



Proactive Release

The following briefing has been proactively released by the Department of the Prime Minister and Cabinet (DPMC), and National Emergency Management Agency, on behalf of Hon Peeni Henare, Minister of Civil Defence:

Fourth Extension of the State of National Emergency for COVID-19

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant section of the Act that would apply has been identified. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it. Where information has been withheld in accordance with section 9(2)(h) of the Act, the redacted information relates to legal advice being sought and given by DPMC Legal and/or Crown Law.

This Extension of the State of National Emergency was approved by Minister Henare on 21 April 2020.

Key to redaction code:

- 9(2)(a), to protect the privacy of individuals,
- 9(2)(f)(iv), to maintain the confidentiality of advice tendered by or to Ministers and officials, and
- 9(2)(h), to maintain legal professional privilege.



Briefing

FOURTH EXTENSION OF THE STATE OF NATIONAL EMERGENCY FOR COVID-19

To Minister of Civil Defence (Hon Peeni Henare)

Date	20/04/2020	Priority	Urgent
Deadline	20/04/2020	Briefing Number	20/43

Purpose

1. This briefing seeks your agreement and signature to further extend the duration of the State of National Emergency to manage the impact of the COVID-19 pandemic on New Zealand. The State of National Emergency expires on Wednesday 22 April at 12.21pm, and must be extended before this time if it is to remain in place for a further 7 days.
2. This paper also sets out some high-level options for use of powers under the Civil Defence Emergency Management Act to support implementation of Alert Levels 1 - 3, if and when the Alert Level changes.

Recommendations

1. **Agree** to extend the State of National Emergency for a further 7 days from 22 April 2020 and **sign and date** the attached declaration.

Agree/disagree/discuss
2. **Agree** that your Office forward a photo of the declaration and cover memo to the Bills Office immediately after you have signed it so that the House can be immediately informed of this extension.

Agree/disagree/discuss
3. **Agree** that your Office release the attached media statement once the extension is made.

Agree/disagree/discuss
4. **Note** the high level options for the use of powers to support implementation of Alert Levels 1-3 set out in this paper, and that officials will return to you with further advice shortly.
5. **Note** the attached talking points to support any discussions with other ministers.

6. **Forward** a copy of this briefing to the Prime Minister and Deputy Prime Minister and **refer** a copy to the COVID Ministerial Group for noting and discussion.

Agree/disagree/discuss

7. **Agree** to proactively release a copy of this briefing on the covid19.govt.nz website, with appropriate redactions as in previous releases.

Agree/disagree/discuss

 Sarah Stuart-Black Deputy Chief Executive, NEMA and Director Civil Defence Emergency Management		Hon Peeni Henare Minister of Civil Defence
20/4/2020	/4/2020

Contact for telephone discussion if required:

Name	Position	Telephone		1st contact
Sarah Stuart-Black	Deputy Chief Executive, NEMA and Director, Civil Defence Emergency Management	9(2)(a)	9(2)(a)	
Annabel Ritchie	Acting Corporate Legal Services Manager, DPMC	9(2)(a)	9(2)(a)	✓

Minister's office comments:

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

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FOURTH EXTENSION OF THE STATE OF NATIONAL EMERGENCY FOR COVID-19

Purpose

1. This briefing provides advice on extending the State of National Emergency in response to the impact of the COVID-19 pandemic on New Zealand. The State of National Emergency expires on Wednesday 22 April at 12.21pm and must be extended before this time if it is to remain in place for a further 7 days.
2. This paper also sets out some high-level options for use of powers under the Civil Defence Emergency Management Act to support the implementation of Alert Levels 1 - 3, if and when the alert level changes.

Overall situation: State of National Emergency for COVID-19

3. On Wednesday 25 March 2020, you declared a State of National Emergency over all of New Zealand to curtail the spread of COVID-19. You extended the State of National Emergency at 9.27am on Tuesday 31 March 2020, at 9.25am on Tuesday 7 April 2020 and again at 9.37am on Tuesday 14 April 2020. The current declaration expires on Wednesday 22 April 2020 at 12.21pm unless extended prior.
4. Between 12 and 19 April, the combined number of confirmed and probable cases rose from 1,330 to 1,431, while the number of deceased increased from 4 to 12. The number of new confirmed and probable cases detected over the past week continues to slow and decline. This, along with the growing number of people recovering from COVID-19, suggests that the curve is flattening.

Use of powers

5. Police constables are able to employ powers under the Civil Defence Emergency Management Act in a State of National Emergency. As at 16 April, NZ Police has recorded 473 cases of breaches under the Civil Defence Emergency Management Act by members of the public, which resulted in 38 prosecutions, 418 warnings and 17 youth referrals.

6. Since the State of National Emergency was first declared on 25 March, Civil Defence Emergency Management Groups have used powers under the Civil Defence Emergency Management Act to direct non-essential businesses to close, direct freedom campers to relocate, requisition a carpark for COVID-19 testing, provide for essential supplies, undertake important maintenance, and close some roads. There has been no recorded use of these powers by Civil Defence Emergency Management Groups in the last seven days. A table summarising the use of powers by Civil Defence Emergency Management Groups since 25 March is attached at **Appendix Four** for your information.

Advice on extending the State of National Emergency this week

7. The State of National Emergency expires on Wednesday 22 April at 12.21pm. An extension to an State of National Emergency should only be made if the situation remains an emergency and the emergency is, or is likely to be, of such extent, magnitude, or severity that the civil defence emergency management necessary or desirable in respect of it is, or is likely to be, beyond the resources of Civil Defence Emergency Management Groups whose areas are affected by the emergency.
8. Each week, officials consider a wide range of factors when formulating advice on whether it is necessary to extend the SOE. These are:
- whether the statutory tests have been met;
 - the severity and impact/consequences of the current situation/emergency;
 - the degree of complexity of the necessary response (including the need for coordination at the national level);
 - the potential need for powers under the Civil Defence Emergency Management Act to manage the response; and
 - the effectiveness of measures in place to manage and eliminate COVID-19 and the ability to enforce these measures.
9. As more data is gathered and the risk profile of the virus for New Zealand alters, this also informs the assessment.
10. 9(2)(h) [REDACTED]. NEMA Policy supports this position.
11. As Director, Civil Defence Emergency Management, I consider extending the State of National Emergency is an appropriate action in response to the ongoing and serious impact of COVID-19. Whilst the number of new confirmed and probable cases is continuing to slow and decline, the risk COVID-19 poses to New Zealand remains high, and community transmission may still be occurring. Maintaining a State of National Emergency will enable national coordination, the use of national civil defence emergency resources, and support the personal movement restrictions and physical distancing that will continue to be required.
12. I therefore recommend you agree to extend the State of National Emergency by signing the form attached at **Appendix One**.

13. For further information on powers available under the Civil Defence Emergency Management Act by a declaration of a State of National Emergency, and the overall process to extend a State of National Emergency please refer to Briefing 20/32.

Advice on extending the State of Emergency holds, even if there is a shift to Alert Level Three

14. Should you agree to extend the State of National Emergency, this will overlap with the Government's decision, scheduled for Monday 20 April, on whether to move from Alert Level 4 to 3, in all or part of New Zealand, on 23 April. This decision will be based on advice including specific public health advice from the Director-General of Health. Amongst other requirements, it will require the Director-General to be satisfied that there is reasonable certainty that undetected community transmission is unlikely.
15. Should Cabinet decide to move to Alert Level 3 strict social distancing measures will therefore still be required. The State of National Emergency and COVID-19 alert levels are two distinct things. However, the restrictions associated with the alert system under Alert Level 3 will continue to require the support of the powers available under the Health Act, Civil Defence Emergency Management Act and Epidemic Preparedness Act. The following Alert Level 3 restrictions, as currently set out, are relevant to Civil Defence Emergency Management Act powers:
- a) physical distancing is still required;
 - b) people instructed to stay home in their bubble other than for essential personal movement;
 - c) Inter-regional travel will be highly limited and should be essential (such as going to work);
 - d) people must stay within their immediate household bubble, with limited exceptions enabled;
 - e) people must work from home unless that is not possible;
 - f) businesses can open premises if they can achieve public health measures;
 - g) retail premises cannot open for browsing and businesses cannot offer services that involve close personal contact (some exceptions apply);
 - h) there are limits on public transport use and use of private vehicles; and
 - i) intensive testing for COVID-19 is required.
16. The restrictions required under Alert Level 3 mean that Civil Defence Emergency Management Group Controllers and Police constables will continue to require powers to prevent activities that may substantially contribute to the emergency, and to help slow the spread and reduce the impacts of COVID-19. These include, for example, the closure of roads and public places to prevent unauthorised travel outside the region (i.e. set up roadblocks), and the requisitioning of land to enable the distribution of food and essential services to vulnerable people self-isolating.

17. Paragraph 6 notes the offence provisions under the Civil Defence Emergency Management Act have been used extensively by Police at Alert Level 4. As restrictions are loosened, managing compliance could become more difficult due to a perceived reduction in risk, so it is likely there will continue to be a need for these powers at Alert Level 3.

18. 9(2)(h)

NEMA Policy supports this position.

Civil Defence Emergency Management Act support for restrictions in Alert Levels 1-3

19. Beyond the possibility of moving from Alert Level 4 to 3, Ministers will also be considering how and when to move New Zealand to Alert Levels 2 and 1. Ministers may choose to implement a variation in alert levels across different parts of the country (depending on the pattern of clusters of confirmed cases and the risk of transmission), or to raise the alert level again if the public health risk increases significantly.

20. This paper introduces some high-level options under which the Civil Defence Emergency Management Act could continue providing support for alert level restrictions, regardless of how they are applied. This is preliminary advice to inform future decisions and discussions you may wish to have with your Ministerial colleagues.

21. In advising whether the legal tests associated with each option are met, officials will consider the civil defence emergency management required at each alert level and the evidence base (for example, whether the powers are desirable for the restrictions in place and relevant public health data). 9(2)(f)(iv)

22. We will continue to develop these options and provide further advice to you next week.

9(2)(f)(iv)

23. 9(2)(f)(iv)

24. 9(2)(f)(iv)

25. 9(2)(f)(iv) [Redacted]

9(2)(f)(iv) [Redacted]

26. 9(2)(f)(iv) [Redacted]

27. 9(2)(f)(iv) [Redacted]

28. 9(2)(f)(iv) [Redacted]

9(2)(f)(iv) [Redacted]

29. 9(2)(f)(iv) [Redacted]

30. 9(2)(f)(iv) [Redacted]

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Next Steps

State of Emergency Declaration

31. Once you have signed the extension form, the next steps are to:
- a) ask your Office to forward a photo of the declaration and the cover memo (attached at Appendix Two) to the Bills Office so that the House can be immediately informed of the extension;
 - b) release a media statement informing the public of the extension (attached at Appendix Three); and
 - c) forward a copy of this briefing to the Prime Minister and Deputy Prime Minister and refer a copy to the COVID Ministerial Group for noting. We have provided talking points to support discussions with other Ministers in Appendix Five.

Civil Defence Emergency Management Act support for Alert Levels 1-3

32. Officials will continue work on developing the options in this paper, but are available to discuss these with you should you wish.

APPENDIX ONE

Declaration by Minister extending State of National Emergency

Section 71, Civil Defence Emergency Management Act 2002

I, **Peeni Ereata Gladwyn Henare**, further extend the State of National Emergency declared at 12.21pm, on Wednesday 25 March 2020, which I previously extended at 9.27am on Tuesday 31 March 2020, at 9.25am on Tuesday 7 April 2020 and at 9.37am on 14 April 2020, over the whole of New Zealand owing to the impact of COVID-19.

This extension comes into force at 12.21pm on Wednesday, 22 April 2020 and will expire at 12.21pm on Wednesday, 29 April 2020.

Declared by: _____
signature

Designation: **Minister of Civil Defence**

Time and date of declaration: ____ am/pm on ____ April 2020

Notes

1. The Minister must advise the House of Representatives as soon as practicable of the making of this declaration.
2. This declaration must also be—
 - a. notified to the public immediately by any means of communication that are reasonably practicable in the circumstances; and
 - b. published in the Gazette as soon as practicable. It is recommended that publication in the Gazette occur within 20 working days after the state of emergency is terminated.
3. Calculating the extension of “7 days” for a declaration extending the state of emergency: If the extension came into force at 9.35 am on 1 January, it would expire at 9.35 am on 8 January. If the extension came into force at 9.35 am on a Friday, it would expire at 9.35 am on the following Friday.
4. If this is a second or subsequent extension of a state of emergency, specify the time and date when each previous extension took effect and the time and date when the state of emergency was first declared.

APPENDIX TWO

Memo describing the extension of State of National Emergency, to be provided to the House together with a copy of the signed extension form.

To: Clerk of the House, and the leader of each political party

CC: Bills Office

From: Hon Peeni Henare, Minister Civil Defence

For immediate presentation to the House

Please see attached a declaration extending the current State of National Emergency (due to COVID-19) signed by Hon Peeni Henare, Minister Civil Defence, at TIME/ DATE. This extension comes into force at 12.21 pm on Wednesday, 22 April 2020 and will expire at 12.21 pm on Wednesday, 29 April 2020, unless terminated earlier. There is no limit as to how many times a State of National Emergency may be extended.

This extension has been made on the advice of the Director of Civil Defence Emergency Management, and after consultation with the Prime Minister. The effect of the declaration is that the control of the response to COVID-19 will be managed at the national level and will ensure local and regional level compliance with instructions issued. The aim is to ensure the health system capacity is not exceeded through strengthening public health measures and supporting the enforcement of COVID-19 interventions to reduce and eliminate sustained and intensive transmission of the disease.

The State of National Emergency and the COVID-19 alert levels are two distinct and separate things. The alert levels specify the range of measures that we are taking against COVID-19. A State of National Emergency provides the people managing the response in an emergency, in this case COVID-19, access to powers they would not normally have, but require now to implement and enforce these measures.

APPENDIX THREE

Draft Media Statement regarding the extension of a State of National Emergency due to COVID-19

State of National Emergency extended

The State of National Emergency to support the COVID-19 response will be extended a fourth time, for a further seven days.

The initial declaration was made on March 25, and the seven-day declaration can be extended as many times as necessary. It does not change the COVID-19 Alert Levels.

“On the advice of the Director of Civil Defence Emergency Management and after consultation with the Prime Minister, I consider the State of National Emergency should remain in place to support the COVID-19 response,” Minister of Civil Defence Peeni Henare said.

“It is important that we continue to have the powers activated by the State of National Emergency available to maintain the level of success we have seen to date in stopping the spread of COVID-19 in our communities.

“The powers activated by the State of National Emergency enable civil defence emergency management professionals to carry out critical work during this time including managing roads, traffic and public places; providing first aid, food, shelter and accommodation.

“Use of these powers has included authorising local councils to restrict vehicle access to roads or streets to support social distancing, directing freedom campers to relocate, requisitioning a carpark for COVID-19 testing, stopping people from lighting outdoor fires to reduce the risk of fire related emergencies, and allowing necessary maintenance to happen at a waste water treatment plant.

“As we enter the fifth week under a State of National Emergency I would like to acknowledge the extraordinary sacrifices every New Zealander has made to protect our people and our communities. Getting this far has required a collective effort.

“It is vital that everyone knows we are still under Alert Level 4, and all Alert Level 4 restrictions remain in place. Stay home and stay strong – kia kaha Aotearoa,” Peeni Henare said.

The State of National Emergency and the COVID-19 Alert Levels are two distinct and separate things. The Alert Levels specify the range of measures that we are taking against COVID-19.

A State of National Emergency provides the people managing the response in an emergency, in this case COVID-19, access to powers they would not normally have, but might require now to implement and enforce these measures.

This declaration by the Minister of Civil Defence extending the State of National Emergency can be found in the Gazette <https://gazette.govt.nz/>

ENDS

APPENDIX FOUR: SUMMARY OF CIVIL DEFENCE EMERGENCY MANAGEMENT ACT POWERS USED

Powers used	Date used	Civil Defence Emergency Management Group / Local Authority	Description of power used	Describe the issue and outcome achieved
s90(2)(a)	26-Mar-20	Canterbury	Requisition Church Corner Mall carpark from Christchurch City Council and place it under the direction and control of a person authorised by the Controller (Canterbury District Health Board (CDHB)) (necessary for the preservation of human life)	The CDHB required a Community Based Assessment Centre (CBAC) but was not able to direct activities on Council owned property. The property was requisitioned and placed under the control of the CDHB to establish the CBAC (enabling resources, including containers /Portacoms to be located on the site).
s88	26-Mar-20	Hawkes Bay	Road closure (to prevent or limit the extent of the emergency)	Close rural road leading to forest park to hunters – to prevent hunters accessing the area (and also reducing risks of requiring emergency assistance). Outcome is no further traffic to the area.
s91	26-Mar-20	Taranaki	Direct a business trading non-essential products to stop trading. (stop an activity which may substantially contribute to the emergency (COVID-19))	To cease members of the public making non-essential trips by closing a non-essential activity. Therefore, minimised risk of infection of others / community outbreak.
s85	27-Mar-20	Taranaki	Provide food to vulnerable people (through the Rapid Relief Team)	To ensure a reliable source/availability of food packs for the provision of vulnerable people by Civil Defence Emergency Management
s91	27-Mar-20	Taranaki	Direct a business trading non-essential products to stop trading. (stop an activity which may substantially contribute to the emergency (COVID-19))	To cease members of the public making non-essential trips by closing a non-essential activity (reducing risk of store staff working in close proximity). Therefore, minimised risk of infection of others / community outbreak.
s91	27-Mar-20	Taranaki	Direct a group of freedom campers at a designated freedom camping site at Lake Rotomanu in New Plymouth to move to a pre-arranged, secure campsite (stop an activity which may substantially contribute to the emergency (COVID-19))	To move the freedom campers to a controlled environment which will reduce the risk of community transmission.
s91	28-Mar-20	Taranaki	Direct freedom campers at Tarata Domain in New Plymouth to move to a pre-arranged, secure campsite (stop an activity which may substantially contribute to the emergency (COVID-19))	To move the freedom campers to a controlled environment which will reduce the risk of community transmission
s91	28-Mar-20	Nelson-Tasman	Direct a campground facility and its management to make its facilities available as required by the Nelson Tasman Civil Defence Emergency Management Group (stop an activity which may substantially contribute to the emergency (COVID-19))	The campground was directed to make its facilities available (in accordance with the Nelson Tasman Civil Defence Emergency Management Plan), and to work with Civil Defence Emergency Management Group staff. This enabled a place for freedom campers to self-isolate
s91(1)(a)	31-Mar-20	Nelson-Tasman	Direct persons in the Nelson-Tasman region not to light outdoor fires (on either public or private land) for the duration of the emergency) without prior approval from Fire and Emergency New Zealand (stop an activity which may substantially contribute to the emergency (COVID-19))	Following a request from FENZ and noting a high regional fire risk, this decision was taken to: reduce the number of responses required to fire related emergencies and thus reduce the risk of infection spread, especially in relation to emergency services and their families
s91	1-Apr-20	Taranaki	Authorised District Council Environmental Health Officers to direct businesses trading non-essential products to stop trading. (stop an activity which may substantially contribute to the emergency (COVID-19))	To cease members of the public making non-essential trips by closing a non-essential activity. Therefore, minimised risk of infection of others / community outbreak.

Powers used	Date used	Civil Defence Emergency Management Group / Local Authority	Description of power used	Describe the issue and outcome achieved
s88	1-Apr-20	Taranaki	Road closure (to prevent or limit the extent of the emergency)	To close or install gates or barriers to prevent access to the roads leading to Dawson Falls and Stratford Plateau/Mountain House. This removes access to hard to patrol freedom camping spots. Activities stopped that might result in the need for rescue activity, putting strain on emergency services and place emergency services personnel at risk. Ensures people are compliant with national direction on isolation.
S88	1-Apr-20	Canterbury	Road closure (to prevent or limit the extent of the emergency)	Vehicular access to roads inhibited to prevent people accessing the back country to the north of Hanmer Springs and the potential for the need to rescue them if they became lost or injured.
S91	6-Apr-20	Taranaki	Authorise noise control officers (from Local Authority) to issue directions to persons. (to direct any person to stop any activity that may cause or substantially contribute to an emergency)	Noise Control Officers able to respond to noise complaints in order to maintain law and order and ensure that there is compliance with national Alert Level 4 measures (physical distancing/isolation) during State of National Emergency.
S85	8-Apr-20	Taranaki	Designate a local manufacturer as an essential service to enable the provision of essential supplies. (to enter into arrangements to enable the supply of essential supplies)	Enabled a local manufacturer to operate as an essential service, therefore helping to ensure the availability of hospital scrubs for Taranaki District Health Board for safe, appropriate health service delivery.
S85	8-Apr-20	Taranaki	Designate named contractors as an essential service to undertake works associated with Civil Defence Emergency Management.	Designating specified contractors as essential services enabled them to undertake necessary maintenance on the New Plymouth Waste Water Treatment Plant (WWTP) and the Thermal Drying Facility (TDF).

APPENDIX FIVE

Talking Points for discussion with other Ministers

- The Director of Civil Defence Emergency Management has advised the Minister of Civil Defence that a State of National Emergency should be renewed for a further seven days from 22 April. Multiple factors influence that advice, including statutory tests, how severe the current situation is, and the potential need for powers under the Civil Defence Emergency Management Act to support the current alert level.

Powers used

- The Director Civil Defence Emergency Management / National Controller has now authorised local councils to totally or partially prohibit or restrict vehicle access to roads or streets to support physical distancing where there are higher numbers of people walking or cycling.
- Police constables are also able to employ powers under the Civil Defence Emergency Management Act. As at 16 April, NZ Police has recorded 473 cases of breaches under the Civil Defence Emergency Management Act by members of the public, which resulted in 38 prosecutions, 418 warnings and 17 youth referrals.
- Since the State of National Emergency was first declared on 25 March, Civil Defence Emergency Management Groups have used powers under the Civil Defence Emergency Management Act to direct non-essential businesses to close, direct freedom campers to relocate, requisition a carpark for COVID-19 testing, provide for essential supplies, undertake important maintenance, and close some roads.

Future options

- The State of National Emergency and COVID-19 alert levels are two distinct things. However, the restrictions associated with the alert system under Alert Levels 1-3, may continue to require the support of the powers available under the Health Act, Civil Defence Emergency Management Act and Epidemic Preparedness Act.
- Officials from the Department of the Prime Minister and Cabinet, and National Emergency Management Agency, are developing advice for the Minister of Civil Defence around options on the use of powers to support implementation of Alert Levels 1-3.