

| INFORMATION REQUEST                     |                                |
|---|--------------------------------|
| COVID-19 papers for CVD on 3 April 2020 |                                |
| Deadline: 3 April 2020                  | Date of Response: 3 April 2020 |

## Purpose

1. This note updates you on two Cabinet papers which the COVID-19 Cabinet Committee (CVD) agreed on Friday 3 April 2020. The papers led by the Minister of Health, relate to self-isolation and exemptions for domestic travel.

## Background to the legal powers to respond to COVID-19

### *Health Act 1956*

2. On 24 March 2020, the Prime Minister, with the agreement of the Minister of Health, issued an epidemic notice under section 5 of the Epidemic Preparedness Act 2006. The epidemic notice allows the use of special powers by Medical Officers of Health in accordance with section 70 of the Health Act 1956 for the purpose of preventing the outbreak and spread of COVID-19.
3. From 11.59pm, 25 March 2020, an order has been in force under section 70(1)(m) of the Health Act to enforce COVID-19 Alert Level 4 restrictions, which provides:
  - 3.1. That all premises within all districts of New Zealand, except those essential businesses listed, be closed until further notice and
  - 3.2. The forbidding of people to congregate in outdoor places of amusement or recreation of any kind or description (whether public or private) in all districts of New Zealand until further notice.
4. Section 70 of the Health Act provides that for the purpose of preventing the outbreak or spread of any infectious disease, the Medical Officer of Health may during a state of emergency or while an epidemic notice is in force, exercise special powers. This includes:
  - 4.1. Require persons, places, building ships, vehicles, aircraft, animals, or things to be isolated, quarantined, or disinfected as he or she thinks fit section 70(1)(f)
  - 4.2. Require people to remain in the health district or the place in which they are isolated or quarantined until they have been medically examined and found to be free from infectious disease section 70(1)(h)
5. Section 71A of the Health Act provides a range of powers for constables to assist the Medical Officer of Health in relation to infectious disease. A constable may do any thing reasonably necessary (including the use of force) for a range of purposes, including:

- 5.1. To compel, enforce, or ensure compliance with a requirement made by a medical officer of health or any person authorised by a medical officer of health in the exercise or performance of powers or functions under section 70 or 71.
- 5.2. To prevent, or reduce the extent or effect of, the doing of a thing that a medical officer of health or any person authorised by a medical officer of health has forbidden or prohibited in the exercise or performance of powers or functions under section 70 or 71.

#### *Civil Defence Emergency Management Act 2002*


6. A state of national emergency was declared under the Civil Defence Emergency Management Act 2002, with effect from 12:21pm 25 March 2020.
7. During a state of national emergency, Police retains all existing powers to enforce offending under other legislation. This includes offences under the Summary Offences Act 1981, such as resisting or intentionally obstructing a police officer.
8. Powers for constables under the Civil Defence Emergency Management Act, include the ability to close roads and public places and to direct any person to stop any activity that may cause or substantially contribute to an emergency.
9. Enforcement powers under the Civil Defence Emergency Management Act in effect, complement the powers in the Health Act.

#### *Enforcement approach*

10. Operationally, Police is applying a graduated response to any situation we encounter, apply common sense and understand the intent of what we are asking everyone in our communities to achieve. The emphasis when exercising any statutory power is to ensure the use of discretion, sound judgement and proportionality.
11. Reports from frontline staff indicate that three broad groups of people had been identified:
  - People who didn't know or weren't fully aware of what the lockdown meant for them
  - Those who challenged Police's approach, and were largely non-compliant
  - People who did not believe that the restrictions imposed applied to them.
12. This indicates there is still a lack of understanding from some in the community, as to what the Alert Level 4 restrictions mean for them, and the limits on movement.
13. Police is conscious of the value of maintaining public trust and confidence in enforcing these restrictions. There is a cross-government piece of work in progress reviewing the Level 4 restrictions in the context of providing certainty to the public and maintaining social licence. Police supports efforts to clarify the

restrictions and ensure they are fair, proportional and transparent to the public. Police considers these two proposals will support the social licence of the level 4 restrictions.

**The first paper proposed to issue a COVID-19 Self-isolation order under s 70(1)(f) of the Health Act**

14. This paper advised Ministers that the Director-General of Health (Director-General) proposes to issue an order under section 70(1)(f) of the Health Act to require persons to be quarantined, giving effect to the Level 4 restrictions on self-isolation at home.
  15. New Zealand's Alert Level 4 "elimination strategy" for COVID-19 requires that all people in New Zealand self-isolate at home unless they are essential workers. While there has been good community compliance over the past week of self-isolation, there is a significant public health risk that non-compliance and the lack of clarity around what the current restrictions mean, will result in the transmission of COVID-19.
  16. The Director-General assesses that this risk warrants issuing an order under section 70(1)(f) of the Health Act (attached to the Cabinet paper) which provides special powers to medical officers of health to require people to be isolated or quarantined, as they see fit.
  17. s9(2)(h) 
  18. The order is consistent with existing public messaging on the covid.19.govt.nz website, it will:
    - 18.1. Provide a clear definition of self-isolation
    - 18.2. Define the limits on movement outside of one's place of residence, i.e. for the purpose of providing or accessing essential services, some recreation activities, managing 'shared bubble' arrangements, and for emergencies
    - 18.3. Provide constables with powers to act reasonably to compel, enforce or ensure compliance with those rules.
  19. The order will expire on 22 April, four weeks from when the Level 4 lockdown started, unless revoked or extended. The Director-General will develop a system to consider requests for exemptions from the notice requirements.
- Police supports the proposal to clarify the Level 4 restrictions*
20. Police supports the proposal to issue the order to provide clarity on the limits on movement under Alert Level 4 and remove any uncertainty as to Police powers to enforce Alert Level 4 requirements.

21. As outlined above, Police already has powers during a state of emergency under the Health Act to enforce self-isolation. s9(2)(g)(i)

22. This order will clearly outline the circumstances in which Police can exercise existing powers to ensure compliance with the self-isolation requirements. It will also be a useful signal to the public about the limits of self-isolation, and clarify that Police has the powers to enforce self-isolation.

**The second paper proposed an exemption framework for domestic travel on compassionate grounds**

23. As noted above, exemptions from the section 70(1)(f) order will be developed. The Cabinet paper outlines an exemption framework for persons seeking permission for domestic travel on compassionate grounds. We understand the notice is to also include exemptions for foreign nationals travelling to international airports to return to home countries. This framework has been approved by the Director-General, by including an exception to the order for authorised travel.
24. Alert Level 4 involves strict restrictions on domestic travel, to reduce the spread of COVID-19 by reducing contact between people. The paper identifies circumstances where domestic travel could be allowed, while maintaining public health and safety, and ensuring consistency and fairness.
25. The paper notes the risks associated with creating exemptions, including the potential volume of time sensitive requests and difficulty of enforcing exemptions. However it also recognises that, if there is no exemptions process, people may decide to break the Level 4 restrictions without taking any public health precautions. This could have a wider risk of undermining the social licence of imposing the restrictions.
26. The proposed decision-making process for considering exemptions (at Appendices 1 and 2 of the Cabinet paper) involves two steps:
- 26.1. Does the request meet the test for an exemption on compassionate grounds? i.e. it relates to the need to care urgently for a minor, or to support somebody in a critical condition where there is no other support network.
- 26.2. The case can proceed to a decision if the following principles can be met to ensure public health is maintained:
- the individuals travelling and being visited are not COVID-19 risks
  - the risk of COVID-19 transmission is minimised
  - the purpose for the individual travelling cannot be achieved through other means
  - the individual themselves will not be in close contact with other people who are a risk for COVID-19



- the individual understands the need for public health requirements to be maintained, and agrees to do so.
27. This framework will apply to people already in New Zealand seeking permission to travel, as well as people requesting to enter New Zealand to self-isolate closer to a person in distress. Those requesting to enter New Zealand must test negative for COVID-19 upon entry to New Zealand.
  28. Clear communication to the public will be important to minimise confusion and ensure compliance with the existing restrictions, the covid.19.govt.nz and Ministry of Health websites will be updated following the announcement of the exemption framework.
  29. The National Crisis Management Centre, supported by the Ministry of Health, will manage the exemptions process, and regularly update Ministers on the volume of requests. Agencies will be consulted where appropriate, such as the Ministry of Transport where air travel may be required.

*Police's comment on the paper*

30. The Cabinet paper notes that this exemption framework will have resourcing implications for other agencies which may become involved in the response, including Police, Transport and Health.
31. Police supports the proposal, and the recognition that it will have resource implications as Police will be expected to enforce appropriate travel. Police will work closely with partner agencies to ensure exemptions can be well managed from an enforcement perspective.

## Recommendations

Police recommends that you

- a) **note** the update on two papers agreed by the CVD Committee on Friday 3 April 2020 *COVID-19 Self-isolation order under s70(1)(f)*, and *Exemptions for domestic travel on compassionate grounds*.

|                    |   |          |
|--------------------|---|----------|
| <b>Prepared by</b> | s9(2)(a)  |          |
| <b>Approved by</b> | Jeremy Wood, Executive Director Policy & Partnerships | s9(2)(a) |

# Noting paper: COVID-19

## SELF-ISOLATION ORDER UNDER S70(1)(F) HEALTH ACT

|             |   |             |           |
|-------------|---|-------------|-----------|
| <b>To</b>   | Ad Hoc Cabinet Committee on COVID-19 Response |             |           |
| <b>From</b> | Hon Dr David Clark, Minister of Health        | <b>Date</b> | 2/04/2020 |

### Purpose

1. This paper provides advice on the Director General of Health's proposed order under Section 70(1)(f) of the Health Act 1956 to require persons to be quarantined, giving effect to the Level 4 restrictions on self-isolation at home.
2. This paper includes:
  - a. draft notice of section 70(1)(f) of the Health Act [Appendix 1].

### Comment

3. On 24 March the Prime Minister issued, with the agreement of the Minister of Health, an Epidemic Notice under section 5 of the Epidemic Preparedness Act 2006. This allows for the use of special powers by Medical Officers of Health in accordance with section 70 of the Health Act 1956 for the purposes of preventing the outbreak and spread of COVID-19. To date these powers have been applied on a national basis to require premises to be closed with the exception of essential businesses and to prohibit mass gatherings (under section 70(1)(m)).
4. Central to New Zealand's Alert Level 4 "elimination strategy" for COVID-19 is a requirement that all people in New Zealand self-isolate at home unless they are essential workers. Initial reports from New Zealand Police and Healthline suggest that one week on there have been good levels of community compliance with self-isolation. However, there continue to be people who are not adequately self-isolating, or who are unclear about the self-isolation requirements.
5. There is a significant risk that non-compliance with self-isolation will result in the continued transmission of COVID-19, frustrating the objectives of mass isolation, leading to continued public health risk and the need to extend Alert Level 4.
6. The Director-General of Health (Director-General) assesses that these risks warrant issuing the draft notice attached to this noting paper under section 70(1)(f) of the Health Act 1956 to require persons to be quarantined, giving further effect to the Level 4 restrictions on self-isolation.
7. The draft notice aims to achieve the following:
  - a. Provide a clear definition of self-isolation;

- b. Define the limits on movement outside of one's place of residence, i.e. for the purposes of providing or accessing essential services; for limited recreation; for managing 'shared bubble' arrangements; and for emergencies; and
  - c. Provide constables with powers to act reasonably to compel, enforce or ensure compliance with those rules.
8. These powers would expire on 22 April, four weeks from 25 March, when the lockdown was initiated, unless otherwise revoked or extended.
9. The provisions of the notice have been aligned to be consistent with the existing public messaging to the public from the covid19.govt.nz website.
10. In the absence of an available vaccination or treatment (other than treatment for symptoms), the only effective strategies against COVID-19 to reduce the number of infections, hospitalisations and deaths are to reduce mixing of susceptible and infectious people through early ascertainment of cases (testing and contact tracing) and reduction of contact. Modelling of the epidemic in New Zealand has analysed the extent of contact reduction over various timelines, accounting for different basic reproduction numbers that New Zealand would need to achieve in order to "flatten the epidemic curve" or indeed eliminate the virus, which is the current objective under Alert Level Four.
11. This modelling justifies taking a stringent approach towards physical distancing for the entire population on the basis that if the current eradication strategy fails then health outcomes for New Zealand could be very severe. This modelling reveals that the higher the level of compliance among the general population, the shorter the period of control would need to be. This is essentially the justification behind the current "Go hard. Go early" approach, which requires high compliance throughout the country.
12. In practice, this means that all people in New Zealand except essential workers should be confined to contact with only members of their defined "bubble" for the initial four week period. It is important that the legislative framework and more specifically, section 70(1)(f) enables the achievement of that high level of compliance.
13. The New Zealand Government's approach to date has focused on community-endorsed compliance, supported with strong communications and clear guidance, backed up by regulators who are willing and able to enforce using strong sanctions. The Prime Minister has previously reassured the public that they need not "police" their neighbours' adherence to the lockdown and that the government will play that role.
14. Issuing this notice will not fundamentally change that approach. Instead it aims to provide greater clarity around what is meant by self-isolation and to ensure that New Zealand Police have in place the necessary powers to clarify and enforce those rules, should that be required. On-going monitoring and review of the application of the order will be needed to ensure that these time-bound enforcement powers do not undermine the current high levels of public support for taking stringent action to eliminate the virus.
15. The order to self-isolate would sit alongside other powers under the Civil Defence Emergency Management Act, such as the ability to close roads and public places and to direct any person to stop any activity that may cause or substantially contribute to an emergency.
16. The Director-General proposes issuing the notice following consultation with Ministers.

17 s9(2)(h)

18. Once a notice is issued, the Director-General will ensure that a system is established for considering any requests for exemptions from the requirements under the notice.
19. The notice has been drafted by Parliamentary Counsel Office and officials from the Ministry of Health have worked closely with the All of Government mechanism, Crown Law Office and New Zealand Police to ensure that the notice meets their needs and is consistent with the current policy of self-isolation.

## Recommendation

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It is recommended that the CVD committee:

20. **Note** that the Director-General of Health proposes to issue a notice under s70(1)(f) of the Health Act 1956.
21. **Note** that the Director-General of Health will establish a process for considering any requests for exemption from the requirements under s70(1)(f).



## SECTION 70(1)(f) HEALTH ACT ORDER

On 24 March 2020, the Prime Minister, with agreement of the Minister of Health, issued an epidemic notice under s 5 of the Epidemic Preparedness Act 2006.

The epidemic notice allows the use of special powers by the Medical Officer of Health in accordance with s 70 of the Health Act 1956 for the purpose of preventing the outbreak and spread of COVID-19.

A state of national emergency was declared under the Civil Defence Emergency Management Act 2002, with effect from 12:21pm Wednesday 25 March 2020.

From 11:59pm, 25 March 2020, there has been in force an order under s 70(1)(m) of the Health Act 1956 closing certain premises and forbidding people to congregate in certain outdoor places.

For the purpose of preventing the spread of COVID-19, an infectious disease, I, Dr Ashley Bloomfield, Director-General of Health, acting as the Medical Officer of Health for all districts of New Zealand (that is, nationally), in circumstances where a state of emergency has been declared under the Civil Defence Emergency Management Act 2002 and there is an epidemic notice in force, make the following order pursuant to s 70(1)(f) of the Health Act 1956:

I require all persons within all districts of New Zealand to be quarantined as follows:

- a. To remain at their current place of residence (**residence**), except as permitted for essential personal movement; and
- b. To maintain physical distancing, except-
  - i. from fellow residents; or
  - ii. to the extent necessary to access or provide an essential business; and
- c. If their residence is mobile, to keep that residence in the same general location, except to the extent they would be permitted to leave the residence as essential personal movement.

For the purposes of paragraph (a) of this order, the following are permitted as **essential personal movement**:

### *Accessing essential businesses*

- a. a person leaving their residence for the purpose of accessing an essential business (which must be either within the same territorial authority district or the nearest essential business of a particular kind) for their own or fellow residents' needs or on behalf of any of the following:
  - i. a vulnerable person; or
  - ii. a person who is at an elevated risk for transmitting COVID-19 (and so is self-isolating including from fellow residents or in quarantine);
- b. a person leaving their residence if they are in the care of, or accompanying, a fellow resident who leaves their residence under paragraph (a):

### *Providing essential businesses*

- c. a person leaving their residence for the purpose of providing an essential business or travelling to or from their place of work for that essential business;
- d. a person leaving their residence if necessary to assist a fellow resident to travel to or from their place of work under paragraph (c):

*Limited recreation purposes*

- e. a person leaving their residence for the purpose of exercise or other recreation if:
  - i. it is done in an outdoor place that can be accessed readily from their residence; and
  - ii. it is done in compliance with paragraph (b) of this order (the physical distancing requirements) and the order forbidding congregation in outdoor places made under s 70(1)(m) of the Health Act 1956 on 25 March 2020; and
  - iii. it does not involve swimming, water-based activities (for example, surfing or boating), hunting, tramping, or other activities of a kind that expose participants to danger or may require search and rescue services.

*'Shared bubble' arrangements*

- f. a child leaving the residence of 1 joint care-giver for the purpose of visiting or staying at the residence of another joint care-giver (and then visiting or staying at that residence) if there is a 'shared bubble' arrangement:
- g. a person leaving their residence for the purpose of visiting or staying at another residence (and then visiting or staying at that residence) under a shared bubble arrangement if:
  - i. 1 person lives alone in 1, or both, of those residences; or
  - ii. all persons in 1 of those residences are vulnerable persons:
- h. a person leaving their residence to assist a fellow resident to travel to or from a residence under paragraph (f) or (g):

*Emergencies, court orders, etc*

- i. a person leaving their residence if necessary to preserve their own or any other person's life or safety:
- j. a person changing their residence if necessary to use another temporary or emergency place of residence (for example, a women's refuge centre):
- k. a person changing their residence if required as a result of a court order, a direction of the New Zealand Parole Board or a probation officer, or any other power to order a person to be detained, to change their place of detention, or otherwise determine their place of residence under any legislation:
- l. a person leaving their residence to assist a person to travel to or from a residence under paragraph (i) to (k):

*Other exemptions permitted by further order*

- m. any other essential personal movement defined by a further order of the Director-General of Health under section 70(1) of the Health Act 1956.

In this order, the following definitions apply:

**child** means a person under the age of 18 years

**essential business** has the same meaning as in the order given under s 70(1)(m) of the Health Act 1956 on 25 March 2020

**fellow resident**, for any person A, means another person who resides at the same residence as person A or another residence with which person A has a shared bubble arrangement

**joint care-giver**, in relation to a child, means a person who, under an agreement, or a parenting order or interim parenting order made under of the Care of Children Act 2004, has the role of providing the day-to-day care of the child

**physical distancing** means remaining 2 metres away from other people or, if you are closer than 2 metres, being there for less than 15 minutes

**place of residence-**

- i. includes a campervan, caravan, or other vehicle or temporary structure (for example, a tent) that is a place of residence and
- ii. in the case of a building, includes the land that is part of the property on which the building is situated (other than any common areas); and
- iii. includes any prison or hospital in which a person is detained under any enactment

**shared bubble arrangement** means an agreement by all of the residents (other than children) of no more than 2 residences within the same or adjacent health districts to quarantine in accordance with this order as if they were 1 residence

**vulnerable person** means a person who is at significant risk if they contract COVID-19.

**Effect of order**

Nothing in this order-

- limits or affects any previous order given under s 70 of the Health Act 1956; or
- limits or prevents an essential business provider from setting requirements on entry to any premises for the purpose of promoting physical distancing and appropriate access to that essential business.

**Assistance from Constables**

Under s 71A, I request that constables do anything reasonably necessary to assist in ensuring compliance with this instruction. This includes, but is not limited to:

- helping a Medical Officer of Health, or any person authorised by a Medical Officer of Health, in the performance of functions under s70;
- preventing persons from obstructing or hindering a Medical Officer of Health, or any person authorised by a Medical Officer of Health;
- compelling, enforcing, or ensure compliance with a requirement of a Medical Officer of Health, or any person authorised by a Medical Officer of Health;
- preventing or reducing the extent of the doing of a thing that a Medical Officer of Health, or any person authorised by a Medical Officer of Health, has forbidden or prohibited in the exercise of performance of powers or functions under s 70.

**Period of this Order**

This order has effect from \_\_\_hrs on \_\_\_ / \_\_\_ / \_\_\_, and expires on 11:59pm on 22 April 2020 (unless earlier revoked or extended).

# Noting paper

## COVID-19: AN EXEMPTIONS FRAMEWORK TO ALLOW DOMESTIC TRAVEL ON COMPASSIONATE GROUNDS

|             |   |             |              |
|-------------|---|-------------|--------------|
| <b>To</b>   | Ad Hoc Cabinet Committee on COVID-19 Response |             |              |
| <b>From</b> | Minister of Health                            | <b>Date</b> | 1 April 2020 |

### Purpose

1. The Section 70(1)(f) Order, also being discussed by COVID-19 Ministers on 2 April 2020, foreshadows that officials are setting up schemes to manage exemptions to Level 4 travel restrictions. This paper describes the exemptions framework for people seeking permission to travel on compassionate grounds.
2. This framework will apply to people already in New Zealand seeking permission to travel, as well as people requesting to enter New Zealand and self-isolate closer to a person in distress.

### Comment

#### Context

3. New Zealand is currently at COVID-19 Alert Level 4, which involves strict restrictions on travel [CAB-20-MIN-0133 refers]. These restrictions aim to reduce the spread of COVID-19 by reducing contact between people.
4. Moving to Alert Level 4 was predicated on significantly limiting the movement of all people in New Zealand to break the chain of transmission of COVID-19. All current modelling about New Zealand's COVID-19 exposure is predicated on there being no exceptions.
5. The public health rationale for strict domestic travel restrictions remains relevant. However, there are a small number of circumstances where domestic travel or self isolation outside of a quarantine facility could be warranted on compassionate grounds if public health and safety can be maintained.

#### Current state

6. Agencies and Ministers are receiving a number of requests for travel exemptions, and as at 30 March 2020, three exemptions have already been granted on compassionate grounds by the National Crisis Management Centre (NCMC).
7. It will be important that any further exceptions are managed to ensure decision-making is:
  - a. informed by public health considerations, and
  - b. consistent and fair.

### An approach to exemptions on compassionate grounds

8. Any exception granted on compassionate grounds risks reducing the effectiveness of the Alert Level 4 measures. The Ministry of Health, in consultation with NCMC and other agencies, has developed a principles-based decision-making process that will be operationalised by NCMC.
9. Any interpretation of 'compassionate grounds' in the current COVID-19 environment must be made in this broader context of nation-wide efforts to eliminate COVID-19, noting that Ministers have also declared a State of National Emergency to help manage the outbreak.
10. 'Compassionate grounds' in this context will include the need to care urgently for a minor, or to support somebody in a critical or terminal condition, with no other support network.
11. This process will apply only to domestic travel requests that are not related to COVID-19 cases. Requests to travel to see COVID-19 cases should continue to be declined on public health grounds.
12. There are several cases where this exceptions framework will not be relevant because there are already processes underway. This includes: international medical transfers and their support people; people receiving organ transplants; people travelling as a designated support person for someone receiving medical treatment). The COVID-19 and Ministry of Health websites will be updated to make this clear.

#### *More detail - a principles-based approach*

13. The process to consider and approve any exemptions is set out in Appendices 1 and 2. Each request must be assessed on a case-by-case basis only, and follow the two steps below.

#### First step

14. Does the request meet the test for an exemption on compassionate grounds? i.e. does it relate to the need to care urgently for a minor, or to support somebody in a critical or terminal condition, where there is no other support network?
15. *If yes, you can proceed to the second step. If no, the request must be declined.*

#### Second step

16. The second step is designed to ensure public health can be maintained if the applicant is moving around the country.
17. *The case can proceed to a decision if the following principles can be met:*

1. **The individuals travelling (and being visited) are not COVID-19 risks**, i.e:
  - a. Not diagnosed with COVID-19,
  - b. Does not have symptoms consistent with COVID-19,
  - c. Has not been tested for COVID-19 and is awaiting results,
  - d. Is not a close contact of a suspected/probable/confirmed case of COVID-19,
  - e. Has not travelled internationally within the last 14 days
2. **The risk of COVID-19 transmission is minimised** (i.e. the individual maintains social distancing, hand hygiene and the integrity of their bubble for the duration of their travel)
3. **The purpose for the individual travelling cannot be achieved through other means** (e.g locally-available support as a substitute, teleconferencing etc.)



4. **The individual themselves will not be in close contact with other people who are a risk for COVID-19**
5. **The individual understands the need for public health requirements to be maintained, and agrees to do so.**

#### **Process for requests coming from New Zealanders based offshore**

18. We are aware that New Zealanders based off-shore are requesting to return to New Zealand to be with a loved one in need – often asking to cut short the official 14 day self-isolation period to see their relative in distress.
19. These requests can be considered, but must follow the same two-step process (i.e. meet the test for an exemption to domestic travel restrictions on compassionate grounds, and not present a risk to public health). We also suggest that given the higher COVID-19 risk these individuals carry, they must test negative for COVID-19 upon entry to New Zealand (and quarantine while awaiting test results), maintain social distancing and work with public health officials to create an isolation plan.

#### **Putting the framework into practice**

20. The National Crisis Management Centre (NCMC), supported by the Ministry of Health, will manage the exemptions process to ensure public health can be upheld and the risk is reduced. This process is shown in detail in Appendix 2.
21. The individual's request will be considered against the two-step process to ensure fairness, consistency and public health and safety. Depending on the specific case context, NCMC will consult other agencies (e.g. the Ministry of Health where clinical judgment or public health advice is required, or the Ministry of Transport where the use of public transport or air travel may be required).
22. The approval process includes:
  - a. consideration by NCMC, and consultation with other agencies (e.g. Ministry of Health, Ministry of Transport) if situation warrants it
  - b. final approval by the Response Manager, NCMC.
23. Anyone who has been granted an exemption will be notified by the NCMC in writing and will be required to have this document with them at all times.

#### **Risks of introducing a framework**

24. Introducing an exemptions framework does come with risks:
  - **Volume:** There may be a high volume of requests made for exemptions once people become aware that exemptions are being granted, particularly if the number of COVID-19 deaths continues to rise in New Zealand's COVID-19
  - **Confusion:** An exemptions process may introduce further confusion for some people already struggling to know if their travel is authorised, and if this process applies to COVID-19 related deaths
  - **Enforcement:** Enforcing exemptions may be difficult or resource-intensive
  - **Time-pressures:** Ensuring requests go through a robust process with appropriate sign-out comes with a time cost. Many of the requests we expect to receive will be extremely time-sensitive. We expect that even with increased resourcing, we will not be able to

respond to all requests in adequate time for travel to be undertaken (e.g. people may pass away before a request is processed)

- **Practical:** It may be difficult to manage exemptions if the Alert Levels change in some areas of the country and not others (e.g. where travel is limited in the place of origin or destination, but not both).
- **Precedent:** It will likely set a precedent for other exemptions frameworks which may create operational and enforcement pressures in other parts of the system
- **Public concern:** It is unlikely that all requests will be approved, leaving requestors unhappy. This could create potential media attention, and in turn, pressure for more exemptions.

25. To manage these risks:

- NCMC and the Ministry of Health will monitor demand closely, and NCMC will regularly update Ministers on the number of requests received and approved.
- The COVID-19 and Ministry of Health websites will be updated with guidance about exemptions and how to apply in exceptional circumstances.

### **Risks of not introducing a framework**

26. The risks associated with creating an exemptions framework also need to be balanced against the risks of not doing so.
27. If there is no avenue for exceptions to be considered, it may undermine the Government's social licence to impose the Alert Level 4 measures. Without a fair process, people may decide to break the rules without understanding the public health precautions they need to take, or people who are high risk (e.g. close contacts of confirmed cases) may choose to travel. If not well-controlled, this could amplify community transmission rates in New Zealand, putting further pressure on individuals' health and the ability of the health system to respond to COVID-19 cases. Further, not introducing a consistent exemptions process could raise ethical considerations, and generate media attention.

### **Wider operational considerations**

28. While this is a public health issue, other agencies have concerns about how this process may be operationalised.
29. This is due to concerns about non-compliance under the current settings. We understand that non-compliance with the current travel restrictions is creating challenges for transport operators, such as airline check-in staff and ferry operators (e.g. Cook Strait Ferries). The Ministry of Transport and MBIE are concerned that this process will add further complexity into the system, and there will need to be clear guidance for operators about how to manage these requests.
30. Based on public health grounds, the Ministry of Health advises that the exceptions process described in this paper is appropriate, warranted and designed in a way to ensure public health and safety.
31. However, Ministers may wish to consider whether more resourcing is required to support agencies enforce Alert Level 4 isolation measures.

### *Financial Implications*

32. Introducing an exemptions framework will have fiscal implications.

33. At this stage, the costs associated with this process can be managed from within existing funding. If public demand is significantly higher than expected, or New Zealand remains at Alert Level 4 for longer than 4 weeks, more funding may be required.

## Recommendations

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34. I recommend that you:

- a. **note** that New Zealand's move to COVID-19 Alert Level 4 was predicated on there being no exceptions to travel restrictions, other than for essential services
- b. **note** that while the public health rationale remains for strong containment measures, health officials recommend establishing a process to consider requests for exemptions to domestic travel restrictions on compassionate grounds
- c. **note** this exemptions process is limited to people who are (a) not confirmed or probable COVID-19 cases themselves and (b) seeking to visit a person who is not a confirmed or probable COVID-19 case
- d. **note** the decision to introduce this exceptions process has been made by the Director-General of Health, through a carve out for authorised travel to the Section 70(1)(f) Order under the Health Act 1956 currently under consideration
- e. **note** that officials will apply a two-step, principles based decision-making framework to consider requests for domestic travel on compassionate grounds (set out in Appendices 1 and 2)
- f. **note** that establishing this process has resourcing implications for the National Crisis Management Centre and the Ministry of Health, as well as possible flow on implications for enforcement agencies (e.g. the Ministry of Transport and Police)
- g. **note** that the challenges associated with introducing an exemptions framework need to be weighed against the risks of not doing so (including undermining the social licence of imposing Level 4 measures)
- h. **note** that this exemptions process needs to be carefully communicated to the public to avoid further confusion and non-compliance, we suggest this is managed through the COVID-19 website
- i. **note** that the COVID-19 and Ministry of Health websites will be updated following your announcement

## Appendix 1 - Framework for decision-making on compassionate grounds: principles and additional considerations

The guidance framework below is intended to assist NCMC and the Office of the CMO to make recommendations to approve or decline applications for exemptions to the ban on domestic travel.

### First step

- Does the request meet the test for an exemption on compassionate grounds? i.e. does it relate to the need to care urgently for a minor, or to support somebody in a critical or terminal condition, where there is no other support network?
- *If yes, you can proceed to the second step. If no, the request must be declined.*

### Second step

- The second step is designed to ensure public health can be maintained if the applicant is moving around the country.
- *The case can proceed to a decision if the following principles can be met:*
  1. **The individuals travelling (and being visited) are not COVID-19 risks**, i.e:
    - not diagnosed with COVID-19
    - does not have symptoms consistent with COVID-19
    - has not been tested for COVID-19 and is awaiting results
    - is not a close contact of a suspected/probable/confirmed case of COVID-19
    - has not travelled internationally within the last 14 days.
  2. **The risk of COVID-19 transmission is minimised** (i.e. the individual maintains social distancing, hand hygiene and the integrity of their bubble for the duration of their travel).
  3. **The purpose for the individual travelling cannot be achieved through other means** (e.g. locally-available support as a substitute, teleconferencing etc.).
  4. **The individual themselves will not be in close contact with other people who are a risk for COVID-19.**
  5. **The individual understands the need for public health requirements to be maintained**, and agrees to do so.

### Process for requests coming from New Zealanders based offshore

- Requests from New Zealanders offshore can be considered, but must follow the same two-step process (i.e. meet the test for an exemption to domestic travel restrictions on compassionate grounds, and not present a risk to public health).
- Given the higher COVID-19 risk these individuals carry, they must be able to test negative for COVID-19 on entry into New Zealand, maintain social distancing, and work with public health officials to create an isolation plan.

Below are a set of additional considerations for decision-makers to support assessing each case against the principles above. These considerations will not necessarily prevent an individual from being granted an exemption, but may increase the restrictions placed on them if an exemption is granted.

| Area          | Considerations  |
|---------------|---|
| Public health | <ul style="list-style-type: none"> <li>• Can all five principles be met or managed?</li> <li>• Do you have credible assurance that the individual will maintain social distancing, hand hygiene etc, or are they prepared to take public health precautions (e.g. wearing full PPE) if not?</li> <li>• Is the individual intending to return to their original location/bubble once their visit is complete?</li> <li>• Has the individual been complying with self-isolation advice prior to the request (or, for example, have they travelled internationally)?</li> <li>• Will the applicant be able to actually access the person they are intending to visit (e.g. will the DHB need to provide approval)?</li> <li>• Will the applicant be able to maintain isolation protocols during the visit (if applicable)?</li> <li>• Will the individual pose a greater threat when travelling to public health than an essential worker and can this risk be mitigated?</li> </ul> |
| Logistics     | <ul style="list-style-type: none"> <li>• Will the request require the use of public transport (including air travel), or can the individual travel in a private car? <ul style="list-style-type: none"> <li>◦ How complex are the logistics (e.g. is the travel simple from end to end, or complex)?</li> </ul> </li> <li>• Is there a chance the individual will be unable to get home (e.g. through unavailability of domestic or international flights)?</li> <li>• Who will meet any costs incurred as a result of the travel?</li> <li>• What case-by-case support might be needed to help people comply (e.g. Police escort, and is that available)?</li> <li>• If PPE is required, who will provide them with it and how?</li> </ul>   |
| General       | <ul style="list-style-type: none"> <li>• Are the compassionate grounds so significant that any other risks (e.g. non-compliance, general confusion, as well as risks to public health) can be managed?</li> <li>• Can the request be assessed in time?</li> <li>• Is the travel likely to set a precedent for other cases that could result in a significant increase in the number of people applying to travel, or the number of people breaking self-isolation?</li> <li>• Would not travelling have any likely effect on the applicant's mental health or the person requiring support's mental health?</li> <li>• Are there other risk factors or circumstances that should be considered?</li> <li>• Would staying in the new bubble if Alert Level 4 is extended put the traveller or others in danger?</li> </ul>   |



## Appendix 2 - Process for authorising exemptions

