



BRIEFING

COVID-19 NATIONAL TRANSITION PERIOD

To Minister of Civil Defence (Hon Peeni Henare)

Date	12/05/20	Priority	Urgent
Deadline	12/05/2020	Briefing Number	20/59

Purpose

This briefing seeks your agreement to give notice of a National Transition Period to come into effect when the State of National Emergency expires at 12.21 pm on Wednesday 13 May.

Recommendations

- Note** 9(2)(h) [redacted] NEMA Policy and the COVID-19 AOG response leadership team support this position.
- Note** 9(2)(h) [redacted] NEMA Policy and the AOG response leadership team support this position.
- Agree** to give notice of a National Transition Period over the whole of New Zealand owing to the impacts of COVID-19 by signing the attached form.
Agree/disagree/discuss
- Agree** to advise the House as soon as practicable, using the attached draft Statement to the House.
Agree/disagree/discuss
- Agree** that your Office release the attached media statement when the National Transition Period comes into force.
Agree/disagree/discuss

6. **Refer** a copy of this briefing to the Cabinet Social Wellbeing Committee and the Prime Minister's Office.

Agree/disagree/discuss

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

Agree/disagree/discuss

 Sarah Stuart-Black Deputy Chief Executive, NEMA and Director Civil Defence Emergency Management		Hon Peeni Henare Minister of Civil Defence
12/5/2020	/5/2020

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- Withdrawn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

National Transition Period for COVID-19

Overall situation

- 1 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 have extended the duration of the State of National Emergency on six occasions. The current declaration expires on Wednesday 13 May 2020 at 12.21pm unless extended or terminated prior.
- 2 New Zealand moved to at Alert Level 3 at 11.59pm on Monday 27 April 2020. Since then, the Government has announced that New Zealand will move to Alert Level 2 in a staggered approach from 11.59 on Wednesday 13 May 2020.


Number of cases continues to decline

- 3 Remarkable efforts continue to control the spread of COVID-19 through the use of public health measures. New case numbers have declined further over the past week to consistently fewer than five per day, and a total of only 10 cases since Monday 4 May. On two of these days, no new cases were identified. As at 11 May, active cases stand at 92, down from a peak of 929 on April 6.
- 4 From a public health perspective, the continued step-down in required public health measures indicates that the risk of transmission of COVID-19 has decreased compared to seven weeks ago when we first moved to Alert level 4.
- 5 The Director General of Health has now stated that on the evidence currently available he is confident that, there is no widespread, undetected, community transmission of COVID-19 occurring in New Zealand.

Bespoke COVID-19 legislation under development

- 6 The COVID-19 Public Health Response Bill 2020 has been considered by Cabinet and is proposed to be introduced and enacted this week. The Bill proposes a fit for purpose legal framework for managing the ongoing response to COVID-19 in a coordinated and orderly way. To this end, it establishes standalone legislation that provides a legal framework for responding to COVID-19 over the next two years, or until COVID-19 is sooner brought under control.
- 7 The new legislation does not prevent states of emergency being declared or notice of a transition period being given.
- 8 However, if passed, the powers under the Public Health Response Bill will be the primary legal mechanism for enforcing the public health requirements under the Alert Levels. Therefore, depending on the circumstances at the time, it may be more difficult to meet the statutory tests for declaring a state of emergency or transition period. This is because the new legislation will likely mean that there is less need to access the emergency powers in the CDEM Act to respond to any changes in transmission of COVID-19 (as in some cases there are complementary powers available under the new legislation).

Tests to support a further extension of the State of National Emergency may no longer be met

- 9 To date, we have advised you an extension of the State of National Emergency to support the Government response to COVID-19 was appropriate, on the basis of a number of factors, including the public health risk, and the powers that might be required to enforce the alert level restrictions. However, the health data noted above suggests a continued slow and decline in the number of cases of COVID-19. In addition, Ministers have signalled their intent to move from a principles-based model, supplemented by strong restrictions in Level 3, toward a guidance-focussed, high-trust approach in lower alert levels.
- 10 9(2)(h) 
- 11 There are two main alternatives to extending the State of National Emergency for COVID-19 – allowing the State of National Emergency to expire, or giving notice of a National Transition Period.
- 12 If the State of National Emergency is terminated or expires and is not replaced with an alternative, this could make it more difficult to continue the nationally coordinated approach to civil defence emergency management activities in the COVID-19 context. For this reason, we do not recommend allowing the State of National Emergency to expire without replacing it with another mechanism.
- 13 The main alternative statutory mechanism under the CDEM Act would be for you to give notice of a National Transition Period. The next section of this briefing therefore provides you with advice on moving from a State of National Emergency to a National Transition Period under the CDEM Act.

What is a National Transition Period?

- 14 While a State of National Emergency enables access to powers provides for civil defence emergency management arrangements to respond to emergencies, the CDEM Act also contains provisions to assist with recovery. A transition period enables a seamless transition from the end of the response, into recovery in the short, medium and long term - to assist the community's transition toward recovery.
- 15 Similar to a State of National Emergency, the authority to give notice of a National Transition Period sits with you, as the Minister of Civil Defence.
- 16 A National Transition Period can be given over the whole of New Zealand or any areas or districts as required. A National Transition Period lasts 90 days and can be extended more than once (or terminated early).
- 17 Although the CDEM Act enables a Civil Defence Emergency Management Group (or the Minister of Civil Defence) to give notice of a local transition period over their area, districts or wards, NEMA's preference is for any initial transition period to be national to enable coordination and management at the national, rather than local level.

18 The CDEM Act also provides for Recovery Managers, at a national, regional or local level. The Director of CDEM is the National Recovery Manager by default, but may delegate certain functions and powers in relation to national transition periods to another person to act as a National Recovery Manager. Police constables also have powers under a transition period.

What is recovery?

19 While the impacts of COVID-19 are far reaching, and elements of the response phase remain, there is evidence we are moving towards a recovery phase.

20 Recovery is defined under the CDEM Act as the co-ordinated efforts and processes used to bring about the immediate, medium-term, and long-term holistic regeneration and enhancement of a community following an emergency

21 A recovery activity is an activity carried out under the CDEM Act or any National or Group Civil Defence Emergency Management Plan to deal with the consequences of an emergency, including, without limitation –

(a) the assessment and ongoing monitoring of the needs of a community affected by the emergency; and

(b) the co-ordination and integration of planning, decisions, actions, and resources; and

(c) measures to support—

(i) the regeneration, restoration, and enhancement of communities across the 4 environments (built, natural, social, and economic); and

(ii) the cultural and physical well-being of individuals and their communities; and

(iii) government and non-government organisations and entities working together; and

(d) measures to enable community participation in recovery planning; and

(e) new measures—

(i) to reduce risks from hazards; and

(ii) to build resilience

22 Where an area has significantly reduced numbers of COVID-19 cases, or no community transmission and is subject to lower Alert Level requirements, there is an argument that the focus of activities is moving increasingly from response to the recovery phase.

What are the statutory tests for a National Transition Period?

23 Section 94A of the CDEM Act sets out a number of requirements before you can give notice of a National Transition Period. Transition periods are subject to a different legal test than states of emergency.

24 In deciding to give notice of a National Transition Period, you must consider a national transition period is required.

- 25 This includes, without limitation, that you are satisfied that invoking the powers to manage, co-ordinate, or direct recovery activities is –
- a) In the public interest; and
 - b) necessary or desirable to ensure a timely and effective recovery.
- 26 You must also “have regard” to:
- a) the areas or districts affected by the emergency,
 - b) whether the focus of activities is moving from response to recovery, including whether a state of emergency is about to expire or be terminated; and
 - c) the capacity of any Civil Defence Emergency Management Group and any local authority in any area or district affected by the emergency to carry out recovery activities.
- 27 To meet the “have regard to” tests above, you must give those matters genuine attention and thought, but the matters are not necessarily determinative of your decision.

Assessment of the statutory tests

What powers are available during a transition period?


- 28 The powers available in a transition period are similar to those available under a state of emergency, though slightly more limited. Under a Transition Period, the powers sit with Recovery Managers, rather than Controllers. Recovery Managers (and Police constables) must only exercise powers if they meet both the tests in the particular power and the overarching legal tests that the exercise of the power is:
- a) in the public interest;
 - b) necessary or desirable to ensure a timely and effective recovery; and
 - c) proportionate in the circumstances.
- 29 There are some limitations on powers during a transition period. For example, there is no ability to prohibit or regulate land, air, and water traffic. Nor is there any power to requisition land, medical supplies or other equipment, materials or supplies etc.
- 30 However, the powers of requisition were only used on a limited basis during the State of National Emergency, and are less likely to be required to enforce the public health requirements at lower alert levels.
- 31 I therefore do not consider that the reduced powers in a transition period will hinder the response or recovery.
- 32 Appendix Four outlines the powers which are released (and to who) upon giving notice of a National Transition Period.

Is a National Transition Period in the public interest and necessary or desirable?

- 33 In developing our advice on this, officials have considered the following factors and their impact on a timely or effective recovery:
- the potential public good associated with the use of transition period powers under the CDEM Act, and whether these will help mitigate the risk of transmission;
 - the measures in place to manage and eliminate COVID-19 and the ability to enforce these measures;
 - compliance issues;
 - the degree of complexity of the necessary response (including the need for coordination at the national level); and
 - the risk of not having a transition period in force.
- 34 Alert Level 2 involves far more personal freedoms and decision-making by individuals, communities and businesses, than in Alert Levels 3 and 4 (for example travel between regions is no longer restricted provided it is undertaken safely). Alert Level 2 therefore relies to a large extent on voluntary compliance with guidelines (particularly outside of workplaces), with enforcement only likely to be needed on a limited basis.
- 35 Despite the positive health data referred to in paragraph 3, COVID-19 remains in New Zealand and we must continue to take appropriate steps to avoid transmission. Even under Level 2, there are still likely to be new cases which may be the result of household transmission or associated with cluster outbreaks that are contained.
- 36 Transition period powers could be used to help contain any isolated transmission of COVID-19 in the community, or, if there was evidence of a second wave quickly emerged, without having to declare a State of National Emergency. A transition period could complement the powers expected to be available under the COVID-19 Public Health Response Bill, to enforce the alert levels. For example, transition powers could be used to:
- disseminate information and advice to the public;
 - require information (a transition period extends this power to Recovery Managers);
 - close roads to contain any isolated transmission in the community, should this be detected;
 - direct persons to stop activities that may contribute to the spread of COVID-19, or prevent or substantially hinder recovery from the emergency;
 - provide for the conservation and supply of food, fuel and other essential supplies, for example, to vulnerable people; and/or
 - The Director CDEM/National Recovery Manager can co-ordinate and use for the purposes of the CDEM Act any personnel, material and resources made available.
- 37 Perceptions of reduced risk among the public mean that retaining some powers at the harder end of the spectrum may be desirable to retain even at lower alert levels.

- 38 NEMA is in regular contact with Civil Defence Emergency Management Groups, Controllers and Recovery Managers alongside local government Mayors/Regional Council Chairs and their Chief Executives to provide advice and support. This contact also provides an opportunity to ensure the coordination and integration of planning and decisions to understand the recovery priorities of communities.
- 39 Unlike many other emergencies, the unprecedented, nation-wide impact of COVID-19 is likely to require a centrally-enabled, regionally-led recovery. Civil Defence Emergency Management Groups can play an important role in the recovery from COVID-19, deploying powers under the CDEM Act to support this. However, CDEM's role in the recovery process will need to be well-integrated into, and aligned with, wider government recovery structures and efforts, which are still under development.
- 40 A National Transition Period would provide a lever for continued national level civil defence emergency management coordination. It would also offer a degree of clarity for Civil Defence Emergency Management Groups through a familiar framework for the use of powers. Together, these factors would provide a greater overall level of certainty, thereby contributing to an effective recovery.

Overall Assessment

- 41 Under the current circumstances, I recommend a National Transition Period strikes an appropriate balance between continued support for the public health response, and the Government's increasing focus on providing guidance and education.
- 42 There also are robust checks and balances built into the transition period provisions in the CDEM Act. In addition to the overarching legal tests that must be satisfied to bring a transition period into effect, the exercise of any specific power must be:
- a) in the public interest;
 - b) necessary or desirable to ensure a timely and effective recovery; and
 - c) proportionate in the circumstances.
- 43 The CDEM Act requires those using powers under a National Transition Period to report to the Director, Minister, the House and to the public via an internet site at the conclusion of the transition period.
- 44 While the public health requirements at lower alert levels rely to a large extent on voluntary compliance, transition powers will support any enforcement action should it be required.
- 45 9(2)(h)  The National Emergency Management Agency supports this position. The AOG leadership team also support this position. As Director, Civil Defence Emergency Management, I consider giving notice of a National Transition Period is an appropriate action in response to the ongoing and serious impact of COVID-19.
- 46 I therefore recommend you signed the attached form in Appendix One.

Engagement with CDEM Groups

- 47 Should you agree to give notice of a National Transition Period, I intend to provide further advice to CDEM Groups on the purpose of a National Transition Period, the powers available, the parameters for their use, and how these are likely to intersect with the new COVID-19 legislation.
- 48 This communication will take a no surprises approach, and reassure Groups that they will have necessary powers without needing to consider declaring another state of local emergency or local transition notice.
- 49 I will also continue reinforcing to Groups that the important part they play in the nationally-led recovery process. I therefore do not intend to delegate the role of National Recovery Manager at this time, but will consider this as events develop.

Process and timing to give notice of a National Transition Period

- 50 A form is attached in Appendix One for you to give notice of a National Transition Period, should you wish. I recommend that the National Transition Period comes into force when the State of Emergency expires.
- 51 After you give notice of a national transition period, you must advise the House as soon as practicable. A draft statement to the House is therefore attached in Appendix Two.
- 52 A national transition period lasts for 90 days unless you terminate it earlier. With the new COVID-19 legislation likely to be in force by the end of this week, the national transition period may not span the full 90-day duration. However, NEMA will continue to monitor the situation and provide advice on the need to extend, terminate or otherwise modify the National Transition Period as appropriate.
- 53 Officials will ensure that notice of the National Transition Period is published in the Gazette, and in relevant newspapers and on the internet as soon as practicable.

APPENDIX ONE: NOTICE OF A NATIONAL TRANSITION PERIOD

Notice of national transition period

Section 94A, Civil Defence Emergency Management Act 2002

I, **Peeni Ereata Gladwyn Henare**, give notice of a national transition period over *the whole of New Zealand* owing to the impacts of COVID-19

This transition period-

- (a) Comes into force at 12.21pm on Wednesday 13 May 2020, which is the time and date when the state of national emergency declared at 12.21pm on Wednesday 25 March 2020 (and subsequently extended for seven days on six occasions) for the whole of New Zealand owing to the impacts of COVID-19 expires.
- (b) is in force for 90 days
- (c) ends at 12.21pm on Monday 10 August 2020, unless extended or terminated earlier

Signed by:

Designation: Minister of Civil Defence

Time and Date of Notice: _____ AM / PM on _____ May 2020

APPENDIX TWO: STATEMENT TO THE HOUSE

Mr Speaker

I wish to make a Ministerial Statement under Standing Order 356 in relation to giving notice of a National Transition Period over the whole of New Zealand under section 94A of the Civil Defence Emergency Management Act 2002.

The National Transition Period will come into effect when the State of National Emergency, currently in place for all of New Zealand, expires at 12.21 pm on Wednesday 13 May.

At 12.21pm, 25 March 2020, having considered the advice of the Director of Civil Defence Emergency Management, and in consultation with the Prime Minister, under section 66 of the Civil Defence Emergency Management Act I [Hon Peeni Henare, Minister of Civil Defence] declared a State of National Emergency for the whole of New Zealand to help manage the impact of COVID-19.

I have since extended this state of emergency six times. I [Minister Henare] did not make these decisions lightly. But it was the Government's judgement that extraordinary measures needed to be maintained to support nationwide efforts to combat the virus, and to break the chain of infection across the entire country.

Since then, New Zealanders, through their efforts, have made great strides in combatting the spread of COVID-19. This is clearly evident in the numbers of new confirmed and probable cases of COVID-19, which continue to slow and decline.

With the relaxing of restrictions provided for under Alert Level 2, and the decreasing numbers of COVID-19 cases, it is now appropriate to lift the State of National Emergency.

But while the trends are positive, Level 2 is not a return to business as usual.

Putting a National Transition Period in place will help support a nationally consistent and coordinated approach to civil defence emergency management activities.

I am satisfied that a National Transition Period is both in the public interest, and necessary or desirable to ensure a timely and effective recovery from the impacts of COVID-19.

The National Transition Period will cover all of New Zealand, including the Chatham Islands, Stewart Island, and other offshore islands. It will remain in place for 90 days, unless it is extended or terminated earlier.

A National Transition Period supports a transition from an emergency response into the initial recovery phase. A National Transition Period provides the National Recovery Manager and others access to special powers designed to assist with

recovery (rather than response).

This includes, for example, powers to enable the conservation and supply of food and essential supplies, or the ability for Recovery Managers to require information from persons.

Mr Speaker, New Zealanders can be confident in the very clear checks and balances on the use of these powers set out in the Civil Defence Emergency Management Act.

These powers can only be used if they meet both the tests within the power and the three overarching legal tests.

The person exercising the powers *must* be satisfied that these are 'in the public interest', that they are 'necessary or desirable to ensure a timely and effective recovery', and that their use would be 'proportionate in the circumstances'.

The lifting of the State of National Emergency and the move to a National Transition Period does not signal that New Zealanders should stop being vigilant. It is essential that all New Zealanders follow the Alert Level requirements to ensure we do not lose the gains we have made.

I reiterate my gratitude to each and every New Zealander, volunteer group, community organisation, local government, Civil Defence Emergency Management Group, government agency and business across the country for their outstanding and extraordinary efforts in response to COVID-19.

APPENDIX THREE: MEDIA RELEASE

National Transition Period for COVID-19

The State of National Emergency has been lifted and a National Transition Period is now in place across the country to help mitigate the risk of transmission of COVID-19 in our communities and support activities undertaken by Civil Defence Emergency Management authorities.

Civil Defence Minister Hon Peeni Henare has given notice of a National Transition Period for all of New Zealand, including the Chatham Islands, Stewart Island, and other offshore islands, which came into force at 12:21pm on Wednesday 13 May 2020.

“New Zealanders, through their efforts, have made great strides in combatting the spread of COVID-19 in our communities.” Peeni Henare said.

“With the move to Alert Level 2, and the decrease in the numbers of COVID-19 cases, it is now the appropriate time to lift the State of National Emergency and move into a National Transition Period.”

“Putting a National Transition Period in place will help support a nationally consistent and coordinated approach to civil defence emergency management activities.”

“The lifting of the State of National Emergency and the move to a National Transition Period does not signal that New Zealanders should stop being vigilant. It is essential that all New Zealanders follow the Alert Level requirements to ensure we do not lose the gains we have made.”

Under the Civil Defence Emergency Management Act 2002, the Minister of Civil Defence may give notice of a National Transition Period.

A National Transition Period supports a transition from an emergency response into the initial recovery phase. A National Transition Period provides the National Recovery Manager and others access to special powers designed to assist with recovery (rather than response).

This includes, for example, powers to enable the conservation and supply of food and essential supplies, or the ability for Recovery Managers to require information from persons.

As part of the response to COVID-19, the Director of Civil Defence Emergency Management Sarah Stuart-Black will also hold the powers of National Recovery Manager.

The National Transition Period will remain in place for 90 days unless extended or terminated earlier.

APPENDIX FOUR: ACCESSING POWERS UNDER THE CDEM ACT 2002: NATIONAL TRANSITION PERIOD

