

Briefing

Improving surveillance testing of workers in higher-risk settings

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Security level: IN CONFIDENCE **Health Report number:** 20211995

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

Contact for telephone discussion

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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 Withdrawn | |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:

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

Purpose of report

1. This report:
 - a. outlines a plan for immediate nasopharyngeal COVID-19 testing for staff who work with COVID-19 patients at three Auckland metro District Health Boards (DHBs) (Auckland, Waitematā, and Counties Manukau DHBs)
 - b. updates you on work that will enable the voluntary systematic surveillance testing of those staff to provide greater assurance that COVID-19 is contained in DHB settings
 - c. recommends that you introduce mandatory testing for essential workers¹ crossing Alert Level boundaries.

Summary

2. Surveillance testing acts to provide assurance that certain high-risk groups of people are not infectious with COVID-19 and inadvertently spreading the infection in their work settings and/or into the community. It will help us identify any infected persons early to allow appropriate control measures (further testing, isolation, contact tracing) to be put in place.
3. The measures outlined in this report are focused on persons who:
 - a. work with COVID-19 patients at three Auckland metro district health boards (Auckland, Waitematā, and Counties Manukau DHBs) eg, clinical and non-clinical staff like cleaners and security guards
 - b. essential workers crossing Alert Level boundaries.
4. The immediate imperative is to have all three Auckland DHB staff who work with COVID-19 patients to be tested at least once (with a standard nasopharyngeal swab) in the coming days as part of our response to the current Delta outbreak. At the same time, we are working to establish voluntary surveillance testing.
5. To mitigate the risk posed by essential workers crossing Alert Level boundaries, we recommend mandating surveillance testing for this group. This would provide a greater assurance that essential workers crossing Alert Level boundaries are not infected with COVID-19.

¹ For the purposes of this report, we refer to 'essential workers' as individuals who are permitted by a relevant Order to cross Alert Level boundaries because of the nature of their work.

Recommendations

We recommend you:

- a) **Note** that the Ministry of Health is improving surveillance testing of workers at three Auckland metro district health boards and essential workers crossing Alert Level boundaries to provide greater assurance that COVID-19 is contained in these higher-risk settings. **Noted**
- b) **Note** the risk profile for these group is considered high, as the context in which each operate in is different and they are subject to differing levels of infection prevention and control systems. **Noted**
- c) **Note** that all staff who work with COVID-19 patients at Auckland, Waitematā, and Counties Manukau district health board hospitals will be invited to get a standard nasopharyngeal swab in the coming days as part of the current Delta outbreak response. **Noted**
- d) **Note** a new systematic approach to increase voluntary surveillance testing of staff who work with COVID-19 patients at Auckland, Waitematā, and Counties Manukau district health board hospitals could be implemented by 10 September 2021. **Noted**
- e) **Agree** to amend the COVID-19 Public Health Response (Alert Level Requirements) Order (No 10) 2021 to require mandatory surveillance testing for essential workers crossing Alert Level boundaries. **Yes/No**
- f) **Note** that the necessary consultation regarding the impact of the proposed testing measures is yet to commence with relevant businesses, workplaces, and unions. **Noted**
- g) **Note** that if you agree to mandate surveillance testing, we will provide you with a Health Report that includes a draft amendment to the COVID-19 Public Health Response (Alert Level Requirements) Order (No 11) 2021 giving effect to this measure. **Noted**



Dr Ashley Bloomfield
Te Tumu Whakarae mō te Hauora
Director-General of Health
Date: 4 September 2021

Hon Chris Hipkins
Minister for COVID-19 Response
Date:

Improving surveillance testing of workers in higher-risk settings

Background

6. Surveillance testing provides assurance that high-risk groups of people are not infectious with COVID-19 and inadvertently spreading the infection in their work settings and/or into the community. It helps us to identify any infected persons early to allow appropriate control measures (testing, isolation, contact tracing) to be put in place.
7. The principles of surveillance in this context are similar to those for border worker surveillance testing. Specifically, there needs to be regular surveillance testing of staff that work in higher-risk COVID-19 situations.
8. The measures outlined in this report are focused on persons who:
 - a. work with COVID-19 patients at three Auckland metro district health boards (Auckland, Waitemata, and Counties Manukau DHBs) e.g. clinical and other staff like cleaners and security guards
 - b. essential workers crossing Alert Level boundaries.
9. Public health advice continues to be that anyone who develops symptoms should get tested. We also know that fully vaccinated people are more likely to have a mild illness and may not develop symptoms, and that transmission may still be possible, albeit reduced in vaccinated populations.
10. Testing modalities are rapidly evolving as we learn more about COVID-19, new variants, and emerging technologies to improve testing processes. We continue to iteratively review the Surveillance Strategy and Testing Plan to ensure that our current surveillance and testing approach is based on emerging evidence and best practice (most recently reviewed in August 2021).
11. Surveillance testing outlined in this report will likely be PCR testing conducted through a combination of nasopharyngeal and saliva-based samples. The latter may provide a faster process but could lead to higher usage of materials needed to process samples. We believe this is manageable based on current supply.
12. As previously advised on testing using saliva sample, we are confident that for surveillance purposes, providing two saliva samples within a 72-hour period is equivalent to a standard nasopharyngeal polymerase chain reaction (PCR) test [HR20211563 refers]. While we may not be able or need to achieve such frequency with our recommended regime, we have adequate confidence in saliva as a testing platform.

Actions to improve surveillance testing

13. Surveillance testing of Auckland metro DHB workers and essential workers crossing Alert Level boundaries should provide greater assurance that COVID-19 is contained in these higher risk settings.
14. While the risk profile of each group is considered high, the context in which they operate in is different and is subject to differing levels of Infection Prevention Control (IPC)

systems. We therefore want to make sure that despite best efforts and practices, there are no incursions via infected workers.

15. We are taking a two-stage process to improve surveillance testing of staff working in area with COVID-19 patients:
 - a. immediate nasopharyngeal swabbing, and
 - b. voluntary surveillance testing of staff who work with COVID-19 patients.
16. At the same time, we are also recommending you mandate weekly surveillance testing for essential workers crossing Alert Level boundaries, from Friday 10 September 2021. As long as there is an Alert Level 4, this measure will also apply for other potential boundary configurations.

Managing potential risk at the three Auckland metro DHBs

Stage 1: Immediate nasopharyngeal testing from tomorrow

17. The immediate imperative is to have all staff at the three Auckland DHBs who work with COVID-19 patients to be immediately tested at least once (with a standard nasopharyngeal swab) in coming days as part outbreak control. This is so that any potentially infected staff are identified, and any potential chains of transmission interrupted quickly.
18. At this point in the outbreak, this is not so much routine surveillance testing as case finding. We are engaging with relevant DHBs to implement this measure at pace. This will likely involve tasking some testing teams to do swabbing on site as has happened early in the outbreak. **We expect this to commence from tomorrow, Sunday 5 September 2021.**
19. We understand that many affected staff may have already had a recent test when DHBs commence this nasopharyngeal testing. Therefore, we propose that those staff who have had a nasopharyngeal test within the last five days be exempt from having another one immediately.
20. We anticipate the volumes will not be significant for laboratories to process in addition to the standard community testing.

Stage 2: Voluntary surveillance testing scheme for staff working with COVID-19 cases

21. At the same time, we are working to establish saliva-based surveillance testing for more regular ongoing surveillance testing.
 - a. The outcome will be a new systematic process that could utilise a private testing provider to conduct another type of surveillance testing eg a saliva test.
 - b. In practice, this could see a DHB staff member dropping off a saliva test on-site prior to starting work. This may then eliminate the need for a health care worker to administer the standard PCR test.
22. We continue to work closely with the three Auckland metro DHBs and their workforce unions as this work is progressed. Based on available information, **we anticipate this could be implemented by 10 September 2021.** This approach will relieve any extra burden that might occur for DHB laboratories and workforce should more intense

surveillance testing be required. It would also relieve the impact on testing capacity, particularly during surge responses.

Public health rationale for surveillance testing of staff who work with COVID-19 patients

23. Hospitals and staff are well practised in managing infectious diseases and have IPC systems in place. These include, but are not limited to, personal protection equipment (PPE), training, vaccination, negative pressure rooms, and cleaning and care protocols.
24. However, the volume of COVID-19 cases in Auckland hospitals is putting additional pressure on the system, including the need to bring in staff from other places. As of 1pm on Saturday 4 September, there are a total of 43 people with COVID-19 in hospital across Auckland hospitals - North Shore (10); Middlemore (18); Auckland (15). Ten of those cases are in intensive care or high-dependency units. There has been one death linked to this outbreak.
25. Existing measures in place include hospital systems (training and protocols), IPC (eg fit tested N95 masks, and other relevant PPE), the vaccination of workers, patient management (eg negative pressure rooms). While having good systems in place reduces the risk, experience from New Zealand's previous outbreaks and from overseas is that those caring for COVID-19 patients can still become infected through workplace exposure to COVID-19.
26. Due to this, and to provide additional assurance for staff and their whānau, and the wider public, the Ministry has considered surveillance testing as an additional tool to monitor the risk of staff becoming infected within DHB settings and transmitting the virus to others at work or home and support assurance that COVID-19 is contained.
27. This is especially important in the context of a Delta outbreak, where patients are likely to be shedding high amounts of the virus, and staff are highly likely to be vaccinated and may be infected but asymptomatic. Asymptomatic surveillance testing at this point is an important part of assuring control of the outbreak and provides an additional assurance for them and their families that they are not infectious with COVID-19.
28. Given all the existing measures in place at hospitals, and assuming all COVID-19 cases are in negative pressure rooms/wards and can be transported there safely, then **the voluntary and systematic surveillance testing of those staff working with COVID-19 cases would be an appropriate measure to provide greater assurance**. It is considered appropriate to be voluntary due to the existing controls in place for these workers.

Mandating surveillance testing of essential workers crossing Alert Level boundaries

29. We recommend mandating surveillance testing for essential workers crossing Alert Level boundaries as it would provide a high level of assurance that essential workers crossing alert level boundaries are not infected with COVID-19. This is particularly important in a scenario where parts of the country outside of Auckland move to lower Alert Levels.

Proof of a COVID-19 test will be required

30. Under this requirement, essential workers crossing the Alert Level boundaries will be asked to present proof of having had a valid COVID-19 test, done within the past 7 days.
31. People who cross the Alert Level boundaries will be allowed to proceed once they have a proof of testing from the past seven days.
32. Mandatory testing could be implemented by an additional provision to the Alert Level Order making it a requirement for essential workers crossing between Alert Level boundaries to have a proof of test. **We anticipate that this can be mandated through including a provision in the Alert Level Order**, pending your agreement and necessary operational and legislative requirements are completed.
33. Similar obligations on PCBU's from the Required Testing Order could be applied to ensure employers are taking all steps to get their workers tested. It could also be imposed on businesses to have the systems and processes in place to ensure their essential workers get tested. Consideration also needs to be given to how the requirement would be monitored for enforcement purposes.

Public health rationale for mandatory surveillance testing of essential workers crossing Alert Level boundaries

34. Under Alert Level 3 and 4, movement between alert level areas is heavily restricted. However, Alert Level 3 and 4 businesses can continue to operate, which can mean that people cross and recross boundaries in the course of their work. At present, we understand that around 3,000 people are moving across the Alert Level 4/3 boundary daily.
35. Movements across boundaries by essential workers present the following risks:
 - a. Increasing the risk of becoming infected with COVID-19 as they are moving around in the community, with some groups of essential workers regularly coming into contact with other people.
 - b. Increasing risk that COVID-19 is seeded from the higher Alert Level area, where community transmission is more likely, to an area with a lower Alert Level where there are fewer restrictions on personal movement. These essential workers may unknowingly transmit the virus, especially in the early days when they are more likely to be asymptomatic.
36. We recognise that there are differing risk profiles within the wider category of essential workers. This will depend on their type of work, exposure to public-facing settings, and the frequency with which they are crossing the boundaries. However, surveillance testing coupled with improved IPC measures, maybe a useful measure for many workforces.
37. We are giving further consideration to the need to provide proof of a test for individuals who have been exempted from Alert Level restrictions in order to travel for personal reasons.

There is a lack of robust IPC measures and assurance of compliance

38. Unlike DHB workers, who have robust existing measures in their workplaces, this cannot necessarily be said for essential workers crossing Alert Level boundaries eg truck drivers. There is also no way for us to gain the necessary assurance regarding adherence to any suitable IPC measures such as mask wearing.
39. Even with the above measures in place, there is still a risk associated with this group due to higher transmissibility of the Delta variant. This is exacerbated by the challenges with enforcement and compliance in these group's dynamic work settings. It is appropriate that all steps are taken to reduce the risk of transmission such as introducing mandating surveillance testing.

Applicability at different Alert Level boundaries

40. In an Alert Level 4/3/2 scenario, we recommended that the same Alert Level 4/3 restrictions on personal movement apply at the Alert Level 3/2 border [HR20211922 refers]. We similarly recommend that in this case, evidence of having a test is required at the Alert Level 3/2 boundary. This measure can be revised when there is no part of the country at Alert Level 4.

Making an order under the COVID-19 Public Health Response Act 2020

41. Under the COVID-19 Public Health Response Act 2020 (COVID-19 Act), an order may be made or amended 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.
42. There is currently an Epidemic Notice in place that allows orders to be made under section 11 of the COVID-19 Act.
43. As the Minister for COVID-19 Response, you may make orders under section 11 of the COVID-19 Act. In order to make an order under section 11 you must have received advice from the Director-General about:
 - a. the risks of the outbreak or spread of COVID-19
 - b. the nature and extent of measures that are appropriate to address those risks.
44. You must 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 considering any social, economic, or other factors) and you must have consulted with the Prime Minister and the Minister of Justice as required under the Act. You must be satisfied that this order is appropriate to achieve the purpose of that Act.
45. 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 (NZBORA).

Implementation of mandatory surveillance testing

46. To implement these measures, we will need to:

- a. complete a robust consultation process with other government agencies, the sector, and its workforce unions,
 - b. confirm and establish sufficient testing capacity to ensure demand can be met from both existing and new providers
 - c. work through any required amendments to relevant operational mechanisms to support the mandatory nature of this measure,
 - d. develop necessary communication plan to support implementation; and
 - e. include relevant provision to the upcoming Alert Level Order drafting to make it a requirement for essential workers crossing between Alert Level boundaries get tested regularly.
47. We will implement this measure from 10 September 2021.
48. While we work through the above, we can introduce some interim measures to mitigate the immediate risks posed by boundary crossing. This can include targeted guidance (not compulsory or enforceable by government) for employers of essential workers that recommends that workers who cross the boundaries get tested every seven days. The guidance will be published on Tuesday 7 September 2021, prior to any Alert Level change.

Equity

49. In Aotearoa New Zealand, people have differences in health that are not only avoidable but unfair and unjust. Equity recognises different people with different levels of advantage require different approaches and resources to get equitable health outcomes.
50. The impacts of COVID-19 are felt differentially across New Zealand communities. Māori and Pacific communities and those living with disabilities, in lower socio-economic groups and crowded or institutional settings bear a greater portion of both health and economic impacts and risks. Surveillance testing has been a key part of the response to prevent the transmission of COVID-19 into the community, particularly to those communities with many essential workers and higher-risk settings.

New Zealand Bill of Rights Act

51. The COVID-19 Public Health Response Act 2020 (the Act) requires the Minister for COVID-19 Response to be satisfied that the order does not limit or is a justified limit on rights and freedoms under NZBORA. An order that is inconsistent with NZBORA is unlawful.

Inconsistency with NZBORA risks rendering the entire order ultra vires

52. As previously advised, as orders are delegated legislation and any unjustified inconsistency with the rights confirmed in NZBORA renders an order ultra vires. That has the effect of making the entire order null and void. This also applies to an amendment to an order.
53. If any amendment unjustifiably infringes upon an individual's human rights, then the entire order is ultra vires and can no longer be relied upon. It is therefore important to be clear that orders are NZBORA consistent.

How NZBORA applies to the proposed mandatory testing regime

54. Testing engages section 21 of NZBORA - the right to be secure against unreasonable search and seizure. If this search is to be reasonable, the public health rationale for any mandatory testing requirements needs to be clear to justify limits to the right. We need to consider the rationale for testing, the degree of intrusiveness and nature of search, and the frequency of testing of different groups.
55. Saliva testing is less intrusive than nasopharyngeal swabbing because it does not involve intrusion into a person's body, and it is therefore a less rights-infringing testing method.
56. At present, COVID-19 is not contained within Auckland but is considered likely to be contained within the rest of New Zealand. Regular testing of individuals who cross the border between Auckland and the rest of New Zealand is likely to reduce the risk of transmission of COVID-19 into the community outside of Auckland.
57. A limitation on a right should be no more than reasonably necessary. Alternatives that do not limit rights (such as voluntary testing and strengthening existing infection prevention and control measures) should be explored before considering whether to limit rights through mandatory testing.
58. As set out above, those have been explored but other infection control measures are considered likely to be ineffective for individuals crossing the boundary. Accordingly, the minimally invasive saliva test every seven days is not an unreasonable search and seizure.
59. Increased surveillance testing via saliva tests of DHB workers in Auckland working with COVID-19 positive cases will be entirely voluntary and as such does not represent a limit on the rights of those workers.

Next steps

Immediate nasopharyngeal testing from tomorrow

60. We expect nasopharyngeal testing of staff working in units caring for COVID-19 cases to start at the three metro Auckland DHBs from tomorrow, Sunday 5 September 2021. We are working with relevant agencies and DHBs to implement this and monitor in the coming days.

Voluntary surveillance testing of staff who work with COVID-19 patients

61. We will continue to work closely with the three Auckland metro DHBs and their workforce unions to establish voluntary surveillance testing of their staff. We anticipate this could be implemented by 10 September 2021.

Mandating surveillance testing of essential workers crossing Alert Level boundaries

62. If you agree to this measure, we will work through the necessary operational and legislative requirements, including making changes as part of the upcoming Alert Level Order to implement mandatory testing from 10 September 2021.

ENDS.