

Briefing

Options for additional travel permissions across the Alert Level 3/2 boundary

Date due to MO: 26 September 2021 **Action required by:** 26 September 2021

Security level: IN CONFIDENCE **Health Report number:** 20212114

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

Contact for telephone discussion

| Name | Position | Telephone |
|-------------------|--|-----------|
| Ange Hassan-Sharp | Group Manager, COVID-19 Policy | s 9(2)(a) |
| Caroline Flora | Acting Deputy Director-General, System Strategy and Policy | s 9(2)(a) |

Minister's office to complete:

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 Withdrawn | |

Comment:

Options for additional travel permissions across the Alert Level 3/2 boundary

Security level: IN CONFIDENCE **Date:** 26 September 2021

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

Purpose of report

1. This report responds to a request for advice on options that would allow additional travel permissions for individuals to cross the Alert Level 3/2 boundary, including for people relocating home.

Summary

2. Auckland has now been at either Alert Level 4 or 3 for almost six weeks. The longer Auckland remains at a higher alert level, the more difficulties certain people affected by the movement and activity restrictions face.
3. In shifting Auckland to Alert Level 3, Cabinet agreed that Alert Level 4/2 permitted boundary movements would remain under Alert Level 3/2 except for additional movement managed through the exemptions process related to funerals and tangihanga, saying goodbye to terminally ill relatives and accompanying tūpāpaku or a deceased person.
4. At Alert Level 3 there remains a medium risk of community transmission of COVID-19, and an ongoing need to mitigate that risk by limiting movement outside the area as much as possible.
5. On 24 September, Ministers requested advice on how the exemptions process authorised under clause 54 of the COVID-19 Public Health Response (Alert Level Requirements) Order (No 12) 2021 (the Order) could be used to allow more travel across the Alert Level 3/2 boundary, including allowing people to return home or relocate their home.
6. In addition to the reasons cited by the Deputy Prime Minister at a press conference on 24 September, **we have identified a range of possible additional permitted reasons for crossing the boundary** and assessed them against the public health risk they might pose. Our assessment has been made in the context of the objectives of the Elimination Strategy and the current alert level settings.
7. Based on the estimated additional boundary movement the new permitted movements across the Alert Level 3/2 boundary would involve, the public health advice is that **the added risk would be low, as long as certain conditions were met.**
8. This report also sets out advice on three potential options (**Appendix A**) for giving effect to any new permissions for crossing the Alert Level 3/2 boundary:

- a. **Option 1:** The Director-General continues to consider individual exemption requests under clause 54 of the Order against existing criteria set out in the Alert Level Order, or
 - b. **Option 2:** The Director-General grants a class exemption or series of class exemptions under clause 54 of the Order against existing criteria set out in the Alert Level Order, or
 - c. **Option 3:** Make a variation to the Order which would add the proposed new reasons for crossing the boundary to the 'list of permitted reasons for personal travel'.
9. On balance, ***I recommend that you agree to Option 3 above*** on the basis that it would both permit the movement desired without causing undue delays for the public and minimise the administrative cost and burden associated with effecting such a change.
10. Any further residual risk would continue to be managed through the current Direction issued under section 70 of the Health Act 1956 regarding locations of interest and will apply to anyone until revoked, whether they are based in Auckland or anywhere else in New Zealand.
11. The Department of Prime Minister and Cabinet (DPMC) is preparing talking points for you to present this matter as an oral item to Cabinet on Monday 27 September. DPMC will provide you these separately and will incorporate the advice outlined in this report.

Recommendations

I recommend you:

- a) **Note** that, in shifting Auckland to Alert Level 3, Cabinet agreed that Alert Level 4/2 permitted boundary movements would remain under an Alert Level 3/2 situation except for additional movement related to funerals and tangihanga, saying goodbye to terminally ill relatives and accompanying tūpāpaku or a deceased person, managed through the exemptions process. **Noted**
- b) **Note** that at Alert Level 3 there remains a medium risk of community transmission of COVID-19, and an ongoing need to mitigate that risk by limiting movement outside the area as much as possible. **Noted**
- c) **Note** the public health advice that, based on the estimated additional boundary movement involved, the added risk of permitting the movement described in paragraph 14 of this report would be low (as long as boundary crossers adhere to the conditions set out below). **Noted**

d) **Agree to:**

- i. Change the COVID-19 Public Health Response (Alert Level Requirements) Order to add the reasons outlined in this report (in paragraph 14) to the list of permitted reasons for travel across the Alert Level 3/2 boundary, subject to confirmation by Cabinet on Monday 27 September 2021 (**recommended**).

☒ Yes/☐ No

OR

- ii. Agree that the Director-General of Health will continue to consider individual requests for exemptions for people seeking to cross the Alert Level 3/2 boundary against the existing criteria (**not recommended**).

☐ Yes/☒ No

OR

- iii. Agree that the Director-General of Health grants a class exemption request under clause 54 of the Order against existing criteria (**not recommended**).

☐ Yes/☒ No

- e) **Agree** to also change the COVID-19 Public Health Response (Alert Level Requirements) Order to add visiting the dying; accompanying a tūpāpaku or deceased person to a tangihanga or funeral; and attending a tangihanga or funeral to the list of permitted reasons for travel across the Alert Level 3/2 boundary, subject to confirmation by Cabinet on Monday 27 September 2021.

☒ Yes/☐ No

- f) **Agree** to the following conditions for people crossing the Alert Level 3/2 boundary for the reasons outlined in this report, specifically that they:

- i. are not a 'high risk person' as defined by the COVID-19 Public Health Response (Alert Level Requirements) Order,
- ii. only travel from the Alert Level 3 area into the Alert Level 2 area (or vice versa), and

☐ Yes/☒ No

☐ Yes/☒ No

- iii. that they are prevented from returning to the Alert Level 3 area again **Yes/No** and/or crossing the boundary repeatedly (with the exception of shared childcare arrangements), and
- iv. have received a negative COVID-19 test result from a test **Yes/No** administered no more than 72-hours prior to when their journey began, or a certificate from a medical practitioner certifying it would be inappropriate for them to have a COVID-19 test and did not exhibit symptoms of COVID-19.
- g) **Note** that further residual risk would continue to be managed though the current Direction issued under section 70 of the Health Act 1956 regarding locations of interest and will apply to anyone until revoked, whether they are based in Auckland or anywhere else in New Zealand. **Noted**
- h) **Note** that the Department of Prime Minister and Cabinet will provide talking points separately to support you presenting this matter as an oral item to Cabinet on Monday 27 September 2021. **Noted**



Dr Ashley Bloomfield

Te Tumu Whakarāe mō te Hauora

Director-General of Health

Date: 26 September 2021



Hon Chris Hipkins

Minister for COVID-19 Response

Date: 27/9/2021

Options for additional travel permissions across the Alert Level 3/2 boundary

Background

1. On 24 September, Ministers requested advice on how the exemptions process authorised under the COVID-19 Public Health Response (Alert Level Requirements) Order (No 12) 2021 (the Order) could be modified to permit travel across the Alert Level 3/2 boundary for people to return or relocate their home and other reasons.
2. At the same time, the Deputy Prime Minister announced that Ministers would consider that advice and announce as soon as possible on Monday 27 September.

There is considerable pressure mounting on some people in Auckland six weeks into the outbreak

3. Auckland has now been at either Alert Level 4 or 3 for almost six weeks. The longer Auckland remains at a higher alert level, the more difficulties certain people affected by the movement and activity restrictions face.
4. In particular, an increasing number of people have reported experiencing significant welfare-related issues related to the restrictions (e.g. when applying for exemptions to leave the Alert Level 3 area).
5. These issues relate to their personal employment status (e.g. a need to relocate for a new job), personal finances (e.g. needing to settle house sales or move into a new rental property), personal relationships (e.g. relationship breakdowns or changes to care arrangements), and education (e.g. needing to complete university or polytechnic assessments).
6. In shifting Auckland to Alert Level 3, Cabinet agreed that Alert Level 4/2 permitted boundary movements would be retained under an Alert Level 3/2 [CAB-21-MIN-0379 refers]. The only change was additional movement managed through the exemptions process related to funerals and tangihanga, saying goodbye to terminally ill relatives and accompanying tūpāpaku or a deceased person.
7. This decision was made on the basis that at Alert Level 3, there remained a medium risk of community transmission of COVID-19, and an ongoing need to mitigate that risk by limiting movement outside the area as much as possible. The decision also took into account that the Delta variant would be able to spread much more quickly if it reached Alert Level 2 areas (given the greater freedom of movement and gatherings permitted).
8. To help mitigate these risks, I recommended that people crossing the Alert Level 3/2 boundary for personal reasons:
 - a. in a *single* movement, should be required to return a negative COVID-19 test within 72-hours prior to their movement, and
 - b. *regularly*, should be tested for COVID-19 within seven days of their planned move across the boundary.

Exemptions based on specific criteria can be granted

9. Under clause 54 of the Order, the Director-General of Health may grant an exemption to individuals, or group or classes of people if satisfied that:
 - a. the exemption is necessary or desirable in order to promote the purposes of the Act or the purposes of this Order, and
 - b. the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.
10. Criterion (b) above reflects that the current Order and Act are deliberately designed to limit movement unless essential. This is why so few exemptions have been granted to date and have been limited to those essential to the maintenance of life or life necessities (e.g. accessing food, drink, healthcare etc).
11. In determining whether the criterion (a) above is satisfied, permitting an exemption from clause 17 (restrictions on travel between alert level areas), I must take into account
 - a. the extent to which the travel is reasonably necessary, including whether it could reasonably be delayed, and
 - b. the economic, social, or health benefits associated with the purpose of the travel, and
 - c. the public health risk associated with the travel and its purpose.
12. When granting exemptions, the Director-General may also impose conditions as considered necessary to help mitigate potential public health risk stemming from the exempted activity. The parameters of the exemption power are deliberately narrow and not designed to let lots of people be exempt from the Order.

Reasons for additional travel across the Alert Level 3/2 boundary

13. While tight boundary permissions carried over from Alert Level 4/2 to Alert Level 3/2 remain pertinent in the Delta era, recognising that people are almost six weeks into a lockdown, it is appropriate to consider relaxing some restrictions to benefit individuals' wellbeing.
14. Considering both the added public health risk of more movement and the possible mitigating measures, the additional permissions recommended in this report move closer to the Alert Level 3/2 boundary permissions that were in place during February/March 2021 and include:
 - a. People who are permanently relocating to somewhere outside an Alert Level 3 area or those wanting to relocate from Alert Level 2 to 3 (the latter is not currently permitted, only returning home is permitted).
 - i. This will capture the settlement of house sales (but would exclude travel between Alert Level 3/2 for a pre-settlement inspection), and people who are moving to a rented home outside of an Alert Level 3 area.
 - b. Starting jobs outside the Alert Level 3 or entering Alert Level 3 area to start a job.
 - c. Carer duties – People with shared care arrangements split across the boundary – for example, a child who has been with one parent in Auckland and is unable to travel to join the other parent or to drop off or pick up children.

- d. People who are returning home from Alert Level 3 to Alert Level 2 (e.g. someone who decided initially to shelter-in-place in Auckland but is now trying to get back to their home).
 - e. Travel to or from an education facility, including tertiary education settings (e.g. students returning to a hall of residence or attending an exam or other assessment) and secondary (e.g. boarding) school settings.
 - f. Any other person assisting or accompanying a person who meets these criteria.
15. We considered the need for people to move across the boundary for mental wellbeing, as this is a growing theme of the exemption applications to date. But on balance, and given the complexity and uniqueness of individuals' situations, we recommend continuing to consider these movements on a case-by-case basis via the exemptions process.
16. The above proposed reasons effectively would provide people currently in Auckland permission to undertake either one-way or return movement between the Alert Level 3/2 boundary, provided they meet the relevant permitted reasons and conditions. For example, shared care is unlikely to be only one-way and parents may need to take return journeys to drop off or pick up children.
17. The combined effect of allowing more permitted movement and imposing conditions will reduce the significant impact current Alert Level 3 restrictions may be having on some people in Auckland, while mitigating the public health risks involved.
18. Critically, multiple return trips will not be permitted (other than for shared childcare) due to the public health risk of COVID-19 transmission these involve. If a person leaves an Alert Level 3 area for any of the reasons set out above, they would not be permitted to return to the Alert Level 3 area unless they receive an exemption for that travel.

Public health risk and conditions

19. Based on current numbers of requests for exemptions, we estimate that (and excluding people returning to university or school), an additional 3000-5000 people would be permitted to cross the Alert Level 3/2 boundary if the above movements are permitted.
20. Based on this number, there would be a low level of public health risk and concern as long as the person undertaking the movement adheres to the following conditions:
- a. Is not a 'high risk person', which under the current Order means someone who:
 - i. has been diagnosed as having COVID-19, or
 - ii. has one or more COVID-19 symptoms, or
 - iii. is being or has been tested for COVID-19 and is awaiting a test result, or
 - iv. has been in close contact with someone with suspected, probable, or confirmed COVID-19 in the previous 14 days, and
 - b. Only travels from the Alert Level 3 area into the Alert Level 2 area, or vice versa, and
 - c. Are prevented from returning to the Alert Level 3 area again and/or crossing the boundary repeatedly (with the exception of shared childcare arrangements), and
 - d. Have received a negative COVID-19 test result from a test administered no more than 72-hours prior to when their journey began or have a certificate from a medical

practitioner certifying it would be inappropriate for them to have a COVID-19 test and did not exhibit symptoms of COVID-19.

21. Any further residual risk would continue to be managed though the current Direction issued under section 70 of the Health Act 1956 regarding locations of interest. This will continue to apply to anyone until revoked, whether they are based in Auckland or anywhere else in New Zealand.

Mechanisms for implementing these criteria

22. We have identified three legal mechanisms within the Order which could be used to allow additional personal movement across the Alert Level 3/2 boundary:
- a. **Option 1:** The Director-General of Health continues to consider individual exemptions for the reasons outlined above and against the criteria set out in paragraph 14, or
 - b. **Option 2:** The Director-General grants a class exemption under clause 54 of the Order against existing criteria, or
 - c. **Option 3:** A change to the Order to add the above reasons to the list of permitted reasons for travel.
23. On balance, I recommend that you **agree to Option 3** above on the basis that:
- a. from the perspective of the public, making a variation to the Order would be just as fast as changing the Ministry of Health's exemptions policy and practice (in fact potentially faster),
 - b. all exemptions team assessors would require refresher training and the online exemption application form may need to be offline for up to 24 hours to implement system changes – this would impact all individuals wanting to apply for exemptions, not just those applying for these additional reasons,
 - c. **Option 1** would require travellers to present their evidence and have their reasons for travel validated twice – once by the Ministry of Health, and subsequently by Police at the boundary or Aviation Security at the airport. This could result in the public having to navigate two queues instead of one, and
 - d. while **Option 1** would enable the Ministry of Health to count the numbers of people who had crossed the boundary and for which purposes, this would be *after the fact*, so would not mitigate any public health risk,
 - e. both **Option 1 and 2** would involve a continued application of the existing, very narrow criteria for considering exemptions and would not necessarily result in all of those wanting to travel for the reasons set out in paragraph 14 above being granted an exemption.
24. Consequently, I recommend that you agree to **Option 3** above on the basis that it would permit the movement desired without causing undue delays for the public and the significant added administrative burden involved with processing each individual application to cross the boundary through the Ministry of Health first, then the Police at the boundary or Aviation Security at the airport.
25. It is important to note that any option will have an impact on Alert Level settings and our Elimination Strategy. Both will considerably increase Alert Level 3/2 boundary movement

during an active Delta outbreak. Consequently, the individual and cumulative risk posed by each movement must be controlled as far as practicable to meet the purpose of the Act and the Order.

Option 3 is recommended

26. I recommend that the desired outcome is best achieved via a permission change in the Order rather than a change to exemption processes. In addition to the reasons outlined above, Option 3 provides the following:
- a. *Administrative simplicity and consistency*
 - i. Provided a person meets the criteria and conditions of the permitted travel, there is no added benefit of proving it both to the Ministry and to the Police at the checkpoint or Aviation Security at the airport since the evidentiary requirements would be the same. This also provides for a more simple and clear process for those wishing to travel across the boundary.
 - ii. There would be a lower cost and resource impact. Option 3 removes the need for the Ministry of Health to process an additional 3000-5000 potential exemption requests and allow it to process other more bespoke requests. It is also estimated that an additional 60-80 FTE would be required within the Ministry of Health's exemptions team to respond to the surge in applications.
 - b. *Utilises existing boundary checkpoint systems*
 - i. Police and Aviation Security Service officers would continue to consider the evidence of a person's reason for travel when they arrive at a road or airport checkpoint. This will utilise existing systems in place at the boundary.

There is little benefit in using an exemptions process

27. If the intention is to allow travel for everyone who fits the description in paragraph 14, there is no more value that the exemptions consideration process would add – a person would either meet the category or they would not.
28. The only benefit to use the established exemptions process would be to count how many people had crossed the boundary and for which purposes. This might alert the Ministry of Health of potential risk *after the fact* about large numbers of people crossing the boundary.
29. However, noting the public health advice and proposed conditions above, there should be little cause for concern if the necessary evidence is obtained and checked by Police.

Evidence requirements

30. Those seeking to cross the Alert Level 3/2 for this purpose will need to provide evidence of their travel. This includes proof of their negative COVID-19 test obtained within 72-hours of their travel and other supporting documents to support their travel.
31. People should also carry all relevant documentation that speaks to their required movement. For example, this could be a letter from a new employer, house sale documents, etc. This will help Police to distinguish between someone who has rented a

holiday home in Northland and is travelling there for a holiday and someone who has rented a house near their new job in Hamilton.

32. However, it is important to note there is a risk if people have homes in two places (e.g. people going to second homes outside an Alert Level 3 area). None of the options identified would provide a fool proof way of preventing someone determined to get around the boundary controls. Police will not be able to assess if the evidence is from a primary or secondary residence (and neither would Ministry of Health's exemptions team). However, robust drafting will assist to mitigate this risk.

Treatment of additional movement related to funerals and tangihanga

33. Noting the additional movement proposed at paragraph 14, the recent changes made for movement related to funerals and tangihanga could also be reflected in the Order.
34. If the same conditions are met, this would permit travel for people visiting the dying, accompanying a tūpāpaku or deceased person to a tangihanga or funeral; and attending a tangihanga or funeral. This would treat that movement across the Alert Level 3/2 boundary related to funerals and tangihanga the same as the other additional reasons. If it is not, this movement will continue to be managed through the exemption process.

Implementation and operational impacts

35. If you agree to Option 3, the Ministry of Health will work with DPMC and the Parliamentary Counsel Office (PCO) to progress the necessary amendments to the Order.
36. Once the Order has been amended, individuals will be able to immediately travel across the alert level boundary, subject to meeting the criteria and evidence requirements.
37. There is enough testing capacity in the system currently to accommodate any increase in testing as a result of these additional permitted movements. There will likely be an impact on physical checkpoints at boundaries and airports given more people will be allowed to cross the boundary. However, the impact will likely be spread as not all movement will occur at the same time.

New Zealand Bill of Rights Act 1990

38. Each of the measures proposed in this report would enhance the ability of New Zealanders to exercise their right to freedom of movement (as affirmed by s 18(1) of the New Zealand Bill of Rights Act 1990 (NZBORA). This is because it will allow a greater number of people to cross the Alert Level 3 border to travel to other parts of New Zealand.
39. To the extent the requirements involve individuals being required to have a COVID-19 test that they would not otherwise have had, s 21 of the Bill of Rights Act is engaged (the right to be free from unreasonable search). However, such a requirement is unlikely to infringe that right, given its purpose is to minimise the risk of the Delta variant crossing the Alert Level boundary (i.e. a compelling public health reason is likely to justify requiring a test).
40. To the extent that the choice between Options 1 and 2 and Option 3 might give rise to delays in processing applications for exemptions, the option that does not give rise to

delay (therefore making it slightly harder to exercise the right to freedom of movement) is likely to be preferred on human rights ground to the option that makes the exercise of the right easier, unless there is a compelling public health justification for preferring the more restrictive alternative.

Next steps

41. DPMC is preparing talking points for you to present this matter as an oral item to Cabinet on Monday 27 September. DPMC will provide you these separately and will incorporate the advice outline in this report.

PROACTIVELY RELEASED

Appendix 1: Comparison of Options

| | Controlling boundary crossing numbers | Quality of data collected | Speed of implementation | Cost/diversion of resources |
|---|---|---|---|--|
| Option 1 Individual exemptions granted under clause 54 of the Order | LOW - MODERATE For individual exemptions, assessing applications will slow the immediate rush of people who want to cross the boundary as applicants wait for their application to be processed. Overall volumes of people crossing the boundary may be lower if some individuals people do not apply because they are unable to unwilling to navigate the process | HIGH – Individual exemptions MoH would have a record of everyone who crossed the boundary, their destination, and the purpose of their travel. This might alert the MoH of potential risk after the fact about large numbers of people crossing the boundary. However, noting the public health advice and proposed conditions above, there should little cause for concern if the necessary evidence is obtained and checked by Police. | SLOW – Individual exemptions While individual applications may begin to be processed quickly and resources could be increased to respond to increased demand, it is expected this option would lead to a considerable backlog. Many applicants would wait several days before receiving a response, and some will be declined or subject to requests for further information. Many applicants will have already applied previously and been declined so will need to reapply. | HIGH – Individual exemptions The Ministry will need to deploy an additional 60-80 FTE staff as surge capacity to manage the expected high volume of individual applications, should this option be implemented. This will impact the Ministry's ability to deliver other priorities. This resource is shared with contact tracing so any need to surge contact tracing while managing exemptions may put this resource at risk. |
| Option 2 Class exemptions granted under clause 54 of the Order | LOW Under a class exemption, will be permitted to cross the boundary, subject to meeting the specified criteria and conditions. | LOW The Ministry will not have information about each individual who is travelling across the boundary. | FAST Once a class exemption has been made and Gazetted, individuals will be able to immediately travel across the alert level boundary, subject to meeting the criteria and evidence requirements. | LOW There would be low cost/diversion of resources for the Ministry. There will likely be an impact on checkpoints at boundaries given increased moved across the boundary. However, the impact will be likely be spread as not all movement will occur at the same time. |
| Option 3 Variation to the Order to amend permitted reasons for travel | LOW All individuals will be permitted to cross the boundary, subject to meeting the specified criteria and conditions. | LOW The Ministry will not have information about each individual who is travelling across the boundary, but evidence will be checked at boundary checkpoints to ensure they are eligible to cross the boundary. | FAST Once the Order has been amended, individuals will be able to immediately travel across the alert level boundary, subject to meeting the criteria and evidence requirements. | LOW There would be low cost/diversion of resources for the Ministry. There will likely be an impact on checkpoints at boundaries given increased moved across the boundary. However, the impact will be likely be spread as not all movement will occur at the same time. |