

# Briefing

## Procedural options for making further amendments to the COVID-19 Public Health Response Amendment Bill (No 2)

**Date due to MO:** 6 October 2021      **Action required by:** 8 October 2021

**Security level:** IN CONFIDENCE      **Health Report number:** 20212161

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

### Contact for telephone discussion

Name	Position	Telephone
Annie Hindle	Manager, COVID-19 Policy	s 9(2)(a)
Steve Waldegrave	Group Manager, COVID-19 Policy	s 9(2)(a)

### Minister's office to complete:

- Approved       Decline       Noted  
 Needs change       Seen       Overtaken by events  
 See Minister's Notes       Withdrawn

Comment:

# Procedural options for making further amendments to the COVID-19 Public Health Response Amendment Bill (No 2)

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**Security level:** IN CONFIDENCE      **Date:** 6 October 2021

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

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## Purpose of report

1. This report provides advice on the procedural options available to Government to make further amendments or additions to the COVID-19 Public Health Response Amendment Bill (No 2) (the Bill).
2. This report does not seek policy approval for these changes, which will be sought separately.

## Background

3. On the 21 September, the Prime Minister and the Minister for COVID-19 Response announced that the Bill had been introduced, and that key changes relating to the level of penalties for breaches of Orders under the COVID-19 Public Health Response Act would commence in November, subject to passage of the Bill.
4. On 29 September 2021, the Bill was read a first time. The House of Representatives referred the Bill to the Health Select Committee (the Committee), and directed the Committee to report back to the House no later than 11 November. The Committee has called for submissions on the Bill no later than 11 October.
5. This report sets out your procedural options for making further amendments to the Bill, should the Government wish to do so.

## Issues

6. In the six days since the Bill received its First Reading and was referred to the Committee, four further amendments to the Bill have been proposed. These are:
  - a. Three proposed amendments from DPMC to:
    - i. **Amendment 1:** provide an additional, explicit safeguard in the Bill that information collected for the purposes of record keeping and contract tracing relating to COVID-19 may not be used for any other purpose;
    - ii. **Amendment 2:** clarify that Orders made under the COVID-19 Public Health Response Act 2020 (the Act) may provide for different arrangements for persons who are vaccinated against COVID-19 and those who are not;

- iii. **Amendment 3**: ensure that enforcement officers have the power to demand evidence of compliance with a requirement of an Order under the Act for enforcement purposes; and
  - b. One proposed amendment from the Ministry of Health to:
    - i. **Amendment 4**: ensure that an Order under the Act can impose additional minimum leave requirements or obligations on employers, for the purpose of employees being vaccinated against COVID-19.
7. Approvals for these proposals are under development:
  - a. DPMC has advised that it intends to progress approval for **Amendment 1** and **Amendment 2** in the coming days, and will also reflect in its advice that you have asked for **Amendment 3** to be progressed; and
  - b. The Public Health System Policy Group in the Ministry of Health has indicated that **Amendment 4** is urgent, but there is no specific timeframe for the change as yet.
8. This report does not seek policy approval for these changes, which will be sought separately. Rather, this report provides advice on your procedural options to progress any or all of these changes, should you wish to do so.

## Procedural options for further changes

9. Broadly, you have three options to make further amendments to the COVID-19 Public Health Response Act 2020, now that the Bill has been read a first time. These are:
  - a. raising potential amendments for the Select Committee to consider through the departmental report (**Option One**);
  - b. proposing amendments by lodging a Supplementary Order Paper (SOP) when the Bill is at the Committee of the Whole House stage (**Option Two**); or
  - c. progressing further policy changes using a new Bill (**Option Three**).
10. Options one and two are subject to the caveat that the proposed changes must be within scope of the Bill as introduced. Officials consider that the amendments noted in this briefing are all likely to be within scope, but it is possible that additional changes will be sought as the Bill progresses. In each case the first threshold for additional amendments to meet will be one of scope.
11. The most appropriate vehicle for further changes to the Bill will depend on the nature of the amendments sought:
  - a. **Amendment 1** provides additional information privacy safeguards and is technical in nature. It is likely to be suitable for inclusion in the Departmental Report as per option one above;
  - b. **Amendment 2** has potentially significant implications for the rights and freedoms of individuals as set out in the New Zealand Bill of Rights Act. **Amendment 4** has potentially significant implications for employers and could be seen as an intervention in the employment relationship. Both of these amendments raise substantive policy issues.

- c. **Amendment 3** sits somewhere between the two and we are unsure whether the Committee would be willing to consider it as a part of the departmental report or not.
12. The Committee may be unwilling to consider substantive policy issues in the absence of providing a meaningful opportunity for the public to engage on the changes proposed. Amendments 2, 3 and 4 were not a part of the Bill as introduced, so the Committee could only remedy this by calling for additional submissions – which would delay its deliberation on the Bill and push out its report back date. The detailed policy would also need to be developed and approved in time to be included in the departmental report and the timeline for obtaining policy approvals is uncertain.
13. Alternatively, the government may wish to introduce amendments 2, 3 and 4 by way of Government SOP during the deliberation of the Whole House and post the Committee's report back.
14. This would allow more time for finalising the policy. However, there would be no select committee scrutiny of the proposals and pushing through too many substantive issues during the Committee of the Whole stage could be contentious. A contentious Committee of the Whole Stage may delay the Bill and the lack of select committee scrutiny would increase the risk of error or unintended consequences.
15. Establishing another COVID-19 Public Health Response Amendment Bill would be the most procedurally robust means by which to deliver additional, substantive policy changes. This would also enable the current Bill to progress relatively smoothly and would ensure that the infringements regime could be delivered without further delay.
16. If the number of substantive policy issues continues to grow over the coming weeks, the rationale for establishing a new Bill becomes stronger. Additionally, should a separate Bill be planned, it may be preferable to include all amendments in that Bill.
17. Should the Government consider that the further policy changes must be legislated rapidly, a second Bill could be considered by the House under urgency. Progressing substantive policy issues under urgency can be contentious and has risks associated with complexity.

## Recommendations

I recommend you:

- a) **Note** that there are four amendments currently proposed by DPMC and the Ministry of Health to the COVID-19 Public Health Response Amendment Bill (No 2), which is before the Health Select Committee; **Noted**
- b) **Note** that agencies may seek to add additional amendments to the Bill as it progresses through the House; **Noted**
- c) **Note** the procedural options for progressing these amendments, either as part of the Bill or as a separate Bill; **Noted**
- d) **Note** that adding substantive policy issues to the Bill after the Health Committee has called for submissions carries the risk of complexity and delay; and **Noted**

e) **Indicate** your preferred option for progressing each of the four amendments (subject to policy approval) through Parliament on the table below: **Yes/No**

Amendment	Option 1 – Departmental Report	Option 2 – SOP at Committee of the Whole House stage	Option 3 – Separate Bill
Amendment 1 – additional privacy safeguards	✓		
Amendment 2 – clarifying that Orders can make different arrangements for vaccinated and unvaccinated persons			✓
Amendment 3 – ensuring that enforcement officers have the power to demand evidence of compliance with a requirement of an Order under the Act			✓
Amendment 4 – ensure that an Order can impose additional obligations on an employer			✓



Maree Roberts  
**Deputy Director-General, System Strategy & Policy**

Date: 6 October 2021



Hon Chris Hipkins  
**Minister for COVID-19 Response**

Date: 14/10/2021