

Briefing

Options for progression of the COVID-19 Public Health Response Amendment Bill

Date due to MO: 2 August 2021 **Action required by:** 9 August 2021

Security level: IN CONFIDENCE **Health Report number:** 20211742

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

Contact for telephone discussion

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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 Withdrawn | |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:

Options for progression of the COVID-19 Public Health Response Amendment Bill

Security level: IN CONFIDENCE

Date: 30 September 2021

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

Purpose of report

1. This briefing provides you with updated timelines for the options for progressing the COVID-19 Public Health Response Amendment Bill (the Bill), dependent upon future policy decisions regarding integration of increased maximum penalties in the Bill.

Summary

2. You have requested further advice from officials regarding how to increase the penalties in the Bill beyond the maximums approved by Cabinet [SWC-21-MIN-00067 refers] and contemplated in the Bill. The Department of Prime Minister and Cabinet (DPMC) will be providing that additional advice to you in the coming weeks.
3. In the meantime, this briefing provides you with options for progressing the Ministerial consultation and introduction of the Bill in its current form if you so wish, and procedural options to give effect to any agreed change in the penalty maximums in the Bill. The timelines have been drafted applying all potential time savings (taking into account sitting weeks, recesses and Standing Orders), including progressing straight through Cabinet, undertaking work concurrently instead of sequentially, and minimising Parliamentary Counsel Office (PCO) drafting time.
4. If you progress with the Bill as is, the new timeline sees the Bill commencing the first week of November, with the new infringement penalties coming into force with the Regulations in early December. These timelines are set out in the table in **Appendix One**.
5. If you wish to progress with the Bill in its current form, we propose you undertake Ministerial consultation from Monday 9 August to Monday 16 August (inclusive). The LEG paper for this consultation is attached in **Appendix Two**, and version 3.0 of the Bill is attached in **Appendix Three**. Officials will provide you with a new version of the Bill on Monday 9 August, that has been more thoroughly reviewed by PCO.

Options for progressing with amended penalty settings

6. If you wish to progress with amending the existing penalty settings in the Bill, you have two options:
 - a. **Option One:** pause the introduction of the Bill until the policy work supporting increased penalty settings has been undertaken, the decisions have been reconsidered by Cabinet, and the Bill amended to include the new maximums. This is

estimated to take an additional seven weeks, making use of any identifiable time savings and taking into account Standing Orders and House sitting time. The timeline setting out these additional timeframes is attached in **Appendix two**.

This option provides a more predictable process and more certainty and control over timeframes. The additional timeframes are absorbed upfront, with officials leading the process. However, the Bill introduction and referral to Select Committee is further delayed.

- b. **Option Two:** introduce the current Bill as in para 5 above and attached in Appendix One, while undertaking work concurrently on the change to penalty settings. However, instead of progressing as an amendment to the Bill any change in penalty settings will progress as a Supplementary Order Paper (SOP) introduced during the Select Committee stage. Note that adding a new SOP at the Select Committee stage will increase the difficulty of the Bill's passage through the House. Additionally, the Select Committee may wish to either:
- i. extend the timeframe for consideration to provide for additional submissions to be made and analysis undertaken, or
 - ii. require an additional separate single issue Select Committee process to consider the penalty provisions alone.

This option will allow for the Bill to be introduced and referred to Select Committee as planned, with officials undertaking work concurrently on the revised penalty settings. However, the additional timeframes for this option are unpredictable and an SOP may result in a more contentious process at Select Committee.

Issues that would benefit from progressing sooner

7. Both Options One and Two will delay commencement of the Bill. While the majority of the changes included in the Bill are not needed urgently, two changes are of particular importance and time sensitivity. Those are:
- a. The improvements to the sub-delegation section to provide for better sub-delegation within Orders. This is needed to address the ongoing sub-delegation issue identified by the Regulations Review Committee and will enable significant simplification and improvement of the drafting of Orders, especially when this must be done at pace.
 - b. The ability to incorporate material by reference into Orders, including automatically updating for new versions¹. This will reduce the significant administrative burden of the current use of section 70 Health Act 1956 Directions to name locations of interest and will greatly support the Reconnecting New Zealand work by improving the speed of communication and information-sharing about Quarantine Free Travel agreements between New Zealand and other countries.
8. It could be possible to progress these two matters outside of the Bill if an appropriate legislative vehicle could be found. It is recommended that you agree to officials identifying any potential legislative vehicles that might deliver these changes sooner.

¹ Such as referencing another country's government website for lists of locations of interests, with the reference automatically referring to the most recent version of that list without requiring further updates to the Order.

Next steps

9. Following advice of your preferred option, officials will:
- a. continue to progress this work according to the timeframes indicated in Appendix One
 - b. identify any potential vehicles to progress an urgent amendment for the two issues identified above (sub-delegation and incorporation by reference), and
 - c. continue to work with DPMC on the development of their advice on penalty settings in the Bill.

Recommendations

We recommend you:

- a) **Agree** to one of the following options:

- i. **Option One:** pause the introduction of the COVID-19 Public Health Response Amendment Bill (the Bill) until the policy work supporting increased penalty settings has been undertaken, the decisions have been reconsidered by Cabinet, and the Bill amended to include the new maximums. **Yes/No**

OR

- ii. **Option Two:** introduce the Bill with the current penalty settings, while undertaking work concurrently on the change to penalty settings, progressing this as a Supplementary Order Paper introduced during the Select Committee stage. **Yes/No**

- b) **Note** that if you select Option Two, it is recommended you begin Ministerial consultation on the current Bill on Monday 9 August in order to minimise the delay to its progress. **Noted**

- c) **Agree** that officials should begin work to identify any potential vehicles to progress an urgent amendment for the sub-delegation and incorporation by reference issues currently included in the Bill, and report back to you shortly on this matter. **Yes/No**



Maree Roberts

**Deputy Director-General, System
Strategy and Policy**

Date:



Hon Chris Hipkins

Minister for COVID-19 Response

Date: 3/8/2021

ENDS.

Appendix One: Timelines for progression of Bill as currently drafted, with no changes to penalty settings

Dates that cannot be moved are highlighted in red

Milestone	Date	Dependency
Ministerial consultation	Monday 9 August to Monday 16 August, inclusive	
HR seeking approval to lodge provided to Minister's Office. This will also include: <ul style="list-style-type: none"> • LEG paper • Bill • Departmental Disclosure Statement • Talking points for Cabinet • QAs • Key messages • 1st reading speech • Legislative statement 	Tuesday 17 August, due back Wednesday 18 August	Dependent upon no significant changes arising from consultation.
Bill and LEG paper lodged	Thursday 19 August	Note House is not sitting the week of 16-20 August . Submitting to Cabinet a week earlier therefore would not gain any time as it cannot be considered and Introduced until the week of 23-27 August .
Consideration by Cab as LEG with introduction same day	Monday 23 August	Skipping LEG to avoid a three-day delay waiting for Cab confirmation.
First Reading and referral to Select Committee	Thursday 26 August	Has to be third sitting day following introduction if not on a Tuesday for First Reading (Standing Orders).
Select Committee	Monday 30 September to Friday 21 October	7 weeks (as currently planned) minimum (as currently planned is dependent upon no additional issues being included, as no more than 1,500 submissions received with only 1 week or oral hearings. House is not sitting the weeks of 4-8 and 11-15 October , therefore needing one sitting week for consideration of the report by the Committee before reporting back to the House means SC must take until 21 October.
Select Committee reports back to the House	Tuesday 26 October	Monday 25 October is a public holiday
Second Reading, Committee of the Whole and Third reading	Week of 25-29 October	Assumes all stages are proceeding under urgency. Second Reading must be the third working day following (Standing Orders). As that falls on a Friday, this is pushed to Tuesday the next week.

Royal assent and commencement	First week of November	
Commencement of infringement clauses (including increase in penalties) and regs	Early December	The Bill currently states the increases in penalties shall not be applied until the Regulations are in place. Due to the 28-day rule (Cab Manual) this cannot happen until 28 days after the Bill has passed.

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Appendix Two: Alternative timelines for Option One (pausing Bill progression to include revised penalty settings)

Dates that cannot be moved are highlighted in red

Milestones	Date	Dependencies
Policy approvals briefing provided by DPMC	Monday 16 August	<i>Note not a sitting week</i> Two weeks to draft, consult and finalise.
Activities undertaken concurrently: <ul style="list-style-type: none"> One week for Ministerial consideration One week drafting a Cab paper and amended Regulatory Impact Statement (RIS) to take it back to Cabinet. Agency consultation undertaken concurrently with drafting. 	Week of 23-27 August	Both activities undertaken concurrently.
Four days for Ministerial consultation on the Cab paper, lodged by 12pm Friday 3 September	30 August-3 September	Assumes approval for late lodgement is given
Cabinet consideration	Monday 6 September	Assumes this will progress directly through Cab and not through the Cabinet Social Wellbeing Committee first.
One week PCO drafting of amendments. Concurrently, the new LEG paper will be drafted.	Week of 6-10 September	Assumes PCO capacity and that the changes made are purely to the \$ values detailed in the penalty provisions.
Activities undertaken concurrently in one week: <ul style="list-style-type: none"> BORA vet PCO peer-review/proof-read of Bill Agency consultation on the new LEG paper and draft Bill (allows for one day consultation) Ministerial consultation on the new LEG paper and draft Bill (allows for one day consultation) LEG paper and Bill lodged by 12pm Friday 16 September	Week of 13-17 September	<i>Note not a sitting week</i> BORA vet and PCO peer-review/proof-read usually take two weeks, assuming both can be undertaken in one week as the actual change in the Bill is minimal. Assumes agency consultation time of one day and Ministerial consultation time of three days as the Bill drafting change is minimal and will reflect recent policy decisions.

		Assumes Ministerial consultation can be undertaken in a non-sitting week. Assumes late lodgement sought and granted.
Cab consideration of LEG paper (Cab sitting as LEG) and introduction same day	Monday 20 September	
First reading and referral to Select Committee	Thursday 23 September	Has to be third sitting day following introduction if not on a Tuesday for First Reading (Standing Orders).
<i>Note the House is in recess for two weeks 4-14 October. There is one remaining sitting week in September before this recess (week of 27 September to 1 October), allowing for potential slippage of timelines by one week if needed while still providing for referral to Select Committee before the recess.</i>		

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Appendix Three: Draft LEG paper '*COVID-19 Public Health Response Amendment Bill: Approval for Introduction*'

This final version of this is publicly available at: https://www.health.govt.nz/system/files/documents/information-release/cab_paper_covid-19_public_health_response_amendment_bill_-_further_policy_approvals_and_approval_for_introduction.pdf

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Appendix One

CAB approval for introduction of Bill	Date
CAB (acting as LEG) consideration and approval to introduce	2 August 2021
Introduce Bill and release media statement	6 August
First reading speech	6 August
Select Committee consideration	6 August to 20 September
Second reading	23 September
Committee of the Whole House	23 September
Third reading	23 September
Royal assent	28 September
Commencement	29 September 2021

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Appendix Four: Draft COVID-19 Public Health Response Amendment Bill

The final version is publicly available at:
<https://www.legislation.govt.nz/bill/government/2020/0003/latest/LMS430896.html>

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