Cabinet

In Confidence

Office of the Minister of Health

Request to make COVID-19 a quarantinable disease under the Health Act 1956

Purpose

1. I seek Cabinet's approval to

    1.1. amend Schedule 1 of the Health Act 1956 to include novel coronavirus capable of causing serious respiratory illness and COVID-19 as infectious and quarantinable diseases; and

    1.2 authorise the submission of the Infectious and Notifiable Diseases Order No 2 (2020) to the Executive Council.

Executive summary

2. On 28 February 2020, the World Health Organization (WHO) raised its COVID-19 risk assessment to 'very high at a global level' which is the highest level of alert in terms of the disease's spread and impact.

3. WHO has assessed the disease as having pandemic potential, and as at 4 March 2020 it has spread to at least 80 countries. On 28 February 2020, WHO warned countries to 'wake up, get ready', emphasising that countries have a duty to the world to prepare themselves. These comments were made in the context of raising the disease to the highest alert level.

4. An Order in Council has been prepared for Cabinet approval and subsequent submission to Executive Council. It would make novel coronavirus capable of causing serious respiratory illness and COVID-19 quarantinable diseases by placing them on Part 3 of Schedule 1 of the Health Act[1]. It would also make a small drafting change to the current entry in Section B of Part 1 of Schedule 1 relating to notifiable infectious diseases to be consistent with that.

5. These changes would engage the powers in Part 4 of the Health Act, authorising quarantine of ships, aircraft and associated travellers coming into New Zealand where there is reason to believe a passenger has COVID-19.

[1] The addition of both removes drafting ambiguity and follows the approach that was taken for Middle East Respiratory Syndrome (MERS). The Order makes it clear that both COVID-19 and MERS are covered, in addition to any other unnamed novel coronaviruses capable of causing severe respiratory illness (whether currently existing, or yet to emerge).

Listing a quarantinable disease in Part 3 of Schedule 1 has been done previously for a small number of diseases, including Middle East Respiratory Syndrome (MERS) which was added to Schedule 1 in 2013.

6. Existing powers in Part 3A of the Act are fit for the purpose of managing individual cases and suspected cases of notifiable infectious diseases as well as contacts. However, they do not deal specifically with quarantine of travellers 'en masse'. While Part 4 of the Act, which deals with quarantine of ships and aircraft, contains a number of precautionary measures already in use, ultimately *pratique* (health clearance) cannot be withheld unless the suspected or confirmed cases of infectious disease on board involve a quarantinable disease listed on Part 3 of Schedule 1 of the Act.

7. This change also applies to aircraft which have people with symptoms of COVID-19 on board. An operational and communications plan is being developed to ensure minimal disruption at airports from delayed disembarking. Very few flights are expected to be affected at this time, but the number could grow as COVID-19 spreads.

8. The inclusion of 'novel coronavirus capable of causing severe respiratory illness' and COVID-19 as quarantinable diseases also means that, should the circumstances warrant it, the Prime Minister can issue an epidemic notice, allowing modification orders to modify certain legislative requirements, under the Epidemic Preparedness Act 2006.

9. The attached Order in Council will come into effect on 11 March 2020, in order to enable affected Public Health Units (PHUs) and border and other stakeholder agencies to prepare for implementation. The ongoing monitoring of the costs and benefits of the use of these powers is part of the implementation of this proposal.

Background

10. On 2 March 2020, Cabinet noted that Ministers asked for further information on making COVID-19 a quarantinable disease under the Health Act 1956. This would expand the range of powers available in respect of COVID-19 which is now a notifiable disease. Cabinet also noted that Ministers with Power to Act would be provided with information to support a decision on Wednesday 4 March [CAB-20-MIN-0067 refers]. On 4 March, Ministers directed officials to prepare a Cabinet paper and an Order in Council for Cabinet's meeting on 9 March 2020.

11. On 28 January 2020, Cabinet approved making 'Novel coronavirus capable of causing severe respiratory illness' a notifiable infectious disease and its placement on a different part of Schedule 1 for that purpose [CAB-20-MIN-0009 refers]. At the time, officials advised that the further step of making the disease quarantinable was not warranted at that stage from a public health perspective but that the situation was fluid and would be monitored.

12. Since then the virus has been officially named ‘COVID-19’ by the World Health Organization. There are likely to be other coronaviruses emerging in the future which are capable of causing severe respiratory illness. For future preparedness, I consider it necessary to include an entry to the Schedule which covers more than COVID-19 only.

13. When the previous Cabinet paper was lodged on 24 January 2020 (seeking Cabinet approval to make the virus a notifiable infectious disease), there were less than 600 confirmed cases in China. Then officials considered the existing powers in Part 3A of the Health Act, supplemented by my potentially approving use of the special powers in s 70 in closely defined and time-limited circumstances, would be sufficient to effectively manage the presenting public health risk posed by the disease.

14. I have on two occasions so far approved the use of special powers in s 70. Both approvals were to authorise infectious disease management of the Wuhan evacuees and the people repatriated from the Diamond Cruise Ship and accommodated at the Whangaparāoa Military Base for up to 14 days.

15. As at 4 March 2020, there are 93,090 confirmed cases in at least 80 countries, with 3,198 confirmed deaths. As at 5 March 2020, New Zealand has confirmed cases of COVID-19.

16. Since COVID-19 became a notifiable infectious disease in New Zealand, the World Health Organization has determined the event constitutes a Public Health Emergency of International Concern.

Current powers to stop travel to or within New Zealand

17. The various powers across Health, Immigration and Customs’ agencies interact to restrict the movement of people into and within New Zealand.

18. Immigration New Zealand has powers to prevent boarding or refuse entry at the border (including for health reasons), but these are limited to temporary visa holders, and cannot stop New Zealand citizens and residents.

19. There is currently a gap in relation to marine ports of entry because Immigration New Zealand does not have powers to prevent non-NZ residents from disembarking. The Ministry of Business, Innovation and Employment is considering regulatory change to address this, which could be complementary to a health quarantine declaration and enable management after the quarantine period.

20. Customs has powers to direct people and vessels, but only for customs’ purposes.

21. Health powers increase in force to restrict movement of all people within New Zealand as status is escalated from notifiable to quarantinable disease and on to emergency powers. At present:

21.1 Ships go through an active process to seek and receive *pratique* while aircraft generally receive automatically ('deemed pratique') unless they radio ahead to alert authorities of a sick person on board.

21.2 In situations where health officials have reason to believe there is or may be a person with a quarantinable disease on board, *pratique* is withheld and the craft and people on board remain 'liable to quarantine' until released from this liability by the Public Health Unit officer (ie, the Medical Officer of Health and/or Health Protection Officer). The release from liability to quarantine can happen when the possibility of quarantinable disease is ruled out, or if there are cases of quarantinable disease and these, and all other exposed travellers, have completed treatment and the period of quarantine respectively.

21.3 The health officers then conduct a rapid risk assessment to determine what immediate action is appropriate (eg, arrange for isolation, diagnosis and treatment of suspected cases, and possible disembarkation of other travellers who remain liable to quarantine).

22. Carriers also have powers to refuse boarding and to manage people on board. Carriers have an obligation to alert health authorities of a sick person.

23. Without the quarantine declaration, combined powers can prevent non-residents from entering New Zealand. However, the main additional powers granted by making a disease quarantinable provide the ability to stop passengers (including 'en masse' should that be necessary and including New Zealanders), from disembarking a vessel until a risk management plan is in place. They also allow health officers to direct people to further isolation and enable health officers to prevent people leaving New Zealand such as by requiring their isolation at a location in New Zealand.

Making COVID-19 a quarantinable disease

24. The Order in Council proposed in this paper is considered necessary given the increasing numbers of affected countries and the first cases in New Zealand. This will enable New Zealand to appropriately respond to the evolving situation.

25. WHO has assessed the disease as having pandemic potential. On 28 February, WHO warned countries to 'wake up, get ready', emphasising that countries have a duty to the world to prepare themselves. These comments were made in the context of raising the disease to the highest alert level.

26. While the rate of new infections appears to be contained in some countries, there have been rapid outbreaks in others. COVID-19 is a rapidly transmissible disease, as the daily increase in rates of people who have the disease and who die from it shows.

27. Australia is now operating on the basis that there is a global pandemic. Both the state and commonwealth governments have powers to require people to go into quarantine, with the triggering of the Biosecurity Act 2015 and the Chief Medical Officer's declaration under it. 'Human coronavirus with pandemic potential' is one of the listed diseases which can cause significant harm to human health.

28. The powers that arise from quarantine under Part 4 of the New Zealand Health Act include:

    28.1 People must comply with directions of a Medical Officer of Health, including supplying relevant information;

    28.2 People may be subject to medical examination, removal and detention in hospital, and kept under surveillance at large in the community;

    28.3 People may not board or leave a craft without authorisation; and

    28.4 Where an epidemic notice is issued under the Epidemic Preparedness Act 2006, then the Medical Officer of Health may exercise their powers under s 70 of the Health Act, without further Ministerial approval.

The implications of making COVID-19 a quarantinable disease

29. The Order in Council would have the effect of making COVID-19 and novel coronavirus capable of causing severe respiratory illness quarantinable diseases by placing them on Part 3 of Schedule 1 of the Health Act. This would engage the powers in Part 4 of the Act, authorising quarantine of ships, aircraft and associated travellers coming into New Zealand where there are grounds to believe there may be cases of COVID-19 on board.

30. Novel coronaviruses appear to be emerging every five to 10 years (eg, MERS and Severe Acute Respiratory Syndrome (SARS) and now COVID-19). The approach to scheduling in the Order will ensure that the legislation keeps ahead of the disease risk. There is an in-built limit in the wording of the Order with the specific reference to 'capable of causing severe respiratory illness'.

31. In practice, making novel coronavirus capable of causing severe respiratory illness and COVID-19 quarantinable diseases would mean any aircraft or vessel with a passenger or crew member with symptoms of concern would trigger the ill traveller protocol. *Pratique* for the craft would be withheld until a public health risk assessment was undertaken. This would involve health officers confirming there is no epidemiological link (ie, relevant travel history and potential contact with confirmed case) before travellers disembark.

32. This may create disruption for travellers, and delays for aircraft processing as well as implications for public health staff who may already be under pressure undertaking other pandemic control activities.

33. Masters of arriving craft must already notify suspected cases of particular illnesses to health officials, and Medical Officers of Health have powers to deal with individual travellers under Part 3A of the Health Act – such as issuing written directions restricting movement and association. However, giving the diseases quarantinable disease status will help ensure health officers can move quickly and comprehensively to contain infection threats at the border, enabling them to manage the risk posed by all on board.

34. This step has been taken previously in relation to a small number of diseases, including MERS which was added to Schedule 1 in 2013.

35. When diseases are quarantinable, the Epidemic Preparedness Act 2006 also applies. The Order in Council would enable use of the emergency management powers in that Act if required. These include the Prime Minister's power to issue an epidemic notice – allowing modification orders to vary legislative requirements (eg, potentially such as to temporarily relax health practitioners' registration and practice requirements under the Health Practitioners Competence Assurance Act 2003).

Operational implications

36. s 9(2)(h) [redacted]

37. The biggest potential disruption is to aircraft disembarking and therefore flow-on impacts at airports affecting other aircraft and passengers:

    37.1 If a pilot reports flu-like symptoms compatible with COVID-19 in respect of passengers, either a health risk assessment would be undertaken before passengers can disembark or health officers would decide to conduct checks and issue any instructions.

    37.2 Following completion of the assessment passengers can be allowed to disembark with any requirements around self or facilitated isolation.

38. While there are limited cases in New Zealand and the priority remains 'keep it out', the additional health risk of domestic importation of the virus outweighs the risk of disruption at disembarking. The risk of disruption can be mitigated to some extent by border agencies working together with health officials, as now, to ensure ease of implementation and clarity of communication to affected groups such as airlines and airports.

39. Officials will also continue to anticipate and plan for the implementation and impacts of any specific quarantine actions taken in New Zealand (such as enforced isolation, or shutting down events of activities).

Consultation

40. The following departments have been consulted on this paper: Department of Prime Minister and Cabinet; Ministries of Business, Innovation and Employment; Foreign Affairs and Trade; Justice; Primary Industries; Transport; the New Zealand Customs Service; the Treasury and the New Zealand Police.

Financial implications

41. There are no direct financial implications arising from the proposals in this paper at this stage, although the effect of the new powers should be monitored. In the event more cases of COVID-19 arrive in New Zealand, costs to affected parties will fall, as for any other quarantinable disease, on individuals, transport operators, ports and airports. The public health response will be funded in the usual way, within baselines in the first instance.

42. The current proposal does not change funding of individuals' treatment once in New Zealand. Foreign nationals are entitled to the publicly funded treatment for COVID-19 as set out in the Health and Disability Services Eligibility Directive 2011, as the disease falls into the category of 'infectious and quarantinable diseases.Visitors to New Zealand who go into voluntary self-isolation need to fund the costs of this themselves.

Legislative implications

43. The changes proposed to the Schedule, making COVID-19 a quarantinable disease, require an Order amending Schedule 1 of the Health Act, drafted by Parliamentary Counsel for submission to the Executive Council.

Regulations Review Committee

44. There are no grounds for the Regulations Review Committee to draw the proposed Order in Council to the House of Representatives under Standing Order 319.

Certification by Parliamentary Counsel

45. The proposed Order in Council was certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

46. No impact analysis has been provided, and on the face of it, none of the existing grounds for exemptions from the regulatory impact analysis requirements apply because this measure could have significant economic and social impacts. Rather than triggering the Supplementary Analysis Requirements at this time, the Regulatory Quality Team recommends that the ongoing monitoring of the costs and benefits of the use of these powers is part of the implementation of this proposal.

Human Rights Implications

47. The proposals in this paper have implications under the New Zealand Bill of Rights Act 1990. Inclusion of COVID-19 and novel coronavirus capable of causing severe respiratory illness as quarantinable diseases has the ability to affect the following rights:

    a. Liberty of the person (section 22 of the Bill of Rights Act), for example the power to detain people for periods of up to 28 days;

    b. Search and seizure (section 21 of the Bill of Rights Act), for example the power to board and inspect ships and aircraft or potentially any place the Minister declares to be an infected place. Further, there are powers around people's baggage, or other possessions, which could include destruction of those possessions;

    c. Freedom of movement (section 18 of the Bill of Rights Act), for example by withholding *pratique*.

48. Once a disease is included as quarantinable, the Medical Officer of Health has significant powers to require individuals or groups to be detained, to search and seize property, to withhold *pratique*, and to require bodily samples to be provided.

49. Further, the addition of a quarantinable disease on Schedule 1 enables an epidemic notice to be made under section 5(1) of the Epidemic Preparedness Act. If a notice were to be made in the future by the Prime Minister, it would provide very wide-ranging special powers to the Medical Officer of Health under s 70 of the Health Act. These include the ability to require people to undertake preventative treatment – although this in reality means a person can be prescribed treatment yet may withhold consent to it, which is some protection against coercion.

50. The powers to search and seize, detain and require treatment to be taken 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 seriousness of the harm that could flow from an outbreak of the quarantinable disease spreading in an outbreak in New Zealand.

51. Having regard to the risks to public health and safety from any potential outbreak, I am satisfied that inclusion of COVID-19 and coronavirus causing severe respiratory illness as quarantinable diseases is reasonable in this case.

52. The limitations on rights are justified in light of the public health risk and are proportionate given the potential likelihood and consequences of the spread of COVID-19 in any outbreak in New Zealand. The inclusion is also consistent with other conditions currently listed on Part 3 of Schedule 1, including 'Avian

influenza' and 'Non-seasonal influenza (capable of being transmitted between human beings)'.

Gender implications

53. None of the proposals in this paper have gender implications.

Disability perspective

54. None of the proposals in this paper have disability implications.

Compliance

55. The Order in Council complies with:

    a. The principles of the Treaty of Waitangi;
    b. The rights and freedoms contained in the New Zealand Bill of Rights Act 1990;
    c. The human rights contained in the Human Rights Act 1993;
    d. The principles and guidelines set out in the Privacy Act 1993;
    e. Relevant international standards and obligations;
    f. The Legislation Design and Advisory Committee Legislation Guidelines (2018).

Timing and 28-day rule

56. I am seeking a waiver of the 28-day rule on the basis of the Order being made in response to an emergency. Subject to Cabinet's agreement, this would mean the Order in Council will come into effect on 11 March 2020, allowing two days for implementation planning and communications to border and other stakeholders.

Proactive release

57. 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.

Publicity

58. Subject to Cabinet's agreement to the proposed amendment to the Schedule of the Health Act 1956, notice of it will be disseminated to public health officers, border agencies and other border stakeholders, using established communication channels.

59. My office will coordinate with the Ministry of Health regarding any general publicity.

Recommendations

I recommend that Cabinet:

1. **note** that novel coronavirus capable of causing severe respiratory illness was made a notifiable infectious disease on 30 January 2020, by placement on Section B, of Part 1 of Schedule 1 of the Health Act 1956 by Order in Council;

2. **note** that since COVID-19 became a notifiable infectious disease the World Health Organization has determined the event constitutes a Public Health Emergency of International Concern, and the Ministry of Health has assessed the likelihood of one or more imported cases in New Zealand as 'high';

3. **note** that effective border management is very important to protect New Zealanders from the health and other effects of the disease's entry to and spread in this country;

4. **agree** to the addition of 'Novel coronavirus capable of causing severe respiratory illness' and 'COVID-19' to Part 3 of Schedule 1 of the Health Act by Order in Council so that the quarantinable disease provisions in the Health Act, and the Epidemic Preparedness Act 2006, will apply;

5. **agree** to update the notifiable disease name, regarding novel coronavirus, at Section B, of Part 1 of Schedule 1 of the Health Act 1956 to align with recommendation 4;

6. **note** the need for urgency and irregular process in proceeding direct to Cabinet because of the serious and rapidly evolving global and domestic situation;

7. **approve** a waiver of the 28-day rule for Gazette notification of the Order in Council given the urgency of the situation;

8. **approve** the attached Order in Council giving effect to recommendations 4 and 5 above, for submission to the Executive Council as soon as possible;

9. **note** that the Order in Council will come into effect on 11 March 2020, to enable communication and effective implementation with health, border and other agencies.

Authorised for lodgement

Hon Dr David Clark
Minister of Health

Options for classification of COVID-19 under The Health Act 1956

The table below describes the differences between classifying *'novel coronavirus capable of causing serious respiratory illness'* such as COVID-19 as either:

1. a notifiable infections disease (Under Schedule 1 of the Health Act - approved on 28 January 2020)
2. as an infectious and quarantinable disease (Under Part 3 of Schedule 1 of the Health Act).

Making COVID-19 a quarantinable disease requires an Order in Council to add it to Part 3 of Schedule 1 of the Health Act. This would engage the powers in Part 4 of the Act, authorising quarantine of ships, aircraft and associated travellers coming into New Zealand where there are grounds to believe there may be cases of COVID-19 on board.

NOTIFIABLE (as approved on 28 January 2020)	QUARANTINABLE (for further consideration)
The following powers are enacted: 1. Medical officers of health may enter premises to examine any person if they have reason to believe disease present. 2. Director-General of Health may order a post-mortem examination if cause of death may be notifiable disease. 3. Medical officers of health have wide powers to issue directions to persons reasonably believed to pose a health risk, due to notifiable diseases. They can direct people to take or refrain from taking particular actions, which could include remaining in a particular place, refraining from a particular activity (eg taking public transport). • The power extends to people who are infected, who have been in contact with an infected person, or who the officer reasonably believes may be infected. • This is a wide power, but cannot be used to require a person to accept treatment. Force may not be used to enforce a direction. • The District Court may issue an order, covering the same ground as a direction from the medical officer of health. Non-compliance carries larger penalties, including imprisonment, and compliance may be secured using force, including with the assistance of Police. Such an order cannot compel someone to accept treatment. **As a notifiable disease the following actions are mandatory:** • Health practitioners and medical laboratories must notify medical officer of health if they identify a case of a notifiable disease. • Occupiers of premises and captains of ships must notify the local authority or the medical officer of health if they suspect a notifiable disease.	**The following powers are enacted:** 1. Medical officer of health or health protection officer may detain aircraft or ship if reason to believe a passenger has a quarantinable disease (if a passenger has died or become ill on the voyage). 2. Medical officer of health may examine any person arriving in New Zealand reasonably believed to have a quarantinable disease. 3. Medical officer of health or health protection may require captain of ship or aircraft to take reasonable steps to limit the spread of infection. 4. Medical officer of health may detain a person arriving in New Zealand and reasonably suspected to have a quarantinable disease. They may be detained for up to 28 days to allow examination or to prevent them infecting others. The person may be kept under surveillance at large if they undertake to report to a doctor at required times and places. 5. The Prime Minister may issue an epidemic notice relating to a quarantinable disease (and only a quarantinable disease). An epidemic notice grants medical officers of health very wide powers to (for example) a. Prohibit public gatherings or close areas or buildings b. Quarantine or isolate any person, animal or aircraft c. Requisition any item to be used to treat patients. **As a quarantinable disease the following actions are mandatory:** • Medical officer of health or health protection officer must not grant pratique (health clearance) until satisfied that no novel coronavirus exists aboard aircraft or ship. Craft may not move, and no one and no thing may leave until pratique (health clearance) granted.