

# Briefing

## COVID-19 Public Health Response Amendment Bill (No 2) – departmental report to the Health Select Committee

**Date due to MO:** 21 October 2021      **Action required by:** 22 October 2021

**Security level:** IN CONFIDENCE      **Health Report number:** 20212306

**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)
Jolanda Meijer	Director, COVID-19 Policy	s 9(2)(a)

### Minister's office to complete:

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 Withdrawn |  |

Comment:

# COVID-19 Public Health Response Amendment Bill (No 2) – departmental report to the Health Select Committee

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**Security level:** IN CONFIDENCE      **Date:** 21 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 the departmental report on the COVID-19 Public Health Response Amendment Bill (No 2) (the Bill) to the Minister for COVID-19 Response.

## Issues

2. The Health Select Committee (the Committee) is due to report back to the House on the Bill by 11 November 2021. It will be considering this report on 27 October 2021.
3. The Ministry of Health and the Ministry of Business, Innovation and Employment have prepared a departmental report to the Committee (**Attachment 1**), which:
  - a. provides an overview of submissions received by the Committee; and
  - b. makes several recommendations for minor and technical amendments to the Bill to clarify or better deliver on the policy intent.
4. The Committee received approximately 15,000 written submissions, half of which were form submissions, primarily from Voices for Freedom and the Outdoors Party. The Committee also heard from individuals and organisations at oral hearings.
5. Of these, just over 1000 submissions engaged with or referenced the Bill itself, though many briefly. There were approximately 1700 references to different provisions within the Bill across these submissions.
6. The approximately 14,000 submissions remaining did not relate directly to the legislative changes proposed in the Bill but reflected deeply held concerns by some parts of the community around the Government's response to COVID-19, such as vaccination.
7. The departmental report includes a recommendation that an additional safeguard against the use personal information collected through QR code scanning and paper forms for contact tracing purposes be included in the Bill, consistent with advice previously provided to you (HR20212161 refers).

## Issues likely to be raised in Parliamentary debate

### *Warrantless entry to marae*

8. Te Pāti Māori has raised concerns about section 20 of the COVID-19 Public Health Response Act 2020, which allows for warrantless entry of premises in certain circumstances for the purposes of enforcing a COVID-19 Order. These concerns have been raised by members of the Committee directly, as well as through a submission lodged by Te Pāti Māori (which was supported by a number of other Māori organisations).
9. Te Pāti Māori has made the specific recommendation that the Bill amends section 20 of the Act to align with the wording of section 111 of the Water Services Act 2021, which provides for a similar power of entry, but does not extend to entry to private homes or marae (except with the consent of the occupier).
10. Te Pāti Māori may lodge a non-government Supplementary Order Paper (SOP) when the Bill returns to the House.
11. Officials do not recommend adopting the wording of the Water Services Act 2021 in the Bill, because:
  - a. the public health rationale for powers of entry applies equally to marae as to other similar locations where people might gather; and
  - b. broader consideration of the appropriateness of applying warrantless powers of entry to marae cannot be undertaken in the COVID 19 Public Health Response Act in isolation of other legislation.
12. In addition, we note that while the Water Services Act 2021 limits the power of entry to marae, there are at least 13 other Acts which do not make special provision for marae.

### *Requisitioning of materials from testing laboratories*

13. Several submitters raised concerns about the proposed expansion of powers under section 11 of the Act relating to testing laboratories. In particular, medical testing laboratories were concerned about:
  - a. the powers to requisition testing consumables, and to limit COVID-19 testing services provided by these laboratories to the public health response to COVID-19; and
  - b. the compensation mechanism for laboratories.
14. Committee members representing both National and ACT also raised concerns (in hearings and in the first reading debate) around whether these provisions were appropriate and necessary, and whether the compensation provisions were suitable.
15. It is possible that at least one non-Government SOP may be tabled proposing amendments to these provisions when the Bill returns to the House.

16. You have three options for responding to this:

Option	Comment
<p><b>Option 1</b> <b>Prepare a Government SOP to the Bill</b></p>	<ul style="list-style-type: none"> <li>• Would require further policy work to explore alternative models for the compensation provisions, which might include other existing legislation dealing with compulsory or emergency requisition of property (such as the Defence Act 1990 or the Civil Defence Emergency Management Act 2002).</li> <li>• <b>Would require further Cabinet approval no later than 1 November 2021</b>, in order to allow time for the amendments to be drafted and tabled without delaying debate on the Bill or its eventual passage through the House.</li> </ul>
<p><b>Option 2</b> <b>Consider a non-government SOP on its merits</b></p>	<ul style="list-style-type: none"> <li>• Some preliminary policy work on these issues could be undertaken at this stage.</li> <li>• The Ministry would provide advice to Government on the merits of any non-government SOPs, if and when they are tabled.</li> <li>• The Government could choose whether to support any non-government SOP (with or without amendments) or vote it down.</li> <li>• <b>This would require a Cabinet process in mid-November</b> (subject to confirmation of dates when the Bill goes through 2<sup>nd</sup> and 3<sup>rd</sup> readings). Any delay to debate on the Bill at this stage could affect the introduction of increased penalties for breaches of COVID-19 in November.</li> </ul>
<p><b>Option 3</b> <b>Make no changes to the Bill (RECOMMENDED)</b></p>	<ul style="list-style-type: none"> <li>• No further policy work on these issues would be undertaken and <b>no Cabinet process would be required</b>.</li> <li>• The Government would not support amendments proposed by non-government members when the Bill returns to the House, if and when they are tabled.</li> <li>• No impact on introduction of changes to increase penalties for breaches of COVID-19 Orders in November.</li> </ul>

17. Officials recommend that you agree to **Option 3** and make no further changes to the Bill. The rationale for this is that:

- a. **officials do not support changes to the requisitioning powers.** While it is unlikely that these powers would be needed, they may be necessary to support the public health response in the event of a severe outbreak of COVID-19. Should the government ever need to use these powers, the circumstances would be such that further amendment to primary legislation at that point of crisis would be impractical. We consider it prudent to take the opportunity to ensure that the powers are available, should they ever be needed.

- b. **the policy grounds for making changes to the compensation provisions are not clear.** No other parties affected by the exercise of powers under section 11 of the Act are entitled to compensation in the way proposed for testing laboratories. While further work could be undertaken to consider the options for additional compensation, that is not a priority at this time, given the low likelihood of the powers ever being used.

The Bill contains the ability for testing laboratories and the Crown to resolve disputes relating to compensation in the District Court, and we consider this to be sufficient for addressing any future disputes, should they arise.

- c. **further changes to the Bill may delay the higher penalties for breaches of COVID-19 Orders.** If the passage of the Bill is delayed while the details around an SOP to address this issue are resolved, it will not be possible to meet the Government's expectation that increased penalties for breaches of COVID-19 orders are available in November 2021.

## Recommendations

I recommend you:

- a) **Note** that the departmental report to the Health Select Committee on the COVID-19 Public Health Response Amendment Bill (No 2) (Attachment 1) will be provided to the Committee on Friday 22 October 2021; **Noted**
- b) **Note** that the issues of warrantless entry to marae and the requisition of laboratory testing supplies and services are likely to be raised in Parliamentary debate on the Bill; and **Noted**
- c) **Agree** to make no further changes to provisions in the Bill relating to testing laboratories (**Option 3**).  **Yes/No**

PP



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

Date: 21/10/2021



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

Date: 28/10/2021