

## In-Confidence

Office of the Minister of Health

Cabinet Committee

# **COVID-19: An exemptions framework to allow domestic travel on compassionate grounds**

## **Proposal**

- 1 The Section 70(1)(f) Order, which was discussed by COVID-19 Ministers on 3 April 2020, foreshadowed that officials are setting up schemes to manage exemptions to Alert Level 4 travel restrictions. This paper describes the exemptions framework for people seeking permission to travel on compassionate grounds.
- 2 This framework for exemptions on compassionate grounds will apply to people already in New Zealand seeking permission to travel, as well as people requesting to enter New Zealand and travel domestically.

## **Relation to government priorities**

- 3 The domestic travel restrictions are a key feature of efforts to contain COVID-19 at Alert Level 4. This alert level is focused on breaking the chain of community transmission through restriction of movement.

## **Executive Summary**

- 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 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.
- 6 Agencies and Ministers are already receiving requests for travel exemptions, and as at 2 April 2020, three exemptions have been granted.
- 7 The Clinical, Public Health and Policy teams have developed a principles-based decision-making process that will be operationalised by the National Crisis Management Centre (NCMC). This process will apply only to domestic travel requests that are not related to COVID-19 cases. Requests to travel to visit COVID-19 cases will continue to be declined on public health grounds.
- 8 In order to maintain the integrity of the Level 4 Alert restrictions, officials have deliberately not set the bar too low. This framework is designed to support urgent care for a minor or support someone in a critical or terminal condition where there is no other support available, and is not designed as a catch all. The process will be carefully followed to ensure equity, consistency and fairness for people in genuine distress.

## Background

- 9 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.
- 10 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.
- 11 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.

## Analysis

### *Current state*

- 12 Agencies and Ministers are receiving requests for travel exemptions, and as at 2 April 2020, three exemptions have been granted on compassionate grounds by the National Crisis Management Centre (NCMC).
- 13 It will be important that any further exceptions are managed to ensure decision-making is:
- 13.1 informed by public health considerations, and
- 13.2 consistent and fair.

### *An approach to exemptions on compassionate grounds*

- 14 Any exception granted on compassionate grounds risks reducing the effectiveness of the Alert Level 4 measures.
- 15 To ensure public health and safety can be maintained, 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.
- 16 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.
- 17 As such, '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, *only* where no other support network is available, and physical presence of a support person is required.
- 18 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.

- 19 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.

*Risks of introducing a framework*

- 20 Introducing an exemptions framework does come with risks:
- 20.1 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.
  - 20.2 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.
  - 20.3 Enforcement: Enforcing exemptions may be difficult or resource-intensive.
  - 20.4 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).
  - 20.5 Operational: 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).
  - 20.6 Precedent: It will likely set a precedent for other exemptions frameworks which may create operational and enforcement pressures in other parts of the system.
  - 20.7 Public concern: It is unlikely that all requests will be approved, and being declined by cause additional distress for people already in challenging situations. This could create potential media attention, and in turn, pressure for more exemptions.
- 21 To manage these risks:
- 21.1 NCMC and the Ministry of Health will monitor demand closely, and NCMC will regularly update Ministers on the number of requests received and approved.
  - 21.2 The COVID-19 and Ministry of Health websites will be updated with guidance about exemptions and how to apply in exceptional circumstances. This will involve the need to provide evidence about each case (e.g. a letter from a clinician stating the acuity of a case and the need for in person support)

- 21.3 If Ministers offices receive requests for exemptions on compassionate grounds, these should immediately be forwarded to [operations@ncmc.govt.nz](mailto:operations@ncmc.govt.nz) for consideration

*Risks of not introducing a framework*

- 22 The risks associated with creating an exemptions framework also need to be balanced against the risks of not doing so.
- 23 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 COVID-19 cases) may choose to travel.
- 24 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.
- 25 In addition, not introducing a consistent exemptions process could raise ethical questions, and generate media attention.

**Implementation**

*A two step, principles-based framework*

- 26 It is intended that each request will be considered on a case-by-case basis. Applications will be for a single journey. The process for consideration of applications for exemptions is set out in Appendices one and two.
- 27 Each request must first meet the criteria for compassionate grounds i.e. whether it relates 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.
- 28 If the compassionate grounds criteria are met, the request must then be tested against public health principles. Only then can a decision can be taken. This process allows for agency and expert consultation where

*Process for requests coming from New Zealanders based offshore*

- 29 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.
- 30 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*

- 31 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.
- 32 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).
- 33 The approval process includes:
- 33.1 consideration by NCMC, and consultation with other agencies (e.g. Ministry of Health, Ministry of Transport) if situation warrants it
- 33.2 final approval by the Response Manager, NCMC.
- 34 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.

*Wider operational considerations*

- 35 While this is a public health issue, other agencies have concerns about how this process may be operationalised.
- 36 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 Ministry of Business, Innovation and Employment (MBIE) are concerned that this process will add further complexity into the system. This will be managed through a clear exemptions process, that will result in applicants receiving written confirmation of their ability to travel that they can provide to transport operators.
- 37 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.
- 38 However, Ministers may wish to consider whether more resourcing is required to support agencies enforce the range of Alert Level 4 isolation measures.

**Financial Implications**

- 39 Introducing an exemptions framework will have fiscal implications.
- 40 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.

### **Legislative Implications**

- 41 No additional legislation is required, this exemptions process will be enacted 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.

### **Population Implications**

- 42 It is too early in the lockdown period to know if introducing exemptions to domestic travel on compassionate grounds would impact certain groups more than others.

### **Human Rights**

- 43 The initial decision to move to COVID-19 Alert Level 4, and the declaration of a state of emergency, has ongoing human rights implications, particularly regarding freedom of movement, assembly and association. At this stage in New Zealand's COVID-19 trajectory, these restrictions are still warranted on public health grounds.
- 44 Introducing an exemptions framework for people on compassionate grounds will mean in certain strict situations, and for certain people, these restrictions are relaxed.

### **Consultation**

- 45 Due to time constraints, only the Ministry of Health, the Ministry of Transport, the MBIE, the All-of-Government response to COVID-19, and the National Crisis Management Centre were consulted. The Department of Prime Minister and Cabinet was informed.

### **Communications**

- 46 Officials recommend that the communication of this be managed carefully to avoid confusion and non-compliance. Information will be available on the COVID-19 website about how to apply, and the kinds of evidence required for decision-making.

### **Proactive Release**

- 47 Once Cabinet decisions have been made, the Ministry of Health will proactively release this paper on its website with any redactions that may apply under the Official Information Act 1982.

## Recommendations

The Minister for Health recommends that the Committee:

- 1 **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;
- 2 **note** that while the public health rationale remains for strong containment measures remains, health officials recommend establishing a process to consider requests for exemptions to domestic travel restrictions on compassionate grounds;
- 3 **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;
- 4 **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;
- 5 **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 one and two);
- 6 **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);
- 7 **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 Alert Level 4 measures);
- 8 **note** that this exemptions process needs to be carefully communicated to the public to avoid further confusion and non-compliance. This will be done through the COVID-19 website.

Authorised for lodgement

Hon David Clark

Minister of Health

## **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. Applications will be for a single journey, and will not cover multiple trips.

### **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:

- 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.
- 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).
- The purpose for the individual travelling cannot be achieved through other means (e.g. locally-available support as a substitute, teleconferencing etc.).
- 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.

### **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 (and maintain quarantine while they await the results), maintain social distancing, and work with public health officials to create an isolation plan.

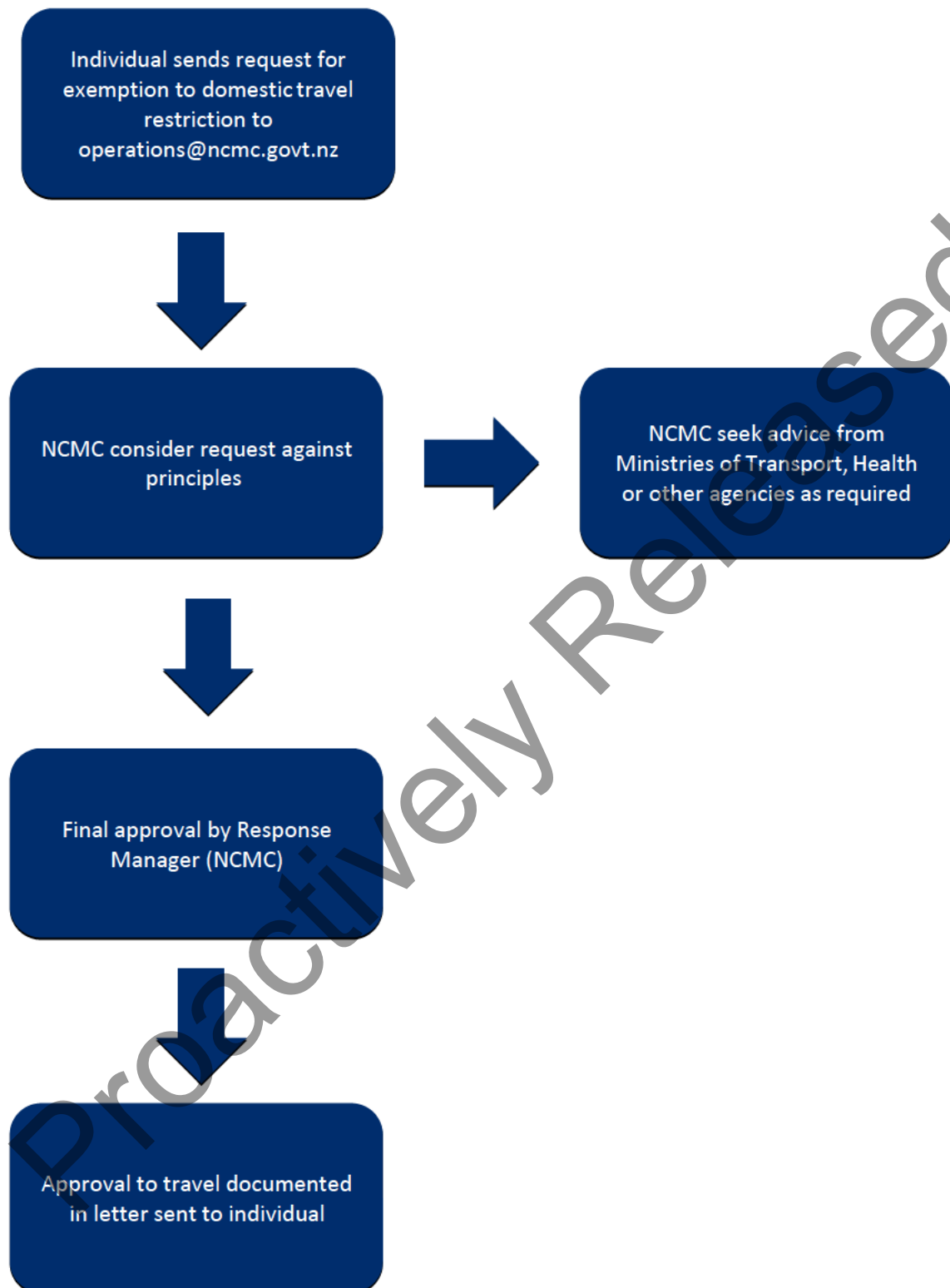
Below are a set of additional considerations for decision-makers to support assessing each case against the principles above. These considerations will not necessarily prevent an



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individual from being granted an exemption, but may increase the restrictions placed on them if an exemption is granted.

Area	Considerations
Public health	<p>Can all five principles be met or managed?</p> <p>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?</p> <p>Is the individual intending to return to their original location/bubble once their visit is complete?</p> <p>Has the individual been complying with self-isolation advice prior to the request (or, for example, have they travelled internationally)?</p> <p>Will the applicant be able to actually access the person they are intending to visit (e.g. will the DHB need to provide approval)?</p> <p>Will the applicant be able to maintain isolation protocols during the visit (if applicable)?</p> <p>Will the individual pose a greater threat when travelling to public health than an essential worker and can this risk be mitigated?</p>
Logistics	<p>Will the request require the use of public transport (including air travel), or can the individual travel in a private car?</p> <p>How complex are the logistics (e.g. is the travel simple from end to end, or complex)?</p> <p>Is there a chance the individual will be unable to get home (e.g. through unavailability of domestic or international flights)?</p> <p>Who will meet any costs incurred as a result of the travel?</p> <p>What case-by-case support might be needed to help people comply (e.g. Police escort, and is that available)?</p> <p>If PPE is required, who will provide them with it and how?</p>
General	<p>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?</p> <p>Can the request be assessed in time?</p> <p>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?</p> <p>Would not travelling have any likely effect on the applicant's mental health or the person requiring support's mental health?</p> <p>Are there other risk factors or circumstances that should be considered?</p> <p>Would staying in the new bubble if Alert Level 4 is extended put the traveller or others in danger?</p>

**Appendix 2 - Process for authorising exemptions**



# Cabinet

## Minute of Decision

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

### COVID-19: An Exemptions Framework to Allow Domestic Travel on Compassionate Grounds

Portfolio                      Health

On 6 April 2020, Cabinet:

- 1        **noted** 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;
- 2        **noted** 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;
- 3        **noted** that this exemptions process is limited to people who are:
  - 3.1      not confirmed or probable COVID-19 cases themselves; and
  - 3.2      seeking to visit a person who is not a confirmed or probable COVID-19 case;
- 4        **noted** that 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;
- 5        **noted** 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 one and two attached to the submission under CAB-20-SUB-0152);
- 6        **noted** that establishing the exemptions 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);
- 7        **noted** 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 Alert Level 4 measures);

- 8 **noted** that the exemptions process needs to be carefully communicated to the public to avoid further confusion and non-compliance, and that this will be done through the COVID-19 website.

Michael Webster  
Secretary of the Cabinet

Proactively Released