



Minister of Health

Self-repeal of the COVID-19 Public Health Response Act 2020

13 December 2024

These documents have been proactively released by the Ministry of Health on behalf of the Minister of Health, Hon Dr Shane Reti.

Title of Cabinet paper:

- Self-repeal of the COVID-19 Public Health Response Act 2020

Titles of minutes:

- Report of the Cabinet Social Outcomes Committee: Period Ended 18 October 2024 (CAB-24-MIN-0402)
- Self-repeal of the COVID-19 Public Health Response Act 2020 (SOU-24-MIN-0122)

Titles of briefings:

- Briefing: Self-repeal of the COVID-19 Public Health Response Act 2020 – draft Cabinet paper
- Briefing: Health system pandemic preparedness: options for legislative reform
- Aide-Mémoire – Talking points: Self-repeal of the COVID-19 Public Health Response Act 2020

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- S 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.
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In Confidence

Office of the Minister of Health

Cabinet Social Outcomes Committee

Self-repeal of the COVID-19 Public Health Response Act 2020

Proposal

- 1 This paper seeks agreement to allow the COVID-19 Public Health Response Act 2020 to self-repeal on 26 November 2024 and updates Cabinet on work underway to modernise legal provisions for the management of pandemics and infectious diseases.

Relation to government priorities

- 2 This proposal aligns with the Government focus on maintaining appropriate and fit for purpose regulation.

Executive Summary

- 3 The COVID-19 Public Health Response Act 2020 (the COVID-19 Act) is due to self-repeal on 26 November 2024. The last remaining orders under the COVID-19 Act were removed in August 2023, and it is unlikely that any further orders will be required.
- 4 The government response to COVID-19 has now transitioned largely to business as usual. This means the approach to managing COVID-19 is now generally similar to other common respiratory diseases, such as influenza. The epidemiological risk profile of COVID-19 is such that the likelihood of a deterioration of the COVID-19 situation to a point where the return of mandatory measures enabled by the COVID-19 Act is required, is very low. As such I am seeking Cabinet's approval to let the COVID-19 Act expire on 26 November 2024 on the basis that it is no longer needed.
- 5 This paper also outlines some of the issues with pre-existing pandemic-related legislation identified during the COVID-19 pandemic. In particular, the Health Act 1956 (the Health Act) is now considered unsuitable to impose sustained or population wide mandatory public health measures in response to a significant infectious disease threat.
- 6 The Ministry of Health is currently reviewing the pandemic-related legislative framework and I will report back to the Cabinet Social Outcomes Committee by June 2025 on options to address the issues identified.
- 7 As a 'backstop' measure until broader reform of pandemic-related legislation can be considered, the Ministry of Health has provided me with limited policy proposals to amend the Health Act if needed for the introduction of certain mandatory public health measures. I would only bring these proposals to Cabinet in the event of an

imminent pandemic threat or significant disease outbreak (such as measles), or in the very unlikely event that the COVID-19 situation significantly deteriorates.

Background

- 8 Enacted under urgency on 15 May 2020, the COVID-19 Act enabled the Minister for COVID-19 Response (now the Minister of Health) to make orders to give legal effect to the public health response to COVID-19. The orders were a flexible legislative tool that enabled the Government to respond quickly to changing circumstances over the course of the pandemic.
- 9 The COVID-19 Act has been amended a number of times to ensure it remains fit for purpose and is proportionate to the risk of COVID-19 to the public. The Act was most recently amended in November 2022 to extend its sunset date to 26 November 2024 so that Orders in place at that time relating to mask use in health premises and case isolation would remain active [CAB-22-MIN- 0524]. These remaining Orders were withdrawn on 15 August 2023, and there are currently no orders in force under the COVID-19 Act [CAB-23-MIN-0369 refers].

Current state of COVID-19 and the health response

Current context

- 10 Overall, COVID-19 cases and hospitalisations are now tending to fluctuate in small waves over the course of the year, likely due to changes in behaviour, vaccination levels and continued viral evolution. COVID-19 has not fallen into a seasonal pattern, and it is possible that it may never do so.
- 11 Currently, approximately 100–200 cases of COVID-19 are reported daily. Wastewater testing, which reflects levels of COVID-19 infection in the community, also confirms that there are generally low levels of infection, accompanied by periodic increases. Recently, there have been approximately 20 new hospital admissions per day and 1-2 deaths per day due to COVID-19.
- 12 The epidemiological risk profile of COVID-19 is such that the likelihood of a deterioration of the COVID-19 situation (due to future waves and/or virus evolution) to a point where the return of mandatory measures enabled by the COVID-19 Act are required, is very low.

The health system response has transitioned

- 13 COVID-19 vaccination and anti-viral treatments are available and fully funded for those eligible, and rapid antigen tests were available free of charge to the public until 30 September 2024, reflecting a progressive transition to business as usual.
- 14 The impact of the virus has been reduced by a combination of virus mutation, vaccination, previous infection, public health response measures (eg, staying home when unwell), and the availability of antiviral treatments.
- 15 Further waves of COVID-19 and/or the emergence of a more severe variant can likely be managed through enhanced voluntary public health measures such as guidance, increased vaccination, and anti-viral use. Measures can be ramped up through clear

guidance to wear a mask and isolate, as opposed to mandating these measures via legislation. This approach would appropriately balance competing risks to public health, society and the economy.

- 16 In Budget 2024, \$232.2 million over four years was committed to support timely access to vaccines and PCR testing and also to retain critical public health surveillance infrastructure for future disease threats.
- 17 I have considered the alternate option of extending the COVID-19 Act for a short period of time in recognition that virus evolution cannot be perfectly predicted and work on generic improvements to pandemic response legislation is still in progress. However, on balance I do not consider this to be necessary.
- 18 Given the transition from an emergency to a business-as-usual health response and our health system's improved ability to address increased disease risk and consequences through non-mandatory measures, I recommend that Cabinet let the COVID-19 Act expire on 26 November 2024.

Broader pandemic risk and the need for a 'legal backstop' for health measures

Future pandemic risk remains

- 19 While COVID-19 has been the most significant global pandemic in 100 years, there have been a number of 'near-misses'. The risk of a new pandemic remains, and in the longer term it is not a matter of if another pandemic occurs, but when.
- 20 The COVID-19 experience demonstrated that a high degree of social license for, and voluntary compliance with, public health measures is essential to achieve desired health outcomes. However, a legal backstop for health measures is required in circumstances where the population wide consequences of non-compliance are very serious.
- 21 To be prepared for future pandemic risks, our broader pandemic-related legislative framework needs some reform. This will enable mandatory measures to be introduced if required during an emergency response to a future pandemic or disease outbreak.

There are issues with the current legislative framework

- 22 New Zealand's legislative framework for managing epidemics and pandemics is principally through the Health Act and the Epidemic Preparedness Act 2006.
- 23 The High Court's *Borrowdale* decision, s 9(2)(h) and the Ministry of Health's experience of using the Health Act to respond to COVID-19 have highlighted several issues with the Act. Most significantly:

- 23.1 The emerging legal view is that Section 70 powers in the Health Act are now best treated as special emergency powers only to be used to respond to an urgent health crisis and are not suitable as part of a long-term national emergency response. There is now less confidence in using these powers for anything other than a very short duration and localised response.

- 23.2 The powers included in Sections 70 and 71 of the Health Act are also blunt in nature and lack the nuancing that was found to be required through the COVID-19 response. They also lack the safeguards typically in place for emergency powers and provide for unelected officials, rather than elected Ministers, to exercise extraordinary powers.
- 24 The experience of responding to COVID-19 has also highlighted several issues with the Epidemic Preparedness Act 2006. The Epidemic Preparedness Act was found to have too narrow a triggering testing for issuing an epidemic notice that does not allow for public health considerations, and too narrow a scope for modifying existing legislative requirements.
- 25 Part 4 of the Health Act is critical for border controls, but it is outdated and no longer fit-for-purpose. Some provisions are very ambiguous, such as health clearance for arriving craft and liability to quarantine, and do not align with modern operational processes.

Legislative review and interim ‘back-up’ policy proposals

- 26 The Ministry of Health is currently undertaking a review of pandemic related legislation, giving consideration to the issues outlined above. I seek approval to report back to Cabinet by June 2025 with policy options to ensure a fit-for-purpose legislative framework. As well as capitalising on agencies recent experience of COVID-19 to make improvements for the future, this work will provide a platform for the Government to consider recommendations of the New Zealand Royal Commission of Inquiry into COVID-19 Lessons Learned against.
- 27 As a ‘back-up’ measure until broader reform of pandemic legislation can be considered, the Ministry of Health has provided me with a set of limited policy proposals to amend the Health Act that could be passed under urgency if required for an emergency response. These proposals would allow for measures such as case isolation and mask wearing, and to shift significant national-level powers from unelected officials to Ministers.
- 28 I would only bring these ‘back-up’ proposals to Cabinet if, due to a pandemic or other significant disease outbreak (including in the very unlikely event of a significant deterioration of the COVID-19 situation), mandatory measures may be needed.

Cost-of-living Implications

- 29 This proposal has no cost-of-living implications.

Legislative Implications

- 30 If Cabinet agrees to this proposal, the COVID-19 Act will expire on 26 November 2024. No other changes to pandemic related legislation are proposed at this time.

Regulatory Impact Statement

- 31 The COVID-19 Act is scheduled to expire in November 2024, and therefore the proposal in this paper to allow the COVID-19 Act to expire does not trigger Cabinet’s regulatory impact analysis requirements.

Climate change implications

- 32 This proposal has no climate change implications.

Population Implications

- 33 In the current context, the population implications are minimal because there are no orders likely to be introduced under the COVID-19 Act.

Human Rights

- 34 Mandatory public health measures introduced during the pandemic under the COVID-19 Act impacted on people's human rights, such as freedom of movement. Allowing the COVID-19 Act to self-repeal protects human rights because it removes unnecessary legislation under which rights restricting orders could be issued.

Consultation

- 35 The Ministry of Health has consulted with the following agencies and entities: Health New Zealand, Crown Law, Te Puni Kōkiri, Ministry of Ethnic Communities, Ministry of Justice, Ministry of Corrections, New Zealand Customs Service, Ministry of Foreign Affairs, Treasury, Ministry of Social Development, Department of the Prime Minister and Cabinet, New Zealand Police, Ministry for Primary Industries, Ministry of Education, Ministry of Transport, Department of Internal Affairs, Ministry of Housing and Urban Development, Ministry for Children, Ministry for Regulation and the Ministry for Disabled People.
- 36 The Ministry for Disabled People noted that allowing the COVID-19 Act to self-repeal may cause alarm among some members of their community, given the disproportionate impact of COVID-19 on disabled people.

Communications

- 37 Should Cabinet agree to the proposal, my office will issue a press release advising that the COVID-19 Act will self-repeal on 26 November 2024, noting that public health measures for COVID-19 will continue, as supported by funding through Budget 2024.

Proactive Release

- 38 This Cabinet paper will be proactively released within 30 business days of decisions being confirmed by Cabinet, with some information withheld where appropriate under the Official Information Act 1982.

Recommendations

The Minister of Health recommends that the Social Outcomes Committee:

- 1 **note** that in May 2020 Parliament passed the COVID-19 Public Health Response Act 2020 under urgency to support the emergency response to COVID-19;
- 2 **note** that unless the COVID-19 Public Health Response Act 2020 is renewed, it will self-repeal on 26 November 2024;

- 3 **note** that the last remaining orders under the COVID-19 Public Health Response Act 2020 were removed on 15 August 2023;
- 4 **note** the Ministry of Health's advice is that the epidemiological risk profile of COVID-19 is such that there is a very low likelihood of a deterioration to a point where mandatory measures would be required again;
- 5 **agree** to allow the COVID-19 Public Health Response Act 2020 to self-repeal on 26 November 2024;
- 6 **note** the Ministry of Health is undertaking a broader review of public health legislation to identify potential changes to ensure fit-for-purpose legislation to respond to future pandemics and infectious disease outbreaks;
- 7 **note** the Ministry of Health has provided the Minister of Health with a set of limited policy proposals to amend the Health Act 1956, that could be passed under urgency if required due to an emergency response, prior to the Ministry's broader legislative review being complete;
- 8 **invite** the Minister of Health to report back to the Social Outcomes Committee by June 2025 with policy options for legislative change.

Authorised for lodgement

Hon Dr Shane Reti

Minister of Health



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Report of the Cabinet Social Outcomes Committee: Period Ended 18 October 2024

On 21 October 2024, Cabinet made the following decisions on the work of the Cabinet Social Outcomes Committee for the period ended 18 October 2024:

SOU-24-MIN-0122 **Self-repeal of the COVID-19 Public Health Response Act 2020** CONFIRMED
Portfolio: Health

Out of scope

Rachel Hayward
Secretary of the Cabinet



Cabinet Social Outcomes Committee

Minute of Decision

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Self-repeal of the COVID-19 Public Health Response Act 2020

Portfolio Health

On 16 October 2024, the Cabinet Social Outcomes Committee:

- 1 **noted** that in May 2020, Parliament passed the COVID-19 Public Health Response Act 2020 (the Act) under urgency to support the emergency response to COVID-19;
- 2 **noted** that unless the Act is renewed, it will self-repeal on 26 November 2024;
- 3 **noted** that the last remaining orders under the Act were removed on 15 August 2023;
- 4 **noted** that the Ministry of Health's (the Ministry) advice is that the epidemiological risk profile of COVID-19 is such that there is a very low likelihood of a deterioration to a point where mandatory measures would be required again;
- 5 **agreed** to allow the Act to self-repeal on 26 November 2024;
- 6 **noted** that the Ministry is undertaking a broader review of public health legislation to identify potential changes to ensure that there is fit-for-purpose legislation to respond to future pandemics and infectious disease outbreaks;
- 7 **noted** that the Ministry has provided the Minister of Health with a set of limited policy proposals to amend the Health Act 1956, which could be passed under urgency if required due to an emergency response, prior to the completion of the broader legislative review;
- 8 **invited** the Minister of Health to report back to the Cabinet Social Outcomes Committee by June 2025 with options for legislative change.

Jenny Vickers
Committee Secretary

Attendance: (see over)

Present:

Hon David Seymour
Hon Nicola Willis (Chair)
Hon Dr Shane Reti
Hon Erica Stanford
Hon Paul Goldsmith
Hon Louise Upston
Hon Matt Doocey
Hon Melissa Lee
Hon Nicole McKee
Hon Casey Costello
Hon Penny Simmonds
Hon Karen Chhour
Hon Nicola Grigg

Officials present from:

Office of the Prime Minister
Officials Committee for SOU
Office of Hon Erica Stanford

PROACTIVELY RELEASED