

COVID-19

COVID-19 Public Health Response Amendment Act (No 2) 2021

November 2021

Fact Sheet 5: Regulating COVID-19 laboratory testing and managing testing supplies and capacity

Previous state

It is important that all New Zealanders have access to high quality testing for COVID-19 and that the country is well equipped to respond to a significant outbreak of COVID-19.

There is currently very little regulation in New Zealand around what might happen if testing supplies and capacity are needed to support the public health response. As we have seen with the Delta strain of COVID-19, outbreaks can grow rapidly. The Government need to prepare for all eventualities and ensure we have the necessary tools available to respond to a significant resurgence of COVID-19 in the community that impacts on testing supplies and capacity.

What has changed?

The Amendment Act will allow an Order to be made by the Minister for COVID-19 Response to regulate COVID-19 testing laboratories to:

- set quality control measures and minimum standards;
- require COVID-19 test results to be reported to the Director-General's national testing repository (the Health Act 1956 already requires positive COVID-19 cases to be reported to a Medical Officer of Health); and
- manage the supply of testing consumables (such as solutions and swabs).

There are no plans to make an Order to use these regulatory provisions at this time, but they will provide a valuable tool in case they are needed in the future.

The Amendment Act will also allow the Minister for COVID-19 Response to make an Order requiring any laboratory carrying out COVID-19 testing to do so only for the public health response, and to ensure any supplies needed for testing can be reprioritised for the public health response. Through these Orders we can ensure that in an emergency the Minister will be able to harness all of New Zealand's testing capacity in the most efficient way possible.

Provisions in the Act will be made to guarantee fair compensation for these laboratories in a manner consistent with similar legislation that requisitions private property for public use in an emergency. The Amendment Act also provides laboratories with the ability to dispute claims for compensation or payment to the District Court, whose decision will be final.

How will this impact you?

The proposed change will not have any direct impacts. Orders made under the new provision may impose obligations or restrictions on testing laboratories to ensure quality of testing, integration of test results with the public testing repository and regulation of testing consumables.

It is important to note that an Order to requisition supplies or redirect capacity to the public health response would only be made if there was significant COVID-19 resurgence where there is insufficient testing capacity in the public system.

On the following page there is a framework setting out the various scenarios of when this type of Order might be made.

Want to know more?

For further information about the COVID-19 Public Health Response Amendment Act visit the Ministry of Health [website](#).

Read the [Regulatory Impact Statement](#).

SCENARIO FRAMEWORK FOR WHEN A SECTION 11 ORDER MIGHT BE MADE REGARDING COVID-19 TESTING SUPPLIES AND CAPACITY

Scenario One (No community cases of COVID-19)

- New Zealand would be likely to have sufficient consumables and testing capacity to meet COVID-19 testing needs through the use of laboratories currently contracted to deliver testing for the public health response.
- It is unlikely that there would be a need to make any Orders to regulate COVID-19 testing supplies and capacity.

Scenario Two (moderate NZ resurgence)

- Due to an increase in global demand for testing supplies, or an increased domestic demand due to a resurgence, there is concern that New Zealand may not have sufficient consumables and testing capacity to meet increased needs if the outbreak got worse.
- A better picture is needed of what resources New Zealand has available that may be deployed for the public health response to enable informed decision making.
- Consideration is likely to be given to making an Order to require all testing laboratories to report the number of consumables they hold in stock at any time to the Ministry of Health.

Scenario Three (significant NZ resurgence)

- As a result of a significant resurgence of COVID-19 in New Zealand, and insufficient capacity through laboratories currently contracted to deliver testing to the public health response, it is desirable to ensure that any COVID-19 testing taking place, and consumables to facilitate that testing, is prioritised for the public health response.
- Depending on the severity of testing supply and capacity issues, consideration is likely to be given to the making of an Order to:
 - Requisition testing consumables held by laboratories for the national public health response (with appropriate compensation); and/or
 - Require any laboratories (either contracted to the public health response or not) if they are undertaken COVID-19 testing, to do so for the public health response only (with appropriate payment).

Scenario Four (severe NZ resurgence)

- As a result of a severe resurgence of COVID-19 in New Zealand, laboratory testing capacity and supplies are overwhelmed.
- It is likely that an Order would be made to:
 - Requisition testing consumables held by laboratories for the national public health response (with appropriate compensation); and/or
 - Require any laboratories (either contracted to the public health response or not) if they are undertaken COVID-19 testing, to do so for the public health response only (with appropriate payment).