



Briefing

ALERT LEVEL REQUIREMENTS (4/2) ORDER FOR SIGNING

To Minister for COVID-19 Response (Hon Chris Hipkins)			
Date	7/09/2021	Priority	URGENT
Deadline	7/09/2021	Briefing Number	DPMC-2021/22-289


Purpose

Attached to this briefing is the proposed COVID-19 Public Health Response (Alert Level Requirements) Order (No 11) 2021, which we recommend you sign. This Order moves New Zealand, except for the Auckland Alert Level 4 area, to Alert Level 2.

This briefing summarises the effect of changes to previous Alert Level settings and confirms that the necessary procedural requirements for the making of COVID-19 Orders have been complied with.

Recommendations

- Note** that this brief provides a summary of the key provisions of the proposed order.
- Note** that the necessary procedural requirements for the making of COVID-19 Orders have been complied with.
- Sign** the COVID-19 Public Health Response (Alert Level Requirements) Order (No 11) 2021 (**Attachment A**) YES / NO

 Ben White Policy Manager COVID-19 Group, DPMC
7/9/21

Hon Chris Hipkins Minister for COVID-9 Response
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Contact for telephone discussion if required:

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Minister's office comments:

- Noted
- Seen
- Approved
- Needs change
- Withdrawn
- Not seen by Minister
- Overtaken by events
- Referred to

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ALERT LEVEL REQUIREMENTS AMENDMENT ORDER FOR SIGNING

Alert Level 2 settings applied to areas other than Auckland

1. This Order provides for New Zealand, with the exception of Auckland, to be moved to Alert Level 2. Auckland will remain in Alert Level 4.
2. On 6 September Cabinet agreed to revised Alert Level 2 settings in response to the increase risk posed by the 'Delta' variant of the COVID-19 virus [CAB-21-MIN-0360]. These are summarised as follows.

a) Physical distancing

- i) In general, workers in businesses and services are subject to the 1-metre rule and others that enter the business/service (e.g. customers and clients) are subject to the 2-metre rule.
- ii) However, the 1-metre rule applies to everyone in:
 - controlled-access businesses/services (e.g. non-public-facing office workplaces and factory floors);
 - event facilities (e.g. cinemas, stadia and casinos); and
 - hospitality venues (e.g. restaurants, cafes and bars), where patrons must also remain seated other than when ordering from the counter (in non-licensed venues), entering, leaving paying or using toilets.
- iii) No physical distancing requirements are applied to public transport or social gatherings.
- iv) No physical distancing requirements are applied to close-proximity businesses and services (e.g. hairdressers, barbers, massage, and professional or semi-professional sports).

b) Limits on numbers of people in some settings

- i) A limit of 50 people in an indoor defined space and 100 people in an outdoor defined space (not including workers) is applied to:
 - event facilities (e.g. cinemas, stadia and casinos);
 - hospitality venues (e.g. restaurants, cafes and bars); and
 - social gatherings (e.g. weddings, funerals and religious services).
- ii) Other settings are not subject to specific caps, but the numbers able to enter premises will be limited by physical distancing requirements.

c) **Face coverings**

i) Face coverings are required:

- in the public areas of retail settings (e.g. supermarkets, retail stores, takeaway food outlets) for all people;
- in the public areas of libraries, museums, recreation centres, for all people;
- in the public areas of courts and tribunals, social services, NZ Post premises, and local and central government agencies for all people;
- in hospitality venues (e.g. restaurants, cafes, bars) for staff working with customers and clients only; and
- on public transport for all people.

d) **The contact record rule**

i) Workplaces are required to have systems and processes in place to ensure that contact records are kept in the following settings:

- indoor public facilities (e.g. libraries, museums, recreation centres, and swimming pools) for visitors to those facilities only;
- local and central government offices, courts and tribunals, visitors to those facilities only;
- health services, including pharmacies, visitors to those facilities only;
- indoor event facilities (e.g. cinemas, stadia, casinos) for visitors to those facilities only;
- indoor exercise facilities (e.g. gyms) for visitors to those facilities only; and
- in hospitality venues (e.g. restaurants, cafes, bars) for visitors to those facilities only.

ii) For businesses opening at Alert Level 2, these requirements will come into effect from 14 September 2021.

iii) People responsible for social gatherings are responsible for ensuring that contact records are kept, which will come into effect immediately.

e) **Testing for those crossing the Alert Level 4/2 Boundary (delayed commencement)**i) Commencement 11.59pm Thursday 16 September: People travelling across the Alert Level boundary will be required to carry evidence of having undertaken a COVID-19 test within the previous seven days if:

- they are travelling in order to work at an Alert Level 4 business or service (whether or not that service is in the Alert Level 4 area); and

- they are travelling to undertake minimum necessary operations at a premises in the Alert Level 4 area.
- ii) Commencement 11.59pm Thursday 9 September: Businesses will be required to have systems and processes to ensure, as far as reasonably practicable, that their workers are not required to cross Alert Level boundaries unless they have been tested in the previous 7 days and an obligation to facilitate their workers to undergo testing and examination during their working hours (if testing and medical examination are available during their working hours).

Adjustments to Alert Level 4 settings

3. Some minor amendments are proposed to Alert Level 4 settings, namely:

a) **Viewings, burials and the treatment of tūpāpaku and deceased persons**

- i) The Alert Level 4 settings are amended in order to allow no more than 10 members of a household or shared bubble to view or accompany the deceased in a funeral home, cemetery, faith-based institution or other location, provided that:
 - they maintain physical distancing from people providing services for the tūpāpaku/deceased persons;
 - face coverings are worn by all of those in attendance;
 - contact tracing records are kept; and
 - viewings conducting indoors are limited to one-hour in duration.
- ii) The settings are also amended in order to allow marae, faith-based institutions and family members may provide services for tūpāpaku/deceased persons (such as washing, dressing or shrouding a body). This is in addition to funeral homes and crematoria, who are able to provide such services under the extant settings.

b) **In-home services at Alert Level 4**

- i) The Alert Level 4 settings in the order are clarified in order to confirm the requirements for Alert Level 4 businesses and services that are undertaken in people's homes. This clarifies that:
 - such services can be provided in-home, where necessary for the health or safety of a resident;
 - the business or service responsible for carrying out the work must keep contact records; and
 - face coverings must be worn by those entering a home or place of residence for this purpose.

c) **Parliamentary Officers confirmed as exempt from the order**

- i) The list of exempt businesses and services is amended to clarify that Parliamentary Officers (for example, the Office of the Ombudsman) are exempt with regard to the performance of their statutory duties. This is in addition to being exempt in relation

to “parliamentary business” under existing settings. This will, for example, enable the Office of the Ombudsman to perform its inspection function under the Crimes of Torture Act 1989.

d) Drug and Alcohol Testing Services an Alert Level 4 business/service

- i) Drug and Alcohol Testing Services are added to the list of Alert Level 4 businesses/services in order for them to operate in support of other Alert Level 4 businesses/services and exempt services. The absence of this from the existing list was highlighted as an issue for agencies such as the New Zealand Police and the New Zealand Customs Service.

e) Cross-boundary travel for receiving the COVID vaccine limited

- i) This order restricts the ability to cross the Alert Level boundary to receive the COVID-19 Pfizer vaccine to situations where people:
 - have an appointment; and
 - the facility providing the vaccine is the nearest such facility to the person’s home or place of residence.
- ii) This responds to concerns from New Zealand Police and others that people had been misusing this ability in order to cross the boundary for other reasons, creating a risk of unnecessary travel across the between Alert Levels.

Procedural Requirements for making a COVID-19 Order

- 4. This proposed Order can be made pursuant to section 11 of the COVID-19 Public Health Response Act 2020 (the Act). The Act imposes certain requirements for the form, publication and making of COVID-19 Orders. You must be sure that these requirements have been complied with before making a COVID-19 Order.

48-Hour Notification Period

- 5. The Act requires that a COVID-19 Order must be published and gazetted at least 48 hours before it comes into force. However, this notice period is not required to be observed where you are satisfied that the Order should come into force urgently to prevent or contain the outbreak or spread of COVID-19 or where the effect of the Order is only to remove or reduce requirements imposed by a COVID-19 Order.
- 6. The new requirement for businesses to have systems and processes to ensure that workers do not cross the boundary without evidence of surveillance testing, and the obligation on workers to carry that evidence, imposes an additional restriction from the current settings. Further, the limitation on the ability to cross the Alert Level boundary for the purposes of a COVID-19 vaccination is also an additional restriction. We consider that these changes are urgently required in order to maintain the integrity of the Alert Level boundary, particularly in the context of an Alert Level 4/2 boundary. The 48-hour period will be observed with respect to the surveillance testing aspects of the requirements, due to the delayed commencements noted above.
- 7. Other changes in this order only relax or clarify existing settings. Accordingly, we consider that the 48-hour notice period need not be observed.

Ministerial Consultation

8. The Act requires that before making a COVID-19 Order, you must consult with the Prime Minister, the Minister of Justice and the Minister of Health. You may also consult with any other Minister you think fit.
9. The decision to move areas outside of Auckland to Alert Level 2 was considered by Cabinet on 6 September. Accordingly, the required Ministerial consultation on these aspects of the order has been completed. However, the specific requirements relating to the testing requirements for those workers crossing the Alert Level boundary have been confirmed over the last 24 hours. The Prime Minister's office has led Ministerial consultation on these matters, which we are advised has been completed.
10. Your office has kindly conducted the required Ministerial consultation with regard to the adjustments to the Alert Level 4 settings. No feedback has been received on those proposed adjustments.

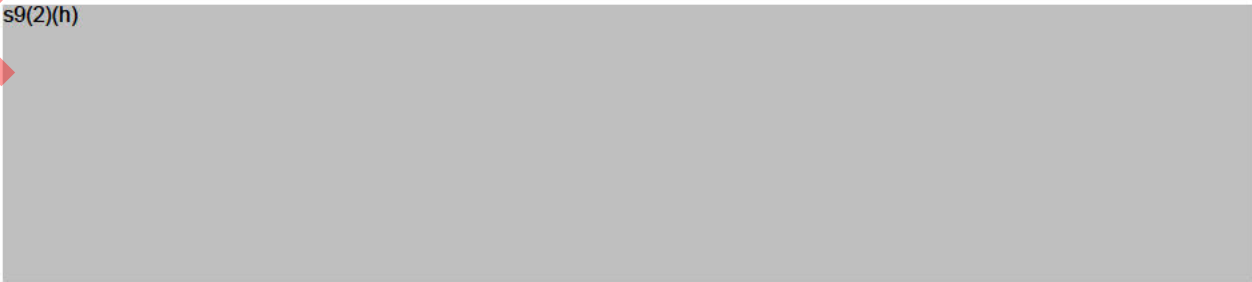
Public Health Advice

11. The Act requires that before making a COVID-19 Order, you must have had regard to advice from the Director-General of Health about the risks of the outbreak or spread of COVID-19 and the nature and extent of measures (whether voluntary or enforceable) that are appropriate to address those risks.
12. The Director-General provided advice to Cabinet with regard to the decision to move the relevant areas to Alert Level 2 and the appropriate revised Alert Level 2 settings, which are reflected in the Order.
13. We have consulted with the Ministry of Health on the amendments to the Alert Level 4 settings. Public Health officials have confirmed that these amendments align with the Director-General of Health's previous advice to Ministers about the appropriate current settings for Alert Level 4.
14. Accordingly, this requirement has been complied with.

New Zealand Bill of Rights Act 1990

15. In addition to the specified requirements from the Act, a further matter for you to consider each time a COVID-19 order is proposed is whether the exercise of your power to do so is appropriate in the circumstances. In particular, the power to make an order under section 11 of the Act must be exercised consistently with the New Zealand Bill of Rights Act 1990 (NZBORA).

16. s9(2)(h)



17. s9(2)(h)



Attachments:	
Attachment A:	COVID-19 Public Health Response (Alert Level Requirements) Order (No 11) Order 2021 (Signature Copy)

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