

Briefing

Public health advice on COVID-19 community cases in Auckland 27 February and COVID-19 Public Health Response (Alert Level Requirements) Order (No 4) 2021 for signing

Date due to MO: 27 February 2021 **Action required by:** 27 February 2021

Security level: IN CONFIDENCE **Health Report number:** 20210459

To: Hon Chris Hipkins, Minister for COVID-19 Response

Copy to
Rt Hon Jacinda Ardern, Prime Minister
Hon Andrew Little, Minister of Health
Hon Kris Faafoi, Minister of Justice

Contact for telephone discussion

Name	Position	Telephone
Dr Ashley Bloomfield	Director-General of Health	s 9(2)(a)
Caroline Flora	Acting Deputy Director-General System Strategy and Policy	s 9(2)(a)

Minister's office to complete:

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|---|------------------------------------|--|
| <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 Withdrawn | |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:

Public health advice on COVID-19 community cases in Auckland 27 February and COVID-19 Public Health Response (Alert Level Requirements) Order (No 4) 2021 for signing

Security level: IN CONFIDENCE **Date:** 27 February 2021

To: Hon Chris Hipkins, Minister for COVID-19 Response

Purpose of report

1. This report provides you with my advice on an emerging risk of community spread of COVID-19 in Auckland and recommends that you sign the Order attached at Appendix 1. The Order is entitled Covid-19 Public Health Response (Alert Level Requirements) Order (No 4) 2021.

Summary

2. On 1.45pm on 27 February the Ministry of Health was informed of a new community case of COVID-19, Case M, in Auckland. At 7pm, a further community case, Case N was reported, a close family contact of Case M.
3. Case M is the s 9(2)(a) of a student at Papatoetoe High School. The school student is a casual plus contact of Case A but has returned three negative COVID-19 tests. While infectious over the past 6 days since Sunday 21 February, s 9(2)(a) attended lectures at Manukau Institute of Technology, two appointments at s 9(2)(a) GP and a number of other exposure events that involved a significant number of other people.
4. The source of the infection is still unclear and under investigation. Whole genome sequencing results show this infection is linked to the current outbreak, associated with Papatoetoe High School.
5. Given the number of exposure events and the period of time Case M was infectious, I cannot rule out the possibility of wider community transmission.
6. Based on the available evidence at 6pm tonight my advice is that at **6am Auckland should move to Alert Level 3 in Auckland and the rest of New Zealand to move to Alert Level 2.**
7. An Alert Level change to Level 3 for the rest of New Zealand has been considered, and on balance we have determined at this time a wider Alert Level 3 is not required due to

the number of tests undertaken, with no positive results and the lack of any evidence at this point of spread in regions outside of Auckland.

8. Due to the unpredictability of the new variants, some individuals not complying with public health restrictions, and because there is still a risk that the virus has travelled outside of Auckland given the country has been at Alert Level 1 for nearly a week, I am recommending an increase to Alert Level 2 for the rest of New Zealand as a precautionary response. **I recommend this Alert Level change is for a seven day period initially and reviewed again on 7 March 2021 or earlier should the need arise.**
9. Investigation of this case will continue. I will review my advice regularly as new information becomes available and keep you informed.
10. I provided this advice to Cabinet verbally this evening when it discussed Alert Level settings to address the risk of COVID-19 transmission posed by these two new community cases in Auckland.
11. At that meeting Cabinet agreed to move Auckland to Alert Level 3, and the rest of New Zealand to Alert Level 2 for an initial period of seven days, effective from 6:00am Sunday 28 February 2021.
12. Cabinet agreed that a precautionary approach be taken and that this needed to occur as soon as possible. **I recommend that an Order is made under urgency and that the usual 48-hour notice period is dispensed with.**
13. A 24-hour transitional period has been allowed in the Order to enable people time to obtain the required evidence for interregional travel between and through alert level areas.
14. The draft Order, attached at Appendix 1, will give effect to this.
15. To make or amend an Order under section 11 of the COVID-19 Public Health Response Act 2020 (COVID-19 Act) you must:
 - a. receive advice from the Director-General of Health about –
 - i. the risks of the outbreak or spread of COVID-19, and
 - ii. the nature and extent of measures that are appropriate to address those risks, and
 - b. have regard to any decision by the Government on how to respond to those risks and avoid, mitigate or remedy the effects of the outbreak or spread of COVID-19 (including taking into account any social, economic or other factors), and
 - c. be satisfied that the proposed Order does not limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 2020, and
 - d. consult with the Prime Minister, Ministers of Health and Justice and any other Ministers you think necessary, and
 - e. be satisfied that the Order is appropriate to achieve the purpose of the COVID-19 Act.
16. This attached Order is based on the template Alert Level Order that you consulted Ministers on prior to Christmas.

17. I understand that you have consulted with the Prime Minister, Ministers of Health and Justice, and other relevant Ministers at Cabinet on 27 February 2021 on your intention to issue an order in line with the draft template Order previously subject to Ministerial consultation.

Recommendations

The Ministry recommends that you:

- a) **Note** my advice as the Director-General of Health on the prerequisites for making an Order under the COVID-19 Public Health Response Act 2020, including: **Yes/No**
- i) the risks of an outbreak or spread of COVID-19, and
 - ii) the nature and extent of measures that are appropriate to address those risks.
- b) **Note** that my advice as the Director-General of Health is that COVID-19 Public Health Response (Alert Level Requirements) Order (No 4) 2021 for signing is in line with the purpose of the COVID-19 Public Health Response Act 2020 to prevent, and limit the risk of, the outbreak or spread of COVID-19 by assisting with the important public health measure. **Yes/No**
- c) **Agree** that the change to Alert Levels should remain in place for an initial period of 7 days. **Yes/No**
- d) **Agree** that the Order is made under urgency and that the usual 48-hour notice period is dispensed with. **Yes/No**
- e) **Agree** to sign the attached COVID-19 Public Health Response (Alert Level Requirements) Order (No 4) 2021. **Yes/No**
- f) **Note** that the Ministry of Health will continue to review the situation and our advice based on ongoing case investigations and testing. **Yes/No**



Dr Ashley Bloomfield
Director-General of Health
Date:

Hon Chris Hipkins
Minister of Health
Date:

Public health advice on COVID-19 community cases in Auckland 27 February and COVID-19 Public Health Response (Alert Level Requirements) Order (No 4) 2021 for signing

Background

18. The COVID-19 Public Health Response Act 2020 came into force on 13 May 2020. Under this Act you are permitted to make a range of orders to prevent the outbreak or spread of COVID-19.
19. On 27 February Cabinet met to discuss Alert Level settings to address the risk of COVID-19 transmission posed by two new community cases in Auckland. I gave the advice contained in this report to that meeting in a verbal update.
20. At that meeting Cabinet agreed to move Auckland to Alert Level 3 and the rest of New Zealand to Alert Level 2 for an initial period of 7 days, effective from 6.00am Sunday 28 February 2021.

Case information

21. On 1.45pm on 27 February, the Ministry of Health was informed of one further community case, Case M in Auckland, and at 7pm a further community case, , who is a close family contact of Case M, was reported (this new case is Case N).
22. Case M returned a positive test with a CT value **s 9(2)(a)** (acute infection) on 27 February. Taking into account their symptom onset, it is estimated that Case M has been infectious throughout this past week.
23. Case N, the **s 9(2)(a)** of Case M, returned a positive test late this afternoon; **s 9(2)(a)** is currently asymptomatic.
24. Case M is a **s 9(2)(a)** of Manukau Institute of Technology, and is the **s 9(2)(a)** casual plus contact associated with Papatoetoe High School. Case M's **s 9(2)(a)** has returned three negative tests (the last test was completed on 23 February 2021).
25. Case M lives in a household of five people. **s 9(2)(a)**
26. Case M tested negative on Friday 29 January as part of the post-Pullman departee MIF testing wave. Of note, **s 9(2)(a)** arrived in New Zealand on 26 December 2020 and tested negative three times during **s 9(2)(a)** time in managed isolation. **s 9(2)(a)** visited his GP on 23 February after developing symptoms including general weakness and fever. **s 9(2)(a)** then developed further symptoms including loss of taste and smell on Wednesday 24

February. § 9(2)(a) returned to the GP on Friday 26 February where a test was advised. The GP did not wear PPE, although the nurse taking the swab did wear PPE.

27. A positive test was returned on 27 February showing a CT value § 9(2)(a) (acute infection). A sample has been sent to ESR for rapid WGS analysis on 27 February, with results showing that Case M is linked to the current outbreak.
28. Contact tracing interviews confirm that § 9(2)(a) has been active in the community through the past week while § 9(2)(a) was infectious, suggesting a number of exposure sites and events. Case M did not use the COVID Tracer App.
29. Case management and contact scoping has been underway. As of 27 February, ARPHS are working with seven exposure locations of interest including Pak n Save Manukau, MIT classes and student administration office, two GP practices, the GP Pharmacy, BreakTime, Kerry Logistics, Burger King Highland Park § 9(2)(a), CityFitness Gym Papatoetoe.
30. Given the number of exposure events, I cannot rule out the possibility that wider community transmission has occurred.
31. An Alert Level change will keep a very large number of close and casual plus contacts at home. Given the numbers of potential contacts associated with this latest case, this will be critical for limiting the spread of COVID-19. This approach is particularly important as there has been several examples of poor adherence to public health advice once Auckland moved down to Alert Level 1.
32. Based on the available evidence at 6pm today I can confirm my advice is that **Auckland should, at 6am on 28 February, move to Alert Level 3 in Auckland (note that the boundaries as described in Schedules 4 and 5 of the attached Order) and move the rest of New Zealand to Alert Level 2.**
33. An Alert Level change to Level 3 for the rest of New Zealand has been considered, and on balance we have determined at this time a wider Alert Level 3 is not required due to the lack of positive test results to date outside the Auckland region alongside good levels of testing.
34. Due to the unpredictability of the new variants of the virus, some individuals not complying with public health restrictions, and because we cannot be sure that the virus has not travelled outside of Auckland, I am recommending an increase to Alert Level 2 for the rest of New Zealand as a precautionary response. **I recommend this Alert Level change is for a seven day period and reviewed again on 7 March 2021, or earlier should the need arise.**

Factors to consider when making decisions about COVID-19 Alert Levels

35. The public health factors to be considered when making decisions about COVID-19 Alert Levels were agreed by Cabinet on 4 May 2020 [CAB-20-MIN-0199 refers]. These factors continue to be relevant in the context of the new outbreak. They are my degree of confidence that:
 - a. transmission is restricted to households and known clusters;
 - b. testing and contact tracing capacity is adequate;
 - c. border control and isolation measures are robust;

- d. there is sufficient health and disability system capacity to manage COVID-19 cases, including adequate PPE for people for whom it is recommended.
36. Cabinet also agreed three other factors:
- a. evidence of the effects of the measures on the economy and society more broadly,
 - b. evidence of the impacts of the measures for at risk populations in particular, and
 - c. our ability to operationalise the restrictions, including satisfactory implementation planning.
37. The National Response Leadership Team will advise Cabinet separately on these factors.

Process for amending a section 11 Order

38. Under the COVID-19 Act, an Order may be made if either:
- a. a state of emergency has been declared (under the Civil Defence Emergency Management Act 2002);
 - b. an Epidemic Notice is in force (under the Epidemic Preparedness Act 2006); or
 - c. it has been authorised by the Prime Minister.
39. There is currently an Epidemic Notice in place, which allows Orders to be made under section 11 of the COVID-19 Public Health Response Act 2020 (the Act).
40. As the Minister for COVID-19 Response, you may make Orders under section 11 of the COVID-19 Act.
41. To make an Order under section 11 you must:
- a. have received advice from the Director-General about –
 - i. the risks of the outbreak or spread of COVID-19; and
 - ii. the nature and extent of measures that are appropriate to address those risks; and
 - b. be satisfied that the proposed Order does not limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990 (NZBORA); and
 - c. consult with the Prime Minister, Ministers of Health and Justice, and any other Ministers you think necessary; and
 - d. be satisfied that the Order is appropriate to achieve the purposes of the Act.
42. The requirement to have consulted with the Prime Minister and Ministers of Health and Justice, and other relevant Ministers on the draft Order has been fulfilled through the Cabinet policy decisions made earlier this evening and the previous consultation on the form of the template Alert Level Order, which this Order is based upon.
43. Until further information is known and due to the risk of more transmissible strains, Cabinet agreed that a precautionary approach be taken and that this needed to occur from 6.00am on Sunday 28 February 2021. As a result, I recommend that the Order is made under urgency and that the usual 48-hour notice period is dispensed with.
44. Given the urgency and that this matter needed to be publicly announced at 9.00pm tonight with an Order coming into effect at 6.00am tomorrow morning, a 24 hour

transitional period has been allowed in the Order to enable people time to obtain the required evidence for interregional travel between and through alert level areas.

45. My advice about the risks of the outbreak or spread of COVID-19 and the nature and extent of measures that are appropriate to address those risks is set out below.
46. COVID-19 is a highly infectious disease which may be spread by people who are not showing symptoms. Evidence shows that new variants are more transmissible. This supports significant measures for those at heightened risk of contracting or spreading COVID-19 to identify potential cases and reduce risk.

New Zealand Bill of Rights Act

47. A matter for you to consider each time an Order is proposed under the COVID-19 Public Health Response Act 2020 is whether the exercise of such powers will be appropriate. The power to make an Order in section 11 of the Act must be exercised consistently with the New Zealand Bill of Rights Act 1990.
48. The Order will only be lawful if it limits those rights to the extent that can be demonstrably justified in a free and democratic society.
49. The Order limits rights and freedoms affirmed by the New Zealand Bill of Rights Act 1990, including the rights to manifest religion, and freedom of peaceful assembly, association and movement.
50. The Government's plan for responding to COVID-19 cases in the community provides for a precautionary approach. In particular, rapid and decisive action, while case investigation and contact tracing is undertaken, is seen as our best chance to avoid needing to further escalate up the Alert Level framework (with corresponding greater limitations on rights and freedoms) on a nationwide basis.
51. COVID-19 is a highly contagious virus, capable of being carried and transmitted by asymptomatic people and as potentially having serious health effects on some who acquire the virus.
52. It is open to you to consider limits imposed by the Order may be demonstrably justified in a free and democratic society. In particular, the restrictions are differentiated by reference to the location of the greatest risk of community transmission (the Auckland region) —whilst still acknowledging there is a high likelihood that spread has already taken place outside that region (and therefore some restrictions remain warranted).
53. I also note these restrictions are intended to be in place for an initial 7 days, to be reviewed once more information regarding the nature and extent of any community transmission is obtained.

Enforcement

54. Consistent with previous settings under the Alert Levels Requirements Order, non-compliance will be an infringement offence.
55. The penalties for non-compliance are stipulated under the COVID-19 Act. As with other offences under the COVID-19 Act.
56. Note that the infringement offence in cl 21(5) (physical distancing on small passenger vehicles and public transport) has been removed following correspondence from the

Regulations Review Committee expressing concern that the infringement offence was not appropriate in circumstances where compliance with the provision is not a straightforward question of fact.

Equity

57. There are two 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 epidemic;
 - b. we also know these communities are also likely to be disproportionately affected by the impact of any controls, for example, they are less likely to be able to work remotely.
58. The moves that have been taken to strongly and quickly control the outbreak are intended to prevent the spread of COVID-19 to all New Zealanders, including these vulnerable populations in particular. As such, the measures are intended to promote equity of health outcomes. We note that imposing restrictions to achieve better health outcomes could involve worse economic outcomes for vulnerable populations in the short term.
59. As the risk of community transmission abates, the relaxation of the temporary controls and restrictions on gathering sizes will reduce the impact of controls and therefore the impact on equity (e.g. in terms of any economic harms involved).

Next steps

60. If you are satisfied that the grounds for making the order are met and it is appropriate to achieve the purpose of the COVID-19 Public Health Response Act 2020, then it is recommended you sign the attached Order.
61. The attached Order must be signed today for it to come into force by 6.00am Sunday 28 February 2021.
62. Once signed, officials will arrange for the Order to be gazetted.
63. The Order will be in place for 7 days, after which it will be reviewed.

ENDS.

Appendix 1: COVID-19 Public Health Response (Alert Level Requirements) Order (No 4) 2021 for signing

The final order is available at:
[https://www.legislation.govt.nz/regulation/
public/2021/0263/latest/whole.html](https://www.legislation.govt.nz/regulation/public/2021/0263/latest/whole.html)

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