

# Health Report

## Renewal of Epidemic Notice under the Epidemic Preparedness Act 2006

**Date due to MO:** 17 June 2020      **Action required by:** 22 June 2020

**Security level:** IN CONFIDENCE      **Health Report number:** 20200925

**To:** Rt Hon Jacinda Ardern, Prime Minister  
Hon Dr David Clark, Minister of Health

### Contact for telephone discussion

Name	Position	Telephone
Dr Ashley Bloomfield	Director-General of Health	s 9(2)(a)
Jane Kelley	Director, COVID-19 Hub	

### Action for Private Secretaries

**Return** the signed report to the Ministry of Health.

**Date dispatched to MO:**

# Renewal of Epidemic Notice under section 7(1) of the Epidemic Preparedness Act 2006

## Purpose of report

This paper recommends that you renew the Epidemic Preparedness (COVID-19) Notice 2020.

## Key points

- An Epidemic Notice under Section 5 of the Epidemic Preparedness Act 2006 (Act) was issued on 24 March 2020 and unless renewed or earlier revoked expires at the close of 24 June 2020. Renewals of that Epidemic Notice are made under Section 7(1) of the Epidemic Preparedness Act 2006.
- The notice declares that the Prime Minister is satisfied that the effects of an outbreak of a stated quarantinable disease (within the meaning of the Health Act 1956) are likely to disrupt or continue to disrupt essential governmental and business activity in New Zealand (or stated parts of New Zealand) significantly.
- The notice can be renewed whether the outbreak is occurring in New Zealand or overseas, after confirming:
  - the written recommendation of the Director-General of Health; and
  - that you are satisfied that the effects of the outbreak concerned are likely to continue to disrupt essential governmental and business activity in New Zealand (or the parts of New Zealand concerned) significantly.
- My recommendation is that the Epidemic Notice be renewed for the reasons set out in this report. These include that, based on the ongoing international risk, a further outbreak of COVID-19 will disrupt or continue to disrupt essential governmental and business activity in New Zealand (or stated parts of New Zealand) significantly. The impacts of COVID-19 are still significantly impacting New Zealand, and the prevalence of the disease overseas means that we must remain prepared for the possibility of subsequent waves of COVID-19.
- An Epidemic Notice allows a range of things to happen under legislation. While the COVID-19 epidemic still presents such significant disruption both in New Zealand and overseas, it is essential to have these legislative tools available for use, if needed.
- The Epidemic Notice is the enabling framework for a range of legislation, and therefore should continue in force while that framework is required to address the effects of the COVID-19 epidemic.
- As soon as possible after giving the notice, the Prime Minister must present a copy of the Epidemic Notice to Parliament.

## Recommendations

The Ministry recommends that you:

- a) **Note** that there continue to be large scale outbreaks of COVID-19 globally, which pose an ongoing risk to New Zealand as we open our borders
- b) **Note** that an Epidemic Notice under section 5 of the Epidemic Preparedness Act 2006 is currently in place and expires at the close of 24 June 2020
- c) **Note** that the Epidemic Notice includes powers that require persons to refrain from taking any specified actions that contribute to or are likely to contribute to the risk of the outbreak or spread of COVID-19, or require persons to take specified actions to comply with specified measures that contribute or are likely to contribute to preventing the risk of the outbreak or spread of COVID-19
- d) **Note** the advice of the Director-General of Health that an outbreak of COVID-19 is likely to disrupt or continue to disrupt essential governmental and business activity in New Zealand (or stated parts of New Zealand) significantly
- e) **Note** that the Epidemic Notice can be renewed whether the outbreak is occurring in New Zealand or overseas
- f) **Note** that the Epidemic Notice is the enabling framework for a range of legislative instruments used to address the effects of the COVID-19 epidemic.
- g) **Agree** to renew the attached Epidemic Notice under section 7(1) of the Epidemic Preparedness Act 2006
- h) **Note** the notice will take effect on publication in the Gazette and expire on three months after its commencement, unless earlier renewed or revoked.
- i) **Agree**, when the notice is signed, to present a copy of the notice as soon as possible to Parliament

Dr Ashley Bloomfield  
**Director-General of Health**

Right Hon Jacinda Ardern  
**Prime Minister**

Date:

Hon Dr David Clark  
**Minister of Health**

Date:

## Background

1. On 24 March 2020, the Prime Minister, with the agreement of the Minister of Health, after considering the written recommendation of the Director-General of Health, issued the Epidemic Preparedness (COVID-19) Notice 2020 (Epidemic Notice). Unless earlier revoked, the Epidemic Notice will expire three months after its commencement.
2. By issuing this Epidemic Notice, the Prime Minister declared that she was satisfied that the effects of an outbreak of COVID-19 was likely to disrupt or continue to disrupt essential governmental and business activity in New Zealand significantly.
3. At this time, the World Health Organisation (WHO) had declared the COVID-19 outbreak a global pandemic and had recommended that countries take a comprehensive approach to stopping the spread of COVID-19.
4. The Epidemic Notice triggered special effects under the Health Act 1956, the Corrections Act 2004 and the Epidemic Preparedness Act 2006. An Epidemic Notice is also one of the available prerequisites for the issue of orders under the COVID-19 Public Health Response Act 2020.
5. The Epidemic Notice is due to expire prior to 25 June 2020 and, unless revoked earlier, a decision is required whether it should be renewed.
6. As required by the Act, I, as the Director-General of Health, have kept under review, and have kept you informed of, the situation out of which the making of the Epidemic Notice arose. In doing this, I have had particular regard to the changing situation as the country has de-escalated through the Alert Levels.

## Effects of an Epidemic Notice

### Legislative powers: COVID-19 Act and Health Act

7. The Epidemic Notice allows for the use of powers under the COVID-19 Public Health Response Act 2020 (COVID-19 Act) and 'special powers' under section 70 of the Health Act 1956. These powers include requiring persons to refrain from taking any specified actions that contribute to or are likely to contribute to the risk of the outbreak or spread of COVID-19, or requiring persons to take specified actions to comply with specified measures that contribute or are likely to contribute to preventing the risk of the outbreak or spread of COVID-19.<sup>1</sup>
8. These powers have been used by the Director-General of Health (acting with the powers of a medical officer of health in accordance with section 22 of the Health Act 1956) to issue notices to classes of people in New Zealand. These powers have now been augmented by the COVID-19 Act.
9. Medical officers of health have been using the 'special powers' in individual circumstances to prevent further outbreak or spread of COVID-19. This has included

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<sup>1</sup>[http://www.legislation.govt.nz/act/public/2020/0012/latest/resultsin.aspx?search=sw\\_096be8ed8198cd26\\_review\\_25\\_se&p=1](http://www.legislation.govt.nz/act/public/2020/0012/latest/resultsin.aspx?search=sw_096be8ed8198cd26_review_25_se&p=1)

requiring persons to be quarantined/isolated and/or submitting themselves for medical examination and testing in an effort to minimise the risk to public health.

10. Powers under the COVID-19 Act will be used, in the short term, at Alert Level 1 to continue border-related managed isolation and quarantine arrangements (replacing orders previously made under the Health Act). In addition, those powers are likely to be central to any future orders required for escalation back to higher Alert Levels, such as closure of premises, social distancing and self-isolation requirements.

### **Epidemic Preparedness Act 2006**

11. The Epidemic Notice also unlocks the power to make Epidemic Management Notices. Two notices are in place: the Epidemic Preparedness (Epidemic Management—COVID-19) Notice 2020 and the Epidemic Preparedness (Epidemic Management— COVID-19— Parole Act 2002 and Sentencing Act 2002) Notice 2020. These notices amend 15 statutory provisions across five statutes. For example, they enable greater flexibility in relation to managing parole conditions, given physical distancing requirements.
12. There are also eight Immediate Modification Orders in place under section 15 of the Act, through which the effect of primary legislation is temporarily modified to relax statutory requirements or restrictions to enable compliance that would otherwise be impossible or impracticable. For example, the notices relax requirements for citizens to physically complete forms or be physically present to participate in activities or access government or other services.
13. In addition, a number of the provisions introduced through the COVID-19 Response (Further Management Measures) Legislation Act 2020 are contingent on the Epidemic Notice remaining in place. This includes a varied range of provisions that agencies have reported will be required at Alert Level 1 or in the event of future escalation back to higher Alert Levels. For example, these provisions include obligations on coroners to test for COVID-19 and enable the Commerce Commission to authorise conduct that may technically breach the restrictions on cartel conduct, but would be of such a benefit to the public that it should be permitted.

### **An epidemic notice can only be issued or renewed if the effects of COVID-19 are likely to disrupt essential government and business activity**

14. By issuing the Epidemic Notice the Prime Minister declared she was satisfied the effects of an outbreak of a quarantinable disease were likely to significantly disrupt essential government and business activity in New Zealand. This has been confirmed with the effects of the outbreak in New Zealand so far, and the risk of the effects of an outbreak continues due to the continued outbreaks overseas and lack of an effective vaccine.

### **New Zealand's economy has been significantly disrupted, and this disruption is ongoing**

15. The outbreak in New Zealand has had a significant impact on our economy through disruption to internal and external markets, supply chains and workers. The outbreak in New Zealand has disrupted government business and impacted the effective operation of the judiciary, executive and legislature through the impact of the disease and the application of measures to contain its spread.
16. Domestically, the economic impacts of COVID-19 are significant and ongoing:
  - In the main Budget forecasts, real GDP is forecast to fall sharply in the June quarter resulting in annual GDP declining from 2.8% growth in the June 2019 year,

to a contraction of 4.6% over the June 2020 year, with GDP falling a further 1% by June 2021.

- Economic activity is forecast to recover over the remaining three years in the forecast period. The unemployment rate is expected to rise from 4.2% currently, approaching 10% in the September quarter before reducing to 8% by mid-2021.

17. The pace and magnitude of the economic recovery will depend partly on the degree to which global restrictions (including border restrictions) are able to be lifted to enable economic activity to recover towards pre-COVID levels.<sup>2</sup>

### **The global situation continues to pose a significant risk to New Zealand**

18. The continued effective operation of Government is best served if the health impacts of COVID-19 are managed and minimised. While there are only two current known COVID-19 cases in New Zealand (as at 16 June 2020) the scale and extent of COVID-19 outbreaks overseas means that there remains a significant risk of a further outbreak (a "second wave") in New Zealand, unless powers available through the issue of an epidemic notice remain. These include the ability to make orders as required under the COVID-19 Act, particularly border controls.
19. The WHO reported that on 16 June 2020, there were 7,823,289 cases of COVID-19 reported globally, and 431,541 deaths. Although the situation in some areas has been improving, the global situation continues to worsen. The WHO also reports that the virus is present in 216 countries, areas or territories.<sup>3</sup>
20. The scale of the COVID-19 pandemic presents a high risk of a 'second wave' of transmission in New Zealand. People arriving into New Zealand from high risk countries with ongoing COVID-19 cases may lead to infection being introduced into the community, despite mandatory quarantine and isolation and case numbers could quickly escalate. New Zealand's COVID-19 Elimination Strategy includes border controls, case detection and surveillance, contact tracing and managed isolation/quarantine, and community support for control measures.

### **The Epidemic Notice provides the enabling framework for other instruments and should remain in place as long as COVID-19 poses a threat**

21. After the Law Reform (Epidemic Preparedness) Bill was before the Government Administration Committee, the Committee reported on the Bill, and commented that there should be a graduated approach to implementing and scaling back immediate modification orders. The Committee also commented that, to facilitate the graduated approach, an Epidemic Notice should remain in force for as long as the epidemic remains a threat. It was suggested that as the epidemic recedes, "the immediate modification orders should be scaled back gradually to facilitate society's return to normality,"<sup>4</sup> implying that the Epidemic Notice would be the last to be revoked.

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<sup>2</sup> COVID-19 Economic Dashboard 9 June 2020, produced by New Zealand Treasury

<sup>3</sup> <https://www.who.int/emergencies/diseases/novel-coronavirus-2019>

<sup>4</sup> Page 5 Law Reform (Epidemic Preparedness) Commentary – accessed on 11 June 2020 at

[https://www.parliament.nz/resource/en-NZ/48DBSCH\\_SCR3588\\_1/bb53df3ec76505d2dfb175afc97631aed1cf0789](https://www.parliament.nz/resource/en-NZ/48DBSCH_SCR3588_1/bb53df3ec76505d2dfb175afc97631aed1cf0789)

22. s 9(2)(h) [Redacted]  
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23. s 9(2)(h), s 9(2)(g)(i) [Redacted]  
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## Comment

### In a pandemic response, the Government should use legislative provisions in a way that is proportionate and appropriate to the emerging pandemic

25. Government and designated officers may use available legislative powers as appropriate to the particular situation. These include:
- powers provided for in the COVID-19 Act and the Health Act 1956 ('routine' and 'special' powers) – COVID-19 is currently a quarantinable disease (**current state – recommended to continue**)
  - additional powers available under the Epidemic Preparedness Act 2006 to facilitate the management of epidemics of quarantinable diseases (**current state – recommended to continue**)
  - additional powers under the Civil Defence Emergency Management Act 2002 (in a state of emergency declared under that Act) if required in a very severe situation (**not recommended at this time**).
26. The powers resulting from renewing the Epidemic Notice are broad-ranging and limit rights and freedoms in the New Zealand Bill of Rights Act 1990. The powers to search and seize, detain, and require people to be treated, are some of the most powerful that a state can exert over its people. The significant nature of the powers can only be justified when the spread of the quarantinable disease could cause serious harm to the public in an outbreak in New Zealand.
27. For a public health emergency to justify derogating from human rights, the situation should be of an exceptional and temporary nature. These powers must be exercised in a way that is consistent with the New Zealand Bill of Rights Act. This means that individual decisions that limit fundamental rights must be necessary and proportionate to the objective of limiting the spread of COVID-19. Given this, the Ministry of Health

will continue to keep the situation under review and the Director-General will keep the Minister of Health and Prime Minister informed.

28. The Act requires the notice be promptly revoked when the Prime Minister is no longer satisfied that the effects of the outbreak are likely to disrupt essential governmental and business activity in New Zealand (or parts of New Zealand concerned) significantly.

## **Recommendation to renew the Epidemic Notice**

### **Given the impact on government and business activity, it is proposed the epidemic notice be renewed for a period of three months from 25 June 2020**

29. The scale and extent of COVID-19 outbreaks overseas means that there remains a significant risk of a further outbreak in New Zealand, unless powers available through the issue of the Epidemic Notice remain. These include the various instruments described above and the ability to make orders as required under the COVID-19 Act, particularly border controls.
30. My recommendation is therefore that the Epidemic Notice is renewed for a further three months before its expiry on 25 June 2020, to ensure continuity in the use of these various legal instruments to contribute to the recovery.
31. If the Epidemic Notice is renewed, it would continue in force (unless earlier revoked or renewed) until 24 September 2020. As the House rises in mid-August, it would be beneficial to have the Epidemic Notice in place during this time if any immediate modifications to legislation need to take place to address the impacts of COVID-19, as the option of emergency legislation is unlikely to be available.

### **There are safeguards and processes in place for the Prime Minister to issue the Epidemic Notice**

32. There are important safeguards and forms of Parliamentary scrutiny, particularly the following:
- The Prime Minister is required to notify the House of Representatives as soon as reasonably practicable that an epidemic notice has been issued or extended.
  - The House of Representatives has the opportunity to scrutinise orders made during an epidemic. This provides a layer of swift scrutiny, which enhances the legitimacy of the orders without imposing impractical requirements
  - In addition, while the issuing of an epidemic notice would allow the modification or relaxation of laws, laws that protect fundamental rights and freedoms are prevented from being modified in this way.
  - Significant constitutional legislation cannot be modified, including the Bill of Rights 1688, the Constitution Act 1986, the Electoral Act 1993, the Judicial Review Procedure Act 2016, the New Zealand Bill of Rights Act 1990, or the Parliamentary Privilege Act 2014, or by this Act.

## **Timing**

33. Unless earlier revoked the Epidemic Notice will expire three months after its commencement, on 25 June 2020. My recommendation is that it is renewed from that date for a further three months.



## Publication and Presentation to Parliament

34. The renewal of the Epidemic Notice will be given by publication in the Gazette as soon as possible.
35. As soon as possible after giving the Epidemic Notice, the Prime Minister must present a copy of the Epidemic Notice to Parliament. If Parliament is not due to sit until a day more than seven days after the day on which the notice is given, then Parliament must organise to sit within that seven-day period.

## Equity

36. The spread of COVID-19 disproportionately harms older people and those with long term conditions such as diabetes or heart disease. Additionally, the disruption likely to result from spread of the disease in New Zealand, and measures to contain it, is likely to disproportionately affect those who are unable to work from home, and people in certain industries, such as health, education, retail, aviation, tourism and hospitality.
37. The renewal of the Epidemic Notice will allow the government to rapidly and more effectively introduce measures early in an outbreak to reduce the peak of an epidemic, prevent and/or reduce community transmission, and mitigate harm to those most vulnerable.

## Next steps

38. If the Epidemic Notice is renewed, the Ministry will make arrangements for the Notice to be published in the Gazette to come into effect as soon as possible. We will work with the Department of Prime Minister and Cabinet to arrange for the Epidemic Notice to be tabled with Parliament.

**ENDS.**

**Appendix 1: Draft Epidemic Preparedness (COVID-19) Notice 2020  
Renewal Notice 2020**

Proactively released

**IN CONFIDENCE**

## **Epidemic Preparedness (COVID-19) Notice 2020 Renewal Notice 2020**

Pursuant to section 7 of the Epidemic Preparedness Act 2006, the Prime Minister gives the following notice—

- (a) with the agreement of the Minister of Health; and
- (b) on, and after considering, the written recommendation of the Director-General of Health; and
- (c) being satisfied that the effects of the outbreak of COVID-19 are likely to continue to disrupt essential governmental and business activity in New Zealand significantly.

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### **Notice**

**1 Title**

This notice is the Epidemic Preparedness (COVID-19) Notice 2020 Renewal Notice 2020.

**2 Commencement**

This notice comes into force on 24 June 2020.

**3 Renewal of Epidemic Preparedness (COVID-19) Notice 2020**

The Epidemic Preparedness (COVID-19) Notice 2020 is renewed.

Dated at Wellington this                      day of                      2020.

Prime Minister.

## Explanatory note

*This note is not part of the notice, but is intended to indicate its general effect.*

This notice, which comes into force on 24 June 2020, renews the Epidemic Preparedness (COVID-19) Notice 2020 (the **principal notice**).

The principal notice came into force on 25 March 2020. Under section 5(3) of the Epidemic Preparedness Act 2006, that notice was due to expire on 25 June 2020. The renewal of the principal notice by this notice means that the principal notice will not now expire until 24 September 2020, unless an earlier date is stated for that purpose by the Prime Minister by notice in the *Gazette* (see section 7(3) of the Epidemic Preparedness Act 2006).

Under the principal notice, the Prime Minister declared that she is satisfied that the effects of the outbreak of COVID-19 are likely to disrupt or continue to disrupt essential governmental and business activity in New Zealand significantly.

The principal notice is one way in which the following powers under the Health Act 1956 were activated (they can also be activated by the Minister of Health authorising their use or by a state of emergency being declared under the Civil Defence Emergency Management Act 2002):

- the special powers of medical officers of health under section 70 of the Health Act 1956;
- the requisition powers of medical officers of health under section 71 of that Act.

The principal notice also activated section 24 of the Epidemic Preparedness Act 2006, which enables certain Judges and Associate Judges to, in particular cases, modify rules of court as they think necessary in the interests of justice to take account of the effects of COVID-19.

The principal notice is a prerequisite for—

- the making of notices under section 74C of the Health Act 1956 (these notices can require that medicines under the control of the Crown or a Crown entity are administered, dispensed, prescribed, or supplied in accordance with priorities determined by the Director-General of Health);
- the making of epidemic management notices under section 8 of the Epidemic Preparedness Act 2006, which can—
  - activate dormant provisions of the Criminal Procedure Act 2011, the Immigration Act 2009, the Parole Act 2002, the Sentencing Act 2002, and the Social Security Act 2018 that are intended to deal with an outbreak of disease; and

- activate prospective modification orders under section 11 and 12 of that Act (these orders may modify requirements or restrictions in legislation, either for the purpose of enabling the effective management of an outbreak or dealing with requirements or restrictions that are or may well be impossible or impracticable to comply with):
- the making of immediate modification orders under section 14 and 15 of that Act (these orders are similar in purpose and effect to prospective modification orders, but do not require an epidemic management notice to activate them).

The principal notice is also relevant to—

- whether the Chief Electoral Officer may, under the Electoral Act 1993, adjourn voting at polling places and use alternative voting processes (*see* sections 195 to 195B of that Act):
- whether liability for certain people, including employees of the Department of Corrections, may be excluded for failures to comply with the Corrections Act 2004 or regulations made under it (*see* sections 179C and 179E of that Act).

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*:

This notice is administered by the Ministry of Health.