those not entitled under existing provisions, remove the requirement to inquire into claims, and provide for the making of regulations for benefits, rates of benefits and exercise of other powers not currently available.	Yes / No

j)	Minister of Immigration Agree the Prime Minister should give an Epidemic Management Notice (effective 2 April 2020) for the purposes of ss78, 337-341 of the Immigration Act 2009, to enable extension of temporary visas and management of court processes	Yes / No
k)	Prime Minister: Agree you are satisfied that the effects of the COVID-19 outbreak make it, or are likely to make it, reasonably necessary to give an Epidemic Management Notice in respect of ss64, 299, 443 of the Social Security Act 2018, and ss78, 337-341 of the Immigration Act 2009.	Yes / No
l)	Prime Minister: Agree to give the attached Epidemic Management Notices under s8 of the Epidemic Management Act 2006.	Yes / No
<i>Modification Orders</i>		
m)	Note that giving an Epidemic Notice would allow the Governor-General to make Modification Orders under ss14 and 15 of the Epidemic Preparedness Act 2006 that make targeted modifications to some provisions of primary legislation (to modify requirements or restrictions)	
n)	Note that officials are not proposing any Modification Orders at this time, but that other Ministers and their departments, e.g. Department of Internal Affairs are likely to seek s15 orders to modify legislation. Officials are establishing processes for drafting and approvals. Giving an Epidemic Notice will enable the Government to move quickly as needs are identified.	
<i>Commencement</i>		

o)	Note that the Epidemic Notice and the Epidemic Management Notice will take effect on 24 March 2020 by notice in the Gazette and will expire 3 months after its commencement date, with the exception of the Immigration Act changes, which come into effect on 2 April 2020 and expire 3 months afterwards.	
p)	Note that the Prime Minister, and other appropriate Ministers and agencies, can publicly announce these decisions immediately, including those Immigration Act changes that do not come into effect until 2 April 2020.	
q)	Agree , once the Epidemic Notice is signed, to present a copy of the notice as soon as possible to Parliament.	Yes / No
Further decisions may be required		
r)	Note that further decisions may be sought in relation to these notices, depending how the situation regarding COVID-19 continues	



Dr Ashley Bloomfield
 Director-General of Health
 Date:

Rt Hon Jacinda Ardern
 Prime Minister
 Date:

Hon Dr David Clark
 Minister of Health
 Date:

Hon Carmel Sepuloni
 Minister for Social Development
 Date:

Hon Iain Lees-Galloway
 Minister of Immigration
 Date:

Proposal

1. This paper recommends that the Prime Minister give an Epidemic Notice, under the Epidemic Preparedness Act 2006, and seeks agreement from the Minister of Health.
2. This paper also recommends that the Prime Minister give an Epidemic Management Notice, and seeks agreement from the Ministers of Social Development and Immigration.
3. The Prime Minister may wish to discuss this with her Cabinet colleagues on 23 March 2020.

Background

4. Giving an Epidemic Notice is a tool to support the Government's response to COVID-19, and can help ensure the continuity of essential government services in the changing COVID-19 environment.
5. With confirmed COVID-19 cases in 18 of the 20 District Health Boards, it is critical that New Zealand acts decisively and rapidly to protect communities both from the virus, and the disruption caused by Government's activity to respond to it. Government agencies need to be able to respond effectively, and in an agile way, as the situation continues to evolve.
6. The Government has chosen to go hard and go early in the response to COVID-19 for public health reasons. The package of measures introduced since 14 March 2020 have helped New Zealand take a precautionary approach to managing COVID-19. It has also had flow-on impacts on other parts of the system (e.g. welfare and immigration systems).
7. This paper recommends the Prime Minister give an Epidemic Notice to strengthen the government's ability to respond to the effects of COVID-19. An Epidemic Notice triggers a number of self-executing provisions in other enactments.
8. Once an Epidemic Notice is given, the Prime Minister, with the agreement of the Minister responsible for the enactment concerned, may give Epidemic Management Notices. Epidemic Management Notices trigger a greater number of self-executing provisions in other enactments.
9. The paper also recommends that an Epidemic Management Notice be given to ensure the continuity of social security and immigration services in the COVID-19 context.
10. If given by the Prime Minister, an Epidemic Notice and Epidemic Management Notice would be published in the Gazette on Tuesday 24 March 2020. The Epidemic Notice would be presented in Parliament as soon as possible.
11. In the coming weeks, Ministers and their departments, e.g. Department of Internal Affairs are likely to seek s15 orders to modify legislation. Once an Epidemic Notice has been given, this can be done on Ministers recommendation to the Governor General (in consultation with Cabinet colleagues). Depending on the volume of requests, these may need to be streamlined and triaged.

Legislative provisions in the current context

12. On 11 March 2020, COVID-19 was declared a notifiable infectious disease, and a quarantinable disease under the Health Act 1956. This decision has enabled a range of broad powers under the Health Act 1956. These are already being used to respond to COVID-19.
13. From a public health perspective, the current powers under the Health Act 1956 are deemed broadly appropriate - at this time.
14. However, from a whole-of-government perspective, some changes to current requirements in the law are highly likely to be needed to allow agencies to respond to the changing environment. While it is possible to create new legislation to allow agencies to respond, this is time-consuming and resource-intensive.

In a pandemic response, the Government should use legislative provisions in a way that is proportionate and appropriate to the emerging pandemic

15. The Epidemic Preparedness Act has additional powers to facilitate the management of epidemics or quarantinable diseases.
16. Officials advise that the Epidemic Preparedness Act provides an effective platform to manage some of the direct and flow-on implications of COVID-19.
17. This Act has been designed to ensure that there is adequate statutory power for:
 - a. government agencies to prevent and respond to epidemics in New Zealand
 - b. certain activities to continue during an epidemic, and
 - c. the relaxation of some statutory requirements that might not be able to be fully complied with during an epidemic.
18. Using the process as set out under Epidemic Preparedness Act allows certain modifications to be activated immediately, and provides a platform for further modifications to be considered as the context around COVID-19 evolves.

Giving an Epidemic Notice - More Context

Using the Epidemic Preparedness Act

19. To unlock the process under the Epidemic Preparedness Act, the Prime Minister must first give an Epidemic Notice.
20. This decision is for the Prime Minister, with the agreement of the Minister of Health, and on the recommendation from the Director-General of Health. This decision can be taken once she is satisfied that the effects of an outbreak are likely to significantly disrupt or continue to disrupt essential government and business activity in New Zealand.

21. The Director-General recommends an Epidemic Notice be given as the situation continues to change rapidly and New Zealand cannot rule out community transmission (for more detail, see paragraphs 27-29).
22. An Epidemic Notice must be published in the Gazette.

What an Epidemic Notice involves, and the flexibility it provides

23. Giving an Epidemic Notice triggers a number of specific effects in three pieces of legislation.
 - a. Health Act 1956
 - b. Corrections Act 2004
 - c. Epidemic Preparedness Act 2006
24. These are automatic (i.e self-executing) changes designed to help agencies respond in an epidemic, and are listed in more detail in Appendix 2.
25. Perhaps more significant in the current, rapidly evolving context, giving an Epidemic Notice provides a platform to activate additional changes, or modify existing legislation as the situation around COVID-19 continues. These are set out in paragraphs 38-41.

Certain tests must be met

26. An Epidemic Notice can only be given if the Prime Minister is satisfied the effects of COVID-19 are likely to disrupt, or continue to disrupt essential government and business activity significantly.
27. Significant disruption has already been experienced in New Zealand to government and business activity at levels 1 and 2 of the COVID-19 Alert framework.
28. Disruption to government activity includes: pressures on the health system (including the Ministry of Health, as well as DHBs and PHUs to prepare for and manage cases and containment), as well as flow on pressures to the welfare, immigration, police and border control eco-systems as agencies respond to the changing COVID-19 environment.
29. Disruption to business activity has already been significant. Disruptions include reduced demand for services (especially tourism, hospitality, transport and other service sectors) given domestic and international border restrictions, as well as increasing costs associated with COVID-19 related leave. Compliance pressures on businesses are also increasing, and are likely to increase further under higher levels of alert.
30. Given the growing risk of community transmission, the Director-General of Health confirms that COVID-19 is likely to continue to disrupt essential government and business activity significantly. In particular, social welfare and immigration activities are being impacted. See the sections below on immigration and welfare for additional information on the current impact to activities.

An Epidemic Notice would also result in effects to the health system

31. An Epidemic Notice will activate the 'Activation - Code Red' phase of the National Health Sector Emergency Plan, 2015. Under this phase, DHBs are required to activate Coordinated Incident Management Response Structures (CIMS) via four regional coordination teams.
32. DHBs are required to act as a single point of contact for the Ministry of Health on behalf of hospital, primary care, and community-based contracted services. Maintenance of core clinical capacity and prioritisation of services are to be managed as per individual DHB emergency response protocols and the Influenza Pandemic Plan, 2017. Note these activations are not legislative, they flow from the design of the Ministry of Health's epidemic plan.
33. An Epidemic Notice will devolve special powers to Medical Officers of Health under s71 of the Health Act without need for prior approval of the Minister of Health. This includes the ability to authorise temporary use of any site for a special hospital or place of isolation.
34. The special powers under s70 of the Health Act are already available to all Medical Officers of Health, under the authorisation of the Minister of Health (but in practice are being exercised by the Ministry of Health - rather than DHB - employees). Reauthorisations will no longer be required during the period of an Epidemic Notice.

The Epidemic Notice should be given for the whole of New Zealand, for three months

35. Individual modification orders considered in relation to the Epidemic Notice may apply to parts or the whole of New Zealand as required for their individual application.
36. The imperatives noted in this paper in regards to immigration and welfare requirements may apply to individuals within any part of New Zealand. It is therefore recommended that the Epidemic Notice be issued for the whole of New Zealand.
37. Epidemic Notices are renewable, and the Director-General of Health is required to keep the situation under review. If no longer required it must be promptly revoked.

Epidemic Preparedness Act - Further changes and modifications available

38. Once an Epidemic Notice has been given, Epidemic Management Notices - activating a number of immediate powers and modifications - can be given by the Prime Minister, with the agreement of the Minister responsible for the relevant legislation. In order to give such a Notice the Prime Minister must be satisfied that the effects of COVID-19 make it, or are likely to make it, reasonably necessary for her to do so.
39. In addition, Modification Orders - lifting some legislative requirements and restrictions can be made by Ministers making a recommendation to the Governor General in consultation with Cabinet to make an Order in Council. In order to recommend such an Order, the Minister responsible for the enactment must be satisfied that the effects of COVID-19 make it, or are likely to make it, impossible or impracticable to comply with a requirement or restriction. This is a high bar – but appropriately so, given that the Order in Council

would modify legislation enacted by Parliament. Modification Orders are subject to disallowance by Parliament.

40. This paper is proposing an Epidemic Management Notice to help the Ministry of Business, Innovation and Employment, and the Ministry of Social Development, respond to difficulties with emergency benefits, temporary visas expiring and difficulties detaining deportees, where there is limited ability to leave New Zealand, as set out below. The full range of powers that can be activated under Epidemic Management Notices (e.g changes to courts and prisons) are not being sought at this time.
41. No Modification Orders are not being sought in this paper, but some are likely to be sought in future advice (for example from the Department of Internal Affairs).

Specific Epidemic Management Notices being sought in this paper

42. Epidemic Management Notices can be given if "the effects of the outbreak [of COVID-19] make it, or are likely to make it, reasonably necessary to do so".
43. The sub-sections below set out two challenges officials wish to resolve through Epidemic Management Notices.

Immigration and visas - current challenges

44. Travel restrictions in New Zealand and globally mean there are approximately 85,000 people in New Zealand on temporary visas (a) whose visas are due to expire prior to 31 July 2020 and (b) who may be unable to travel to their country of origin¹. This means that unless they apply for a new visa, they will be in New Zealand unlawfully at the expiration of their visa.
45. The closure of all three of the MBIE's offshore visa processing centres has severely restricted New Zealand's visa processing capacity. This means that MBIE's domestic processing centres are at capacity and are unable to process visa extensions at the volume and speed required.
46. MBIE's domestic visa processing capacity will be further impacted if community transmission increases in New Zealand and if New Zealand moves to alert Level 3.
47. This is because privacy concerns and system limitations mean it is very difficult to process visas through remote working arrangements. As staff are increasingly required to self-isolate due to exposure to COVID-19, or work from home due to school closures, existing visa processing capacity will be further reduced.

¹ Some of these individuals may be intending to re-apply for visas and remain in New Zealand, while others would have been expecting to leave New Zealand at the expiry of their visa.

Immigration and visas - the benefits of giving an Epidemic Management Notice

48. Once an Epidemic Notice is given, the Prime Minister, in consultation with the Minister of Immigration can give a further Epidemic Management Notice to activate powers in the Immigration Act 2009.
49. This would ensure that all current temporary visa holders whose visas are expiring in the epidemic period (plus 14 days) will have their visas extended for the duration of the epidemic management notice plus three months.
50. This applies to all people who (a) hold a temporary visa that is valid immediately prior to the notice being given, and (b) people whose temporary visa is due to expire within 14 days of the end of the Epidemic Notice (i.e. June 2020). The visa holder must also be in New Zealand.
51. This deemed bulk extension will enable people on valid visas to continue to study or work (therefore maintaining the continuity of eligibility for their visa), and visitors to remain lawfully in the country. This extension can be automated (and affected visa holders informed), removing the need for Immigration New Zealand (INZ) to manually process individual applications from individuals whose visas are expiring. This will present a major relief for INZ's now limited processing capacity which can be instead focused on new visa or essential case-by-case changes to conditions if needed (potentially providing limited work rights to visitors stranded here who need financial support).
52. The extension will also provide confidence to businesses that existing staff can lawfully remain in their current roles during the epidemic period, removing the need to recruit a replacement that may be difficult to find or a distraction from more pressing business concerns (such as falling demand).

Unintended consequences associated with changing immigration settings

53. The deemed extension applies to all visas expiring during the period, and cannot be limited to specific visa types or visa holder circumstances. This may mean that some travellers could choose to stay longer than intended, or some workers may remain in jobs that may have otherwise been offered to a New Zealander.
54. However, the reality is that foreigners are already becoming stranded in New Zealand due to a lack of viable flight routes home and retaining a job provides financial support for those stranded. Officials advise that the benefits of the certainty for visa holders and businesses, and the significant reduction of visa processing requirements for INZ, outweigh these concerns.
55. There will be people who, due to COVID-19 related restrictions, are unable to fulfil the conditions on their visas (e.g. because their work hours need to be reduced). To ensure visa conditions can continue to be met, MBIE is considering options that can be progressed by the Minister of Immigration, such as varying the definitions of 'full time work' and 'full time study' in instructions for a temporary period. This does not require an Epidemic Management Notice.

Welfare - current challenges

56. MSD considers that an Epidemic Management Notice would materially assist it to be responsive in how it changes its operating model and in delivering new initiatives to respond to the impact of the COVID-19 outbreak. MSD believes it will be necessary to provide emergency benefits that, absent an Epidemic Management Notice, it would not be able to provide.
57. For example, at the moment, MSD is unable to provide emergency grants to people who are present in New Zealand on temporary entry visas but who cannot work in New Zealand or leave New Zealand due to border closures and international travel restrictions.
58. MSD has considered creating a new welfare programme to override the current restrictions, as they did in relation to the Christchurch shootings. However, creating a programme is resource intensive and time-consuming. MSD considers that given the rapidly-changing COVID-19 situation, creating a new welfare programme will take too long and would divert resources from the delivery of core services.
59. MSD has been, and continues, to actively explore ways to change the way it interacts with clients to reduce face to face interactions and any wider interactions that its processes drive, which are not dependent on the notice being given or legislative changes.

Welfare - the effects of giving an Epidemic Management Notice

60. If an Epidemic Management Notice is given there are three statutory provisions in the Social Security Act 2018 that would become available (s64, s299 and s443). These provisions would allow more people to receive support, faster, and are described below:
- a. s64 allows MSD, with the written approval of the Minister, to grant emergency benefits to people who would not otherwise be entitled to be granted emergency benefits. This would allow MSD to grant emergency benefits to people currently on temporary visas who are unexpectedly required to stay in the country longer than they had planned due to border restrictions, and who are unable to work.
 - b. s299 provides that during the period of the notice, MSD may grant a benefit to a person even if their claim has not been at all, or has not been fully, inquired into as required by s298 of the Act. This may be required where staffing priorities mean conducting the usual inquiries are not feasible.
 - c. s443 provides for regulations to be made authorising MSD to do the following. MSD considers this an important tool as the COVID-19 situation continues to evolve²:
 - i. cause benefits to be paid to people otherwise not entitled to them because of stand-down periods or suspensions of benefits (noting this should not be required because the government has already enacted regulations to override stand down periods for the next 8 months);

² Any regulations made under s443 made would be subject to usual processes, including the scrutiny of the Regulations Review Committee

- ii. reinstate cancelled benefits;
- iii. grant benefits to or reinstate the benefits for, people who are subject to non-entitlement periods;
- iv. cause benefits to be paid at a rate not higher than the maximum rate but higher than a lower rate to which people would otherwise be entitled (being a lower rate because of a reduction, variation, suspension, or direct deduction, or because of a sanction, penalty, or non-entitlement period, imposed on a spouse or partner);
- v. refrain from exercising a power, or from meeting a requirement in this Act, to cancel, suspend, or vary benefits or payments of benefits, in circumstances where the holders satisfy the normal criteria for, or the requirement in this Act applies and requires, cancellation, suspension, or variation of benefits or payments.

61. Ss64 and 229 apply to the period in which an Epidemic Management Notice remains in force, and a period after the notice expires that the Minister of Social Development thinks reasonable in the circumstances.

Modification Orders

62. No Modification Orders are being sought at this time. However, some modifications will be required to enable councils' decision-making processes to function effectively and this advice is expected in the coming week.
63. Further Modification Orders are likely to be required should the epidemic persist for a prolonged time.

Links with other advice

Moving through COVID-19 Alert levels

64. CVD will receive a paper on 25 March 2020 that provides advice on whether and how to move from a Level 2 to either Level 3 or Level 4 in response to COVID-19.
65. That advice sets out a package of measures to move New Zealand to Level 3, and the legal authority required to do so.
66. Many of the measures discussed in that paper can be enacted using the authority of the Minister of Health under the Health Act (a) as it stands, or (b) under the augmented powers associated with issuing an Epidemic Notice.

System perspective - a state of emergency

67. Officials have tested whether, from a legal perspective, it would be preferable to bypass the Epidemic Notice process and move straight to declaring a state of emergency under the CDEM Act.

68. While the CDEM Act has specific powers that may be required later in the COVID-19 response (e.g. entry onto premises or evacuations), the CDEM Act was not designed to address the systems of flow-on implications Immigration New Zealand, the Ministry of Social Development or Local Government Authorities are currently facing.
69. In particular, it does not allow for modifications to other pieces of legislation. Officials will provide Cabinet with further advice if this assessment changes.
70. See Appendix 1 for more information on the difference between Epidemic Management Notices and a state of emergency.

Timing

71. As soon as possible after giving an Epidemic Notice (by way of publication in the Gazette), the Prime Minister must present a copy of it to Parliament. If Parliament is not due to sit until a day more than 7 days after the day on which the notice is given, then Parliament must organise to sit within that 7 day period.
72. Parliament is not sitting 20 March 2020 to 30 March 2020. We therefore recommend the Epidemic Notice come into effect on 24 March 2020. It may then be presented to Parliament as soon as possible. Parliament could meet to consider it on 31 March 2020 (a regularly scheduled sitting).
73. However, officials recommend activating the visa extension powers under the Immigration Act from 2 April 2020. This will ensure the extension applies to the interim open study rights visa that is automatically granted to students with visa applications still awaiting processing on 1 April. Bringing these powers into force earlier than 2 April would create more processing rework for Immigration New Zealand.

Out of scope

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Appendix 2 - Schedule 1 — Legislative powers activated by an Epidemic Notice (under section 5 of the Epidemic Preparedness Act 2006)

2. An epidemic notice is a necessary condition for activating the provisions identified in the table. However, other conditions may also need to be met (for example, a person involved in the exercise of the power may need to be satisfied that certain circumstances exist).

Act	Section	Section heading	Notes
Corrections Act 2004	179E	Exclusion of liability while epidemic notice in force or during emergency	
Electoral Act 1993	195A	Adjournment of poll on polling day	This power may be available without an epidemic notice being in force (see s 195)
	195B	Alternative voting processes to respond to polling disruption	As above
Epidemic Preparedness Act 2006	8	Activating other measures while epidemic notice in force	Notices under this section may only be given if an epidemic notice has been given under s 5
	11	Prospective modification of statutory requirements and restrictions to facilitate management of serious outbreaks of disease	Orders under this section may only be brought into force by an epidemic management notice under s 8 (see s 13)
	12	Prospective modification of statutory requirements and restrictions to enable	Orders under this section may only be brought into force by an epidemic management notice under s 8 (see s 13)

		compliance during epidemic	
	14	Immediate modification of statutory requirements and restrictions to facilitate management of quarantinable disease	Orders under this section may only be made while an epidemic notice given under s 5 is in force
	15	Immediate modification of statutory requirements and restrictions to enable compliance during epidemic	Orders under this section may only be made while an epidemic notice given under s 5 is in force
	24	Some Judges may modify rules of court during epidemic	Does not apply to all judicial officers, including District Court Judges and Coroners
Health Act 1956	70	Special powers of medical officer of health	These powers are available in relation to an infectious disease (which COVID-19 is) without an epidemic notice being in force, provided that the medical officer of health's intended actions are authorised by the Minister of Health
	71	Powers of medical officer of health on outbreak of infectious disease	These powers are available in relation to an infectious disease (which COVID-19 is) without an epidemic notice being in force, provided that the medical officer of health's intended actions are authorised in writing by the Minister of Health
	71A	Power of constables to assist medical officer of health in relation to infectious diseases	This section is operative whenever sections 70 or 71 are operative

	72	Offences relating to obstructing medical officer of health or people assisting medical officer of health	This section is operative whenever sections 70 or 71 are operative
	73	Medical officer of health may cause sanitary works to be undertaken	This section is operative whenever sections 70 or 71 are operative
	74C	Priorities for medicines	

Appendix 3 - Schedule 2 — Legislative powers activated by an Epidemic Management Notice under section 8 of the Epidemic Preparedness Act 2006

3. An epidemic notice is a necessary condition for activating the provisions identified in the table. However, other conditions may also need to be met (for example, a person involved in the exercise of the power may need to be satisfied that certain circumstances exist).

Criminal Procedure Act 2011	385	Application of section 168 during epidemic	Relates to dealing with defendants on adjournment	
Epidemic Preparedness Act 2006	13	Application of prospective modifications	Provides for an epidemic management notice to bring into force a prospective modification order under s 11 or 12	
Health Act 1956	74D	Redirection of aircraft		
Immigration Act 2009	78	Deemed extension of temporary entry class visa expiring during epidemic		
	337	During epidemic District Court may deal with certain matters on basis of documents only		
	338	Modification during epidemic of requirements to bring people before District Court Judge		

	339	During epidemic certain warrants to have effect for 28 days	<u>Although unnecessary, INZ intend to request new warrants from the District Court to regularise the paperwork.</u>
	340	Application of section 320 during epidemic	<u>Immigration Officer may agree to vary conditions of release without approval from a District Court Judge</u>
	341	Calculation of consecutive period of detention for purposes of section 323	<u>Relaxes the conditions for obtaining a warrant of commitment where total detention is more than 6 months</u>
Parole Act 2002	13A	Procedure of Board during epidemic	
	27B	Consideration of offenders for parole during epidemic	
	56A	Application of section 56 during epidemic	Relates to applications for variation or discharge of conditions
	65A	Application of section 65 during epidemic	Relates to the procedure for determining recall applications
	107GA	Application of section 107G during epidemic	Relates to the procedure following applications for extended supervision orders

Sentencing Act 2002	54A	Application of section 54 during epidemic	Relates to the variation or cancellation of sentences of supervision
	54L	Application of section 54K during epidemic	Relates to the variation or cancellation of sentences of intensive supervision
	67A	Remission of community work hours during epidemic	
	69A	Extension during epidemic of period within which community work must be done	
	69J	Application of section 69I during epidemic	Relates to the variation or cancellation of sentences of community detention
	80ZH	Application of section 80F during epidemic	Relates to applications for variation or cancellation of sentences of home detention
	80ZI	Application of section 80R during epidemic	Relates to the variation or discharge of post-detention conditions
Social Security Act 2018	64	Emergency benefit: grant during epidemic in New Zealand	Provides for MSD to grant emergency benefits to those not entitled or eligible under existing provisions
	299	Exception during epidemic	Provides for an exception to the requirement to inquire into claims for a benefit that is otherwise required

	443	Regulations: payments during epidemic in New Zealand	Provides for the making of regulations for benefits, rates of benefits, and the exercise of other powers not available under existing provisions
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RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Health Report

Renewal of Epidemic Notice under section 7(1) of the Epidemic Preparedness Act 2006

Date due to MO: 11 September 2020 **Action required by:** 16 September 2020

Security level: IN CONFIDENCE **Health Report number:** 20201530

To: Hon Chris Hipkins, Minister of Health
Hon Jacinda Ardern, Prime Minister

Contact for telephone discussion

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

Action for Private Secretaries

Forward the signed report to the Prime Minister's office.

Date dispatched to MO:

Return the signed report to the Ministry of Health.

Renewal of Epidemic Notice under section 7(1) of the Epidemic Preparedness Act 2006

Purpose of report

This report sets out my written recommendation, as Director-General of Health, that the Epidemic Preparedness (COVID-19) Notice 2020 (Epidemic Notice) be renewed and seeks your agreement to renew the Epidemic Notice.

Key points

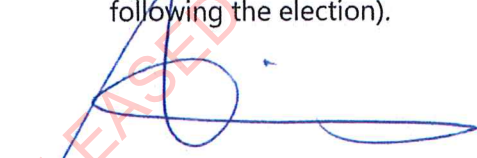
- The Epidemic Preparedness (COVID-19) Notice 2020 (Epidemic Notice), issued under section 5 of the Epidemic Preparedness Act 2006 (Act), came into force on 25 March 2020. That notice was renewed under section 7 of the Act on 24 June 2020.
- The Epidemic Notice declares that the Prime Minister is satisfied that the effects of an outbreak of a stated quarantinable disease (within the meaning of the Health Act 1956) are likely to disrupt or continue to disrupt essential governmental and business activity in New Zealand significantly.
- The Epidemic Notice can be renewed by the Prime Minister whether the outbreak is occurring in New Zealand or overseas:
 - with the agreement of the Minister of Health;
 - after considering my written recommendation, as the Director-General of Health; and
 - if the Prime Minister is satisfied that the effects of the outbreak concerned are likely to continue to disrupt essential governmental and business activity in New Zealand significantly.
- The purpose of this report is to provide my written recommendation, as Director-General of Health that the Epidemic Notice be renewed. My recommendation is that the Epidemic Notice be renewed for the reasons set out in this report. These include that:
 - based on the current community outbreak of COVID-19 in New Zealand and the ongoing international risk leading to further future outbreaks in New Zealand, COVID-19 will continue to disrupt essential governmental and business activity in New Zealand; and
 - while the COVID-19 epidemic still presents significant disruption both in New Zealand and overseas, it is essential to continue to have the legislative tools that are available while an epidemic notice is in force, for use as needed.
- If the Epidemic Notice is renewed, as soon as possible after that renewal, the Prime Minister must present a copy of the renewed Epidemic Notice to Parliament. As Parliament has now been dissolved this does not need to occur until Parliament has been summoned after the election.

Recommendations to the Minister of Health

It is recommended that you:

- a) **Note** that there is currently community transmission of COVID-19 in New Zealand and there continues to be large scale outbreaks of COVID-19 globally, which pose an ongoing risk to New Zealand.
- b) **Note** that an Epidemic Notice under section 5 of the Epidemic Preparedness Act 2006 is currently in place and expires at the close of 23 September 2020.
- c) **Note** that the Epidemic Notice includes powers that require persons to refrain from taking any specified actions that contribute to or are likely to contribute to, the risk of the outbreak or spread of COVID-19, or require persons to take specified actions to comply with specified measures that contribute or are likely to contribute to preventing the risk of the outbreak or spread of COVID-19.
- d) **Note** my advice that the current outbreak of COVID-19 in New Zealand and globally is likely to continue to disrupt essential governmental and business activity in New Zealand significantly.
- e) **Note** that the Epidemic Notice can be renewed whether the outbreak is occurring in New Zealand or overseas.
- f) **Note** that the Epidemic Notice is the enabling framework for a range of legislative instruments used to address the effects of the COVID-19 epidemic.
- g) **Note** my recommendation that the Epidemic Notice be renewed.
- h) **Note** the Prime Minister is the decision-maker as to whether the Epidemic Notice is renewed.
- i) **Agree**, as the Minister of Health, that the Epidemic Notice be renewed.
- j) **Note** the renewal of the Epidemic Notice will take effect on publication in the Gazette and expire on three months after its commencement, unless earlier renewed or revoked.
- k) **Note** when the renewal of the Epidemic Notice is signed, a copy of that renewal must be presented as soon as possible to Parliament (after Parliament is summoned following the election).

☒ Yes ☐ No


Dr Ashley Bloomfield
Director-General of Health


Hon Chris Hipkins
Minister of Health
Date: 14/9/2020

Recommendations to the Prime Minister

It is recommended that you:

- a) **Note** that there is currently community transmission of COVID-19 in New Zealand and there continues to be large scale outbreaks of COVID-19 globally, which pose an ongoing risk to New Zealand.
- b) **Note** that an epidemic notice under section 5 of the Epidemic Preparedness Act 2006 is currently in place and expires at the close of 23 September 2020.
- c) **Note** that the Epidemic Notice includes powers that require persons to refrain from taking any specified actions that contribute to or are likely to contribute to, the risk of the outbreak or spread of COVID-19, or require persons to take specified actions to comply with specified measures that contribute or are likely to contribute to preventing the risk of the outbreak or spread of COVID-19.
- d) **Note** my advice that the current outbreak of COVID-19 in New Zealand and globally is likely to continue to disrupt essential governmental and business activity in New Zealand significantly.
- e) **Note** that the Epidemic Notice can be renewed whether the outbreak is occurring in New Zealand or overseas.
- f) **Note** that the Epidemic Notice is the enabling framework for a range of legislative instruments used to address the effects of the COVID-19 epidemic.
- g) **Note** my recommendation that the Epidemic Notice be renewed.
- h) **Note** that you are the decision-maker as to whether the Epidemic Notice is renewed.
- i) **Note** the Minister of Health has agreed to the Epidemic Notice being renewed.
- j) **Agree**, as the Prime Minister, that the Epidemic Notice be renewed: Yes/No
 - (i) having considered the written recommendation of the Director-General of Health; and
 - (ii) being satisfied that the effects of the outbreak concerned are likely to continue to disrupt essential governmental and business activity in New Zealand significantly.
- k) **Note** the renewal of the Epidemic Notice will take effect on publication in the Gazette and expire on three months after its commencement, unless earlier renewed or revoked.
- l) **Note** when the renewal of the Epidemic Notice is signed, a copy of that renewal is presented as soon as possible to Parliament (after Parliament is summoned following the election).


Dr Ashley Bloomfield
Director-General of Health


Hon Jacinda Ardern
Prime Minister

Date:

Proposal

1. This paper recommends that the Epidemic Preparedness (COVID-19) Notice 2020 (Epidemic Notice) be renewed under section 7 of the Epidemic Preparedness Act 2006 (Act).

Background

2. On 24 March 2020, the Prime Minister, with the agreement of the Minister of Health, after considering my written recommendation, issued the Epidemic Notice under section 5 of the Act. Unless earlier revoked or subsequently renewed the Epidemic Notice expires three months after its commencement.
3. The first Epidemic Notice was to expire on 24 June 2020.
4. On 24 June 2020, the Prime Minister, with the agreement of the Minister of Health, after considering my written recommendation, renewed the Epidemic Notice. The Epidemic Notice now expires on 23 September 2020.
5. A decision is required on whether to further renew the Epidemic Notice before its expiry on 23 September 2020.
6. To renew the Epidemic Notice the Prime Minister must:
 - a. have the agreement of the Minister of Health;
 - b. have considered my written recommendation, as Director-General of Health; and
 - c. be satisfied the effects of an outbreak of COVID-19 are likely to continue to disrupt essential governmental and business activity in New Zealand significantly.
7. As at 8 September 2020:
 - a. the World Health Organisation (WHO) has declared the COVID-19 outbreak a global pandemic and has recommended that countries take a comprehensive approach to stopping the spread of COVID-19;
 - b. there is community transmission of COVID-19, with 123 active cases in the community in New Zealand; and
 - c. the outbreak of COVID-19 in New Zealand and globally continues to have a significant impact on our economy through disruption to internal and external markets, supply chains and workers.
8. As required by the Act, I, as the Director-General of Health, have kept under review, and have kept you informed of, the situation of which the making of the Epidemic Notice arose.

Effects of an Epidemic Notice

Legislative powers: COVID-19 Public Health Response Act 2020 and the Health Act 1956

9. The Epidemic Notice allows for the use of powers under the COVID-19 Public Health Response Act 2020 (COVID-19 Act) and 'special powers' under section 70 of the Health Act 1956. These powers include requiring persons to refrain from taking any specified actions that contribute to or are likely to contribute to the risk of the outbreak or spread of COVID-19, or requiring persons to take specified actions to comply with specified

measures that contribute or are likely to contribute to preventing the risk of the outbreak or spread of COVID-19.

10. These powers have been used by me, as the Director-General of Health (acting with the powers of a medical officer of health in accordance with section 22 of the Health Act 1956), to issue notices to classes of people in New Zealand. These powers have now been augmented by the COVID-19 Act.
11. Medical officers of health have been using the 'special powers' in individual circumstances to prevent further outbreak or spread of COVID-19. This has included requiring persons to be quarantined/isolated and/or submitting themselves for medical examination and testing in an effort to minimise the risk to public health.
12. Powers under the COVID-19 Act will be used to continue to manage the current community outbreak of COVID-19 and to continue border-related managed isolation and quarantine arrangements.

Epidemic Preparedness Act 2006

13. The Epidemic Notice also unlocks the power to make Epidemic Management Notices. Three notices are in place: the Epidemic Preparedness (Epidemic Management – COVID-19) Notice 2020, the Epidemic Preparedness (Epidemic Management – COVID-19) Notice (No.2) 2020 and the Epidemic Preparedness (Epidemic Management – COVID-19 – Parole Act 2002 and Sentencing Act 2002) Notice 2020. These notices amend 12 statutory provisions across four statutes. For example, they enable greater flexibility in relation to managing parole conditions, given physical distancing requirements.
14. There are also nine Immediate Modification Orders in place under section 15 of the Act, through which the effect of primary legislation is temporarily modified to relax statutory requirements or restrictions to enable compliance that would otherwise be impossible or impracticable. For example, the notices relax requirements for citizens to physically complete forms or be physically present to participate in activities or access government or other services.
15. In addition, a number of the provisions introduced through the COVID-19 Response (Further Management Measures) Legislation Act 2020 are contingent on the Epidemic Notice remaining in place. For example, one of these provisions is an obligation on coroners to test for COVID-19. Another provision enables the Commerce Commission to authorise conduct that may technically breach the restrictions on cartel conduct, but which is of such a benefit to the public that it should be permitted.

An epidemic notice can only be issued or renewed if the effects of COVID-19 are likely to disrupt essential government and business activity

16. By issuing and renewing the Epidemic Notice, the Prime Minister declared she was satisfied the effects of an outbreak of a quarantinable disease were likely to significantly disrupt essential government and business activity in New Zealand. This has been confirmed with the effects of the current outbreak in the community in New Zealand and the ongoing risk of further outbreaks due to the continued outbreaks overseas and lack of an effective vaccine.

New Zealand's economy has been significantly disrupted, and this disruption is ongoing

17. The outbreak in New Zealand has had a significant impact on our economy through disruption to internal and external markets, on supply chains and for workers. The outbreak in New Zealand has disrupted government business and impacted the effective

operation of the judiciary, executive and legislature through the impact of the disease and the application of measures to contain its spread.

18. Domestically, the economic impacts of COVID-19 are significant and ongoing:
 - The reduction in GDP as a result of the implementation of the alert levels ranges from an estimated 4% at alert level 1 to 37% in alert level 4.
 - Operating deficits are predicted to average around \$28 billion through to 2022/23 while net core Crown debt is expected to increase on average by around \$35 billion per year.¹

The global situation continues to pose a significant risk to New Zealand

19. The continued effective operation of Government is best served if the health impacts of COVID-19 are managed and minimised. In addition to the current outbreak in New Zealand, there remains a significant risk of further outbreaks in future.
20. The WHO reported on 8 September 2020 that there were 27,236,916 cases of COVID-19 reported globally, and 891,031 deaths. Although the situation in some areas has been improving, the global situation continues to worsen.
21. The scale of the COVID-19 pandemic presents a high risk of further outbreaks of COVID-19 in the community in New Zealand. People arriving into New Zealand from high risk countries with ongoing COVID-19 cases may lead to infection being introduced into the community. Despite mandatory quarantine and isolation measures in place, case numbers could quickly escalate. New Zealand's COVID-19 Elimination Strategy includes border controls, case detection and surveillance, contact tracing and managed isolation/quarantine, and community support for control measures.

The Epidemic Notice provides the enabling framework for other instruments and should remain in place as long as COVID-19 poses a threat

22. After the Law Reform (Epidemic Preparedness) Bill was before the Government Administration Committee, the Committee reported on the Bill, and commented that there should be a graduated approach to implementing and scaling back immediate modification orders. The Committee also commented that, to facilitate the graduated approach, an Epidemic Notice should remain in force for as long as the epidemic remains a threat. It was suggested that, as the epidemic recedes, "the immediate modification orders should be scaled back gradually to facilitate society's return to normality,"² implying that the Epidemic Notice would be the last to be revoked.

23.

s 9(2)(h)

24. All other instruments, particularly the epidemic management notices, will remain under review, and will be revoked if and when they are no longer necessary. The Epidemic

¹ Budget Economic and Fiscal Update 2020 (14 May 2020), produced by New Zealand Treasury

² Page 5 Law Reform (Epidemic Preparedness) Commentary – accessed on 11 June 2020 at

https://www.parliament.nz/resource/en-NZ/48DBSCH_SCR3588_1/bb53df3ec76505d2dfb175afc97631aed1cf0789

Notice is the enabling framework for a range of other legislative powers and instruments, including epidemic management notices, and immediate modification orders (both under the Epidemic Preparedness Act). s 9(2)(h)

The powers resulting from renewing the Epidemic Notice are significant

25. The powers that would be enabled by renewal of the Epidemic Notice are broad-ranging. They include the power to search (eg by way of testing) and detain persons (eg by way of orders directing an individual to isolate or quarantine in a managed facility). These are some of the most intrusive and significant powers a State can exercise over its people.
26. The exercise of these powers would limit rights and freedoms in the New Zealand Bill of Rights Act 1990. They may only be limited by the Executive Government where this is demonstrably justifiable in a free and democratic society. Exercise of the powers in any individual case must be necessary, reasonable and proportionate to the risk COVID-19 presents to the New Zealand community.
27. s 9(2)(h) In addition, the Ministry of Health is keeping the situation justifying the Epidemic Notice under review, and I will keep you informed. I will advise the Prime Minister to promptly revoke the Epidemic Notice if it appears the effects of a COVID-19 outbreak are no longer likely to disrupt essential government and business activity.

Recommendation to renew the Epidemic Notice

Given the impact on government and business activity, I recommend the epidemic notice be renewed for a period of three months from 23 September 2020

28. The current community outbreak of COVID-19 in New Zealand and the scale and extent of COVID-19 outbreaks overseas means COVID-19 is continuing to have a significant impact on government and business activity and that this impact may go on for some time in light of the significant risk of further outbreaks of COVID-19 in New Zealand.
29. My recommendation is therefore that the Epidemic Notice is renewed for a further three months before its expiry on 23 September 2020. If the Epidemic Notice is renewed, it would continue in force (unless earlier revoked or renewed) until 22 December 2020.

There are safeguards and processes in place for the Prime Minister to renew the Epidemic Notice

30. There are important safeguards and forms of Parliamentary scrutiny, particularly the following:
 - The Prime Minister is required to notify Parliament as soon as reasonably practicable that an epidemic notice has been issued or renewed. As Parliament has now been dissolved in advance of the upcoming election, the renewed epidemic notice will not be put before Parliament until after the election.
 - Parliament has the opportunity to scrutinise orders made during an epidemic. This provides a layer of swift scrutiny, which enhances the legitimacy of the orders without imposing impractical requirements.

- In addition, while the issuing of an epidemic notice would allow the modification or relaxation of laws, laws that protect fundamental rights and freedoms are prevented from being modified in this way.
- Significant constitutional legislation cannot be modified, including the Bill of Rights 1688, the Constitution Act 1986, the Electoral Act 1993, the Judicial Review Procedure Act 2016, the New Zealand Bill of Rights Act 1990, or the Parliamentary Privilege Act 2014.

Timing

31. The renewal of the Epidemic Notice will be effected via publication in the Gazette as soon as possible.
32. As soon as possible after giving the Epidemic Notice, the Prime Minister must present a copy of the Epidemic Notice to Parliament. As Parliament has now been dissolved, the renewed Epidemic Notice does not need to go before Parliament until the new Parliament is summoned (but it must not be later than 7 days after the latest day for return of the writ).

Equity

33. The spread of COVID-19 disproportionately harms older people and those with long term conditions such as diabetes or heart disease. Additionally, the disease is likely to disproportionately affect those who are unable to work from home and people in certain industries, such as health, education, retail, aviation, tourism and hospitality. In short, failing to successfully stop the disease from spreading would likely have equity implications that far outweigh any negative equity impacts from this Epidemic Notice coming into force.
34. The renewal of the Epidemic Notice will allow the government to rapidly and more effectively introduce measures early in an outbreak to reduce the peak of an epidemic, prevent and/or reduce community transmission, and mitigate harm to those most vulnerable.

Next steps

35. If the Epidemic Notice is renewed, the Ministry will make arrangements for the Notice to be published in the Gazette to come into effect as soon as possible. We will work with the Department of Prime Minister and Cabinet to arrange for the Epidemic Notice to be tabled in Parliament after Parliament is summoned following the election.

ENDS.

Briefing

Renewal of the Epidemic Notice under section 7(1) of the Epidemic Preparedness Act 2006 (No 4)

Date due to MO: N/A **Action required by:** 19 March 2021

Security level: IN CONFIDENCE **Health Report number:** H20210418

To: Rt Hon Jacinda Ardern, Prime Minister
Hon Chris Hipkins, Minister for COVID-19 Response
Hon Andrew Little, Minister of Health

Contact for telephone discussion

Name	Position	Telephone
Dr Ashley Bloomfield	Director-General of Health	s 9(2)(a)
Phil Knipe	Chief Legal Advisor	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:

Renewal of Epidemic Notice under section 7(1) of the Epidemic Preparedness Act 2006 (No 4)

Security level: IN CONFIDENCE **Date:** 10 March 2021

To: Rt Hon Jacinda Ardern, Prime Minister
Hon Chris Hipkins, Minister for COVID-19 Response
Hon Andrew Little, Minister of Health

Purpose of report

1. This report sets out my written recommendation, as Director-General of Health, that the Epidemic Preparedness (COVID-19) Notice 2020 (Epidemic Notice) be renewed and seeks your agreement to renew the Epidemic Notice.

Summary

1. The Epidemic Preparedness (COVID-19) Notice 2020 (Epidemic Notice), issued under section 5 of the Epidemic Preparedness Act 2006 (Act), came into force on 25 March 2020 for a maximum period of three months. That notice was renewed under section 7 of the Act on 24 June 2020, 23 September 2020 and 22 December 2020.
2. The Epidemic Notice can be renewed by the Prime Minister whether the outbreak is occurring in New Zealand or overseas:
 - a. with the agreement of the Minister of Health;
 - b. after considering my written recommendation, as the Director-General of Health; and
 - c. if the Prime Minister is satisfied that the effects of the outbreak concerned are likely to continue to disrupt essential governmental and business activity in New Zealand significantly.
3. This report provides my written recommendation, as the Director-General of Health, that the Epidemic Notice be renewed. My recommendation is that the Epidemic Notice be renewed for the reasons set out in this report. These include that:
 - a. based on the ongoing international risk, and the continued risk of further outbreaks in New Zealand, COVID-19 will continue to disrupt essential governmental and business activity in New Zealand; and
 - b. while gains are being made to control the outbreak and spread of COVID-19 overseas, including a worldwide vaccination effort, the COVID-19 epidemic still presents significant disruption both in New Zealand and overseas, it is essential to

continue to have the legislative tools that are available while an epidemic notice is in force, for use as needed.

4. If the Epidemic Notice is renewed, as soon as possible after that renewal, the Prime Minister must present a copy of the renewed Epidemic Notice to Parliament.

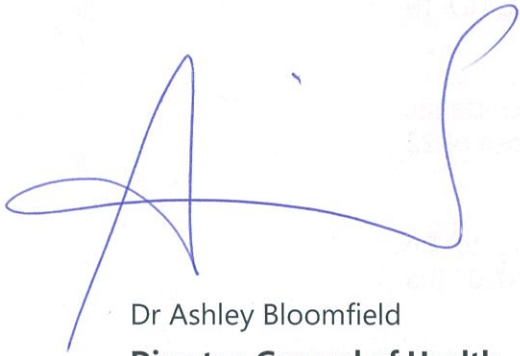
Recommendations

It is recommended that you:

- a) **Note** that there continue to be large scale outbreaks of COVID-19 globally, which pose an ongoing risk to New Zealand.
- b) **Note** that an Epidemic Notice under section 5 of the Epidemic Preparedness Act 2006 is currently in place and expires at the close of 22 March 2021.
- c) **Note** that the Epidemic Notice enables a number of powers to be exercised under the COVID-19 Public Health Response Act 2020, the Health Act 1956 and the Epidemic Preparedness Act 2006.
- d) **Note** that a number of legislative provisions are contingent on the Epidemic Notice remaining in place.
- e) **Note** my advice that the current outbreak of COVID-19 globally, and the current measures to prevent community transmission in New Zealand, are likely to continue to disrupt essential governmental and business activity in New Zealand significantly.
- f) **Note** that the Epidemic Notice can be renewed whether the outbreak is occurring in New Zealand or overseas.
- g) **Note** that the Epidemic Notice is the enabling framework for a range of legislative instruments used to address the effects of the COVID-19 epidemic.
- h) **Note** my recommendation that the Epidemic Notice be renewed.
- i) **Note** the Prime Minister is required to make the decision as to whether the Epidemic Notice is renewed.
- j) **Agree**, as the Minister for COVID-19 Response, that the Epidemic Notice is renewed (*Minister for COVID-19 Response only*). **Yes/No**
- k) **Agree**, as the Minister of Health, that the Epidemic Notice is renewed (*Minister of Health only*). **Yes/No**
- l) **Agree**, as the Prime Minister, that the Epidemic Notice be renewed: **Yes/No**
 - (i) having considered the written recommendation of the Director-General of Health; and
 - (ii) being satisfied that the effects of the outbreak concerned are likely to continue to disrupt essential governmental and

business activity in New Zealand significantly (*Prime Minister only*).

- m) **Note** the renewal of the Epidemic Notice will take effect upon publication in the Gazette and expire three months after its commencement, unless earlier renewed or revoked.
- n) **Note** when the renewal of the Epidemic Notice is signed, a copy of that renewal must be presented as soon as possible to Parliament.



Dr Ashley Bloomfield
Director-General of Health

11/3/21

Hon Chris Hipkins
Minister for COVID-19 Response

Date:

Hon Andrew Little
Minister of Health

Date:

Rt Hon Jacinda Ardern
Prime Minister

Date:

Renewal of Epidemic Notice under section 7(1) of the Epidemic Preparedness Act 2006 (No 4)

Proposal

1. This paper recommends that the Epidemic Preparedness (COVID-19) Notice 2020 (Epidemic Notice) be renewed under section 7 of the Epidemic Preparedness Act 2006 (the Act).

Background

2. On 24 March 2020, the Prime Minister, with the agreement of the Minister of Health, after considering my written recommendation, issued the Epidemic Notice under section 5 of the Act. Unless earlier revoked or subsequently renewed, the Epidemic Notice expires three months after its commencement.
3. The first Epidemic Notice was to expire on 24 June 2020.
4. On 24 June 2020, the Prime Minister, with the agreement of the Minister of Health, after considering my written recommendation, renewed the Epidemic Notice. The Epidemic Notice was then due to expire on 23 September 2020.
5. The Epidemic Notice was renewed twice more: on 23 September 2020 and 22 December 2020. It is now due to expire on 22 March 2021.
6. To renew the Epidemic Notice, the Prime Minister must:
 - a. have the agreement of the Minister of Health;
 - b. have considered my written recommendation, as the Director-General of Health and
 - c. be satisfied the effects of an outbreak of COVID-19 are likely to continue to disrupt essential governmental and business activity in New Zealand significantly.
7. The Act states that an epidemic notice should be made with the agreement of the Minister of Health. I understand that the Prime Minister has written to the Minister for COVID-19 Response to provide that he is the Minister of Health for the purposes of the COVID-19 response. As the renewal of an epidemic notice falls within the portfolio of the Minister for COVID-19 Response, it is appropriate for both the Minister of Health and the Minister for COVID-19 Response to agree to the renewal of the Epidemic Notice.
8. As at 9 March 2021:
 - a. the World Health Organisation (WHO) has declared the COVID-19 outbreak a global pandemic and has recommended that countries take a comprehensive approach to stopping the spread of COVID-19;
 - b. there is widespread community transmission of COVID-19 globally which continues to challenge New Zealand's border measures;

- c. the outbreak of COVID-19 globally continues to have a significant impact on New Zealand's economy through disruption to internal and external markets, supply chains and workers.
9. As required by the Act, I, as the Director-General of Health, have kept under review, and have kept you informed of, the situation during which the Epidemic Notice has been made.

Effects of an Epidemic Notice

Legislative powers: COVID-19 Public Health Response Act 2020 and the Health Act 1956

10. The Epidemic Notice allows for the use of powers under the COVID-19 Public Health Response Act 2020 (COVID-19 Act) and 'special powers' under section 70 of the Health Act 1956 (Health Act). These powers include requiring persons to refrain from taking any specified actions that contribute to or are likely to contribute to the risk of the outbreak or spread of COVID-19, or requiring persons to take specified actions to comply with specified measures that contribute or are likely to contribute to preventing the risk of the outbreak or spread of COVID-19.
11. These powers have been used by me, as the Director-General of Health (acting with the powers of a medical officer of health in accordance with section 22 of the Health Act), to issue notices to classes of people in New Zealand. These powers have now been augmented by the COVID-19 Act.
12. Medical officers of health have been using the 'special powers' in individual circumstances to prevent further outbreak or spread of COVID-19. This has included requiring persons to be quarantined/isolated and/or submitting themselves for medical examination and testing in an effort to minimise the risk to public health.
13. Powers under the COVID-19 Act are currently used to mandate preventative measures at Alert Level 1 (e.g. mandatory QR codes and masks on domestic flights and public transport) and to continue border-related requirements such as managed isolation and quarantine arrangements.

Epidemic Preparedness Act 2006

14. The Epidemic Notice also unlocks the power to for the Prime Minister to also make Epidemic Management Notices. Three notices are in place: the Epidemic Preparedness (Epidemic Management – COVID-19) Notice 2020, the Epidemic Preparedness (Epidemic Management – COVID-19) Notice (No 2) 2020 and the Epidemic Preparedness (Epidemic Management – COVID-19 – Parole Act 2020 and Sentencing Act 2002) Notice 2020. These notices activate epidemic provisions under the Social Security Act 2018, Immigration Act 2009, Parole Act 2002 and the Sentencing Act 2002. For example, they enable greater flexibility in relation to managing parole conditions, given physical distancing requirements.
15. There are also nine immediate modification orders currently in place under section 15 of the Act, through which the effect of primary legislation is temporarily modified to relax statutory requirements or restrictions to enable compliance that would otherwise be impossible or impractical. For example, the immediate modification orders relax requirements for citizens to physically complete forms or be physically present to participate in activities or access government or other services. Seven immediate

modification orders will be automatically revoked when the Epidemic Notice expires or is revoked.

16. In addition, a number of the provisions introduced through the COVID-19 Response (Further Management Measures) Legislation Act 2020 are contingent on the Epidemic Notice remaining in place. For example, one of the provisions is an obligation on coroners to test for COVID-19. Another provision enables the Commerce Commission to authorise conduct that may technically breach the restrictions on cartel conduct, but which is of such a benefit to the public that it should be permitted.

An epidemic notice can only be issued or renewed if the effects COVID-19 are likely to disrupt essential government and business activity

17. By issuing and renewing the Epidemic Notice, the Prime Minister declared she was satisfied the effects of an outbreak of a quarantinable disease were likely to significantly disrupt essential government and business activity in New Zealand. This continues to be the case as overseas jurisdictions still face high numbers of COVID-19 cases.
18. The changes to Alert Level 3 for Auckland, and Alert Level 2 for the rest of New Zealand that took place on 14 February 2021, and again on 27 February demonstrates that COVID-19 also poses a continued risk in New Zealand.
19. While progress is underway for the rollout of COVID-19 vaccines both in New Zealand and overseas, it will still take months for a vaccine to be rolled out to the general public in New Zealand, and to have widespread uptake (and effect) overseas.

The disruption to New Zealand's economy is ongoing

20. The outbreak overseas has continued to have an impact on the New Zealand economy through disruption to supply chains, and ongoing impacts felt by restrictions imposed by higher Alert Levels. Border restrictions also have an ongoing impact on supply chains.
21. Domestically, the economic impacts of COVID-19 are significant and ongoing:
 - a. the reduction in GDP as a result of the implementation of the alert levels ranges from an estimated 5 percent at Alert Level 1 to 35 percent at Alert Level 4; and
 - b. operating deficits are predicted to average around \$31.7 billion in 2020/21 while net core Crown debt is expected to increase on average by around \$29.4 billion per year¹.

The global situation continues to pose a significant risk to New Zealand

22. The continued effective operation of the Government is best served if the health impacts of COVID-19 are managed and minimised.
23. The WHO reported on 9 March 2021 that there were 116,874,912 cases of COVID-19 reported globally, and 2,597,381 deaths. The global situation continues to worsen as the numbers of weekly cases and deaths continue to increase.
24. The scale of the COVID-19 pandemic presents a high risk of further outbreaks of COVID-19 in the New Zealand community. People arriving into New Zealand from high risk countries with ongoing COVID-19 cases may lead to infection being introduced into the

¹ Pre-election Economic and Fiscal Update 2020 (16 September 2020) produced by New Zealand Treasury.

community. Despite managed quarantine and isolation measures in place, case numbers could quickly escalate. New Zealand's COVID-19 Elimination Strategy includes border controls, case detection and surveillance, contact tracing and managed isolation/quarantine, and community support for control measures.

The Epidemic Notice provides the enabling framework for other legislative instruments

25. The Government Administration Committee reported on the Law Reform (Epidemic Preparedness) Bill (which became the Epidemic Preparedness Act 2006) and noted that there should be a graduated approach to implementing and scaling back immediate modification orders. The Committee also commented that, to facilitate the graduated approach, an Epidemic Notice should remain in force for as long as an epidemic remains a threat. It was suggested that as an epidemic recedes, "the immediate modification orders should be scaled back gradually to facilitate society's return to normality,"² implying that the Epidemic Notice would be the last to be revoked.

26. s 9(2)(h)

27. All other instruments, particularly the epidemic management notices, will remain under review, and will be revoked if and when they are no longer necessary. The Epidemic Notice is the enabling framework for a range of other legislative powers and instruments, including epidemic management notices, and immediate modification orders (both made under the Act).

28. s 9(2)(h)

The powers resulting from renewing the Epidemic Notice are significant

29. The powers resulting from the renewed Epidemic Notice are broad-ranging. They include the power to search (e.g. by way of testing) and detain persons (e.g. by way of orders directing an individual to isolate or quarantine in a managed facility). These are some of the most intrusive and significant powers a State can exercise over its people.
30. Exercising these powers limits the rights and freedoms in the New Zealand Bill of Rights Act 1990. They may only be limited by the Executive Government where this is demonstrably justified in a free and democratic society. Exercise of the powers in any individual case must be necessary, reasonable and proportionate to the risk COVID-19 presents to the New Zealand community.
31. The power to make Immediate Modification Orders, which have the effect of modifying requirements set out in primary legislation, is also extraordinary and constitutionally unique.

² Page 5 Law Reform (Epidemic Preparedness) Commentary – accessed on 11 June 2020 at

https://www.parliament.nz/resource/en-NZ/48DBSCH_SCR3588_1/bb53df3ec76505d2dfb175afc97631aed1cf0789.

32. s 9(2)(h)
s 9(2)(h) In addition, the Ministry of Health constantly reviews the situation justifying the Epidemic Notice, and I will keep you informed. I will advise the Prime Minister to promptly revoke the Epidemic Notice if it appears the effects of COVID-19 outbreak are no longer likely to disrupt essential government and business activity.

Recommendation to renew the Epidemic Notice

Given the impact on government and business activity, it is proposed the epidemic notice be renewed for a period of three months from 22 March 2021

33. The scale and extent of COVID-19 outbreaks overseas means COVID-19 continues to have a significant impact on government and business activity. This impact may go on for some time in light of the significant risk of further future outbreaks of COVID-19 in New Zealand.
34. My recommendation is therefore that the Epidemic Notice is renewed for a further three months before its expiry on 22 March 2021. If the Epidemic Notice is renewed, it would continue in force (unless earlier revoked or renewed) until 21 June 2021.

There are safeguards and processes in place for the Prime Minister to renew the Epidemic Notice

35. There are important safeguards and forms of Parliamentary scrutiny in place to ensure that the use of powers associated with the Epidemic Notice are reasonable, including:
- a. the Prime Minister is required to notify the House of Representatives as soon as reasonably practicable that an Epidemic Notice has been issued or renewed;
 - b. the House of Representatives has the opportunity to scrutinise Orders made during an epidemic. This provides a layer of swift scrutiny, and enhances the legitimacy of the Orders without imposing impractical requirements;
 - c. while the issuing of an Epidemic Notice would allow the modification or relaxation of laws, laws that protect fundamental rights and freedoms are prevented from being modified in this way, such as significant constitutional legislation including the Bill of Rights 1688, the Constitution Act 1986, the Electoral Act 1993, the Judicial Review Procedure Act 2016, the New Zealand Bill of Rights Act 1990, or the Parliamentary Privilege Act 2014.

Timing

36. The renewal of the Epidemic Notice will be published in the Gazette as soon as possible.
37. As soon as possible after giving the Epidemic Notice, the Prime Minister must present a copy of the Epidemic Notice to Parliament. This can be provided to the Office of the Clerk.

Equity

38. The spread of COVID-19 disproportionately harms older people and those with long term conditions such as diabetes or heart disease. Additionally, the disruption likely to result from spread of the disease in New Zealand, and measures to contain it, is likely to

disproportionally affect those who are unable to work from home, and people in certain industries, such as health, education, retail, aviation, tourism and hospitality.

39. There are a number of factors to balance in considering equity implications:
- a. we know from historical examples that Māori and Pacific peoples are likely to be disproportionately affected by a widespread epidemic;
 - b. we also know that the spread of COVID-19 disproportionately harms older people, and those with long-term conditions such as diabetes or heart disease;
 - c. the disruption likely to result from the spread of COVID-19 in New Zealand, and measures to contain it, is likely to disproportionately affect those who are unable to work from home, and people in certain industries, such as health, education, retail, aviation, tourism and hospitality; and
 - d. we know that, in particular, Māori and Pacific communities are likely to be disproportionately affected by the impact of any controls, for example, they are less likely to be able to work remotely.
40. The moves that have been taken to strongly and quickly control the outbreak have struck the correct balance between these factors.
41. The renewal of the Epidemic Notice will allow the government to rapidly and more effectively introduce measures early in an outbreak to reduce the peak of an epidemic, prevent and/or reduce community transmission, and mitigate harm to those most vulnerable.

Next steps

42. If the Epidemic Notice is renewed, the Ministry of Health will make arrangements for the Notice to be published in the Gazette and to come into effect as soon as possible. Officials will work with the Department of Prime Minister and Cabinet to arrange for the Epidemic Notice to be presented to Parliament.

ENDS.

Briefing

Renewal of the Epidemic Notice under section 7(1) of the Epidemic Preparedness Act 2006 (No 6)

Date due to MO: N/A **Action required by:** 17 September 2021

Security level: IN CONFIDENCE **Health Report number:** 20211928

To: Rt Hon Jacinda Ardern, Prime Minister
Hon Chris Hipkins, Minister for COVID 19 Response
Hon Andrew Little, Minister of Health

Contact for telephone discussion

Name	Position	Telephone
Dr Ashley Bloomfield	Director General of Health	s 9(2)(a)
Phil Knipe	Chief Legal Advisor, Corporate Services	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:

Renewal of Epidemic Notice under section 7(1) of the Epidemic Preparedness Act 2006 (No 6)

Security level: IN CONFIDENCE **Date:** 1 September 2021

To: Rt Hon Jacinda Ardern, Prime Minister
Hon Chris Hipkins, Minister for COVID-19 Response
Hon Andrew Little, Minister of Health

Purpose of report

1. This report sets out my written recommendation, as Director-General of Health, that the Epidemic Preparedness (COVID-19) Notice 2020 (Epidemic Notice) be renewed, and seeks your agreement to renew the Epidemic Notice.

Summary

1. The Epidemic Notice, issued under section 5 of the Epidemic Preparedness Act 2006 (Act), came into force on 25 March 2020 for a maximum period of three months. That notice was renewed under section 7 of the Act on 24 June 2020, 23 September 2020, 22 December 2020, 21 March 2021, and 20 June 2021.
2. The Epidemic Notice can be renewed by the Prime Minister, whether the outbreak is occurring in New Zealand or overseas:
 - a. with the agreement of the Minister of Health;
 - b. after considering my written recommendation, as the Director-General of Health; and
 - c. if the Prime Minister is satisfied that the effects of the outbreak concerned are likely to continue to disrupt essential governmental and business activity in New Zealand significantly.
3. This report provides my written recommendation, as the Director-General of Health, that the Epidemic Notice be renewed. My recommendation is that the Epidemic Notice be renewed for the reasons set out in this report. These include that:
 - a. based on the ongoing international risk, and the current outbreak in New Zealand, COVID-19 will continue to disrupt essential governmental and business activity in New Zealand; and
 - b. while gains are being made to control the outbreak and spread of COVID-19 overseas and in New Zealand, including a worldwide vaccination effort, the COVID-19 pandemic still presents significant disruption both in New Zealand and

overseas, it is essential to continue to have the legislative tools that are available while an epidemic notice is in force, for use as needed.

4. If the Epidemic Notice is renewed, as soon as possible after that renewal, the Prime Minister must present a copy of the renewed Epidemic Notice to Parliament.

Recommendations

It is recommended that you:

- a) **Note** that there continues to be large scale outbreaks of COVID-19 globally and a current outbreak of community cases in New Zealand, which pose an ongoing risk to New Zealand.
- b) **Note** that an Epidemic Notice under section 5 of the Epidemic Preparedness Act 2006 is currently in place and expires at the close of 20 September 2021.
- c) **Note** that the Epidemic Notice enables a number of powers to be exercised under the COVID-19 Public Health Response Act 2020, the Health Act 1956 and the Epidemic Preparedness Act 2006.
- d) **Note** that a number of legislative provisions are contingent on the Epidemic Notice remaining in place.
- e) **Note** my advice that the current outbreak of COVID-19 in New Zealand and globally, is likely to continue to disrupt essential governmental and business activity in New Zealand significantly.
- f) **Note** that the Epidemic Notice can be renewed whether the outbreak is occurring in New Zealand or overseas.
- g) **Note** that the Epidemic Notice is the enabling framework for a range of legislative instruments used to address the effects of the COVID-19 epidemic.
- h) **Note** my recommendation that the Epidemic Notice be renewed.
- i) **Note** the Prime Minister is required to make the decision as to whether the Epidemic Notice is renewed.
- j) **Agree**, as the Minister for COVID-19 Response, that the Epidemic Notice is renewed (*Minister for COVID-19 Response only*). Yes/No
- k) **Agree**, as the Minister of Health, that the Epidemic Notice is renewed (*Minister of Health only*). **Yes/No**
- l) **Agree**, as the Prime Minister, that the Epidemic Notice be renewed: Yes/No
 - (i) having considered the written recommendation of the Director-General of Health; and
 - (ii) being satisfied that the effects of the outbreak concerned are likely to continue to disrupt essential governmental and

business activity in New Zealand significantly (*Prime Minister only*).

- m) **Note** the renewal of the Epidemic Notice will take effect upon publication in the Gazette and expire three months after its commencement, unless earlier renewed or revoked.
- n) **Note** when the renewal of the Epidemic Notice is signed, a copy of that renewal must be presented as soon as possible to Parliament.



Dr Ashley Bloomfield
Director-General of Health
Date: 01.09.2021



Hon Chris Hipkins
Minister for COVID-19 Response
Date: 3/9/2021



Hon Andrew Little
Minister of Health
Date: 05/09/2021



Rt Hon Jacinda Ardern
Prime Minister
Date: 6/9/21

Renewal of Epidemic Notice under section 7(1) of the Epidemic Preparedness Act 2006 (No 6)

Proposal

1. This paper recommends that the Epidemic Preparedness (COVID-19) Notice 2020 (Epidemic Notice) be renewed under section 7 of the Epidemic Preparedness Act 2006 (the Act).

Background

2. On 24 March 2020, the Prime Minister, with the agreement of the Minister of Health, after considering my written recommendation, issued the Epidemic Notice under section 5 of the Act. Unless earlier revoked or subsequently renewed, the Epidemic Notice expires three months after its commencement.
3. The first Epidemic Notice was to expire on 24 June 2020.
4. On 24 June 2020, the Prime Minister, with the agreement of the Minister of Health, after considering my written recommendation, renewed the Epidemic Notice. The Epidemic Notice was then due to expire on 23 September 2020.
5. The Epidemic Notice was renewed on four more occasions: on 23 September 2020, 22 December 2020, 21 March 2021 and 20 June 2021. It is now due to expire on 20 September 2021.
6. To renew the Epidemic Notice, the Prime Minister must:
 - a. have the agreement of the Minister of Health;
 - b. have considered my written recommendation, as the Director-General of Health and
 - c. be satisfied the effects of an outbreak of COVID-19 are likely to continue to disrupt essential governmental and business activity in New Zealand significantly.
7. The Act states that an epidemic notice should be made with the agreement of the Minister of Health. I understand that the Prime Minister has written to the Minister for COVID-19 Response to provide that he is the Minister of Health for the purposes of the COVID-19 response. As the renewal of an epidemic notice falls within the portfolio of the Minister for COVID-19 Response, it is appropriate for both the Minister of Health and the Minister for COVID-19 Response to agree to the renewal of the Epidemic Notice.
8. As at 30 August 2021:
 - a. the World Health Organisation (WHO) has determined COVID-19 to be a public health emergency of international concern under the International Health Regulations 2005, has declared the COVID-19 outbreak a global pandemic and has recommended that countries take a comprehensive approach to stopping the spread of COVID-19;

- b. there is widespread community transmission of COVID-19 globally which continues to challenge New Zealand's border measures; and
 - c. the outbreak of COVID-19 globally continues to have a significant impact on New Zealand's economy through disruption to internal and external markets, supply chains and workers.
9. As required by the Act, I, as the Director-General of Health, have kept under review, and have kept you informed of, the situation during which the Epidemic Notice has been made.

Effects of an Epidemic Notice

Legislative powers: COVID-19 Public Health Response Act 2020 and the Health Act 1956

- 10. The Epidemic Notice allows for the use of powers under the COVID-19 Public Health Response Act 2020 (COVID-19 Act) and 'special powers' under section 70 of the Health Act 1956 (Health Act). These powers include requiring persons to refrain from taking any specified actions that contribute to or are likely to contribute to the risk of the outbreak or spread of COVID-19, or requiring persons to take specified actions to comply with specified measures that contribute or are likely to contribute to preventing the risk of the outbreak or spread of COVID-19.
- 11. These powers have been used by me, as the Director-General of Health (acting with the powers of a medical officer of health in accordance with section 22 of the Health Act), to issue notices to classes of people in New Zealand. These powers have now been augmented by the COVID-19 Act.
- 12. Medical officers of health have been using the 'special powers' in individual circumstances to prevent further outbreak or spread of COVID-19. This has included requiring persons to be quarantined/isolated (both self-isolation and in Managed Isolation or Quarantine Facilities) and/or submitting themselves for medical examination and testing in an effort to minimise the risk to public health.
- 13. As at 31 August 2021, New Zealand is at Alert Level 4 due to an outbreak of the Delta variant of COVID-19 in the community. From 11:59pm on Tuesday 31 August 2021, all of New Zealand south of Auckland will shift to Alert Level 3. Powers under the COVID-19 Act are currently being used to mandate measures at Alert Level 4 (e.g., stay-at-home requirements, mandatory QR codes, workplace requirements, physical distancing and face covering requirements for individuals) and to continue border-related requirements such as managed isolation and quarantine arrangements.

Epidemic Preparedness Act 2006

- 14. The Epidemic Notice also unlocks the power for the Prime Minister to make Epidemic Management Notices. Three notices are in place: the Epidemic Preparedness (Epidemic Management – COVID-19) Notice 2020, the Epidemic Preparedness (Epidemic Management – COVID-19) Notice (No 2) 2020 and the Epidemic Preparedness (Epidemic Management – COVID-19 – Parole Act 2020 and Sentencing Act 2002) Notice 2020. These notices activate epidemic provisions under the Social Security Act 2018, Immigration Act 2009, Parole Act 2002 and the Sentencing Act 2002. For example, they enable greater flexibility in relation to managing parole conditions.

15. As at 31 August 2021, there are eight immediate modification orders in place under section 15 of the Epidemic Preparedness Act, through which the effect of primary legislation is temporarily modified to relax statutory requirements or restrictions to enable compliance that would otherwise be impossible or impractical. For example, the immediate modification orders relax requirements for citizens to physically complete forms or be physically present to participate in activities or access government or other services. One immediate modification order (*Epidemic Preparedness (COVID-19 – Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 - Term of Appointments to Te Pou Tupua*) was revoked on 10 June 2021. Seven Immediate Notification Orders will be automatically revoked when the Epidemic Notice expires or is revoked.
16. In addition, a number of the provisions introduced through the COVID-19 Response (Further Management Measures) Legislation Act 2020 are contingent on the Epidemic Notice remaining in place. For example, one of the provisions is an obligation on coroners to test for COVID-19. Another provision enables the Commerce Commission to authorise conduct that may technically breach the restrictions on cartel conduct, but which is of such benefit to the public that it should be permitted.

An epidemic notice can only be issued or renewed if the effects COVID-19 are likely to disrupt essential government and business activity

17. By issuing and renewing the Epidemic Notice, the Prime Minister declared she was satisfied the effects of an outbreak of a quarantinable disease were likely to significantly disrupt essential government and business activity in New Zealand. This continues to be the case as overseas jurisdictions still face high numbers of COVID-19 cases, as well as the current COVID-19 outbreak in New Zealand.
18. As at 30 August 2021, there are 603 active cases of COVID-19 in New Zealand. There is an ongoing risk to New Zealand, as highlighted by ongoing community cases in Auckland and at the border, with the need for controls (such as section 70 Health Act notices and restrictions on travel from Australia) to manage the public health risks.
19. While progress is underway for the rollout of COVID-19 vaccines both in New Zealand and overseas, it will still take months for a vaccine to be fully rolled out to the general public in New Zealand, and to have widespread uptake (and effect) overseas.

The disruption to New Zealand's economy is ongoing

20. The outbreak overseas and in the community continues to have an impact on the New Zealand economy through disruption to supply chains, and ongoing impacts felt by restrictions imposed by higher Alert Levels. Border restrictions also have an ongoing impact on supply chains.
21. Domestically, the economic impacts of COVID-19 are significant and ongoing:
 - a. the reduction in GDP as a result of the implementation of the alert levels ranges from an estimated 4 percent at Alert Level 1 to 30 percent at Alert Level 4; and
 - b. net core Crown debt is forecast to increase by close to \$100 billion by 2024/25, peaking as a share of GDP at 48 percent in 2022/23.¹

¹ Budget Economic and Fiscal Update 2021 (20 May 2021) produced by the New Zealand Treasury.

The global situation continues to pose a significant risk to New Zealand

22. The continued effective operation of the Government is best served if the health impacts of COVID-19 are managed and minimised.
23. The WHO reported on 30 August 2021 that there were 216,303,376 cases of COVID-19 reported globally, and 4,498,451 deaths. The global situation continues to worsen as the numbers of weekly cases and deaths continue to increase.
24. The scale of the COVID-19 pandemic presents a high risk of further outbreaks of COVID-19 in the New Zealand community. People arriving into New Zealand from countries with ongoing COVID-19 cases may lead to infection being introduced into the community. Despite managed quarantine and isolation measures in place, and restrictions on travel to New Zealand of persons from very high risk countries, case numbers could quickly escalate. New Zealand's COVID-19 Elimination Strategy includes border controls, case detection and surveillance, contact tracing and managed isolation/quarantine, and community support for control measures.

The Epidemic Notice provides the enabling framework for other legislative instruments

25. The Government Administration Committee reported on the Law Reform (Epidemic Preparedness) Bill (which became the Epidemic Preparedness Act 2006) and noted that there should be a graduated approach to implementing and scaling back immediate modification orders. The Committee also commented that, to facilitate the graduated approach, an Epidemic Notice should remain in force for as long as an epidemic remains a threat. It was suggested that as an epidemic recedes, "the immediate modification orders should be scaled back gradually to facilitate society's return to normality,"² implying that the Epidemic Notice would be the last to be revoked.

26. s 9(2)(h)

27. All other instruments, particularly the epidemic management notices, will remain under review, and will be revoked if and when they are no longer necessary. The Epidemic Notice is the enabling framework for a range of other legislative powers and instruments, including epidemic management notices, and immediate modification orders (both made under the Act).

28. s 9(2)(h)

The powers resulting from renewing the Epidemic Notice are significant

29. The powers resulting from the renewed Epidemic Notice are broad-ranging. They include the power to search (e.g., by way of testing) and detain persons (e.g., by way of

² Page 5 Law Reform (Epidemic Preparedness) Commentary – accessed on 11 June 2020 at

https://www.parliament.nz/resource/en-NZ/48DBSCH_SCR3588_1/bb53df3ec76505d2dfb175afc97631aed1cf0789.

orders directing an individual to isolate or quarantine in a managed facility). These are some of the most intrusive and significant powers a State can exercise over its people.

30. Exercising these powers limits the rights and freedoms in the New Zealand Bill of Rights Act 1990. They may only be limited by the Executive Government where this is demonstrably justified in a free and democratic society. Exercise of the powers in any individual case must be necessary, reasonable and proportionate to the risk COVID-19 presents to the New Zealand community.
31. The power to make Immediate Modification Orders, which have the effect of modifying requirements set out in primary legislation, is also extraordinary and constitutionally unique.

32. s 9(2)(h)

In addition, the Ministry of Health constantly reviews the situation justifying the Epidemic Notice, and I will keep you informed. I will advise the Prime Minister to promptly revoke the Epidemic Notice if it appears the effects of COVID-19 outbreak are no longer likely to disrupt essential government and business activity.

Recommendation to renew the Epidemic Notice

Given the impact on government and business activity, it is proposed the Epidemic Notice be renewed for a period of three months from 20 September 2021

33. The scale and extent of COVID-19 outbreaks overseas and the current outbreak in New Zealand means COVID-19 continues to have a significant impact on government and business activity. This impact may go on for some time in light of the current outbreak of COVID-19 in New Zealand.
34. My recommendation is therefore that the Epidemic Notice is renewed for a further three months before its expiry on 20 September 2021. If the Epidemic Notice is renewed, it would continue in force (unless earlier revoked or renewed) until 19 December 2021.

There are safeguards and processes in place for the Prime Minister to renew the Epidemic Notice

35. There are important safeguards and forms of Parliamentary scrutiny in place to ensure that the use of powers associated with the Epidemic Notice are reasonable, including:
 - a. the Prime Minister is required to notify the House of Representatives as soon as possible that an Epidemic Notice has been issued or renewed;
 - b. the House of Representatives has the opportunity to scrutinise Orders made during an epidemic. This provides a layer of swift scrutiny, and enhances the legitimacy of the Orders without imposing impractical requirements; and
 - c. while the issuing of an Epidemic Notice would allow the modification or relaxation of laws, laws that protect fundamental rights and freedoms are prevented from being modified in this way, such as significant constitutional legislation including the Bill of Rights 1688, the Constitution Act 1986, the Electoral Act 1993, the Judicial Review Procedure Act 2016, the New Zealand Bill of Rights Act 1990, or the Parliamentary Privilege Act 2014.

Timing

36. The renewal of the Epidemic Notice will be published in the Gazette as soon as possible.
37. As soon as possible after giving the Epidemic Notice, the Prime Minister must present a copy of the Epidemic Notice to Parliament. This can be provided to the Office of the Clerk.

Equity

38. The spread of COVID-19 disproportionately harms older people and those with long term conditions such as diabetes or heart disease. Additionally, the disruption likely to result from the spread of the disease in New Zealand, and measures to contain it, is likely to disproportionately affect those who are unable to work from home, and people in certain industries, such as health, education, retail, aviation, tourism and hospitality.
39. There are a number of factors to balance in considering equity implications:
 - a. we know from historical examples that Māori and Pacific peoples are likely to be disproportionately affected by a widespread pandemic;
 - b. we also know that the spread of COVID-19 disproportionately harms older people, and those with long-term conditions such as diabetes or heart disease;
 - c. the disruption likely to result from the spread of COVID-19 in New Zealand, and measures to contain it, is likely to disproportionately affect those who are unable to work from home, and people in certain industries, such as health, education, retail, aviation, tourism and hospitality; and
 - d. we know that, in particular, Māori and Pacific communities are likely to be disproportionately affected by the impact of any controls, for example, they are less likely to be able to work remotely.
40. The moves that have been taken to strongly and quickly control the outbreak have struck the correct balance between these factors.
41. The renewal of the Epidemic Notice will allow the government to rapidly and more effectively introduce measures early in an outbreak to reduce the peak of an epidemic, prevent and/or reduce community transmission, and mitigate harm to those most vulnerable.

Next steps

42. If the Epidemic Notice is renewed, the Ministry of Health will make arrangements for the Notice to be published in the Gazette and to come into effect as soon as possible. Officials will work with the Department of Prime Minister and Cabinet to arrange for the Epidemic Notice to be presented to Parliament.

ENDS.

Briefing

Renewal of the Epidemic Notice under section 7(1) of the Epidemic Preparedness Act 2006 (No 7)

Date due to MO: N/A **Action required by:** 16 December 2021

Security level: IN CONFIDENCE **Health Report number:** 20212547

To: Rt Hon Jacinda Ardern, Prime Minister
Hon Chris Hipkins, Minister for COVID-19 Response
Hon Andrew Little, Minister of Health

Contact for telephone discussion

Name	Position	Telephone
Dr Ashley Bloomfield	Director-General of Health	s 9(2)(a)
Phil Knipe	Chief Legal Advisor, Corporate Services	s 9(2)(a)

Minister's office to complete:

☐ Approved

☐ Decline

☐ Noted

☐ Needs change

☐ Seen

☐ Overtaken by events

☐ See Minister's Notes

☐ Withdrawn

Comment:

Renewal of Epidemic Notice under section 7(1) of the Epidemic Preparedness Act 2006 (No 7)

Security level:	IN CONFIDENCE	Date:	3 December 2021
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To:	Rt Hon Jacinda Ardern, Prime Minister
	Hon Chris Hipkins, Minister for COVID-19 Response
	Hon Andrew Little, Minister of Health

Purpose of report

1. This report sets out my written recommendation, as Director-General of Health, that the Epidemic Preparedness (COVID-19) Notice 2020 (Epidemic Notice) be renewed, and seeks your agreement to renew the Epidemic Notice.

Summary

1. The Epidemic Notice, issued under section 5 of the Epidemic Preparedness Act 2006 (the Act), came into force on 25 March 2020 for a maximum period of three months. That notice was renewed under section 7 of the Act on 24 June 2020, 23 September 2020, 22 December 2020, 21 March 2021, 20 June 2021, and 19 September 2021.
2. The Epidemic Notice can be renewed by the Prime Minister, whether the outbreak is occurring in New Zealand or overseas:
 - a. with the agreement of the Minister of Health;
 - b. after considering my written recommendation, as the Director-General of Health; and
 - c. if the Prime Minister is satisfied that the effects of the outbreak concerned are likely to continue to disrupt essential governmental and business activity in New Zealand significantly.
3. This report provides my written recommendation, as the Director-General of Health, that the Epidemic Notice be renewed. My recommendation is that the Epidemic Notice be renewed for the reasons set out in this report. These include that:
 - a. based on the ongoing international risk, and the current outbreak in New Zealand, COVID-19 will continue to disrupt essential governmental and business activity in New Zealand; and
 - b. while gains are being made to control the outbreak and spread of COVID-19 overseas and in New Zealand, including a worldwide vaccination effort, the COVID-19 pandemic still presents significant disruption both in New Zealand and

overseas, it is essential to continue to have the legislative tools that are available while an epidemic notice is in force, for use as needed.

4. If the Epidemic Notice is renewed, as soon as possible after that renewal, the Prime Minister must present a copy of the renewed Epidemic Notice to Parliament.

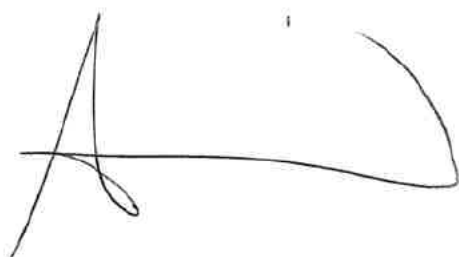
Recommendations

It is recommended that you:

- a) **Note** that there continues to be large scale outbreaks of COVID-19 globally and an ongoing outbreak of community cases in New Zealand, which pose an ongoing risk to New Zealand.
- b) **Note** that an Epidemic Notice under section 5 of the Epidemic Preparedness Act 2006 is currently in place and expires at the close of 19 December 2021.
- c) **Note** that the Epidemic Notice enables a number of powers to be exercised under the COVID-19 Public Health Response Act 2020, the Health Act 1956 and the Epidemic Preparedness Act 2006.
- d) **Note** that a number of legislative provisions are contingent on the Epidemic Notice remaining in place.
- e) **Note** my advice that the ongoing outbreak of COVID-19 in New Zealand and globally, is likely to continue to disrupt essential governmental and business activity in New Zealand significantly.
- f) **Note** that the Epidemic Notice can be renewed whether the outbreak is occurring in New Zealand or overseas.
- g) **Note** that the Epidemic Notice is the enabling framework for a range of legislative instruments used to address the effects of the COVID-19 pandemic.
- h) **Note** my recommendation that the Epidemic Notice be renewed.
- i) **Note** the Prime Minister is required to make the decision as to whether the Epidemic Notice is renewed.
- j) **Agree**, as the Minister for COVID-19 Response, that the Epidemic Notice is renewed (*Minister for COVID-19 Response only*). Yes/No
- k) **Agree**, as the Minister of Health, that the Epidemic Notice is renewed (*Minister of Health only*). Yes/No
- l) **Agree**, as the Prime Minister, that the Epidemic Notice be renewed: Yes/No
- (i) having considered the written recommendation of the Director-General of Health; and
 - (ii) being satisfied that the effects of the outbreak concerned are likely to continue to disrupt essential governmental and

business activity in New Zealand significantly (*Prime Minister only*).

- m) **Note** the renewal of the Epidemic Notice will take effect upon publication in the Gazette and expire three months after its commencement, unless earlier renewed or revoked.
- n) **Note** when the renewal of the Epidemic Notice is signed, a copy of that renewal must be presented as soon as possible to Parliament.



Dr Ashley Bloomfield

Te Tumu Whakarae mō te Hauora

Director-General of Health

6/12/21



Hon Chris Hipkins

Minister for COVID-19 Response

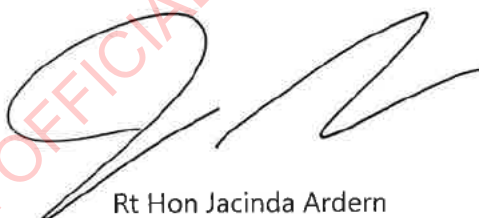
Date: 7/12/21



Hon Andrew Little

Minister of Health

Date: 8/12/21



Rt Hon Jacinda Ardern

Prime Minister

Date: 9/12/21

Renewal of Epidemic Notice under section 7(1) of the Epidemic Preparedness Act 2006 (No 7)

Proposal

1. This paper recommends that the Epidemic Preparedness (COVID-19) Notice 2020 (Epidemic Notice) be renewed under section 7 of the Epidemic Preparedness Act 2006 (the Act).

Background

2. On 24 March 2020, the Prime Minister, with the agreement of the Minister of Health, after considering my written recommendation, issued the Epidemic Notice under section 5 of the Act. Unless earlier revoked or subsequently renewed, the Epidemic Notice expires three months after its commencement.
3. The first Epidemic Notice was to expire on 24 June 2020.
4. On 24 June 2020, the Prime Minister, with the agreement of the Minister of Health, after considering my written recommendation, renewed the Epidemic Notice. The Epidemic Notice was then due to expire on 24 September 2020.
5. The Epidemic Notice was renewed on five more occasions: on 23 September 2020, 22 December 2020, 21 March 2021, 20 June 2021 and 19 September 2021. It is now due to expire on 19 December 2021.
6. To renew the Epidemic Notice, the Prime Minister must:
 - a. have the agreement of the Minister of Health;
 - b. have considered my written recommendation, as the Director-General of Health and
 - c. be satisfied the effects of an outbreak of COVID-19 are likely to continue to disrupt essential governmental and business activity in New Zealand significantly.
7. The Act states that an epidemic notice should be made with the agreement of the Minister of Health. I understand that the Prime Minister has written to the Minister for COVID-19 Response to provide that he is the Minister for the purposes of the COVID-19 response. As the renewal of an epidemic notice falls within the portfolio of the Minister for COVID-19 Response, it is appropriate for both the Minister of Health and the Minister for COVID-19 Response to agree to the renewal of the Epidemic Notice.
8. As of 3 December 2021:
 - a. the World Health Organisation (WHO) has determined COVID-19 to be a public health emergency of international concern under the International Health Regulations 2005, has declared the COVID-19 outbreak a global pandemic and has recommended that countries take a comprehensive approach to stopping the spread of COVID-19;

- b. there is widespread community transmission of COVID-19 globally which continues to challenge New Zealand's border measures; and
 - c. the ongoing outbreak of COVID-19 nationally and globally continues to have a significant impact on New Zealand's economy through disruption to internal and external markets, supply chains and workers.
9. As required by the Act, I, as the Director-General of Health, have kept under review, and have kept you informed of, the situation during which the Epidemic Notice has been made.

Effects of an Epidemic Notice

Legislative powers: COVID-19 Public Health Response Act 2020 and the Health Act 1956

- 10. The Epidemic Notice allows for the use of powers under the COVID-19 Public Health Response Act 2020 (the COVID-19 Act) and 'special powers' under section 70 of the Health Act 1956 (the Health Act). These powers include requiring persons to refrain from taking any specified actions that contribute to or are likely to contribute to the risk of the outbreak or spread of COVID-19, or requiring persons to take specified actions to comply with specified measures that contribute or are likely to contribute to preventing the risk of the outbreak or spread of COVID-19.
- 11. These powers have been used by me, as the Director-General of Health (acting with the powers of a medical officer of health in accordance with section 22 of the Health Act), to issue notices to classes of people in New Zealand. These powers have now been augmented by the COVID-19 Act.
- 12. Medical officers of health have been using the 'special powers' to prevent further outbreak or spread of COVID-19. This has included requiring persons to be quarantined/isolated (both self-isolation and in Managed Isolation or Quarantine Facilities) and/or submitting themselves for medical examination and testing in an effort to minimise the risk to public health.
- 13. As at 3 December 2021, New Zealand has moved to the COVID-19 Protection Framework (the CPF). Northland, Auckland, Taupo, and Rotorua Lakes Districts, Kawerau, Whakatane, Opoitiki Districts, Gisborne District, Wairoa District, Rangitikei, Whanganui and Ruapehu Districts are at 'the Red' setting and the rest of the North Island and the whole of the South Island is at the 'Orange' setting.
- 14. Powers under the COVID-19 Act are currently being used to mandate requirements under the COVID-19 Orders (e.g., QR codes and contact records, face coverings, CVC requirements, physical distancing, gatherings, events and restrictions on access and on opening) and to continue border-related requirements such as managed isolation and quarantine and self-isolation arrangements.

Epidemic Preparedness Act 2006

- 15. The Epidemic Notice also unlocks the power for the Prime Minister to make Epidemic Management Notices. Three notices are in place: the Epidemic Preparedness (Epidemic Management – COVID-19) Notice 2020, the Epidemic Preparedness (Epidemic Management – COVID-19) Notice (No 2) 2020 and the Epidemic Preparedness (Epidemic Management – COVID-19 – Parole Act 2020 and Sentencing Act 2002) Notice 2020. These notices activate epidemic provisions under the Social Security Act 2018,

Immigration Act 2009, Parole Act 2002 and the Sentencing Act 2002. For example, they enable greater flexibility in relation to managing parole conditions.

16. As of 3 December 2021, there are eight immediate modification orders in place under section 15 of the Epidemic Preparedness Act, through which the effect of primary legislation is temporarily modified to relax statutory requirements or restrictions to enable compliance that would otherwise be impossible or impractical. For example, the immediate modification orders relax requirements for citizens to physically complete forms or be physically present to participate in activities or access government or other services. One immediate modification order (*Epidemic Preparedness (COVID-19 – Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 – Term of Appointments to Te Pou Tupua*) was revoked on 10 June 2021. Seven Immediate Notification Orders will be automatically revoked when the Epidemic Notice expires or is revoked.
17. In addition, a number of the provisions introduced through the COVID-19 Response (Further Management Measures) Legislation Act 2020 are contingent on the Epidemic Notice remaining in place. For example, one of the provisions is an obligation on coroners to test for COVID-19. Another provision enables the Commerce Commission to authorise conduct that may technically breach the restrictions on cartel conduct, but which is of such benefit to the public that it should be permitted.

An epidemic notice can only be issued or renewed if the effects COVID-19 are likely to disrupt essential government and business activity

18. By issuing and renewing the Epidemic Notice, the Prime Minister declared she was satisfied the effects of an outbreak of a quarantinable disease were likely to significantly disrupt essential government and business activity in New Zealand. This continues to be the case as overseas jurisdictions still face high numbers of COVID-19 cases, as well as the ongoing COVID-19 outbreak in New Zealand.
19. As at 9:00 am on 2 December 2021, there are 6147 active cases of COVID-19 in New Zealand. There is an ongoing risk to New Zealand, as highlighted by ongoing community cases in Auckland, throughout regions in New Zealand and at the border, with the need for controls (such as section 70 Health Act notices and the suspension of quarantine-free travel from Australia) to manage the public health risks.
20. While the rollout of COVID-19 vaccination is well advanced in New Zealand and in some places overseas, it is still not complete, and we still have some areas with low vaccination rates. A new variant of COVID-19 (Omicron) has also emerged which we presently know little about, including the effectiveness of the vaccine.

The disruption to New Zealand's economy is ongoing

21. The outbreak overseas and in the community continues to have an impact on the New Zealand economy through disruption to supply chains, and ongoing impacts felt by restrictions imposed by the former Alert Level system. Border restrictions also have an ongoing impact on supply chains.
22. Internationally the emergence of the Omicron variant has seen a rapid closure of a number of international borders which may have flow on effects to the supply chain.
23. Domestically, the economic impacts of COVID-19 are significant and ongoing:
 - a. the reduction in GDP as a result of the implementation of the alert levels ranges from an estimated 4 percent at Alert Level 1 to 30 percent at Alert Level 4; and

- b. net core Crown debt is forecast to increase by close to \$100 billion by 2024/25, peaking as a share of GDP at 48 percent in 2022/23.¹
24. It is observed that without the imposition of restrictions, COVID-19 would likely have caused a significant number of deaths, especially in our vulnerable communities and would have quickly overrun our health system. There continues to be a need to protect our health system and protect those who are not yet vaccinated.

The global situation continues to pose a significant risk to New Zealand

25. The continued effective operation of the Government is best served if the health impacts of COVID-19 are managed and minimised.
26. The WHO reported on 1 December 2021 that there were 262,178,403 cases of COVID-19 reported globally, and 5,215,745 deaths. The global situation continues to worsen as the numbers of weekly cases and deaths continue to increase.
27. The scale of the COVID-19 pandemic presents a high risk of further outbreaks of COVID-19 in the New Zealand community. People arriving into New Zealand from countries with ongoing COVID-19 cases may lead to infection being introduced into the community. Despite managed quarantine and isolation measures in place, and restrictions on travel to New Zealand of persons from very high risk countries, case numbers could quickly escalate. New Zealand's COVID-19 Response planning includes border controls, vaccination, case detection and surveillance, contact tracing and managed isolation/quarantine, self-isolation, and community support for control measures.

The Epidemic Notice provides the enabling framework for other legislative instruments

28. The Government Administration Committee reported on the Law Reform (Epidemic Preparedness) Bill (which became the Epidemic Preparedness Act 2006) and noted that there should be a graduated approach to implementing and scaling back immediate modification orders. The Committee also commented that, to facilitate the graduated approach, an Epidemic Notice should remain in force for as long as an epidemic remains a threat. It was suggested that as an epidemic recedes, "the immediate modification orders should be scaled back gradually to facilitate society's return to normality,"² implying that the Epidemic Notice would be the last to be revoked.
29. s 9(2)(h)
30. All other instruments, particularly the epidemic management notices, will remain under review, and will be revoked if and when they are no longer necessary. The Epidemic Notice is the enabling framework for a range of other legislative powers and instruments, including epidemic management notices, and immediate modification orders (both made under the Act).

¹ Budget Economic and Fiscal Update 2021 (20 May 2021) produced by the New Zealand Treasury.

² Page 5 Law Reform (Epidemic Preparedness) Commentary – accessed on 11 June 2020 at

https://www.parliament.nz/resource/en-NZ/48DBSCH_SCR3588_1/bb53df3ec76505d2dfb175afc97631aed1cf0789.

31. s 9(2)(h)

The powers resulting from renewing the Epidemic Notice are significant

32. The powers resulting from the renewed Epidemic Notice are broad-ranging. They include the power to search (e.g., by way of testing) and detain persons (e.g., by way of orders directing an individual to isolate or quarantine in a managed facility). These are some of the most intrusive and significant powers a State can exercise over its people.
33. Exercising these powers limits the rights and freedoms in the New Zealand Bill of Rights Act 1990. They may only be limited by the Executive Government where this can be demonstrably justified in a free and democratic society. Exercise of the powers in any individual case must be necessary, reasonable and proportionate to the risk COVID-19 presents to the New Zealand community.
34. The power to make Immediate Modification Orders, which have the effect of modifying requirements set out in primary legislation, is also extraordinary and constitutionally unique.

35. s 9(2)(h)

In addition, the Ministry of Health constantly reviews the situation justifying the Epidemic Notice, and I will keep you informed. I will advise the Prime Minister to promptly revoke the Epidemic Notice if it appears the effects of the COVID-19 outbreak are no longer likely to disrupt essential government and business activity.

Recommendation to renew the Epidemic Notice

Given the impact on government and business activity, it is proposed the Epidemic Notice be renewed for a period of three months from 18 December 2021

36. The scale and extent of COVID-19 outbreaks overseas and the ongoing outbreak in New Zealand means COVID-19 continues to have a significant impact on government and business activity. This impact may continue for some time in light of the current outbreak of COVID-19 in New Zealand.
37. My recommendation is therefore that the Epidemic Notice is renewed for a further three months before its expiry on 19 December 2021. If the Epidemic Notice is renewed, it would continue in force (unless earlier revoked or renewed) until 18 March 2022.

There are safeguards and processes in place for the Prime Minister to renew the Epidemic Notice

38. There are important safeguards and forms of Parliamentary scrutiny in place to ensure that the use of powers associated with the Epidemic Notice are reasonable, including:
- a. the Prime Minister is required to notify the House of Representatives as soon as possible that an Epidemic Notice has been issued or renewed;
 - b. the House of Representatives has the opportunity to scrutinise Orders made during an epidemic. This provides a layer of swift scrutiny, and enhances the legitimacy of the Orders without imposing impractical requirements; and

- c. while the issuing of an Epidemic Notice would allow the modification or relaxation of laws, laws that protect fundamental rights and freedoms are prevented from being modified in this way, such as significant constitutional legislation including the Bill of Rights 1688, the Constitution Act 1986, the Electoral Act 1993, the Judicial Review Procedure Act 2016, the New Zealand Bill of Rights Act 1990, or the Parliamentary Privilege Act 2014.

Timing

- 39. The renewal of the Epidemic Notice will be published in the Gazette as soon as possible.
- 40. As soon as possible after giving the Epidemic Notice, the Prime Minister must present a copy of the Epidemic Notice to Parliament. This can be provided to the Office of the Clerk.

Equity

- 41. The spread of COVID-19 disproportionately harms older people and those with long term conditions such as diabetes or heart disease. Additionally, the disruption likely to result from the spread of the disease in New Zealand, and measures to contain it, is likely to disproportionately affect those who are unable to work from home, and people in certain industries, such as health, education, retail, aviation, tourism and hospitality.
- 42. There are a number of factors to balance in considering equity implications:
 - a. we know from historical examples that Māori and Pacific peoples are likely to be disproportionately affected by a widespread pandemic;
 - b. we also know that the spread of COVID-19 disproportionately harms older people, and those with long-term conditions such as diabetes or heart disease;
 - c. the disruption likely to result from the spread of COVID-19 in New Zealand, and measures to contain it, is likely to disproportionately affect those who are unable to work from home, and people in certain industries, such as health, education, retail, aviation, tourism and hospitality; and
 - d. we know that, in particular, Māori and Pacific communities are likely to be disproportionately affected by the impact of any controls.
- 43. The moves that have been taken to strongly and quickly control the outbreak have struck the correct balance between these factors.
- 44. The renewal of the Epidemic Notice will allow the government to rapidly and more effectively introduce measures early in an outbreak to reduce the peak of an epidemic, prevent and/or reduce community transmission, and mitigate harm to those most vulnerable.

Next steps

- 45. If the Epidemic Notice is renewed, the Ministry of Health will make arrangements for the Epidemic Notice to be published in the Gazette and to come into effect as soon as possible. Officials will work with the Department of Prime Minister and Cabinet to arrange for the Epidemic Notice to be presented to Parliament.

ENDS.

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Briefing

Renewal of the Epidemic Notice under section 7(1) of the Epidemic Preparedness Act 2006 (No 8)

Date due to MO: N/A **Action required by:** 15 March 2022

Security level: IN CONFIDENCE **Health Report number:** 20220212

To: Rt Hon Jacinda Ardern, Prime Minister
 Hon Chris Hipkins, Minister for COVID-19 Response
 Hon Andrew Little, Minister of Health

Contact for telephone discussion

Name	Position	Telephone
Robyn Shearer	Acting Director-General of Health	s 9(2)(a)
Phil Knipe	Chief Legal Advisor, Corporate Services	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:

Renewal of Epidemic Notice under section 7(1) of the Epidemic Preparedness Act 2006 (No 8)

Security level: IN CONFIDENCE **Date:** 7 March 2022

To: Rt Hon Jacinda Ardern, Prime Minister
Hon Chris Hipkins, Minister for COVID-19 Response
Hon Andrew Little, Minister of Health

Purpose of report

1. This report sets out my written recommendation, as Director-General of Health, that the Epidemic Preparedness (COVID-19) Notice 2020 (Epidemic Notice) be renewed and seeks your agreement to renew the Epidemic Notice.

Summary

1. The Epidemic Notice, issued under section 5 of the Epidemic Preparedness Act 2006 (the Act), came into force on 25 March 2020 for a maximum period of three months. That notice was renewed under section 7 of the Act on 24 June 2020, 23 September 2020, 22 December 2020, 21 March 2021, 20 June 2021, 19 September 2021 and 18 December 2021.
2. The Epidemic Notice can be renewed by the Prime Minister, whether the outbreak is occurring in New Zealand or overseas:
 - a. with the agreement of the Minister of Health;
 - b. after considering my written recommendation, as the Director-General of Health; and
 - c. if the Prime Minister is satisfied that the effects of the outbreak concerned are likely to continue to disrupt essential governmental and business activity in New Zealand significantly.
3. This report provides my written recommendation, as the Director-General of Health, that the Epidemic Notice be renewed. My recommendation is that the Epidemic Notice be renewed for the reasons set out in this report. These include that:
 - a. based on the ongoing international risk, and the ongoing outbreak in New Zealand, with cases numbers continuing to increase, COVID-19 will continue to disrupt essential governmental and business activity in New Zealand; and
 - b. while gains are being made to control the outbreak and spread of COVID-19 overseas, including a worldwide vaccination effort, the COVID-19 pandemic still presents significant disruption both in New Zealand and overseas, it is essential to

continue to have the legislative tools that are available while an epidemic notice is in force, for use as needed.

4. If the Epidemic Notice is renewed, as soon as possible after that renewal, the Prime Minister must present a copy of the renewed Epidemic Notice to Parliament.

Recommendations

It is recommended that you:

- a) **Note** that there continues to be large scale outbreaks of COVID-19 globally and an ongoing outbreak of community cases in New Zealand, which pose an ongoing risk to New Zealand.
- b) **Note** that an Epidemic Notice under section 5 of the Epidemic Preparedness Act 2006 is currently in place and expires at the close of 18 March 2022.
- c) **Note** that the Epidemic Notice enables a number of powers to be exercised under the COVID-19 Public Health Response Act 2020, the Health Act 1956 and the Epidemic Preparedness Act 2006.
- d) **Note** that a number of legislative provisions are contingent on the Epidemic Notice remaining in place.
- e) **Note** my advice that the ongoing outbreak of the Omicron variant of COVID-19 in New Zealand and globally, is likely to continue to disrupt essential governmental and business activity in New Zealand significantly.
- f) **Note** that the Epidemic Notice can be renewed whether the outbreak is occurring in New Zealand or overseas.
- g) **Note** that the Epidemic Notice is the enabling framework for a range of legislative instruments used to address the effects of the COVID-19 pandemic.
- h) **Note** my recommendation that the Epidemic Notice be renewed.
- i) **Note** the Prime Minister is required to make the decision as to whether the Epidemic Notice is renewed.
- j) **Agree**, as the Minister for COVID-19 Response, that the Epidemic Notice is renewed (*Minister for COVID-19 Response only*). Yes No
- k) **Agree**, as the Minister of Health, that the Epidemic Notice is renewed (*Minister of Health only*). Yes/No
- l) **Agree**, as the Prime Minister, that the Epidemic Notice be renewed: Yes/No
 - (i) having considered the written recommendation of the Director-General of Health; and
 - (ii) being satisfied that the effects of the outbreak concerned are likely to continue to disrupt essential governmental and

business activity in New Zealand significantly (*Prime Minister only*).

- m) **Note** the renewal of the Epidemic Notice will take effect upon publication in the Gazette and expire three months after its commencement, unless earlier renewed or revoked.
- n) **Note** when the renewal of the Epidemic Notice is signed, a copy of that renewal must be presented as soon as possible to Parliament.



Robyn Shearer
Acting Director-General of Health



Hon Chris Hipkins
Minister for COVID-19 Response
Date: 10/3/2022



Hon Andrew Little
Minister of Health

Date: 14/3/22



Rt Hon Jacinda Ardern
Prime Minister

Date: 15/3/22

Renewal of Epidemic Notice under section 7(1) of the Epidemic Preparedness Act 2006 (No 8)

Proposal

1. This paper recommends that the Epidemic Preparedness (COVID-19) Notice 2020 (Epidemic Notice) be renewed under section 7 of the Epidemic Preparedness Act 2006 (the Act).

Background

2. On 24 March 2020, the Prime Minister, with the agreement of the Minister of Health, after considering my written recommendation, issued the Epidemic Notice under section 5 of the Act. Unless earlier revoked or subsequently renewed, the Epidemic Notice expires three months after its commencement.
3. The first Epidemic Notice was to expire on 24 June 2020.
4. On 24 June 2020, the Prime Minister, with the agreement of the Minister of Health, after considering my written recommendation, renewed the Epidemic Notice. The Epidemic Notice was then due to expire on 24 September 2020.
5. The Epidemic Notice was renewed on six more occasions: on 23 September 2020, 22 December 2020, 21 March 2021, 20 June 2021, 19 September 2021 and 18 December 2021. It is now due to expire on 18 March 2022.
6. To renew the Epidemic Notice, the Prime Minister must:
 - a. have the agreement of the Minister of Health;
 - b. have considered my written recommendation, as the Director-General of Health; and
 - c. be satisfied the effects of an outbreak of COVID-19 are likely to continue to disrupt essential governmental and business activity in New Zealand significantly.
7. The Act states that an epidemic notice should be made with the agreement of the Minister of Health. I understand that the Prime Minister has written to the Minister for COVID-19 Response to provide that he is the Minister for the purposes of the COVID-19 response. As the renewal of an epidemic notice falls within the portfolio of the Minister for COVID-19 Response, it is appropriate for both the Minister of Health and the Minister for COVID-19 Response to agree to the renewal of the Epidemic Notice.
8. As at 7 March 2022:
 - a. the World Health Organisation (WHO) has determined COVID-19 to be a public health emergency of international concern under the International Health Regulations 2005, has declared the COVID-19 outbreak a global pandemic and has recommended that countries take a comprehensive approach to stopping the spread of COVID-19;

- b. there is widespread community transmission of COVID-19 globally and in New Zealand, case numbers are rising; and
 - c. the ongoing outbreak of COVID-19 nationally and globally continues to have a significant impact on New Zealand's economy through disruption to internal and external markets, supply chains and workers.
9. As required by the Act, I, as the Director-General of Health, have kept under review, and have kept you informed of, the situation during which the Epidemic Notice has been made.

Effects of an Epidemic Notice

Legislative powers: COVID-19 Public Health Response Act 2020 and the Health Act 1956

- 10. The Epidemic Notice allows for the use of powers under the COVID-19 Public Health Response Act 2020 (the COVID-19 Act) and 'special powers' under section 70 of the Health Act 1956 (the Health Act). These powers include requiring persons to refrain from taking any specified actions that contribute to or are likely to contribute to the risk of the outbreak or spread of COVID-19, or requiring persons to take specified actions to comply with specified measures that contribute or are likely to contribute to preventing the risk of the outbreak or spread of COVID-19.
- 11. These powers have been used by the Director-General of Health (acting with the powers of a medical officer of health in accordance with section 22 of the Health Act), to issue notices to classes of people in New Zealand. These powers have now been augmented by the COVID-19 Act.
- 12. Medical officers of health have been using the 'special powers' to prevent further outbreak or spread of COVID-19 and Orders for self-isolation have now been made under the COVID-19 Act. This has included requiring persons to be quarantined/isolated (both self-isolation and in Managed Isolation or Quarantine Facilities) and/or submitting themselves for medical examination and testing in an effort to minimise the risk to public health.
- 13. On 2 December 2021, the COVID-19 Public Health Response (Protection Framework) Order 2021 came into force. As at 7 March 2022, all regions in New Zealand are at the 'Red' setting in the COVID-19 Protection Framework.
- 14. Powers under the COVID-19 Act are currently being used to mandate requirements under the COVID-19 Orders (e.g., self-isolation, QR codes and contact records, face coverings, CVC requirements, testing, vaccination, physical distancing, gatherings, events and restrictions on access and on opening) and to continue border-related requirements such as managed isolation and quarantine and self-isolation arrangements.
- 15. Updated orders relating to border controls came into force on 27 February 2022. In light of the current outbreak, those controls are being reviewed as to whether they remain fit for purpose.

Epidemic Preparedness Act 2006

16. The Epidemic Notice also unlocks the power for the Prime Minister to make Epidemic Management Notices. Three notices are in place: the Epidemic Preparedness (Epidemic Management – COVID-19) Notice 2020, the Epidemic Preparedness (Epidemic Management – COVID-19) Notice (No 2) 2020 and the Epidemic Preparedness (Epidemic Management – COVID-19 – Parole Act 2002 and Sentencing Act 2002) Notice 2020. These notices activate epidemic provisions under the Social Security Act 2018, Immigration Act 2009, Parole Act 2002 and the Sentencing Act 2002. For example, they enable greater flexibility in relation to managing parole conditions.
17. As at 7 March 2022, there are nine Immediate Modification Orders in place under section 15 of the Act, through which the effect of primary legislation is temporarily modified to relax statutory requirements or restrictions to enable compliance that would otherwise be impossible or impractical. For example, the Immediate Modification Orders relax requirements for citizens to physically complete forms or be physically present to participate in activities or access government or other services. Two Immediate Modification Orders have been revoked:
 - a) the '*Epidemic Preparedness (COVID-19 – Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 – Term of Appointments to Te Pou Tupua*' was revoked on 10 June 2021; and
 - b) the '*Epidemic Preparedness (Medicines Act 1981 – COVID-19) Immediate Modification Order 2021*' was revoked on 3 February 2022 and was replaced by the '*Epidemic Preparedness (Medicines Act 1981 – COVID-19) Immediate Modification Order 2022*'.
18. Eight Immediate Notification Orders will be automatically revoked when the Epidemic Notice expires or is revoked.
19. In addition, a number of the provisions introduced through the COVID-19 Response (Further Management Measures) Legislation Act 2020 are contingent on the Epidemic Notice remaining in place. For example, one of the provisions is an obligation on coroners to test for COVID-19. Another provision enables the Commerce Commission to authorise conduct that may technically breach the restrictions on cartel conduct, but which is of such benefit to the public that it should be permitted.

An epidemic notice can only be issued or renewed if the effects COVID-19 are likely to disrupt essential government and business activity

20. By issuing and renewing the Epidemic Notice, the Prime Minister declared she was satisfied the effects of an outbreak of a quarantinable disease were likely to significantly disrupt essential government and business activity in New Zealand. This continues to be the case as regions in New Zealand and overseas jurisdictions still face high numbers of COVID-19 cases. There has been a significant growth of COVID-19 cases identified in the community, particularly in the Auckland region. Cases are expected to continue to grow rapidly which may put our health system under considerable pressure.
21. As at 11:59 pm on 6 March 2022, there are 192608 active cases of COVID-19 in New Zealand. There is an ongoing risk to New Zealand, as highlighted by ongoing community cases in New Zealand, particularly in the Auckland region, and at the border, with the need for controls to manage the public health risks.
22. While the rollout of COVID-19 vaccination is well advanced in New Zealand and in some places overseas, we still have some areas with low vaccination rates. The COVID-19

Omicron variant is the dominant strain in many parts of the world and is now widespread in the New Zealand community. The rollout of the Pfizer COVID-19 vaccine booster doses continues to mitigate the public health risk posed by COVID-19, including the Omicron variant.

The disruption to New Zealand's economy is ongoing

23. The outbreak overseas and in the community continues to have an impact on the New Zealand economy through disruption to supply chains, and ongoing impacts felt by restrictions imposed by the former Alert Level system. Border restrictions also have an ongoing impact on supply chains.
24. Internationally, COVID-19 supply disruptions continue to weigh on activity. The International Monetary Fund's (IMF) latest World Economic Outlook anticipates that while the Omicron variant will disrupt activity in the first quarter of 2022, this effect will fade over the remainder of the year.
25. The Government's proposed path of reopening the borders can be expected to help alleviate some of the labour market pinch points, but the rising risk of a large-scale Omicron outbreak in New Zealand, and the experience from overseas, suggests that disruptions may continue for several more months.¹
26. Domestically, the economic impacts of COVID-19 are significant and ongoing:
 - a. The impact of maintaining restrictions on the New Zealand border, in the context of COVID-19 globally, is approximately 2 to 3 percent of GDP at Red (approximately \$190 million per week); and
 - b. net core Crown debt is forecast to increase by close to \$35.8 billion by 2025/26, peaking as a share of GDP at 40.1 percent in 2022/23.²
27. It is observed that without the imposition of restrictions, COVID-19 would likely have caused a significant number of deaths, especially in our vulnerable communities and would have quickly overrun our health system. At Phase Three of the COVID-19 Response, there is a need to protect our health system and to prioritise those with the greatest health and welfare needs, and those most at risk from poor outcomes due to COVID-19.

The global situation continues to pose a significant risk to New Zealand

28. The continued effective operation of the Government is best served if the health impacts of COVID-19 are managed and minimised.
29. The WHO reported on 4 March 2022 that there have been 440,807,756 confirmed cases of COVID-19 reported globally, including 5,978,096 deaths. The global situation remains serious with weekly cases and deaths showing signs of declining, but still remain at high levels.
30. The scale of the COVID-19 pandemic presents a high risk of a further large-scale outbreak of COVID-19 in the New Zealand community.

¹ Fortnightly Economic Update (4 February 2022) produced by the New Zealand Treasury.

² Half Year Economic and Fiscal Update 2021 (15 December 2021) produced by the New Zealand Treasury.

31. At 11:59 pm on 24 February 2022, all of New Zealand moved to 'Phase Three' of the Omicron response. New Zealand's COVID-19 Response planning at Phase Three of the Omicron response primarily focuses on vaccination, testing, self-isolation, case detection and surveillance, contact tracing, border controls, self-management of COVID-19 cases, and community support for control measures. At present, managed isolation and quarantine continues to be a requirement for all unvaccinated travellers.
32. In Phase Three of the Omicron response, the priority is to reduce pressure on the health sector so it can focus its efforts on communities most at risk from COVID-19. There is a greater emphasis on self-management of COVID-19 cases, supported by digital tools.

The Epidemic Notice provides the enabling framework for other legislative instruments

33. The Government Administration Committee reported on the Law Reform (Epidemic Preparedness) Bill (which became the Epidemic Preparedness Act 2006) and noted that there should be a graduated approach to implementing and scaling back immediate modification orders. The Committee also commented that, to facilitate the graduated approach, an Epidemic Notice should remain in force for as long as an epidemic remains a threat. It was suggested that as an epidemic recedes, "the immediate modification orders should be scaled back gradually to facilitate society's return to normality,"³ implying that the Epidemic Notice would be the last to be revoked.

34. s 9(2)(h)

35. All other instruments, particularly the epidemic management notices, will remain under review, and will be revoked if and when they are no longer necessary. The Epidemic Notice is the enabling framework for a range of other legislative powers and instruments, including epidemic management notices, and immediate modification orders (both made under the Act).

36. s 9(2)(h)

The powers resulting from renewing the Epidemic Notice are significant

37. The powers resulting from the renewed Epidemic Notice are broad-ranging. They include the power to search (e.g., by way of testing) and detain persons (e.g., by way of

³ Page 5 Law Reform (Epidemic Preparedness) Commentary – accessed on 11 June 2020 at https://www.parliament.nz/resource/en-NZ/48DBSCH_SCR3588_1/bb53df3ec76505d2dfb175afc97631aed1cf0789.

orders directing an individual to isolate or quarantine in a managed facility). These are some of the most intrusive and significant powers a State can exercise over its people.

38. Exercising these powers limits the rights and freedoms in the New Zealand Bill of Rights Act 1990. They may only be limited by the Executive Government where this can be demonstrably justified in a free and democratic society. Exercise of the powers in any individual case must be necessary, reasonable and proportionate to the risk COVID-19 presents to the New Zealand community.
39. The power to make Immediate Modification Orders, which have the effect of modifying requirements set out in primary legislation, is also extraordinary and constitutionally unique.
40. s 9(2)(h) [REDACTED] In addition, the Ministry of Health constantly reviews the situation justifying the Epidemic Notice, and I will keep you informed. I will advise the Prime Minister to promptly revoke the Epidemic Notice if it appears the effects of the COVID-19 outbreak are no longer likely to disrupt essential government and business activity.

Recommendation to renew the Epidemic Notice

Given the impact on government and business activity, it is proposed the Epidemic Notice be renewed for a period of three months from 17 March 2022

41. The scale and extent of COVID-19 outbreaks overseas and the ongoing outbreak in New Zealand means COVID-19 continues to have a significant impact on government and business activity. This impact may continue for some time in light of the current outbreak of COVID-19 in New Zealand.
42. My recommendation is therefore that the Epidemic Notice is renewed for a further three months before its expiry on 18 March 2022. If the Epidemic Notice is renewed, it would continue in force (unless earlier revoked or renewed) until 17 June 2022.

There are safeguards and processes in place for the Prime Minister to renew the Epidemic Notice

43. There are important safeguards and forms of Parliamentary scrutiny in place to ensure that the use of powers associated with the Epidemic Notice are reasonable, including:
 - a. the Prime Minister is required to notify the House of Representatives as soon as possible that an Epidemic Notice has been issued or renewed;
 - b. the House of Representatives has the opportunity to scrutinise Orders made during an epidemic. This provides a layer of swift scrutiny, and enhances the legitimacy of the Orders without imposing impractical requirements; and
 - c. while the issuing of an Epidemic Notice would allow the modification or relaxation of laws, laws that protect fundamental rights and freedoms are prevented from being modified in this way, such as significant constitutional legislation including the Bill of Rights 1688, the Constitution Act 1986, the Electoral Act 1993, the Judicial Review Procedure Act 2016, the New Zealand Bill of Rights Act 1990, or the Parliamentary Privilege Act 2014.

Timing

44. The renewal of the Epidemic Notice will be published in the Gazette as soon as possible.
45. As soon as possible after giving the Epidemic Notice, the Prime Minister must present a copy of the Epidemic Notice to Parliament. This can be provided to the Office of the Clerk.

Equity

46. The spread of COVID-19 disproportionately harms older people and those with long term conditions such as diabetes or heart disease. Additionally, the disruption likely to result from the spread of the disease in New Zealand, and measures to contain it, is likely to disproportionately affect those who are unable to work from home, and people in certain industries, such as health, education, retail, aviation, tourism and hospitality.
47. There are a number of factors to balance in considering equity implications:
 - a. we know from historical examples that Māori and Pacific peoples are likely to be disproportionately affected by a widespread outbreak of a pandemic;
 - b. we also know that the spread of COVID-19 disproportionately harms older people, and those with long-term conditions such as diabetes or heart disease;
 - c. the disruption likely to result from the spread of COVID-19 in New Zealand, and measures to contain it, is likely to disproportionately affect those who are unable to work from home, and people in certain industries, such as health, education, retail aviation, tourism and hospitality; and
 - d. we know that, in particular, Māori and Pacific communities are likely to be disproportionately affected by the impact of any controls.
48. The moves that have been taken to strongly and quickly control the outbreak have struck the correct balance between these factors.
49. The renewal of the Epidemic Notice will allow the government to rapidly and more effectively introduce measures to mitigate harm to and to protect those most vulnerable.

Next steps

50. If the Epidemic Notice is renewed, the Ministry of Health will make arrangements for the Epidemic Notice to be published in the Gazette and to come into effect as soon as possible. Officials will work with the office of the Minister for COVID-19 Response to ensure that the Epidemic Notice is presented to Parliament.

ENDS.

Briefing

Renewal of the Epidemic Notice under section 7(1) of the Epidemic Preparedness Act 2006 (No 9)

Date due to MO:	N/A	Action required by:	14 June 2022
Security level:	IN CONFIDENCE	Health Report number:	20220826
To:	Rt Hon Jacinda Ardern, Prime Minister Hon Chris Hipkins, Minister for COVID-19 Response Hon Andrew Little, Minister of Health		

Contact for telephone discussion

Name	Position	Telephone
Ashley Bloomfield	Director-General of Health	s 9(2)(a)
Phil Knipe	Chief Legal Advisor, Corporate Services	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:

Renewal of Epidemic Notice under section 7(1) of the Epidemic Preparedness Act 2006 (No 9)

Security level:	IN CONFIDENCE	Date:	7 June 2022
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To:	Rt Hon Jacinda Ardern, Prime Minister
	Hon Chris Hipkins, Minister for COVID-19 Response
	Hon Andrew Little, Minister of Health

Purpose of report

1. This report sets out my written recommendation, as Director-General of Health, that the Epidemic Preparedness (COVID-19) Notice 2020 (Epidemic Notice) be renewed and seeks your agreement to renew the Epidemic Notice.

Summary

1. The Epidemic Notice, issued under section 5 of the Epidemic Preparedness Act 2006 (the Act), came into force on 25 March 2020 for a maximum period of three months. That notice was renewed under section 7 of the Act on 24 June 2020, 23 September 2020, 22 December 2020, 21 March 2021, 20 June 2021, 19 September 2021, 18 December 2021 and 17 March 2022.
2. The Epidemic Notice can be renewed by the Prime Minister:
 - a. with the agreement of the Minister of Health;
 - b. after considering my written recommendation, as the Director-General of Health; and
 - c. if the Prime Minister is satisfied that the effects of the outbreak concerned (whether occurring in New Zealand or overseas) are likely to continue to disrupt essential governmental and business activity in New Zealand (or parts of New Zealand) significantly.
3. This report provides my written recommendation, as the Director-General of Health, that the Epidemic Notice be renewed. My recommendation is that the Epidemic Notice be renewed for the reasons set out in this report. These include that:
 - a. based on the ongoing international risk with the possibility of new variants, and the ongoing outbreak in New Zealand, with cases and hospitalisations remaining high, and the prospect of a second wave coinciding with winter pressures on the health system, COVID-19 will continue to significantly disrupt essential governmental and business activity in New Zealand; and

- b. while gains have been made to control the outbreak and spread of COVID-19 overseas and domestically, including a worldwide vaccination effort, the COVID-19 pandemic still presents significant disruption both in New Zealand and overseas, including because of new COVID-19 variants, so it is essential to continue to have the legislative tools that are available while an epidemic notice is in force, for use as needed.
- 4. If the Epidemic Notice is renewed, as soon as possible after that renewal, the Prime Minister must present a copy of the renewed Epidemic Notice to Parliament.

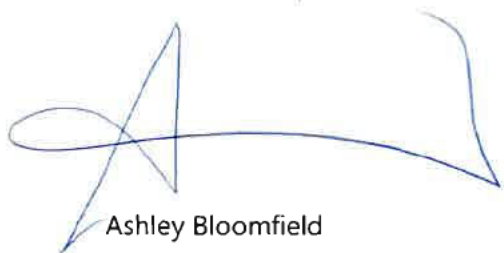
Recommendations

It is recommended that you:

- a) **Note** that there continues to be large scale outbreaks of COVID-19 globally and an ongoing outbreak of community cases in New Zealand, which pose an ongoing risk to New Zealand.
- b) **Note** that an Epidemic Notice under section 5 of the Epidemic Preparedness Act 2006 is currently in place and expires at the close of 17 June 2022.
- c) **Note** that the Epidemic Notice enables a number of powers to be exercised under the COVID-19 Public Health Response Act 2020, the Health Act 1956 and the Epidemic Preparedness Act 2006.
- d) **Note** that a number of legislative provisions are contingent on the Epidemic Notice remaining in place.
- e) **Note** my advice that the effects of the ongoing outbreak of the Omicron variant of COVID-19 in New Zealand and globally, are likely to continue to disrupt essential governmental and business activity in New Zealand significantly.
- f) **Note** that with the current status of the Omicron variant, it is expected that there will be an increase of COVID-19 cases over the winter period where powers under the COVID-19 Public Health Response Act 2020 will continue to be required to manage public health risks.
- g) **Note** that the Epidemic Notice can be renewed whether the outbreak is occurring in New Zealand or overseas.
- h) **Note** that the Epidemic Notice is the enabling framework for a range of legislative instruments used to address the effects of the COVID-19 pandemic.
- i) **Note** my recommendation that the Epidemic Notice be renewed.
- j) **Note** the Prime Minister is required to make the decision as to whether the Epidemic Notice is renewed.
- k) **Agree**, as the Minister for COVID-19 Response, that the Epidemic Notice is renewed (*Minister for COVID-19 Response only*). Yes/No

- l) **Agree**, as the Minister of Health, that the Epidemic Notice is renewed **Yes/No**
(*Minister of Health only*).
- m) **Agree**, as the Prime Minister, that the Epidemic Notice be renewed: **Yes/No**
- (i) having considered the written recommendation of the Director-General of Health; and
 - (ii) being satisfied that the effects of the outbreak concerned are likely to continue to disrupt essential governmental and business activity in New Zealand significantly (*Prime Minister only*).
- n) **Note** the renewal of the Epidemic Notice will take effect upon publication in the Gazette and expire three months after its commencement, unless earlier renewed or revoked.
- o) **Note** when the renewal of the Epidemic Notice is signed, a copy of that renewal must be presented as soon as possible to Parliament.

s 9(2)(g)(i)



Ashley Bloomfield

Te Tumu Whakarae mō te Hauora
Director-General of Health

7/6/22



Hon Chris Hipkins

Minister for COVID-19 Response

Date: 9/6/2022



Hon Andrew Little

Minister of Health

Date: 10/6/22



Rt Hon Jacinda Ardern

Prime Minister

Date: 12/6/22

Renewal of Epidemic Notice under section 7(1) of the Epidemic Preparedness Act 2006 (No 9)

Proposal

1. This paper recommends that the Epidemic Preparedness (COVID-19) Notice 2020 (Epidemic Notice) be renewed under section 7 of the Epidemic Preparedness Act 2006 (the Act).

Background

2. On 24 March 2020, the Prime Minister, with the agreement of the Minister of Health, after considering my written recommendation, issued the Epidemic Notice under section 5 of the Act. Unless earlier revoked or subsequently renewed, the Epidemic Notice expires three months after its commencement.
3. The first Epidemic Notice was to expire on 24 June 2020.
4. On 24 June 2020, the Prime Minister, with the agreement of the Minister of Health, after considering my written recommendation, renewed the Epidemic Notice. The Epidemic Notice was then due to expire on 24 September 2020.
5. The Epidemic Notice was renewed on seven more occasions: on 23 September 2020, 22 December 2020, 21 March 2021, 20 June 2021, 19 September 2021, 18 December 2021 and 17 March 2022. It is now due to expire on 17 June 2022.
6. To renew the Epidemic Notice, the Prime Minister must:
 - a. have the agreement of the Minister of Health;
 - b. have considered my written recommendation, as the Director-General of Health; and
 - c. be satisfied the effects of an outbreak of COVID-19 are likely to continue to disrupt essential governmental and business activity in New Zealand significantly.
7. The Act states that an epidemic notice should be made with the agreement of the Minister of Health. I understand that the Prime Minister has written to the Minister for COVID-19 Response to provide that he is the Minister for the purposes of the COVID-19 response. As the renewal of an epidemic notice falls within the portfolio of the Minister for COVID-19 Response, it is appropriate for both the Minister of Health and the Minister for COVID-19 Response to agree to the renewal of the Epidemic Notice.
8. As at 7 June 2022:
 - a. the World Health Organisation (WHO) has determined COVID-19 to be a public health emergency of international concern under the International Health Regulations 2005, has declared the COVID-19 outbreak a global pandemic and has recommended that countries take a comprehensive approach to stopping the spread of COVID-19;

- b. there is widespread community transmission of COVID-19 globally and in New Zealand, cases and hospitalisations remain stubbornly high, with the prospect of a second wave coinciding with winter pressures on the health system; and
 - c. the ongoing outbreak of COVID-19 nationally and globally continues to have a significant impact on New Zealand's economy through disruption to internal and external markets, supply chains and workers.
9. As required by the Act, I, as the Director-General of Health, have kept under review, and have kept you informed of, the situation during which the Epidemic Notice has been made.

Effects of an Epidemic Notice

Legislative powers: COVID-19 Public Health Response Act 2020 and the Health Act 1956

- 10. The Epidemic Notice allows for the use of powers under the COVID-19 Public Health Response Act 2020 (the COVID-19 Act) and 'special powers' under section 70 of the Health Act 1956 (the Health Act). These powers include requiring persons to refrain from taking any specified actions that contribute to or are likely to contribute to the risk of the outbreak or spread of COVID-19 or requiring persons to take specified actions to comply with specified measures that contribute or are likely to contribute to preventing the risk of the outbreak or spread of COVID-19.
- 11. These powers have been used by the Director-General of Health (acting with the powers of a medical officer of health in accordance with section 22 of the Health Act), to issue notices to classes of people in New Zealand. These powers have now been augmented by the COVID-19 Act.
- 12. Medical officers of health have been using the 'special powers' to prevent further outbreak or spread of COVID-19 and Orders for self-isolation have been made by the Minister for COVID-19 Response under the COVID-19 Act which requires persons to self-isolate and to submit themselves for medical examination and testing in an effort to minimise the risk to public health.
- 13. On 2 December 2021, the COVID-19 Public Health Response (Protection Framework) Order 2021 came into force. On 13 April 2022, all New Zealand moved from the Red to the Orange setting of the COVID-19 Protection Framework, after having been at Red for a prolonged period during the Omicron outbreak.
- 14. Powers under the COVID-19 Act are currently being used to mandate requirements under the COVID-19 Orders (e.g., self-isolation, face coverings, testing and vaccination requirements). While New Zealand has been gradually easing border restrictions, certain border-related requirements such as pre-departure testing and vaccination requirements are still being continued. The final step of the Reconnecting New Zealand strategy is due to come into effect from 31 July 2022.
- 15. Updated orders relating to border controls came into force on 27 February 2022. In light of the current outbreak, those controls continue to be reviewed as to whether they remain fit for purpose.

Epidemic Preparedness Act 2006

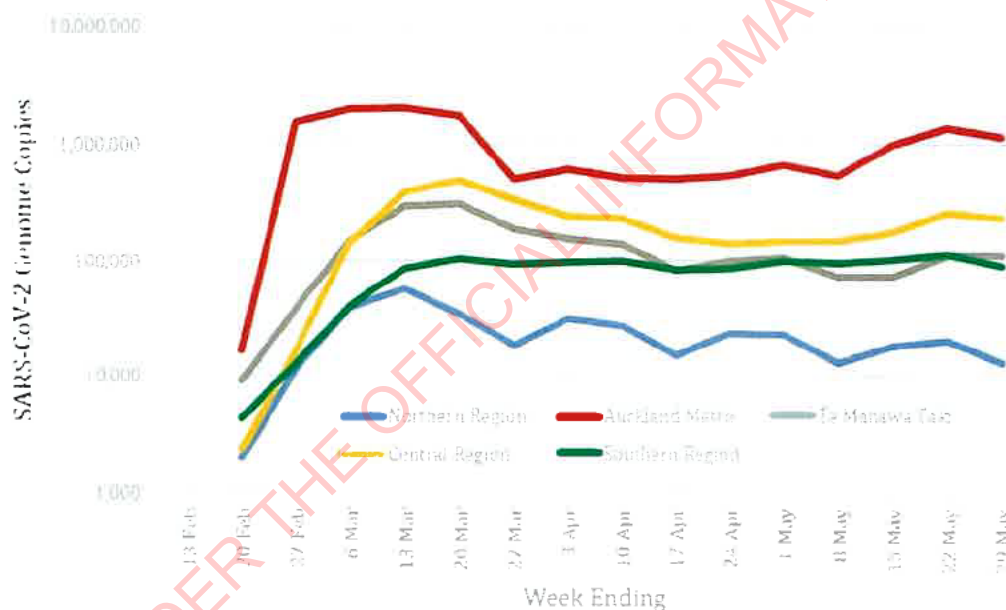
16. The Epidemic Notice also unlocks the power under section 8 of the Act for the Prime Minister to make Epidemic Management Notices. Four notices are in place: the Epidemic Preparedness (Epidemic Management – COVID-19) Notice 2020, the Epidemic Preparedness (Epidemic Management – COVID-19) Notice (No 2) 2020, the Epidemic Preparedness (Epidemic Management – COVID-19 – Parole Act 2002 and Sentencing Act 2002) Notice 2020 and the Epidemic Preparedness (Epidemic Management – COVID-19 – Parole Act 2002) Notice 2022. These notices activate epidemic provisions under the Social Security Act 2018, Immigration Act 2009, Parole Act 2002 and the Sentencing Act 2002. For example, they enable greater flexibility in relation to managing parole conditions.
17. As at 7 June 2022, there are also eight Immediate Modification Orders in place under section 15 of the Act, through which the effect of primary legislation is temporarily modified to relax statutory requirements or restrictions to enable compliance that would otherwise be impossible or impractical. For example, the Immediate Modification Orders relax requirements for citizens to physically complete forms or be physically present to participate in activities or access government or other services. Three Immediate Modification Orders have been revoked:
 - a) the '*Epidemic Preparedness (COVID-19 – Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 - Term of Appointments to Te Pou Tupua*' was revoked on 10 June 2021;
 - b) the '*Epidemic Preparedness (Medicines Act 1981 – COVID-19) Immediate Modification Order 2021*' was revoked on 3 February 2022 and was replaced by the '*Epidemic Preparedness (Medicines Act 1981 – COVID-19) Immediate Modification Order 2022*'; and
 - c) the '*Epidemic Preparedness (Employment Relations Act 2000 – Collective Bargaining) Immediate Modification Order 2020*' was revoked on 6 May 2022 by the '*Epidemic Preparedness (Employment Relations Act 2000 – Collective Bargaining) Immediate Modification Order Revocation Order 2022*'.
18. Currently five Immediate Notification Orders will be automatically revoked if the Epidemic Notice expires or is revoked.
19. In addition, a number of the provisions introduced through the COVID-19 Response (Further Management Measures) Legislation Act 2020 are contingent on the Epidemic Notice remaining in place. For example, one of the provisions is an obligation on coroners to test for COVID-19. Another provision enables the Commerce Commission to authorise conduct that may technically breach the restrictions on cartel conduct, but which is of such benefit to the public that it should be permitted.

An epidemic notice can only be issued or renewed if the effects of an outbreak of COVID-19 are likely to disrupt essential government and business activity in New Zealand significantly

20. By issuing and then repeatedly renewing the Epidemic Notice, the Prime Minister declared she was satisfied the effects of an outbreak of a quarantinable disease were likely to significantly disrupt essential government and business activity in New Zealand. For the reasons set out below, this continues to be the case.

Case numbers and the disruption to essential governmental activity

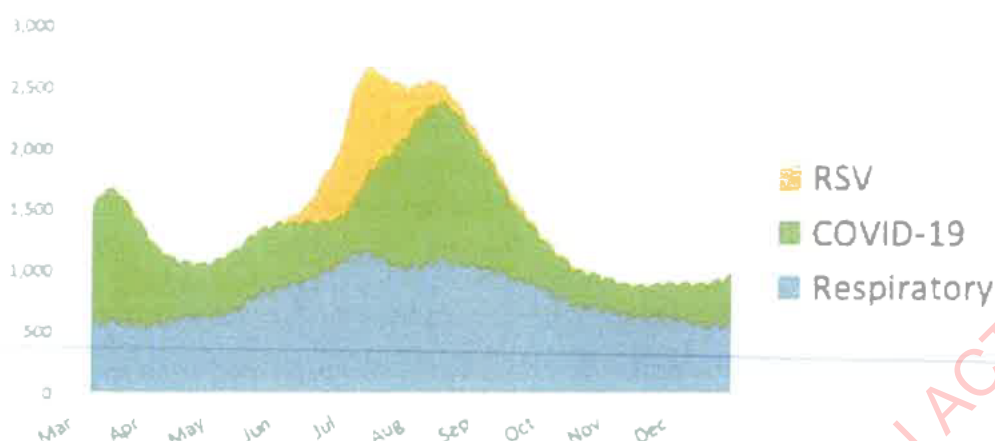
21. New Zealand (and overseas jurisdictions) still face the impacts of high numbers of COVID-19 cases. While the first Omicron peak has passed, I consider that New Zealand is likely to face a further wave of COVID-19 cases due to the impact of COVID-19 vaccine waning, reduce vaccine uptake for booster dose, especially as we enter the winter period and relatively high ongoing numbers of new cases, under the current Omicron BA.2 outbreak.
22. Routine border worker testing comparisons with national case rates suggest substantial under ascertainment of cases (1.4% [14 per 1,000] versus 9.6 per 1,000, respectively). Levels of viral RNA in wastewater have not substantially changed in any region for the past two months. Indicating a high underlying level of new infections. Figure 1.
23. **Figure 1:** Regional wastewater trends in SARS-CoV-2 genome quantification for weeks 20 February – 29 May 2022



Source: ESR, SARS-CoV-2 in 'Wastewater Update', week ending 29 May 2022.

24. Modelling in Figure 2 suggests that the COVID-19 outbreak, combined with the impact of seasonal illness (particularly respiratory and RSV) will cause significant disruption to the health system and wider society, particularly over the winter period.

Figure 2: Hospital beds occupied, with COVID-19 second wave and RSV outbreak



Source: Ministry of Health, District Health Boards via TAS planning website

25. As at 11:59 pm on 4 June 2022, there were 47,965 active cases of COVID-19 in New Zealand. There is an ongoing risk of illness, hospitalisation or death given the numbers infected with COVID-19, as highlighted by ongoing community cases in New Zealand, and at the border.
26. The COVID-19 Omicron variant is the dominant strain in many parts of the world and is now widespread in the New Zealand community. While the rollout of the Pfizer COVID-19 vaccine is well advanced in New Zealand and mitigates the public health risk posed by COVID-19, including the Omicron variant, we still have some parts of New Zealand with low vaccination rates.
27. The effect of the Omicron outbreak is likely to continue to significantly disrupt the public health system both directly and indirectly, through COVID-19 treatment and disruption to other services. There is a need for controls to manage the public health risks that arise from the COVID-19 outbreak, including controls that manage demands on the public health system.
28. It is observed that without the imposition of restrictions which are enabled by the Epidemic Notice, COVID-19 would likely have caused a significant number of deaths, especially in our vulnerable communities and would have quickly overrun our health system. Under our current minimise and protect strategy, there is a need to protect our health system and to prioritise those most at risk from poor outcomes due to COVID-19.

The disruption to New Zealand's economy is ongoing

29. COVID-19 continues to have a significant fiscal impact on the Government's finances. The economic recovery from COVID-19 is dependent on many unknown factors, including the recovery of key trading partners and the emergence of future variants.¹
30. While the New Zealand economy has overall been resilient to the transmission of the Delta and the Omicron variants across the country, some businesses and households

¹ Budget Economic and Fiscal Update 2022 produced by the New Zealand Treasury.

have been impacted more than others.² The Omicron outbreak will weaken GDP growth in the first half of 2022, but the economic impact is expected to be small and temporary relative to prior variants.³ Even though the disruption has reduced, when compared to other variants, the effects of the outbreak of COVID-19 is likely to continue to significantly disrupt essential business activity in New Zealand, including ongoing impacts on supply chains and workforce.

31. The global outlook has deteriorated as the Russia-Ukraine conflict and COVID-19 restrictions in China disrupt global supply chains.⁴ The effects of the Omicron outbreak, when combined with these geo-political and economic factors, is likely to significantly disrupt essential business activity.
32. The effect of the Omicron outbreak is expected to dampen economic growth during the first half of the year as employee sickness and isolation requirements reduce activity and consumers become more risk averse. A rebound in activity is expected as the Omicron outbreak recedes, with easing border restrictions and robust investment also helping to drive annual average GDP growth up to 4.2% for the June 2023 year.⁵
33. The Omicron outbreak has also weighed on household spending in the quarter. The March quarter Retail Trade Survey showed sales volumes fell 0.5%, while values rose 0.5%. Overall, the small decline in retail sales is consistent with the Budget Update forecast of a small fall in household consumption in the quarter. However, a larger fall remains a risk.⁶
34. New Zealand has been at the Red and/or Orange setting of the COVID-19 Protection Framework for the first five months of 2022 and it is expected to be at the Orange setting for the remainder of the June 2022 quarter. The Red setting is assumed to have reduced economic activity by 2-3% across the March 2022 quarter while the Orange setting is expected to reduce economic activity by 0-2% during the June 2022 quarter.⁷
35. For the reasons stated above, I consider that the effects of the outbreak of COVID-19 are likely to continue to disrupt essential business activity in New Zealand significantly.

The global situation continues to pose a risk to New Zealand

36. The World Health Organization (WHO) reported on 6 June 2022, that there have been 529,410,287 confirmed cases of COVID-19 reported globally, including 6,296,771 deaths. Globally, the number of new weekly cases has continued to decline since a peak in January 2022. However, while the global and domestic trends seem to be positive, weekly cases and deaths remain at high levels and there is a risk of a second wave of COVID-19.

² Budget Economic and Fiscal Update 2022 produced by the New Zealand Treasury.

³ Budget Economic and Fiscal Update 2022 produced by the New Zealand Treasury.

⁴ Fortnightly Economic Update (27 May 2022) produced by the New Zealand Treasury.

⁵ Budget Economic and Fiscal Update 2022 produced by the New Zealand Treasury.

⁶ Fortnightly Economic Update (27 May 2022) produced by the New Zealand Treasury.

⁷ Budget Economic and Fiscal Update 2022 produced by the New Zealand Treasury.

37. There is uncertainty around the future course of the pandemic as international travel resumes, vaccine inequities exist between countries and within countries and new variants of concern emerge.
38. As part of New Zealand's minimise and protect strategy, the priority is to protect the health system and to focus our efforts on people and communities most at risk from COVID-19.

The Epidemic Notice provides the enabling framework for other legislative instruments

39. The Epidemic Notice is the enabling framework for a range of other legislative powers and instruments, including epidemic management notices, and immediate modification orders (both made under the Act). All other instruments, particularly the epidemic management notices, will remain under review, and will be revoked if and when they are no longer necessary. Since the last renewal of the Epidemic Notice, certain requirements have been revoked, such as COVID-19 Vaccination Certificate (CVC) requirements under the COVID-19 Public Health Response (Protection Framework) Order 2021, and vaccination requirements of certain workers under the COVID-19 Public Health Response (Vaccinations) Order 2021.

40. s 9(2)(h)

41. s 9(2)(h)

a. s 9(2)(h)

b.


c.

The powers resulting from renewing the Epidemic Notice are significant

42. The powers resulting from the Epidemic Notice are broad-ranging. At present they include the power to search (e.g., by way of testing) and detain persons (e.g., by way of orders directing an individual to isolate or quarantine in a managed facility). These are some of the most intrusive and significant powers a State can exercise over its people.
43. Exercising these powers limits the rights and freedoms in the New Zealand Bill of Rights Act 1990. They may only be limited by the Executive Government where this can be demonstrably justified in a free and democratic society. Exercise of the powers in any individual case must be necessary, reasonable and proportionate to the risk COVID-19 presents to the New Zealand community.

44. The power to make Immediate Modification Orders, which have the effect of modifying requirements set out in primary legislation, is also extraordinary and constitutionally unique.

45. s 9(2)(h)



46. In addition, the Ministry of Health constantly reviews the basis for the Epidemic Notice, and I will keep you informed of the outcome of these reviews. I will advise the Prime Minister to promptly revoke the Epidemic Notice if I consider that the effects of the COVID-19 outbreak are no longer likely to significantly disrupt essential government and business activity in New Zealand.

Recommendation to renew the Epidemic Notice

Given the impact of the COVID-19 outbreak on essential government and business activity, it is proposed the Epidemic Notice be renewed for a period of three months from 16 June 2022

47. The scale and extent of COVID-19 outbreaks overseas and the ongoing outbreak in New Zealand means the outbreak of COVID-19 continues to significantly disrupt essential government and business activity and is likely to continue to do so.
48. My recommendation is therefore that the Epidemic Notice is renewed for a further three months before its expiry on 17 June 2022. If the Epidemic Notice is renewed, it would continue in force (unless earlier revoked or renewed) until 16 September 2022.

There are safeguards and processes in place for the Prime Minister to renew the Epidemic Notice

49. There are important safeguards and forms of Parliamentary scrutiny in place to ensure that the use of powers associated with the Epidemic Notice are reasonable, including:
- a. the Prime Minister is required to notify the House of Representatives as soon as possible that an Epidemic Notice has been issued or renewed;
 - b. the House of Representatives has the opportunity to scrutinise Orders made during an epidemic. This provides a layer of swift scrutiny, and enhances the legitimacy of the Orders without imposing impractical requirements; and
 - c. while the issuing of an Epidemic Notice would allow the modification or relaxation of laws, laws that protect fundamental rights and freedoms are prevented from being modified in this way, such as significant constitutional legislation including the Bill of Rights 1688, the Constitution Act 1986, the Electoral Act 1993, the Judicial Review Procedure Act 2016, the New Zealand Bill of Rights Act 1990, or the Parliamentary Privilege Act 2014.

Timing

50. The renewal of the Epidemic Notice will be published in the Gazette as soon as possible.
51. As soon as possible after giving the Epidemic Notice, the Prime Minister must present a copy of the Epidemic Notice to Parliament. This can be provided to the Office of the Clerk.

Equity

52. The spread of COVID-19 disproportionately harms at risk populations such as those who are living in areas of high material deprivation, immune compromised, older people and those with long term conditions such as diabetes or heart disease. Additionally, the disruption likely to result from the spread of the disease in New Zealand, and measures to contain it, is likely to disproportionately affect those who are unable to work from home, and people in certain industries, such as health, education, retail, aviation, tourism and hospitality.
53. There are a number of factors to balance in considering equity implications:
 - a. we know from historical examples that Māori and Pacific peoples are likely to be disproportionately affected by a widespread outbreak of a pandemic;
 - b. we also know that the spread of COVID-19 disproportionately harms immunocompromised people, older people, and those with long-term conditions such as diabetes or heart disease;
 - c. the disruption likely to result from the spread of COVID-19 in New Zealand, and measures to contain it, is likely to disproportionately affect those who are unable to work from home, and people in certain industries, such as health, education, retail aviation, tourism and hospitality; and
 - d. we know that, in particular, Māori and Pacific communities are likely to be disproportionately affected by the impact of any controls.
54. The moves that have been taken to strongly and quickly control the outbreak have struck the correct balance between these factors.
55. The renewal of the Epidemic Notice will allow the government to rapidly and more effectively introduce measures to mitigate harm to and to protect those most vulnerable.

Next steps

56. If the Epidemic Notice is renewed, the Ministry of Health will make arrangements for the Epidemic Notice to be published in the Gazette and to come into effect as soon as possible. Officials will work with the office of the Minister for COVID-19 Response to ensure that the Epidemic Notice is presented to Parliament.

ENDS.