

Briefing

Cabinet paper: COVID-19 public health measures

Date due to MO: 29 March 2023 **Action required by:** 30 March 2023

Security level: IN CONFIDENCE **Health Report number:** H2023022732

To: Hon Dr Ayesha Verrall, Minister of Health

For your: Information and Decision

Contact for telephone discussion

Name	Position	Telephone
Dr Andrew Old	Deputy Director-General, Public Health Agency	s 9(2)(a)
Stephen Glover	Group Manager, COVID-19 Strategy, Policy and Legislation	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 Withdrawn | |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

Cabinet paper: COVID-19 public health measures

Security level: IN CONFIDENCE **Date:** 29 March 2023

To: Hon Dr Ayesha Verrall, Minister of Health

Purpose

1. This briefing recommends that you consult your Ministerial colleagues, and lodge the attached draft Cabinet paper on COVID-19 public health measures with Cabinet Office by 30 March 2023 for discussion with the Cabinet Social Wellbeing Committee (SWC) on 5 April 2023.

COVID-19 public health measures

Public health risk assessment and development of advice from the Director-General of Health

2. A public health risk assessment was carried out on 16 March 2023 to review the appropriateness of settings in relation to COVID-19.
3. Based on the current context and outlook, the Director-General of Health (the Director-General) and her team recommended:
 - a. retaining mandatory isolation of cases for 7 days;
 - b. revoking mandatory use of masks for visitors to health services;
 - c. revoking regulation of the import, manufacture and supply of point-of-care COVID-19 tests.
4. This advice is included in Appendix One of the attached draft Cabinet paper, and supports the requirement under section 14(5) of the COVID-19 Public Health Response Act 2020 ('the Act') for the you to keep all measures under review. Also attached is the Regulatory Impact Statement (RIS).

Feedback on draft Cabinet paper

5. Following the development of advice from the Director-General, Manatū Hauora developed a draft Cabinet paper and sought feedback on the proposals from a large number of government agencies.
6. In the current draft, the recommendations have remained as they were in the advice from the Director-General.
7. There was generally broad support for retaining the requirement for cases to self-isolate. Most population agencies were opposed to the proposal to remove the mandate for visitors to wear masks in health service settings. In particular, Te Aka Whai Ora and Whaikaha have expressed strong feedback on the lack of data to support the proposal.

There was very little feedback on the proposal to revoke regulation in relation to COVID-19 point-of-care tests.

Rationale for retaining self-isolation

8. As New Zealand approaches the winter illness season it is critical that the public health response remains effective in limiting the spread and impacts of COVID-19 infections. The health system is already under more pressure than is typical at this time of year compared to other years during the pandemic. Increases in the spread of COVID-19 worsens this pressure and restricts the ability of the health sector to deliver services to both COVID-19 and non-COVID-19 patients.
9. COVID-19 continues to affect some population groups significantly more than others. Specifically, older people, Māori, Pacific Peoples, and disabled people are at higher risk of severe outcomes.
10. The Crown's obligations to Māori under Te Tiriti o Waitangi requires a commitment to partnership that includes good faith engagement with and appropriate knowledge of the views of iwi and Māori communities. The active protection principle obliges the Crown to take all steps practicable to protect Māori health and wellbeing, and to support and resource Māori to protect their own health and wellbeing. This includes efforts to counteract inequitable health outcomes and prevent the impact of COVID-19 from falling disproportionately on Māori. In assessing proportionality, it is important to recognise that due to Te Tiriti o Waitangi more restrictive measures may be required to achieve these objectives.
11. In this context, retaining the mandatory requirement for cases to isolate remains necessary – in addition to non-mandatory measures – to continue to suppress transmission, to protect people at greater risk of serious illness and to protect the health system. This measure continues to play a critical role to help keep the COVID-19 outbreak manageable.

Legal framework

12. Under section 8 of the Act, COVID-19 orders may be made while there is an epidemic notice in force, a state emergency or transition period in relation to COVID-19 is in force, or if the Prime Minister, by notice in the *gazette*, after being satisfied that there is risk of an outbreak or the spread of COVID-19 has authorised the use of COVID-19 orders (either generally or specifically).
13. s 9(2)(h)
[REDACTED]
[REDACTED]
[REDACTED]
14. Under section 9 of the Act, provided that one the prerequisites under section 8 have been met, then you may make a COVID-19 order provided that:
 - a. you must have regard to the advice from the Director-General of Health regarding the risks of the outbreak or spread of COVID-19, and the nature and extent of measures (whether voluntary or enforceable) that are appropriate to address those risks; and
 - b. you may have regard to any decision by the Government on the level of public health measures appropriate to respond to those risks and avoid, mitigate, or

remedy the effects of the outbreak or spread of COVID-19 (which decision may have taken into account any social, economic, or other factors)

- c. you must be satisfied that the order does not limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990;
 - d. you must have consulted the Prime Minister, the Minister of Justice, and may consult with any other Minister you think fit
 - e. before making the order, you must be satisfied that the order is appropriate to achieve the purpose of the Act.
15. Your office has previously indicated that your preference is to use the Cabinet process to seek agreement to the proposals from your ministerial colleagues.

Timeframes

16. As the current authorisation provided by the Prime Minister is due to expire on 28 April 2023, the proposal needs to go through the Cabinet process before recess.
17. Following ministerial consultation, and incorporation of feedback, the paper is due to be lodged on 30 March 2023, for consideration by SWC on 5 April 2023.
18. The paper is due to be discussed at Cabinet on 11 April 2023.

Next steps

19. Manatū Hauora recommends that you consult your Ministerial colleagues on the attached draft Cabinet paper and provide feedback to officials prior to lodging with Cabinet Office on Thursday 30 March 2023. We will prepare a final version of the Cabinet paper based on your feedback.

Recommendations

I recommend you:

- a) **Note** that advice will be provided to the Prime Minister on the test in section 8(c) of the COVID-19 Public Health Response Act 2020 before SWC meets on 5 April 2023. **Noted**
- b) **Note** that under section 9 of the COVID-19 Public Health Response Act 2020, provided that one of the prerequisites in section 8 have been met, you may make a COVID-19 order provided that **Noted**
 - a. you must have regard to the advice from the Director-General of Health regarding the risks of the outbreak or spread of COVID-19, and the nature and extent of measures (whether voluntary or enforceable) that are appropriate to address those risks; and
 - b. you may have regard to any decision by the Government on the level of public health measures appropriate to respond to those risks and avoid, mitigate, or remedy the effects of the outbreak or spread of COVID-19 (which decision may have taken into account any social, economic, or other factors)

- c. you must be satisfied that the order does not limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990;
 - d. you must have consulted the Prime Minister, and the Minister of Justice, and may consult with any other Minister you think fit
 - e. before making the order, you must be satisfied that the order is appropriate to achieve the purpose of the Act.
- c) **Agree** to consult your Ministerial colleagues on the attached Cabinet paper **COVID-19 public health measures** prior to lodgement. **Yes/No**
- d) **Agree** to lodge the Cabinet paper and RIS with Cabinet Office on Thursday 30 March 2023 for consideration by the Social Wellbeing Committee on 5 April 2023, and by Cabinet on 11 April 2023. **Yes/No**



Dr Diana Sarfati
Te Tumu Whakarae mō te Hauora
Director-General of Health
Date: 29 March 2023

Hon Dr Ayesha Verrall
Minister of Health
Date:

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