

4 July 2022

s 9(2)(a)

By email: s 9(2)(a)
Ref: H202207410

Tēnā koe s 9(2)(a)

Response to your request for official information

Thank you for your request under the Official Information Act 1982 (the Act) to the Ministry of Health (the Ministry) on 2 June 2022. You requested:

"In your leadership role of the State Sector of New Zealand, and with regard to the general New Zealand economy, can you please tell me which essential governmental and business activity within the Public Service departments; Crown entities; State-owned enterprises or large industries are currently significantly disrupted by the effects of illness due to the 'Covid-19' outbreak? Please refer only to the effects from illnesses, and not the protocols put in place to manage the illness.

This request is made in reference to clause 9(2) of the Epidemic Preparedness Act 2006 whereby Prime Minister Jacinda Ardern must revoke the Epidemic Preparedness (COVID-19) Notice 2020 Renewal Notice 2022 she issued under this Act, if the effects of the outbreak are no longer disrupting essential governmental and business activity in New Zealand:

9 (2) If no longer satisfied that the effects of the outbreak concerned are likely to disrupt or continue to disrupt essential governmental and business activity in New Zealand (or the parts of New Zealand concerned) significantly, the Prime Minister must promptly revoke the epidemic notice. (Epidemic Preparedness Act 2006)."

One document was found within scope of your request and is attached to this letter as Document 1. Some information has been withheld under the following sections of the Act:

- section 9(2)(a)- to protect the privacy of natural persons;
- section 9(2)(f)(iv)- to maintain the constitutional conventions that protect the confidentiality of advice tendered by Ministers and officials; and
- section 9(2)(h)- to maintain legal professional privilege.

The Epidemic Preparedness (COVID-19) Notice 2020 (the Epidemic Notice) will be reviewed in June 2022.

Where information has been withheld under section 9 of the Act, I have considered the countervailing public interest in release in making this decision and consider that it does not outweigh the need to withhold at this time.

I trust this information fulfils your request. Under section 28(3) of the Act, you have the right to ask the Ombudsman to review any decisions made under this request. The Ombudsman may be contacted by email at: info@ombudsman.parliament.nz or by calling 0800 802 602.

Please note that this response, with your personal details removed, may be published on the Ministry website at: www.health.govt.nz/about-ministry/information-releases/responses-official-information-act-requests.

Nāku noa, nā



Phil Knipe
Chief Legal Advisor
Health Legal



Briefing

Renewal of the Epidemic Notice under section 7(1) of the Epidemic Preparedness Act 2006 (No 8)

Date due to MO: N/A **Action required by:** 15 March 2022

Security level: IN CONFIDENCE **Health Report number:** 20220212

To: Rt Hon Jacinda Ardern, Prime Minister
 Hon Chris Hipkins, Minister for COVID-19 Response
 Hon Andrew Little, Minister of Health

Contact for telephone discussion

Name	Position	Telephone
Robyn Shearer	Acting Director-General of Health	S9(2)(a)
Phil Knipe	Chief Legal Advisor, Corporate Services	

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:

Renewal of Epidemic Notice under section 7(1) of the Epidemic Preparedness Act 2006 (No 8)

Security level: IN CONFIDENCE **Date:** 7 March 2022

To: Rt Hon Jacinda Ardern, Prime Minister
Hon Chris Hipkins, Minister for COVID-19 Response
Hon Andrew Little, Minister of Health

Purpose of report

1. This report sets out my written recommendation, as Director-General of Health, that the Epidemic Preparedness (COVID-19) Notice 2020 (Epidemic Notice) be renewed and seeks your agreement to renew the Epidemic Notice.

Summary

1. The Epidemic Notice, issued under section 5 of the Epidemic Preparedness Act 2006 (the Act), came into force on 25 March 2020 for a maximum period of three months. That notice was renewed under section 7 of the Act on 24 June 2020, 23 September 2020, 22 December 2020, 21 March 2021, 20 June 2021, 19 September 2021 and 18 December 2021.
2. The Epidemic Notice can be renewed by the Prime Minister, whether the outbreak is occurring in New Zealand or overseas:
 - a. with the agreement of the Minister of Health;
 - b. after considering my written recommendation, as the Director-General of Health; and
 - c. if the Prime Minister is satisfied that the effects of the outbreak concerned are likely to continue to disrupt essential governmental and business activity in New Zealand significantly.
3. This report provides my written recommendation, as the Director-General of Health, that the Epidemic Notice be renewed. My recommendation is that the Epidemic Notice be renewed for the reasons set out in this report. These include that:
 - a. based on the ongoing international risk, and the ongoing outbreak in New Zealand, with cases numbers continuing to increase, COVID-19 will continue to disrupt essential governmental and business activity in New Zealand; and
 - b. while gains are being made to control the outbreak and spread of COVID 19 overseas, including a worldwide vaccination effort, the COVID 19 pandemic still presents significant disruption both in New Zealand and overseas, it is essential to

continue to have the legislative tools that are available while an epidemic notice is in force, for use as needed.

4. If the Epidemic Notice is renewed, as soon as possible after that renewal, the Prime Minister must present a copy of the renewed Epidemic Notice to Parliament.

Recommendations

It is recommended that you:

- a) **Note** that there continues to be large scale outbreaks of COVID-19 globally and an ongoing outbreak of community cases in New Zealand, which pose an ongoing risk to New Zealand.
- b) **Note** that an Epidemic Notice under section 5 of the Epidemic Preparedness Act 2006 is currently in place and expires at the close of 18 March 2022.
- c) **Note** that the Epidemic Notice enables a number of powers to be exercised under the COVID-19 Public Health Response Act 2020, the Health Act 1956 and the Epidemic Preparedness Act 2006.
- d) **Note** that a number of legislative provisions are contingent on the Epidemic Notice remaining in place.
- e) **Note** my advice that the ongoing outbreak of the Omicron variant of COVID-19 in New Zealand and globally, is likely to continue to disrupt essential governmental and business activity in New Zealand significantly.
- f) **Note** that the Epidemic Notice can be renewed whether the outbreak is occurring in New Zealand or overseas.
- g) **Note** that the Epidemic Notice is the enabling framework for a range of legislative instruments used to address the effects of the COVID-19 pandemic.
- h) **Note** my recommendation that the Epidemic Notice be renewed.
- i) **Note** the Prime Minister is required to make the decision as to whether the Epidemic Notice is renewed.
- j) **Agree**, as the Minister for COVID-19 Response, that the Epidemic Notice is renewed (*Minister for COVID-19 Response only*). Yes No
- k) **Agree**, as the Minister of Health, that the Epidemic Notice is renewed (*Minister of Health only*). Yes No
- l) **Agree**, as the Prime Minister, that the Epidemic Notice be renewed: Yes No
- (i) having considered the written recommendation of the Director-General of Health; and
 - (ii) being satisfied that the effects of the outbreak concerned are likely to continue to disrupt essential governmental and

business activity in New Zealand significantly (*Prime Minister only*).

- m) **Note** the renewal of the Epidemic Notice will take effect upon publication in the Gazette and expire three months after its commencement, unless earlier renewed or revoked.
- n) **Note** when the renewal of the Epidemic Notice is signed, a copy of that renewal must be presented as soon as possible to Parliament.



Robyn Shearer
Acting Director-General of Health



Hon Chris Hipkins
Minister for COVID-19 Response
Date: 10/3/2022



Hon Andrew Little
Minister of Health
Date: 14/3/22



Rt Hon Jacinda Ardern
Prime Minister
Date: 15/3/22

Released under the Official Information Act 1982

Renewal of Epidemic Notice under section 7(1) of the Epidemic Preparedness Act 2006 (No 8)

Proposal

1. This paper recommends that the Epidemic Preparedness (COVID 19) Notice 2020 (Epidemic Notice) be renewed under section 7 of the Epidemic Preparedness Act 2006 (the Act).

Background

2. On 24 March 2020, the Prime Minister, with the agreement of the Minister of Health, after considering my written recommendation, issued the Epidemic Notice under section 5 of the Act. Unless earlier revoked or subsequently renewed, the Epidemic Notice expires three months after its commencement.
3. The first Epidemic Notice was to expire on 24 June 2020.
4. On 24 June 2020, the Prime Minister, with the agreement of the Minister of Health, after considering my written recommendation, renewed the Epidemic Notice. The Epidemic Notice was then due to expire on 24 September 2020.
5. The Epidemic Notice was renewed on six more occasions: on 23 September 2020, 22 December 2020, 21 March 2021, 20 June 2021, 19 September 2021 and 18 December 2021. It is now due to expire on 18 March 2022.
6. To renew the Epidemic Notice, the Prime Minister must:
 - a. have the agreement of the Minister of Health;
 - b. have considered my written recommendation, as the Director General of Health; and
 - c. be satisfied the effects of an outbreak of COVID 19 are likely to continue to disrupt essential governmental and business activity in New Zealand significantly.
7. The Act states that an epidemic notice should be made with the agreement of the Minister of Health. I understand that the Prime Minister has written to the Minister for COVID-19 Response to provide that he is the Minister for the purposes of the COVID 19 response. As the renewal of an epidemic notice falls within the portfolio of the Minister for COVID 19 Response, it is appropriate for both the Minister of Health and the Minister for COVID 19 Response to agree to the renewal of the Epidemic Notice.
8. As at 7 March 2022:
 - a. the World Health Organisation (WHO) has determined COVID 19 to be a public health emergency of international concern under the International Health Regulations 2005, has declared the COVID 19 outbreak a global pandemic and has recommended that countries take a comprehensive approach to stopping the spread of COVID 19;

- b. there is widespread community transmission of COVID 19 globally and in New Zealand, case numbers are rising; and
 - c. the ongoing outbreak of COVID-19 nationally and globally continues to have a significant impact on New Zealand's economy through disruption to internal and external markets, supply chains and workers.
9. As required by the Act, I, as the Director-General of Health, have kept under review, and have kept you informed of, the situation during which the Epidemic Notice has been made.

Effects of an Epidemic Notice

Legislative powers: COVID-19 Public Health Response Act 2020 and the Health Act 1956

10. The Epidemic Notice allows for the use of powers under the COVID-19 Public Health Response Act 2020 (the COVID 19 Act) and 'special powers' under section 70 of the Health Act 1956 (the Health Act). These powers include requiring persons to refrain from taking any specified actions that contribute to or are likely to contribute to the risk of the outbreak or spread of COVID 19, or requiring persons to take specified actions to comply with specified measures that contribute or are likely to contribute to preventing the risk of the outbreak or spread of COVID 19.
11. These powers have been used by the Director General of Health (acting with the powers of a medical officer of health in accordance with section 22 of the Health Act), to issue notices to classes of people in New Zealand. These powers have now been augmented by the COVID 19 Act.
12. Medical officers of health have been using the 'special powers' to prevent further outbreak or spread of COVID 19 and Orders for self-isolation have now been made under the COVID-19 Act. This has included requiring persons to be quarantined/isolated (both self isolation and in Managed Isolation or Quarantine Facilities) and/or submitting themselves for medical examination and testing in an effort to minimise the risk to public health.
13. On 2 December 2021, the COVID 19 Public Health Response (Protection Framework) Order 2021 came into force. As at 7 March 2022, all regions in New Zealand are at the 'Red' setting in the COVID 19 Protection Framework.
14. Powers under the COVID-19 Act are currently being used to mandate requirements under the COVID-19 Orders (e.g., self isolation, QR codes and contact records, face coverings, CVC requirements, testing, vaccination, physical distancing, gatherings, events and restrictions on access and on opening) and to continue border related requirements such as managed isolation and quarantine and self isolation arrangements.
15. Updated orders relating to border controls came into force on 27 February 2022. S9(2)
 (f)(iv)

Epidemic Preparedness Act 2006

16. The Epidemic Notice also unlocks the power for the Prime Minister to make Epidemic Management Notices. Three notices are in place: the Epidemic Preparedness (Epidemic Management – COVID-19) Notice 2020, the Epidemic Preparedness (Epidemic Management – COVID-19) Notice (No 2) 2020 and the Epidemic Preparedness (Epidemic Management – COVID-19 – Parole Act 2002 and Sentencing Act 2002) Notice 2020. These notices activate epidemic provisions under the Social Security Act 2018, Immigration Act 2009, Parole Act 2002 and the Sentencing Act 2002. For example, they enable greater flexibility in relation to managing parole conditions.
17. As at 7 March 2022, there are nine Immediate Modification Orders in place under section 15 of the Act, through which the effect of primary legislation is temporarily modified to relax statutory requirements or restrictions to enable compliance that would otherwise be impossible or impractical. For example, the Immediate Modification Orders relax requirements for citizens to physically complete forms or be physically present to participate in activities or access government or other services. Two Immediate Modification Orders have been revoked:
- a) the *'Epidemic Preparedness (COVID-19 – Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 - Term of Appointments to Te Pou Tupua'* was revoked on 10 June 2021; and
 - b) the *'Epidemic Preparedness (Medicines Act 1981 – COVID-19) Immediate Modification Order 2021'* was revoked on 3 February 2022 and was replaced by the *'Epidemic Preparedness (Medicines Act 1981 – COVID-19) Immediate Modification Order 2022'*.
18. Eight Immediate Notification Orders will be automatically revoked when the Epidemic Notice expires or is revoked.
19. In addition, a number of the provisions introduced through the COVID-19 Response (Further Management Measures) Legislation Act 2020 are contingent on the Epidemic Notice remaining in place. For example, one of the provisions is an obligation on coroners to test for COVID-19. Another provision enables the Commerce Commission to authorise conduct that may technically breach the restrictions on cartel conduct, but which is of such benefit to the public that it should be permitted.

An epidemic notice can only be issued or renewed if the effects COVID-19 are likely to disrupt essential government and business activity

20. By issuing and renewing the Epidemic Notice, the Prime Minister declared she was satisfied the effects of an outbreak of a quarantinable disease were likely to significantly disrupt essential government and business activity in New Zealand. This continues to be the case as regions in New Zealand and overseas jurisdictions still face high numbers of COVID-19 cases. There has been a significant growth of COVID 19 cases identified in the community, particularly in the Auckland region. Cases are expected to continue to grow rapidly which may put our health system under considerable pressure.
21. As at 11:59 pm on 6 March 2022, there are 192608 active cases of COVID-19 in New Zealand. There is an ongoing risk to New Zealand, as highlighted by ongoing community cases in New Zealand, particularly in the Auckland region, and at the border, with the need for controls to manage the public health risks.
22. While the rollout of COVID-19 vaccination is well advanced in New Zealand and in some places overseas, we still have some areas with low vaccination rates. The COVID-19

Omicron variant is the dominant strain in many parts of the world and is now widespread in the New Zealand community. The rollout of the Pfizer COVID-19 vaccine booster doses continues to mitigate the public health risk posed by COVID-19, including the Omicron variant.

The disruption to New Zealand's economy is ongoing

23. The outbreak overseas and in the community continues to have an impact on the New Zealand economy through disruption to supply chains, and ongoing impacts felt by restrictions imposed by the former Alert Level system. Border restrictions also have an ongoing impact on supply chains.
24. Internationally, COVID 19 supply disruptions continue to weigh on activity. The International Monetary Fund's (IMF) latest World Economic Outlook anticipates that while the Omicron variant will disrupt activity in the first quarter of 2022, this effect will fade over the remainder of the year.
25. The Government's proposed path of reopening the borders can be expected to help alleviate some of the labour market pinch points, but the rising risk of a large-scale Omicron outbreak in New Zealand, and the experience from overseas, suggests that disruptions may continue for several more months.¹
26. Domestically, the economic impacts of COVID-19 are significant and ongoing:
 - a. The impact of maintaining restrictions on the New Zealand border, in the context of COVID-19 globally, is approximately 2 to 3 percent of GDP at Red (approximately \$190 million per week); and
 - b. net core Crown debt is forecast to increase by close to \$35.8 billion by 2025/26, peaking as a share of GDP at 40.1 percent in 2022/23.²
27. It is observed that without the imposition of restrictions, COVID-19 would likely have caused a significant number of deaths, especially in our vulnerable communities and would have quickly overrun our health system. At Phase Three of the COVID 19 Response, there is a need to protect our health system and to prioritise those with the greatest health and welfare needs, and those most at risk from poor outcomes due to COVID-19.

The global situation continues to pose a significant risk to New Zealand

28. The continued effective operation of the Government is best served if the health impacts of COVID 19 are managed and minimised.
29. The WHO reported on 4 March 2022 that there have been 440,807,756 confirmed cases of COVID-19 reported globally, including 5,978,096 deaths. The global situation remains serious with weekly cases and deaths showing signs of declining, but still remain at high levels.
30. The scale of the COVID 19 pandemic presents a high risk of a further large scale outbreak of COVID 19 in the New Zealand community.

¹ Fortnightly Economic Update (4 February 2022) produced by the New Zealand Treasury.

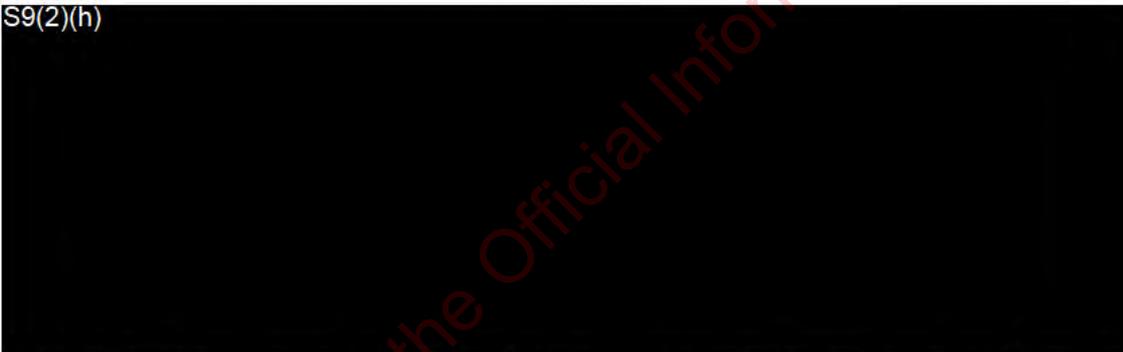
² Half Year Economic and Fiscal Update 2021 (15 December 2021) produced by the New Zealand Treasury.

31. At 11:59 pm on 24 February 2022, all of New Zealand moved to 'Phase Three' of the Omicron response. New Zealand's COVID 19 Response planning at Phase Three of the Omicron response primarily focuses on vaccination, testing, self-isolation, case detection and surveillance, contact tracing, border controls, self-management of COVID-19 cases, and community support for control measures. At present, managed isolation and quarantine continues to be a requirement for all unvaccinated travellers.
32. In Phase Three of the Omicron response, the priority is to reduce pressure on the health sector so it can focus its efforts on communities most at risk from COVID-19. There is a greater emphasis on self-management of COVID-19 cases, supported by digital tools.

The Epidemic Notice provides the enabling framework for other legislative instruments

33. The Government Administration Committee reported on the Law Reform (Epidemic Preparedness) Bill (which became the Epidemic Preparedness Act 2006) and noted that there should be a graduated approach to implementing and scaling back immediate modification orders. The Committee also commented that, to facilitate the graduated approach, an Epidemic Notice should remain in force for as long as an epidemic remains a threat. It was suggested that as an epidemic recedes, "the immediate modification orders should be scaled back gradually to facilitate society's return to normality,"³ implying that the Epidemic Notice would be the last to be revoked.

34. S9(2)(h)



35. All other instruments, particularly the epidemic management notices, will remain under review, and will be revoked if and when they are no longer necessary. The Epidemic Notice is the enabling framework for a range of other legislative powers and instruments, including epidemic management notices, and immediate modification orders (both made under the Act).

36. S9(2)(h)



The powers resulting from renewing the Epidemic Notice are significant

37. The powers resulting from the renewed Epidemic Notice are broad-ranging. They include the power to search (e.g., by way of testing) and detain persons (e.g., by way of

³ Page 5 Law Reform (Epidemic Preparedness) Commentary – accessed on 11 June 2020 at https://www.parliament.nz/resource/en_NZ/48DBSCH_SCR3588_1/bb53df3ec76505d2dfb175afc97631aed1cf0789.

orders directing an individual to isolate or quarantine in a managed facility). These are some of the most intrusive and significant powers a State can exercise over its people.

38. Exercising these powers limits the rights and freedoms in the New Zealand Bill of Rights Act 1990. They may only be limited by the Executive Government where this can be demonstrably justified in a free and democratic society. Exercise of the powers in any individual case must be necessary, reasonable and proportionate to the risk COVID 19 presents to the New Zealand community.
39. The power to make Immediate Modification Orders, which have the effect of modifying requirements set out in primary legislation, is also extraordinary and constitutionally unique.
40. S9(2)(h) [REDACTED] In addition, the Ministry of Health constantly reviews the situation justifying the Epidemic Notice, and I will keep you informed. I will advise the Prime Minister to promptly revoke the Epidemic Notice if it appears the effects of the COVID-19 outbreak are no longer likely to disrupt essential government and business activity.

Recommendation to renew the Epidemic Notice

Given the impact on government and business activity, it is proposed the Epidemic Notice be renewed for a period of three months from 17 March 2022

41. The scale and extent of COVID-19 outbreaks overseas and the ongoing outbreak in New Zealand means COVID-19 continues to have a significant impact on government and business activity. This impact may continue for some time in light of the current outbreak of COVID 19 in New Zealand.
42. My recommendation is therefore that the Epidemic Notice is renewed for a further three months before its expiry on 18 March 2022. If the Epidemic Notice is renewed, it would continue in force (unless earlier revoked or renewed) until 17 June 2022.

There are safeguards and processes in place for the Prime Minister to renew the Epidemic Notice

43. There are important safeguards and forms of Parliamentary scrutiny in place to ensure that the use of powers associated with the Epidemic Notice are reasonable, including:
- a. the Prime Minister is required to notify the House of Representatives as soon as possible that an Epidemic Notice has been issued or renewed;
 - b. the House of Representatives has the opportunity to scrutinise Orders made during an epidemic. This provides a layer of swift scrutiny, and enhances the legitimacy of the Orders without imposing impractical requirements; and
 - c. while the issuing of an Epidemic Notice would allow the modification or relaxation of laws, laws that protect fundamental rights and freedoms are prevented from being modified in this way, such as significant constitutional legislation including the Bill of Rights 1688, the Constitution Act 1986, the Electoral Act 1993, the Judicial Review Procedure Act 2016, the New Zealand Bill of Rights Act 1990, or the Parliamentary Privilege Act 2014.

Timing

44. The renewal of the Epidemic Notice will be published in the Gazette as soon as possible.
45. As soon as possible after giving the Epidemic Notice, the Prime Minister must present a copy of the Epidemic Notice to Parliament. This can be provided to the Office of the Clerk.

Equity

46. The spread of COVID-19 disproportionately harms older people and those with long term conditions such as diabetes or heart disease. Additionally, the disruption likely to result from the spread of the disease in New Zealand, and measures to contain it, is likely to disproportionately affect those who are unable to work from home, and people in certain industries, such as health, education, retail, aviation, tourism and hospitality.
47. There are a number of factors to balance in considering equity implications:
 - a. we know from historical examples that Māori and Pacific peoples are likely to be disproportionately affected by a widespread outbreak of a pandemic;
 - b. we also know that the spread of COVID 19 disproportionately harms older people, and those with long-term conditions such as diabetes or heart disease;
 - c. the disruption likely to result from the spread of COVID-19 in New Zealand, and measures to contain it, is likely to disproportionately affect those who are unable to work from home, and people in certain industries, such as health, education, retail aviation, tourism and hospitality; and
 - d. we know that, in particular, Māori and Pacific communities are likely to be disproportionately affected by the impact of any controls.
48. The moves that have been taken to strongly and quickly control the outbreak have struck the correct balance between these factors.
49. The renewal of the Epidemic Notice will allow the government to rapidly and more effectively introduce measures to mitigate harm to and to protect those most vulnerable.

Next steps

50. If the Epidemic Notice is renewed, the Ministry of Health will make arrangements for the Epidemic Notice to be published in the Gazette and to come into effect as soon as possible. Officials will work with the office of the Minister for COVID-19 Response to ensure that the Epidemic Notice is presented to Parliament.

ENDS.