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MANATŪ HAUORA
MINISTRY OF HEALTH

Briefing

Authorising the use of COVID-19 Orders under section 8(c) of the COVID-19 Public Health Response Act 2020

Date due to MO:	30 March 2023	**Action required by:**	26 April 2023
Security level:	IN CONFIDENCE	**Health Report number:**	H2023022067
To:	Rt Hon Chris Hipkins, Prime Minister		
Copy to:	Hon Dr Ayesha Verrall, Minister of Health Hon Kiri Allan, Minister of Justice		
Consulted:	Health New Zealand: ☒ Māori Health Authority: ☒		

Contact for telephone discussion

Name	Position	Telephone
Dr Diana Sarfati	Director-General of Health	s 9(2)(a)
Stephen Glover	Group Manager, COVID-19 Policy, Strategy, Policy and Legislation	s 9(2)(a)

Minister's office to complete:

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☐ See Minister's Notes	☐ Withdrawn	

Comment:

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Authorising the use of COVID-19 Orders under section 8(c) of the COVID-19 Public Health Response Act 2020

Security level:	IN CONFIDENCE	**Date:**	30 March 2023
To:	Rt Hon Chris Hipkins, Prime Minister		

Purpose

1. This briefing recommends you authorise the use of specific self-isolation requirements under COVID-19 orders until 30 June 2023 pursuant to section 8(c) of the COVID-19 Public Health Response Act 2020 (the Act).

Summary

Measures recommended to be continued or revoked

2. This briefing should be read in parallel with the Cabinet paper 'COVID-19 public health measures' to be considered by the Cabinet Social Wellbeing Committee on 5 April 2023 following the COVID-19 Public Health Risk Assessment (PHRA) held on 16 March 2023. The PHRA is attached as an Annex.

3. The Cabinet paper recommends that the COVID-19 Public Health Response (Self-isolation Requirements) Order 2022 be continued which requires 7-day isolation periods for positive cases (including limited permitted movement for those cases).

4. The Cabinet paper recommends that the other two remaining Orders – the COVID-19 Public Health Response (Point-of-care Tests) Order 2021, and the COVID-19 Public Health Response (Masks) Order 2022 – be revoked. The authorisation notice may be amended to cover one or both of these Orders, if Cabinet decides to keep them in force.

Authorisation required to enable Orders

5. The making of COVID-19 Orders (generally or specifically) can be authorised under section 8(c) of the COVID-19 Public Health Response Act 2020 (the Act), if you are satisfied there is a risk of an outbreak or the spread of COVID-19.

6. The COVID-19 Public Health Response (Authorisation of COVID-19 Orders) Notice 2023 (the current Authorisation) will expire on 28 April 2023.

Section 8(c) test

7. The test under section 8 of the Act is whether there is a risk of an outbreak or spread of COVID-19. s 9(2)(h)

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COVID-19 transmission and risks

The current situation is relatively stable…

8. Case numbers, hospitalisations and mortality rates have stabilised at lower levels relative to the three earlier peaks, although hospitalisation rates have started to rise again in recent weeks. In the short-term and medium-term there is likely to be no increase in severity of the virus.

9. The health system continues to be under pressure but has some limited capacity to respond if case numbers were to increase. The ongoing management of COVID-19 has transitioned to a more stable, long-term approach. We are shifting out of an emergency response and integrating the management of COVID-19 into a new business as usual.

10. We have high levels of immunity through vaccination and previous infection, and better access to antivirals. The bivalent vaccine will be available as a further booster dose for anyone over 30 from 1 April 2023.

…but risks remain especially for vulnerable groups

11. Vulnerable people continue to be at greater risk of severe outcomes from COVID-19. A significant number of people are susceptible to infection, and there are a significant number of deaths attributable to COVID-19 in Aotearoa New Zealand, especially among older people and Māori and Pacific populations:
    a. Older people are more likely to have severe illness than younger people. People aged 50 years and above have accounted for 650,865 cases (29% of total cases), of whom 2,547 have died (98% of total deaths) in the period to 20 March 2023.
    b. The cumulative total age-standardised hospitalisation rate to 12 March 2023 shows that Pacific peoples and Māori have had the highest risks of hospitalisation for COVID-19, at 2.3 and 1.8 times that of the European and Other groups, respectively.

12. Although infection trends are low currently this does not mean peak immunity has been reached. Infection trends will wax and wane as there will be new variants that escape prior immunity gained from infection.

13. Modelling is unable to estimate the impact of removing mandatory self-isolation on transmission. However, if a 15% increase in transmission did result from a policy change, this could cause an 88% increase in peak bed occupancy in hospitals, or an additional 382 beds (in the range 179-463), over the 26 weeks following the removal of mandatory self-isolation.

The retention of mandatory self-isolation is recommended for a further two months

14. Given these risks, I recommend that you extend the section 8(c) authorisation for another two months.

15. Provisional modelling suggests that increases in the levels of transmission following the removal of mandatory self-isolation could be significant, with serious adverse consequences on people and on the health system (hospitalisations and deaths). The PHRA recommendation reflects the view that the outbreak is not yet under sufficient control without the use of the mandatory self-isolation measure.

16. I recommend that you authorise the use of the COVID-19 orders under section 8(c) of the Act, requiring self-isolation of positive cases, through to 30 June 2023. This will also

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allow time for the further roll-out of bivalent vaccines, which will assist in managing risk leading into winter.

Recommendations

17. I recommend you:

a)	**Note** that the Cabinet Social Wellbeing Committee will consider changes to COVID-19 public health measures on 5 April 2023.	**Noted**
b)	**Note** the making of COVID-19 Orders (generally or specifically) can be authorised under section 8(c) of the COVID-19 Public Health Response Act 2020 (the Act), if you are satisfied there is a risk of an outbreak or the spread of COVID-19.	**Noted**
c)	**Note** that the COVID-19 Public Health Response (Authorisation of COVID-19 Orders) Notice 2023 will expire on 28 April 2023.	**Noted**
d)	s 9(2)(h)	**Noted**
e)	**Agree,** being satisfied that there is a risk of an outbreak or the spread of COVID-19, to authorise under section 8(c) of the Act the use of COVID-19 orders for self-isolation requirements for COVID-19 cases.	**Yes / No**
f)	**Agree** to sign the Authorisation Notice, to be provided by Parliamentary Counsel Office, authorising the use of COVID-19 orders under section 8(c) of the Act from 28 April 2023 to 30 June 2023.	**Yes / No**
g)	**Note** that the next Public Health Risk Assessment review of public health measures will take place before the end of May 2023.	**Noted**
h)	**Agree** to proactively release this briefing, subject to any appropriate withholding of information that would be justified under the Official Information Act 1982.	**Yes / No**

Rt Hon Chris Hipkins
Prime Minister
Date:

Hon Dr Ayesha Verrall
Minister of Health
Date:

Dr Diana Sarfati
Director-General of Health | Te Tumu Whakarae mō te Hauora
Date: 30 March 2023

Briefing: H2023022067

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Background

Amendments to the Act

18. The COVID-19 Public Health Response Act 2020 (the Act) was due to expire in May 2023, but the COVID-19 Public Health Response (Extension of Act and Reduction of Powers) Amendment Act 2022 (the Amendment Act) extended the expiry date to 26 November 2024.

19. The Amendment Act came into effect on 26 November 2022 and scaled back the government's previous COVID-19 powers.

20. Some of the measures needed at the start of the pandemic to contain the spread of COVID-19, such as lockdowns and Managed Isolation and Quarantine, are no longer needed. This reflects the evolution of the virus, and the range of additional tools now available to manage transmission and its impacts such as vaccination and antivirals.

21. The Act retains the ability to implement some limited public health measures to manage the ongoing impact of COVID-19 and potential new variants, for example through self-isolation and mask requirements, and other requirements as necessary on travellers to Aotearoa New Zealand.

Authorisation under the Act

22. Section 8 of the Act provides three pre-requisites for making and amending COVID-19 orders:

    a. while an epidemic notice under section 5 of the Epidemic Preparedness Act 2006 is in force for COVID-19

    b. while a state of emergency or transition period in respect of COVID-19 under the Civil Defence Emergency Management Act 2002 is in force

    c. if the Prime Minister, by notice in the *Gazette*, after being satisfied that there is a risk of an outbreak or the spread of COVID-19, has authorised the use of COVID-19 orders (either generally or specifically) and the authorisation is in force.

Current Notice

23. On 27 February 2023, the Prime Minister made the COVID-19 Public Health Response (Authorisation of COVID-19 Orders) Notice 2023 (the Notice) which authorises the use of COVID-19 orders under the Act in relation to the following matters:

    a. self-isolation requirements for COVID-19 cases

    b. point-of-care tests requirements

    c. mask requirements in health services premises.

24. The test for determining whether the use of COVID-19 orders can be authorised using section 8(c) of the Act is different to the test to be applied when determining whether the issuing of an epidemic notice is justified. However, the section 8(c) power is significant, and care is needed to ensure it is exercised prudently.

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25. The Prime Minister has authorised the use of COVID-19 orders under the Act for specific matters on three occasions to date: on 17 October 2022 (notice expired on 20 January 2023), on 16 December 2022 (notice expired on 28 February 2023), and on 27 February 2023 (the current notice, which is due to expire on 28 April 2023).

Cabinet consideration

26. On 5 April 2023, the Cabinet Social Wellbeing Committee will consider recommendations that it agree to:

   a. retain the current mandatory 7-day case isolation requirements (including allowing cases to return home by specified modes of transport and subject to infection prevention control measures being in place)

   b. revoke mandated mask requirements for visitors to health care settings

   c. revoke the restrictions on point-of-care tests.

[Legally privileged] Crown Law advice

s 9(2)(h)

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s 9(2)(h)

Is COVID-19 not under control, or potentially not under control?

35. This test requires a broad assessment of the current outbreak and trajectory of the spread of COVID-19 in New Zealand including what is likely to happen in the short term both with and without the current mandatory measures to limit the spread of COVID-19.

World Health Organization guidance

36. The World Health Organization produced early guidance and materials for national authorities and decision-makers who have public health measures in place and who

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need to consider the regular adjustment of measures. The focus of the guidance is on public health criteria, and reflects a pragmatic decision-making process that addresses:

a. *Epidemiology* – is the epidemic controlled?

b. *Health system* – is the health system able to cope with a resurgence of COVID-19 cases that may arise after adapting some measures?

c. *Public health surveillance* – is the public health surveillance system able to detect and manage cases and their contacts and identify a resurgence of cases?

37. The above criteria are not prescriptive, and it is acknowledged there will not always be adequate data across areas.

38. This three-part consideration is a useful framing which links to information that is currently being provided in regular public information releases and reporting to Ministers.

Status summary as at 16 March 2023

39. The Director of Public Health's summary assessment of current public health risk due to COVID-19 is that the risk to the population overall remains low but is increasing as we approach winter. The risks to more vulnerable members of the population remain higher than for the general population but may be reducing with the commencement of bivalent vaccine and extensive use of antivirals.

40. More information on the current state of the COVID-19 outbreak can be viewed in the PHRA (see Annex).

The current situation and short-term outlook is stable…

41. There is a level of stability in that the virus is not currently escalating out of control, the health system has capacity to respond, and surveillance is ongoing:

a. The virus continues to evolve. New variants emerge, including those with high transmissibility, but the outlook in the short-term and the medium-term is that there is likely no increase in severity. The current pattern is of daily cases in the range 1,000 to 2,000 with future waves uncertain in timing or scale.

b. The health system readiness and its ability to respond to COVID-19 risks, as reflected in the *COVID-19 Weekly Report to the Minister of Health (17 March 2023)* is status 'green' across the 7 core enablers, which include vaccination, case management, clinical operations and therapeutics, laboratories and diagnostics, among others.

c. Surveillance is active and ongoing in identifying variants, cases, and any potential threats. The base of information, science and knowledge is well-established and continues to develop. Contact tracing is not operational at any scale presently but can be activated if needed.

…but there are key ongoing risks to manage

Hospitalisations

42. The COVID-19 hospital admissions rate "for" COVID-19 has a 7-day rolling average of 0.7 per 100,000 population for the week ending 5 March 2023. This rate is almost the lowest

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rate of such hospital admissions experienced since the Omicron outbreak became widespread in Aotearoa New Zealand at the start of 2022.

43. The cumulative total age-standardised hospitalisation rate to 12 March 2023 shows that Pacific peoples and Māori have had the highest risks of hospitalisation for COVID-19, which is 2.3 and 1.8 times the risk of the European or Other groups, respectively.

Older people

44. Older people are more likely to have severe illness than younger people. People aged 50 years and above have accounted for 650,865 cases (29% of total cases), of whom 2,547 have died (**98% of total deaths**) in the period to 20 March 2023.

45. Hospitalisations are primarily driven by infections in older age groups. It is important to delay infections in this group. Current settings and behaviours that are being observed are having an impact on reducing infections in this older age group.

46. Immunity in this group will rise slowly, via vaccination. Bivalent vaccines are planned to be rolled out, and allowing time for the roll-out, by preventing and delaying infections, will assist in achieving the objective of the immunisation programme (avoiding severe illness, hospitalisations, and deaths). Uptake of the first booster is stable at 71.5%, and uptake of the second booster uptake has risen slightly to 49% of the eligible population.

47. The bivalent booster has become available to eligible members of priority groups from 1 March 2023, and it becomes available to those aged 30 years and over on 1 April. The bivalent booster provides targeted protection against Omicron subvariants, which is important for protecting vulnerable people and health sector capacity as Aotearoa New Zealand moves toward the winter illness season with an Omicron 'variant soup'. By mid-May it will be possible to assess the level of uptake and reassess settings considering the level of protection being provided and that expected in the period ahead.

Impact on Māori and Pacific communities, and disabled people

48. There are still significant differences in the rate of severe illness from COVID-19 amongst ethnic groups. As noted above, based on comparison of age-adjusted rates, worst affected are Pacific people, who are 2.3 times more likely than the European and other groups to be hospitalised with COVID-19, with Māori the next worst affected at 1.8 times more likely to be hospitalised with COVID-19.

49. Disability support services recipients have had four times the risk of hospitalisation and 13 times the risk of COVID-19 attributed mortality compared with the rest of the population during 2022. Mortality risk from non-COVID related causes was also substantial, with these recipients having 19 times the risk compared with the rest of the New Zealand population.

Long COVID

50. Based on evidence from overseas, 3-10% of cases may develop long COVID, of whom 20% may have ongoing significant disability. Long COVID and other post-acute conditions have costs to individuals and whānau, costs to government (welfare and health), but also broader impacts on society, such as reduced workforce participation and productivity.

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… and self-isolation remains a critical measure to minimise the ongoing risks

51. Self-isolation of positive cases reduces the spread of COVID-19 by breaking the chain of transmission - it reduces the number of infectious people having contact with and infecting others.

52. Self-isolation is a useful but limited measure:

    a. People with COVID-19 are generally infectious before they experience symptoms and before they self-isolate.

    b. Self-isolation will not be undertaken by those infectious cases who do not know they are infectious (eg, because they do not test, and do not experience any symptoms or only very mild symptoms).

    c. Even in a high-compliance self-isolation environment, positive cases will infect others.

53. Nonetheless, to the extent that self-isolation reduces the number of positive cases, and accordingly the number of hospitalisations, ICU patients, and deaths, it will be beneficial to some degree from a public health point of view.

Mandatory self-isolation is assumed to be the most effective self-isolation option

54. The main points in support of mandatory self-isolation as recommended by the PHRA are (see Annex for more details):

    a. Without mandated case isolation, it is assumed that the number of positive cases self-isolating will be lower, and transmission will be higher, than otherwise. The reason for this is based on an understanding and interpretation of previous experience when mandatory measures have been removed.

    b. Provisional modelling results provided by COVID-19 Modelling Aotearoa received on 22 March 2023 indicate that:

        i. changes to case isolation requirements (and other behaviour changes or measures) that result in a moderate increase in transmission of 10%, will cause an approximate 54% increase in peak bed occupancy in hospitals at some point in the 26 weeks following the change

        ii. changes in case isolation requirements (and other behaviour changes or measures) that result in a higher increase in transmission of 15% will cause an approximate 88% increase in peak bed occupancy in hospitals over the 26 weeks following the change.

    c. The consequences of increased transmission remain of concern as noted earlier in respect of hospitalisations, long COVID, the relatively high death rate, and impacts on vulnerable groups including the elderly and Māori and Pacific communities that are disproportionate and inequitable.

55. When interpreting modelling results, it is important to be aware of the following interpretation caveats (see Annex, paragraph 75 of the PHRA):

    a. It is not possible to determine the size of the effect that removing mandatory isolation would have on cases.

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b. Modelling does provide a useful range of potential impacts under different scenarios. However, it is not a prediction, and results are reliant both on the model itself and the assumptions it uses.

56. The differences between mandatory and non-mandatory self-isolation in reducing transmission are difficult to quantify and are inherently uncertain. Modelling assumes that transmission will increase under a non-mandatory option.

57. In summary, retaining case isolation could support ongoing mitigation of disproportionate impacts on vulnerable populations, provide lead-in time for the bivalent rollout to take effect and to manage potential pressures impacting on the health system as we head into winter. The short and long-term consequences of any significant increase in transmission are serious, especially for vulnerable groups.

Ongoing work to prepare for longer-term settings

58. At the point that mandatory self-isolation can no longer be justified, it will be important to encourage people to test and to continue to self-isolate when they are sick. An effective voluntary compliance regime will also avoid some current drawbacks with the mandatory approach.

Self-isolation as a non-mandatory measure

59. Unlike other restrictive measures that have been removed, self-isolation is a measure which people have always undertaken voluntarily to some degree when they are sick. Further, some mildly sick people are finding it easier to work from home than ever before. With strengthened guidance and communications about expectations, including of employers, and persons in charge of a business or undertaking, there is reason to be optimistic that non-mandatory self-isolation can also be an effective tool.

Moving to a more business-as-usual long-term response

60. In the period ahead, it will be important to promote better public health behaviours and individual and group responsibility for people to protect themselves and others. This will also avoid any misimpression that self-isolation or other safe practices should only be undertaken if they are legally required.

Avoiding arbitrary requirements and maintaining social licence

61. The current mandatory requirement is, in effect, a requirement that people 'elect into' as there is no requirement to test. Nor is the disclosure of any positive test results, or self-isolation itself, monitored for enforcement purposes.

62. An important part of the strategy for managing COVID-19 is to maintain, or to stand up, restrictive measures only when necessary and proportionate to the risks. Maintaining a requirement that is perceived to be arbitrary may erode scarce and valuable social licence that may be needed in future.

Proposed revocation of other orders

63. The PHRA recommends the revocation of:

a. **COVID-19 Public Health Response (Masks) Order 2022**

The current face mask mandate in health service settings would be revoked once Te Whatu Ora and Manatū Hauora implement national infection prevention and control

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(IPC) guidance. Stakeholders will then be able to develop bespoke requirements to manage risk levels on their premises.

b. **COVID-19 Public Health Response (Point-of-care Tests) Order 2021**

Restriction via this Order is no longer required because the quality control of COVID-19 testing products can be carried out via a procurement process, and through other existing mechanisms such as the Consumer Guarantees Act 1993.

64. These revocations are expected to have a negligible impact, if any, on transmission risks. These recommendations are discussed further in the PHRA (see Annex).

Extension to Prime Minister Authorisation

65. The current Authorisation Notice expires on 28 April 2023.

66. s 9(2)(h)

67. Following on from the public health risk assessment on 16 March 2023, and the advice to Ministers reflected in the Cabinet paper to be considered by the Cabinet Social Wellbeing Committee on 5 April 2023, I suggest that you authorise the use of COVID-19 orders for self-isolation on positive cases only for an extended period until 30 June 2023.

68. The Authorisation enables the use of COVID-19 orders for self-isolation of cases, but it does not require that a COVID-19 order be used for the duration of the extension. The justification of using a COVID-19 order for mandatory self-isolation of cases is regularly assessed, and changes will be made to the measures if they become inappropriate before the Authorisation Notice expires.

Scope of authorisation

69. The scope of the authorisation proposed in this paper is limited to self-isolation requirements for COVID-19 cases. This will empower the Minister of Health to make orders within that scope and to amend those orders, but not to expand the scope of the orders to include, for example, self-isolation of contacts without your further authorisation. Likewise, the scope of the authorisation could be expanded should Cabinet determine not to revoke the Masks Order and/or the Point-of-care Tests Order.

Duration of authorisation

70. It is proposed that the current authorisation (which will expire on 28 April 2023) be extended if you agree through until 30 June 2023. This will also allow time for the further roll-out of bivalent vaccines, which will assist in managing risk leading into winter.

71. From 1 April 2023, with few exceptions, those people aged 30 and over can access an additional booster using the bivalent vaccine. By mid-May it will be possible to assess the level of uptake and reassess settings considering the level of protection being provided and that expected in the period ahead.

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72. Should the risks associated with the COVID-19 outbreak change materially (up or down) then Manatū Hauora would undertake an ad hoc PHRA to ensure the public health measures remain appropriate and proportionate to those risks.

Consultation

73. This briefing was prepared by Manatū Hauora. It was informed by public health advice provided by Manatū Hauora. The Crown Law Office has provided legal advice. The Ministry of Justice, The Treasury, Te Whatu Ora, Te Aka Whai Ora, and Whaikaha were provided a copy of the paper. The Department of the Prime Minister and Cabinet was informed.

74. Comments from Te Aka Whai Ora included its view that:

    a. the obligations of the Crown to Māori under Te Tiriti o Waitangi significantly strengthen the argument in favour of maintaining a section 8(c) authorisation in order that mandatory self-isolation may be maintained for the time being

    b. modelling based on the total population, and driven by assumptions based on total population averages or Pākehā cultural norms, will not reflect the specific impact on Māori.

Next steps

75. If you agree to extend the authorisation, I recommend you sign the attached Authorisation Notice after decisions are made by the Cabinet Social Wellbeing Committee on 5 April and confirmed by Cabinet on 11 April, ahead of the expiry of the current authorisation on 28 April 2023.

76. Manatū Hauora will continue to review public health risks and the appropriate measures, including any mandatory measures enabled by orders, required to manage those risks.

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