



Cabinet Social Wellbeing Committee

Minute of Decision

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Approach to Enforcement under Level 2

Portfolios **Police / Workplace Relations and Safety**

On 13 May 2020, the Cabinet Social Wellbeing Committee:

- 1 **noted** that on 11 May 2020, Cabinet directed the Ministry of Business, Innovation and Employment, WorkSafe, and the New Zealand Police to report to the Cabinet Social Wellbeing Committee with a plan for a concerted, coordinated and visible approach to education and enforcement in the first days of Level 2 [CAB-20-MIN-0220];
- 2 **noted** that the approach of enforcement agencies to education and enforcement under Alert Level 2 will include:
 - 2.1 ongoing utilisation of the All-of-Government COVID-19 Compliance Response (ACCR), including the graduated response model;
 - 2.2 an increased emphasis on voluntary compliance and education;
 - 2.3 focus on serious and persistent offending;
 - 2.4 continued use of existing regulatory powers, as well as those specifically provided for under the COVID-19 Public Health Response Bill;
 - 2.5 prioritised enforcement activity in the first 72 hours focused on gatherings and the hospitality and retail industries;
- 3 **noted** that agencies have committed to maintain current resourcing for the ACCR until 28 May 2020;
- 4 **noted** that further work will be required to understand the ongoing resourcing requirements for agencies;
- 5 **noted** that the COVID-19 Public Health Response Bill provides for the Director-General of Health to designate enforcement officers, enabling a broader range of agencies to participate in the COVID-19 response;
- 6 **noted** that officials expect that a range of agencies may be designated enforcement officers, with Police and WorkSafe inspectors the first to be identified;

- 7 **noted** that New Zealand Police will continue to work with Māori and Pacific wardens as part of the enforcement approach.

Vivien Meek
Committee Secretary

Present:

Rt Hon Jacinda Ardern (Chair)
Hon Kelvin Davis
Hon Grant Robertson
Hon Phil Twyford
Hon Dr Megan Woods
Hon Carmel Sepuloni
Hon Nanaia Mahuta
Hon Stuart Nash
Hon Iain Lees-Galloway
Hon Kris Faafoi
Hon Tracey Martin
Hon Peeni Henare
Hon Willie Jackson
Hon Aupito William Sio
Hon Poto Williams
Hon Julie Anne Genter

Officials present from:

Office of the Prime Minister
Officials Committee for SWC
Director General of Health
NZ Police

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Office of the Minister of Police

Office of the Minister for Workplace Relations and Safety

COVID-19: APPROACH TO ENFORCEMENT UNDER ALERT LEVEL TWO

Proposal

1. This paper reports back to Cabinet on the cross-agency approach to supporting compliance under Alert Level 2. It identifies the education and enforcement approach for the first 72 hours at the lower Alert Level.

Relation to government priorities

2. The planned approach supports the Government's plans to open up the economy and resume everyday activities, while maintaining appropriate health restrictions to prevent further community transmission of COVID-19. It maintains an emphasis on a proportionate and graduated response to enforcement.

Background

3. On 11 May 2020, Cabinet agreed to move to Alert Level 2 at 11.59pm on Wednesday 13 May 2020. Cabinet noted that the Ministry of Business, Innovation and Employment (MBIE), Police and WorkSafe were planning a concerted, coordinated, and visible approach to enforcement at Level 2.
4. Cabinet directed MBIE, WorkSafe and Police to report to the Cabinet Social Wellbeing Committee with a plan for a concerted, coordinated and visible approach to education and enforcement in the first days of Level 2, for noting [CAB-MIN-20-0220 refers].

Changed compliance demand at Alert Level 2

5. Changes to the compliance demand at Alert level 2 will require prioritising enforcement efforts, together with increased education. Under Alert Level 2, the compliance demand will shift away from maintaining compliance with general population health controls, towards supporting more tailored restrictions – e.g. physical distancing of customers and staff within businesses, keeping contact tracing records, and limits on gatherings. There will be a considerably larger scale of activity to monitor and respond to reports of non-compliance, as most businesses resume operations and personal movement is no longer restricted.
6. There will also be new compliance challenges given that the public health controls under Alert Level 2 are more permissive, and there are less restrictive legislative requirements for both the regulated community and regulators.

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7. Agencies will continue to draw on their respective regulatory powers, along with those specific powers proposed in the COVID-19 Public Health Response Bill. However, the sheer volume of permitted social and economic activity at Alert Level 2, and the greater reliance on voluntary compliance, means agencies will need to prioritise the enforcement focus towards addressing the most serious and persistent offending.
8. The Police (and now All-of-Government) graduated response model of Engage, Educate, Encourage and Enforce will remain a critical feature of the Alert Level 2 response. The goal is to prioritise supporting people to move into a compliant state, rather than punish them for non-compliance.
9. This approach is underpinned by the continuation of the highly successful Unite Against COVID-19 Campaign, to raise awareness of the public health risks and the boundaries established, to enable New Zealand's "team of five million" to act appropriately and keep each other safe.
10. The Unite Against COVID-19 Campaign will continue through Alert Level 2 with its key role of enabling New Zealanders to comply with the rules by providing guidance to prevent the spread of the disease.
11. Campaign activity leading into and for the initial period of Alert Level 2 will communicate all requirements and guidance, but with an initial focus on the high risk area of gatherings, the rules businesses must follow (including the hospitality industry), and ongoing reminders around hygiene factors. An additional focus from the end of the first week of Alert Level 2 will be to encourage people to keep a record of their movements to enable contact tracing.
12. All channels will continue to be utilised including website, social and paid advertising (digital, radio, TV, print and some outdoor). Advertising will be at a heavy level for the first week of Alert Level 2 to set the scene and scope, tapering to maintenance levels thereafter.
13. Agencies will also continue promoting ongoing voluntary compliance by the community and businesses – for example, through the development of clear guidance and the provision of advice for their respective industries and sectors.

Prioritised enforcement activity at Alert Level 2

14. We will prioritise the following enforcement activity during the first 72 hours under Alert Level 2.

Gatherings

15. Agencies recognise that large gatherings of people can represent considerable risk of COVID-19 spread, based on past large scale outbreaks, such as at weddings or conferences. The COVID-19 Public Health Response Bill will provide specific powers to direct gatherings that exceed the levels allowed under Alert Level 2 to disperse. It will be an offence to fail to follow such a direction. Police will prioritise gatherings as a key element of compliance management during Alert Level 2. Police will continue

to apply a graduated response model, focused on reminding people of their responsibilities and only utilising further enforcement measures if necessary. Police has prepared guidelines for frontline staff to ensure situations involving large gatherings are well managed.

Hospitality and retail industry

16. It is anticipated that a number of businesses in the hospitality and retail industry will encounter issues around maintaining appropriate customer numbers inside their facilities. As controlling entry is a key aspect of their usual business practices, it is expected that they will be well positioned to manage requirements. However, as part of a graduated response, the COVID-19 Public Health Response Bill provides that businesses that do not comply with orders (for example, by not ensuring physical distance requirements are met by customers and staff) can be ordered to close for up to 24 hours.
17. Entry restrictions could also lead to the congregation of people outside hospitality locations and retail malls. This will likely require some level of management to ensure that social distancing is maintained, as well as supporting businesses to implement measures to reduce the potential for this to happen. WorkSafe will continue their significant educational and informational activity, in the same way as they have been doing throughout the public health emergency period. The primary focus is to support businesses to meet their health and safety at work duties under the Health and Safety at Work Act 2015.
18. WorkSafe's activities are predominantly funded by the Health and Safety at Work levy, which enables them to undertake education activities in support of COVID-19. Any diversion of resources to enforcement action under the COVID-19 Public Health Response Bill will require WorkSafe to have a function that enables their use of levy-funded resources. Work is underway on a mechanism to enable this.
19. The low number of WorkSafe inspectors (188) and their locations will limit the enforcement activities that can be undertaken in practice. Continuing WorkSafe's role in enforcement action under the new Bill beyond the initial period of Level 2 will necessarily result in a reduction in wider compliance activity on work health and safety activities. These activities are generally focussed on the highest risk industries (for example construction, forestry, agriculture, and manufacturing) and the highest harm activities within these industries. These industries may see increased activity as part of the recovery and WorkSafe's role will become increasingly important.
20. There will be a collective response across agencies to managing compliance within the hospitality and retail industry. Police will have an ongoing enforcement role, and work is underway to enable WorkSafe to deploy their inspectors as enforcement officers under the new regime. This requires a Direction from the Minister of Workplace Relations and Safety to enable WorkSafe to use their levy-funded resources for this function (currently constrained by the Health and Safety at Work Act), as well as the Director-General of Health providing the necessary authorisation under the new legislation.

IN CONFIDENCE

21. Ongoing consideration will be given to how other relevant agencies and local government officers can also play a role in supporting this compliance effort. At this point, it is unclear whether there is a role for any MBIE regulators to act as enforcement officers under the new Bill.
22. This approach will enable Police, WorkSafe and other agencies to deploy according to respective skills and expertise. For example, the power to close a business where it is failing to effectively manage COVID-19 restrictions sits well within a graduated response model deployed by WorkSafe inspectors. Where there is concern about the response to a closure, Police will attend to manage public order. Other agencies will be likewise positioned to support compliance in their respective capacities, including through the exercise of their usual functions. An overview of each agency's compliance role under Alert Level 2 is set out in Table One.

Table One

Ministry of Health	<p>Provide public updates and advice on the health response.</p> <p>Provide public health information and guidance to business and individuals (e.g. physical distancing at workplaces).</p> <p>Manage the response to people required to be in isolation or quarantine.</p> <p>Provide high level guidance and support to other agencies on the public health principles on the response to COVID-19, to support their enforcement responses under those principles.</p>
Ministry of Business, Innovation & Employment	<p>Continue to support the All-of- Government COVID-19 Compliance Response by providing resource to review complaints by the public.</p> <p>Provide expertise on related regulatory matters (e.g. employment relations and immigration).</p>
New Zealand Police	<p>Provide a graduated enforcement response to compliance with Alert Level restrictions.</p> <p>Enforcement of restrictions within private dwellings.</p> <p>Management of large gatherings.</p>
WorkSafe	<p>Continue to encourage and assist sectors to develop industry-led guidance.</p> <p>Proactive checking-in with businesses on their understanding of COVID-19 related health and safety requirements.</p> <p>Use current Health and Safety at Work Act 2015 powers to issue directions and improvement notices in work settings.</p> <p>If required, operate as enforcement officers under the</p>

IN CONFIDENCE

	new legislation, with the ability to shut a business down for 24 hours in cases of non-compliance.
Ministry for Primary Industries	Provide education and advice to food/primary sector businesses, including requirements around contact tracing. Assist in communication and follow-up for breaches involving food/primary sector businesses, including supporting and liaising with local territorial authorities.
Department of Internal Affairs	Support local government agencies through the Local Government COVID-19 Response Unit, and if required, to act as enforcement officers under the new legislation.

The role of local government

23. Local government will also support compliance under Alert Level 2. Throughout the COVID-19 response, the Local Government COVID-19 Response Unit (i.e. Department of Internal Affairs in conjunction with Local Government NZ (LGNZ) and Society of Local Government Managers (SOLGM)) has encouraged councils to take pragmatic decisions around enforcement in the spirit of the Government's direction. Examples have included relaxing street parking fees and enforcement of restrictions of supermarkets' loading times, to ensure the supply chain could continue to operate under the additional pressures COVID-19 has introduced.
24. Local authorities have different enforcement roles and requirements across the range of services they support, such as food, alcohol and gambling licences, and dog control. Requirements for enforcement are set out across various pieces of legislation, but generally local authorities have some discretion on how these are met. While the legislation enables localised case-by-case decision making, the Local Government COVID-19 Response Unit has worked across councils where greater consistency has been needed.
25. For example, during Alert Level 3, the Response Unit worked with some councils to triage noise control complaints, and to roster to demand. While Police supports these local government functions in exceptional circumstances (for example, when violence is used), local government will need to continue rostering to demand as we shift to Alert Level 2. Officials will continue to work with local government to understand how local government can continue to support the collective compliance effort during Alert Level 2.

The All-of-Government COVID-19 Compliance Response

26. The enforcement framework required at Alert Level 2 is already in place, through a well-established cross-agency compliance response, which is working well.
27. The All-of-Government COVID-19 Compliance Response (ACCR) was established as a collaborative approach to managing compliance. It became operational from 28 April 2020, in line with the commencement of Alert Level 3.

IN CONFIDENCE

28. The ACCR currently involves five primary enforcing or regulatory policy agencies: the Ministry of Health (Health), Police, the Ministry of Business, Innovation and Employment (MBIE), WorkSafe, and the Ministry for Primary Industries (MPI).
29. It provides a single point of access for reporting COVID-19-related breaches by the public (an online form), and a single cross-government triage activity. Reports of non-compliance are reviewed and prioritised, and any breaches requiring further action are assigned to the relevant agency.
30. Agencies have committed to maintain current resourcing for the ACCR until 28 May 2020, at which point ongoing resource needs will be re-assessed.

Voluntary compliance and graduated responses underpin the current approach

31. Agencies have consistently sought to maximise voluntary compliance with the Alert Level restrictions, through education, clear guidance and proportionate measures. This has been highly successful, and our experience at Level 4 and Level 3 show that most people want to do the right thing.
32. While agencies continue to focus heavily on supporting individuals and businesses to be voluntarily compliant, enforcement tools are also required to enable more formal interventions to deal with serious or repeat offenders. Under Alert Level 4 and 3, the enforcement tools have consisted of warnings (both verbal and written), improvement notices for businesses, and prosecutions. This toolkit has supported a graduated response to enforcement.

The compliance response is working well

33. As at 0800 on 11 May 2020, 7,393 complaints had been made using the online notification since the start of Level 3. All reports have been assessed and 2,931 have been further reviewed with 1,781 sent to an agency with recommendations for further action (representing an overall 24% deployment rate).
34. Forty four percent of deployment activities are currently being managed by Police, 38% by WorkSafe, and 11% by MBIE, with about 1% by Health and MPI. The remainder are live cases in the process of being allocated to an agency.
35. Common breach themes during Alert Level 3 include:
 - Mass gatherings at residential addresses and public areas, increasing at weekends (41% of reports).
 - Business breaches largely related to not maintaining physical distancing requirements (37%).
 - Individual breaches predominately relating to people not staying within their bubble (25%).
36. This fully integrated compliance approach and centralised tasking function has realised the following benefits:
 - Resources are leveraged collectively to deliver a timely response

- Consistency in the compliance response across participating agencies
- An aligned source of data and enhanced awareness of individuals, organisations and locations (including repeats)
- Agencies can focus resource on the response as opposed to the filtering and synthesis of breach reports
- Shared understanding of key priorities and risks across agencies.

The legal framework at Alert Level 2

37. The COVID-19 Public Health Response Bill will create a clear and comprehensive legal framework that better reflects the Alert Levels Framework. It provides specific public health enforcement tool
38. The new enforcement tools will help maximise voluntary compliance by providing clear legal powers underpinning restrictions, and enabling enforcement officers to deal with serious or persistent non-compliance that threatens our public health objective.
39. The Bill provides for a range of enforcement tools, most of which can be deployed immediately, to enable enforcement agencies to adopt the most effective tool, proportionate to the nature of the breach and the risk being managed.

Orders, powers and offences

40. The Bill enables the Minister of Health to make Orders that are broadly based on the type of orders that have been made under the Health Act 1956. Once an Order is in place under the legislation, powers and offences set out in the Bill apply.
41. As with the Orders made under the Health Act 1956, non-compliance may result in imprisonment or a fine on conviction. A mental element (i.e. the person acted intentionally) has been included in the offence to reflect the severity of conviction as a penalty.
42. To enable enforcement of the measures in orders, enforcement officers are given a range of powers, such as powers of entry, to give directions or to provide identifying information. There are various criminal offences supporting the exercise of enforcement powers.
43. The Bill also introduces an infringement regime for non-compliance with orders. This provides a more proportionate response to non-compliance, in circumstances where there is no additional conduct such as refusing to comply with a direction or some other exercise of an enforcement power. While work is underway to establish the 'back end' IT and systems, it will be at least 3-4 weeks following the passing of the Bill before an infringement regime can be fully operationalised and form part of the graduated response. In the interim, as the Bill is currently drafted, Police is able to commence proceedings for an infringement offence by way of a summons. This would create an administrative burden for both Police and Courts in the short term. Police continues to work with the Bill drafters to include an exemption to this

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requirement as exists for road traffic infringements. If this amendment is made during the passing of the Bill, leave of the court will not be required.

Authorisation of enforcement officers

44. The Bill allows the Director-General of Health to appoint people as enforcement officers under the Bill. This will enable a broader range of agencies to participate in the COVID-19 response going forward, each bringing their own expertise and connections with different sectors/industries. This will also assist in spreading enforcement demand across agencies, recognising that Police is likely to experience a significant increase in crime demand at Alert Level 2, and that other agencies continue to have business as usual demand to resource.
45. As noted above at paragraph 20, we expect that WorkSafe inspectors will be designated as enforcement officers, and will exercise the power to close businesses, should that be required as part of a graduated response. WorkSafe will also not be able to issue infringement notices immediately, and will need to coordinate with other agencies to access the systems needed to operationalise an infringement regime.
46. Other agencies may also be appointed enforcement officers by the Director-General of Health to further support the compliance capability across government. Some agencies may also be able to incorporate compliance with Alert Level 2 restrictions into their business as usual compliance checks, without being specifically appointed enforcement officers under the Bill. For example, MPI could include these checks as part of their usual food safety compliance activity. As noted above at paragraph 21, whether there is a role for any MBIE regulators as enforcement officers under the new Bill is unclear, and will be further considered by officials.
47. The ACCR will continue to consider how a collective approach to enforcement is supported across multiple agencies, including how to support the consistent use of enforcement tools, training of enforcement officers, and the development of joint administrative processes, such as recording infringement fines. Agencies will also need to determine how to operate with the new powers in conjunction with their other powers.
48. Ongoing review of how we operationalise this shared enforcement responsibility will continue. Given the scale of economic and social activity permissible under level 2, this review will be particularly important if compliance reduces over time. This could lead to the enforcement demand exceeding the available enforcement resources authorised under the Bill - for example, through high demand for crowd management outside stores, or complaints about workplace or hospitality practice.
49. Agencies will work together to ensure the necessary leadership is provided, and the ACCR will continue to ensure cross-agency guidance is made available on matters such as:
 - Ensuring enforcement officers are trained to effectively use their powers under the new Bill

- Infringement offences and other offences are used consistently across agencies, and
- The interface between existing and new powers is effectively managed.

Increased emphasis on education and voluntary compliance at Alert Level 2

50. As noted above, the increased levels of activity will require increased reliance on voluntary compliance. There will be an increased focus on maintaining a strong educative role, to guide, encourage and support people to comply with the Alert Level 2 restrictions – for example, encouraging people to maintain a 2 metre physical distance from people they do not know, and encouraging them to maintain safe behaviours while in public spaces, including avoiding going out in, and congregating with, groups of more than ten people.
51. Agencies will need to provide clear information and guidance to businesses about how the COVID 19 restrictions will apply to them. Given that the new enforcement regime will take time to fully implement, all agencies will be relying heavily on education and engagement in the first few weeks of Alert Level 2.

Continued responses at Alert Level 2

52. It is important to note that some key aspects of our response to COVID-19 will remain in place at all Alert Levels. For example, our border, isolation and quarantine requirements are ongoing. Relevant agencies, including Customs, National Emergency Management Agency (NEMA), Health and Police, will continue to have key roles in enabling and enforcing these requirements.
53. In addition, agencies will continue delivering existing regulatory functions in support of Alert Level 2. For example, workers who are at higher risk of severe illness from COVID-19, or who have household members who are at higher risk, have been able to work outside of the home under all levels of the Alert Framework. Continuing under level 2, it is expected that these workers and their employers discuss in good faith and agree what working arrangements are appropriate to manage the risks to their health arising from work and what extra precautions are needed for them.
54. This can include agreeing that they will continue to work from home where that is possible and preferred, or making changes at work so that work is safe for them, or if they cannot work from home or go to work, agreeing what leave and pay arrangements they will be on until they return to work. The COVID-19 Leave Support Scheme is in place to support employers and workers in this situation. A range of guidance is available for dealing with these situations, including any disputes arising.
55. Regulators have made it clear that normal requirements under the law apply in respect of dealing with workers who are sick or self-isolating/quarantined. Employers and others must not allow those who should be self-isolating to come to work, and the Order for level 2 reinforces this. Where there are suspected breaches in respect of these requirements, notifications can be made through normal health

and safety channels within workplaces, through union representatives or to WorkSafe directly.

Financial Implications

56. Enforcement agencies have committed to resourcing the implementation and ongoing operation of the ACCR until 28 May, and to meeting the ICT costs of the fully integrated system from within existing baselines.
57. Further work will be required to consider the costs of continuing the operation of the ACCR beyond the 28 May. Agencies will also need to review resourcing requirements to understand the financial implications of sustaining a longer-term enforcement response in addition to maintaining business as usual activities.
58. Where agencies are third party funded (levies or fees), those agencies are constrained in the use of that resource to its intended purpose and their mandate. Work is underway to enable WorkSafe is use levy-funded resources to support enforcement activities under the COVID-19 Public Health Response Bill.

Legislative Implications

59. There are no legislative implications associated with this paper. Enforcement of the Alert Level 2 restrictions will be enabled by the passing of the COVID-19 Public Health Response Bill. If the Bill does not pass, some of the restrictions will not be enforceable in the way envisaged.

Impact Analysis

Regulatory Impact Statement

60. RIA requirements are suspended in accordance with CAB-20-MIN-0138.

Climate Implications of Policy Assessment

61. This paper does not have climate implications.

Human Rights and Population Implications

62. There are no population implications from this proposal.
63. No inconsistencies have been identified with the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

Consultation

64. The Ministry of Health, Ministry of Business, Innovation and Employment, WorkSafe, Ministry for Primary Industries, Department of Internal Affairs, the Department of Prime Minister and Cabinet and New Zealand Police have been consulted on this paper.

Communications

65. Information related to the education and enforcement approach taken by agencies during Alert Level 2 will be published on the COVID-19 government website.

Proactive Release

66. We intend to proactively release this Cabinet paper and associated documents as part of the next COVID-19 related proactive release, subject to any redactions that would be justified if the information had been requested under the Official Information Act 1982.

Recommendations

The Minister of Police and Minister for Workplace Relations and Safety recommends that the Committee:

1. **Note** that on 11 May 2020, Cabinet directed the Ministry of Business, Innovation and Employment, WorkSafe and the New Zealand Police to report to the Cabinet Social Wellbeing Committee with a plan for a concerted, coordinated and visible approach to education and enforcement in the first days of Level 2, for noting.
2. **Note** the approach of enforcement agencies to education and enforcement under Alert Level 2 will include:
 - 2.1. ongoing utilisation of the All-of-Government COVID-19 Compliance Response (ACCR), including the graduated response model
 - 2.2. an increased emphasis on voluntary compliance and education
 - 2.3. focus on serious and persistent offending
 - 2.4. continued use of existing regulatory powers, as well as those specifically provided for under the COVID-19 Public Health Response Bill
 - 2.5. prioritised enforcement activity in the first 72 hours focused on gatherings and the hospitality and retail industries
3. **Note** agencies have committed to maintain current resourcing for the ACCR until 28 May 2020
4. **Note** that further work will be required to understand the ongoing resourcing requirements for agencies
5. **Note** the COVID-19 Public Health Response Bill provides for the Director-General of Health to designate enforcement officers, enabling a broader range of agencies to participate in the COVID-19 response

- Note** that officials expect that a range of agencies may be designated enforcement officers, with Police and WorkSafe inspectors the first to be identified.

Authorised for lodgement

Hon Stuart Nash
Minister of Police

Hon Iain Lees-Galloway
Minister for Workplace Relations and Safety

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