

~~In Confidence~~

Office of the Prime Minister

Cabinet

## Managing regional boundary issues during Alert Levels

### Proposal

- 1 This paper is a companion to the paper ‘COVID-19 Resurgence: First Review of Alert Levels’. Subject to decisions on Alert Levels, this paper provides supporting advice on potential amendments to the Order made under section 11 of the COVID-19 Public Health Response Act. It seeks decisions on changes to the current Order in relation to the movement of people across the Auckland regional boundary.

### Relation to government priorities

- 2 The paper seeks decisions to support the Government’s response to the Covid-19 pandemic, in the context of current resurgence in the Auckland region and the implementation of the Alert Level framework.

### Executive Summary

- 3 Ministers are today reviewing the current measures against COVID-19: that is, a three day Level 3 lockdown in Auckland from midday on Wednesday and Alert Level 2 in the rest of the country.
- 4 An Order is currently in place, and with no action taken this will continue to enable the current arrangements until such time as a further decision is taken. This Order was to contain the risk of spread of COVID-19 to within an Auckland boundary as part of a “go early, go hard” approach. The Order therefore significantly limited the movement of people into and out of Auckland.
- 5 However, reflecting issues that have arisen in practice with regard to travel across the boundary into, out of and through Auckland, and that the Order was intended for a short period to allow for further information to be gathered, options are provided for possible changes to the Order should it be required for a longer period.
- 6 The options provided for this are:

#### ***Option 1 – Retaining restricted movement across the boundary into and out of Auckland, with exemptions made on a case-by-case basis***

- 7 This option reflects current arrangements, which have on the whole worked well. Police have taken a pragmatic approach to enforcement in the circumstances, which could be tightened if the arrangements are to endure for longer. This will impact businesses, students, and others wanting to cross the boundary, and is not supported by MPI, MBIE and Treasury for this reason. The number of people and businesses affected is unclear, but likely to be significant. Current travel volumes are broadly estimated to be around 10 per cent of normal flows.

- 8 From a public health perspective, this is the strongest option for reducing the risk of spreading the virus to other regions. Exemptions have been made for specific groups, and further exemptions could be made on a case-by-case basis by the Director-General of Health.

***Option 2 – Amending the Order to allow movement across the boundary by the groups exempted when the whole of New Zealand was at Alert Level 3***

- 9 This option would allow travel across the boundary in and out of Auckland for a range of activities, including public services, building and construction, supply and delivery of consumer goods and some primary industry services. It is supported by Treasury, MPI, MBIE, MSD and the Ministry of Transport, reflecting that it allows for a wider range of economic activity to occur. Traffic volume would be around 45 per cent of normal flows.
- 10 This option would allow for workers in early childhood education and schools to travel to and from work.
- 11 Changes could be made to the groups allowed, but would take away from the familiarity of the existing list, and therefore from clarity.
- 12 From a public health perspective, this option presents risks of the virus spreading between regions. Advice from Police is that it would be very difficult to enforce in practice, and Crown Law note there is possibly a risk a claim could be made the option unlawfully discriminates on the basis of employment status.
- 13 Under this option, exemptions for specific circumstances can be made via an application to the Director-General of Health. Two exemptions have been made to date, with short turnaround times.

***Option 3 – Enabling greater movement across the boundary (half way between Options 2 and 3)***

- 14 This option would add further exemptions to the current Order, for those undertaking critical work (including those working in Managed Isolation and Quarantine (MIQ) facilities), relocating premises, and accessing medical or justice services.
- 15 This option comes with greater risk of the virus spreading between regions, reflecting the greater movement of people. Traffic volumes would be at least 20 per cent of normal volumes, and likely more. Crown Law Office advise there are potentially legal risks including the issue of discriminating on the basis of employment status (noted in relation to option 2) and enforceability.
- 16 A new Order reflecting Ministers' decisions will be prepared in the next 48 hours, and would come into effect another 48 hours later. Announcements can be made today.

**Background**

- 17 On 10 August 2020 Cabinet approved an approach for managing a resurgence of COVID-19 in New Zealand [CAB-20-MIN-0387 refers]. The plan anticipated the potential need for regionally-based responses and the potential for different regions to be operating under different Alert Levels.

- 18 On 11 August 2020, four cases of COVID-19 were identified in a single family in Auckland, with no identifiable link back to the border and Managed Isolation and Quarantine. As a result, a decision was taken to implement the resurgence plan.
- 19 On 11 August 2020, the COVID-19 Ministerial Group, in accordance with their Power to Act, agreed that [CMG-20-0001 refers]:
- 19.1 the whole of the Auckland region should move to Alert Level 3 for 60 hours until midnight Friday, 14 August 2020, to allow time for further investigation of the case, the source of transmission, and undertake contact tracing and more testing;
- 19.2 the rest of New Zealand outside the Auckland region should move to Alert Level 2 during this period for 60 hours until midnight Friday, 14 August 2020.
- 20 Having regard to this direction, and with the purpose of preventing and limiting the risk of the outbreak or spread of COVID-19, on 12 August 2020 the Minister of Health issued *COVID-19 Public Health Response (Alert Levels 3 and 2) Order 2020* (the Alert Levels 3 and 2 Order), which came into force at 11:59 am 12 August 2020.
- 21 Although the Order was issued with regard to the Government direction, it does not expire at the end of Friday, 14 August. It will stay in effect unless revoked or amended by the Minister of Health, or in line with the terms of expiry under s16 of the Act.<sup>1</sup>
- 22 The Order was drafted under urgent circumstances. As a result, it largely replicates the approach provided for in previous Orders for Alert Levels 2 and 3 controls issued in April and May of 2020, including with respect to allowable movement within a region and restrictions on business operations.
- 23 The exception to this was with respect to movement in and out of an area under Alert Level 3, which was substantially changed from the allowable inter-regional movement under the 27 April 2020 *Health Act (COVID-19 Alert Level 3) Order 2020* (Alert Level 3 Order). This Order reflected the “go early, go hard” approach by putting in place restrictions on the amount of people who could travel into and out of Auckland.
- 24 Under the previous national Alert Level 3, the priority was reducing movement in general given the spread of COVID-19, rather than between particular regions. In this outbreak, it has been a priority to contain the spread within the Auckland region if possible. As result, under the Alert Levels 3 and 2 Order, changes made movement in and out of the Auckland region much more restrictive than inter-regional movement previously.
- 25 Under the Alert Levels 3 and 2 Order, movement into, out of, and through the Auckland region is limited to:
- 25.1 Those returning to their primary residence within or outside of Auckland;

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<sup>1</sup> Under section 16 of the Act, the Order will expire at the longer of: 60 days, ten sitting days of the House of Representatives; any other period specified by the House of Representatives.

- 25.2 Those traveling for work in the following businesses or services:
- 25.2.1 the justice sector;
  - 25.2.2 Parliament;
  - 25.2.3 Certain transport services including movement of all freight;
  - 25.2.4 Civil defence emergency management services;
  - 25.2.5 Border services; and
  - 25.2.6 Returning for purpose of a Court Order.
- 26 Under the 27 April 2020 Alert Level 3 Order, there were four broad reasons for which interregional travel was allowed:
- 26.1 most activities that were considered essential personal movement (including going to work and school) could be done within the same region *or* adjacent region;
  - 26.2 undertaking work, or going to or from work, for any businesses and services defined as 'essential' under Alert Level 4;
  - 26.3 several other humanitarian reasons including accessing medical care, visiting hospitals, relocating premises, and attending funerals and tangihanga; and
  - 26.4 for the purpose of urgent care for a child or for the purpose of supporting a person in a critical or terminal condition, if permitted by the Director General of Health.

### **Implementation of the restrictions on inter-regional travel**

- 27 The inter-regional travel restrictions in the Alert Levels 3 and 2 Order (12 August 2020) have been implemented primarily through:
- 27.1 road checkpoints operated by the Police; and
  - 27.2 controls applied at Auckland Airport to confirm the purpose of travel.
- 28 In total, at the road checkpoints under the current order, Police stopped around 25,000 vehicles over the first 26 hours of the Alert Levels 3 and 2 Order having come into effect (an estimated 23,000 per day). Around two percent of these vehicles were turned around, with the large majority being allowed to proceed because Police officers were satisfied the reason for travel was consistent with one of the exemptions in the Alert Levels 3 and 2 Order. This suggests a high level of compliance, with only a relatively small number of people seeking to cross the boundary without a legitimate reason under the Alert Levels 3 and 2 Order.
- 29 However, given the flow of traffic, time for compliance checking is very limited. In addition, few drivers come prepared with a clear link between their travel and the order's specific exemptions and few hold quality evidence of their purpose.

Compliance checking is therefore not simple. In keeping with the existing graduated response and seeking to retain social licence, Police officers have managed the checkpoints with a relatively light touch. As a result, Police is not always seeking verifiable evidence, although detailed information is requested from all drivers prior to a decision being made. As a consequence, actual compliance is likely to be lower.

- 30 In addition, because of the time it has taken for vehicles to be stopped and checks to be conducted, Police have reported some frustration from drivers at the queues created by the checkpoints, with delays at times of highest frequency in the order of some hours. Broadly this frustration has been accepted as an understandable impact of exceptional circumstances.

### **Managing the Regional boundaries between Alert levels**

- 31 The differential Alert Levels between the Auckland region and the rest of New Zealand has created a need for clarification for the management of the boundary. Since the Order came into effect on 12 August 2020 two class exemptions have been approved by the Director General of Health under the current Order. These are for:

- 31.1 NZ Steel (to allow employees to cross the boundary to attend work); and
- 31.2 Relaxation of physical distancing requirements for Air NZ and Jet Star for a period of 36 hours until midnight last night to enable people on aircraft to leave Auckland and others to return home, without removing people from flights. Bookings to and from Auckland have dramatically reduced in recent days so this should be less of an issue.

- 32 A further class exemption for transport regulatory bodies to enable inter-regional travel to deal with regulatory matters relating to health and safety, security, support for COVID-19 response, civil emergency response, and critical incident management (e.g. a railway track has issues, or a bridge collapses, or flooding on a road) is also being considered.

- 33 Under this option, exemptions for specific circumstances can be made via an application to the Director-General of Health. Two exemptions have been made to date, with short turnaround times.

- 34 With different Alert Levels in different regions, there are growing calls for exemptions to allow movement across regional boundaries to primarily allow workers to attend their place of work (on a daily basis), in adjacent regions. Specifically officials across agencies have identified issues with MIQ, social services workers, food and beverage workers, and educational workers. Only some MIQ workers are currently exempted. Those people finishing a stay in MIQ can already return home or travel to their intended place of residence.

- 35 Officials have identified three options for the management of this issue, which are analysed on the basis of:

- 35.1 Public Health – managing the outbreak through regulating the movement of people and managing the risk of infection spreading out of the quarantined region(s);

- 35.2 Economic – maintaining allowable business activity to occur where a business can operate safely under the relevant Alert Level setting for the region, and maintaining workers connection to their workplaces; and
- 35.3 Implementation, Compliance and Enforceability – the approach needs to be easily understandable, defensible in public discourse and enforceable at a practical level by the NZ Police and authorised enforcement officers.
- 35.4 Other social and health outcomes.
- 36 Officials recommend that all MIQ workers are allowed to travel across inter-regional boundaries. MIQ workers are critical to managing the public health risks from returning New Zealanders. MIQ workers use appropriate infection control measures and also have their health closely monitored and have access to regular testing. Allowing them to travel across inter-regional boundaries is unlikely to change the risk of spread from the current cluster.
- 37 Some categories of essential inter-personal travel across the Level 3 boundary are currently excluded from the Order. These include travel to:
- 37.1 Accessing medical services; and
- 37.2 for the purpose of urgent care for a child or for the purpose of supporting a person in a critical or terminal condition; and no other appropriate person is able to provide that care or support.
- 38 Auckland in particular provides a number of specialist medical services. Without this exemption, there is a risk that COVID-19 restrictions lead to other health outcomes worsening for those unable to access the necessary treatment.
- 39 The urgent care category is based on compassionate grounds.
- 40 Decisions on these categories can be made independently of the choice of options above. Officials recommend enabling these categories of travel with appropriate safeguards.
- 41 From a public health perspective, the boundary around Auckland serves to limit the potential spread of COVID-19 outside of Auckland. The purpose of inter-regional travel restrictions are to significantly limit the flow of people into and out of Auckland. This means there are fewer opportunities for people who have been infected with COVID-19 to travel outside Auckland and spread the virus to other regions.

**Option 1: continuing the current order provisions – restricting movement across regional boundaries as under the current order, and allowing exemption on a case by case basis**

- 42 Under this option, movement would be significantly limited across the regional boundary, unless:
- 42.1 permitted as “essential personal movement” under Clauses 9(p) and (q) (complying with court orders or travelling home after completing managed isolation or quarantine);



- 42.2 exempted from the Order by clause 26 (e.g. provision of health services, Police, Fire and Emergency NZ, and NZ Defence Force)
- 42.3 specified in Schedule 3 of the Order (e.g. Justice, emergency and border services; members of Parliament and staff; transport and logistics and the supply of goods); or
- 42.4 exempted by the Director General under Clause 27 of the Order
- 42.5 other specific changes identified above (ie MIQ workers and small passenger vehicle operators).
- 43 This option maintains the quarantine of the relevant region by only allowing limited exemptions and enabling a process for further exemptions to be approved by the Director General of Health. This option is restrictive to manage the public health risk.
- 44 While this approach provides the lowest level of risk of infection transfer within the Alert Level framework, it means that some businesses adjacent to the boundary (which would otherwise operate under the relevant Alert Level for their region) may have to close or operate on a limited basis because of access to their employees. This approach also limits the functions of some Government agencies and hence the provision of public services.
- 45 Similarly, pressure from business will likely continue to mount on the Director-General to approve exceptions on a case by case basis as long as the region is under Alert Level 3. The exemptions and their ongoing implementation will raise issues of detection and enforcement by the NZ Police. We understand that discretion has been applied by the NZ Police from the date the current Order came into effect.
- 46 If this option were to endure into the longer-term it would need to be supported by specific advice to the public around the requirements for crossing the boundary and a stricter enforcement approach by the Police.
- 47 Finally, this very limited approach was only intended to be adopted for the short duration of the Order and was intended to be reviewed (in line with the 27 April Alert Level 3 Order) after the initial period of investigation of the infection. This approach would have significant ongoing social and economic impacts, noting the existing pressure many firms are under. Preventing low risk activities or denying travel on compassionate grounds may cause frustration and undermine social licence and continued compliance with the measures.
- 48 The current public health evidence appears to suggest that the outbreak of COVID-19 in Auckland is limited to a single cluster of cases. We now have evidence of some limited spread outside Auckland but it is still connected to the cluster. The source of the cluster has not yet been located. This may justify continuing with the status quo until this has been determined (while relying on exemptions for inter-regional travel where there is a strong case). This option would provide the greatest certainty of containing the current cluster, while minimising enforcement complexity for the Police.

**Option 2 – reinstating the previous exemptions that applied for inter-regional movement when the whole of NZ was at Alert Level 3**

- 49 The previous order for Alert Level 3 (LI 2020/69) allowed for inter-regional movement for a relatively wide range of activities listed in a schedule. These included public services, building and construction, the production supply and delivery of fast-moving consumer good, and some primary industry services. It also specifically allowed for movement to another region for work (Appendix A refers). With some modifications, this list of exemptions could be applied to the new Order. This option would permit all travel that has been raised by officials as currently excluded.
- 50 However, it is important to note that the previous Order was promulgated when the whole country was under Alert Level 3, and therefore the issues in relation to regional quarantine was set in a different context. That is, the risk of inter-regional infection, were not as acute, as the risks of infection were relatively even across the country and public health measures were the same across regions.
- 51 Of the options proposed in this paper, this would be the most permissive approach by enabling all workers whose workplace is in an adjacent region to cross the boundary to go to their place of employment and return home at the end of the day. The condition on this would be that their place of employment was still able to operate under the relevant Alert Level 2 or 3 settings, depending on where the workers workplace was located (e.g. either within or outside of the Auckland/Waikato regional boundary).
- 52 Under this option, we consider that the volume of movement across the boundary would significantly increase. Data from the most relevant previous Alert Level setting indicates that we could expect from 10 percent to 45 percent of normal flows. This could have the effect of raising the risk of infection outside of the Alert Level 3 region, which would be exacerbated as the infection rate in Auckland rises in the short-term (e.g. before the impact of the Alert Level 3 restrictions have impact).
- 53 Public health officials have not yet completed contact tracing of all cases in the cluster. There are very likely to be infected individuals in Auckland who do not know that they are infected and are still going to work. The public health risk cannot be effectively mitigated by asking people travelling across the boundary to observe greater precautions while in the Level 2 Alert region. People will likely observe the Alert Level restrictions of the area where they currently are, meaning that there is the potential that people who have been infected with COVID-19 will be interacting with others outside Auckland with only Alert Level 2 restrictions in place.
- 54 It may be difficult to defend such a large volume of people movement across the boundary, particularly if infection arise as a result in an adjacent region. However, this is balanced against businesses within relatively close proximity of the boundary being able to maintain access to their workers and those workers maintaining labour force attachment. Contact tracing would also be maintained and is key under this option. But contact tracing on its own is insufficient to stop an outbreak without appropriate physical distancing.
- 55 Finally, because the list of exemptions envisages a relatively large volume of inter-regional movement, public confidence in containing the virus could be compromised.



Each exemption is open to some interpretation and as the list grows, matching a driver's reasons and their evidence to justify travel against this list becomes more time consuming and less feasible, particularly with the pressure of time and known delays. As a consequence, drivers may be inappropriately allowed to cross or turned around, undermining the policy intent of the detailed exceptions list, limiting the effectiveness and the impact of the Alert Levels 3 and 2 Order.

**Option 3 – enabling some movement across level 2 level 3 regional boundaries**

- 56 This option would provide middle ground between the very restrictive option 1 and the enabling option 2, by extending the range of exemptions to include, for example, movement to an adjacent region for:
- 56.1 work in a business or service that is considered critically important and that is listed in an order under the COVID Act;
  - 56.2 Relocating premises (home or business).
- 57 This would expand the range of activities for which inter-regional travel is allowed and the ability for the Director-General to grant exemption under the current Order would be retained. Option 3 is more open than Option 1 but a relatively restrictive approach compared to Option 2. This Option would also include schools and early childhood education providers.
- 58 However, Ministers could also opt for a more restrictive list and exclude financial services, transport services (small passenger vehicles), vet services and primary industries. This would be the preference of the Ministry of Health on the basis that:
- 58.1 Financial service providers could work from home and not require inter regional movement; and
  - 58.2 Transport (small passenger vehicles), veterinary services and primary industries create risk of work in close proximity which is hard to manage if people are moving between Alert Level 2 and 3.
- 59 This approach would exclude some significant industries and services and therefore presents a relatively lower risk of infection transfer across regional boundaries. We note that these industries and service were able to operate under Alert Level 4 previously and would continue to be able to operate. However, would not be able to access workers who live in a different Alert Level region.
- 60 The prohibition on inter-regional travel would require clear communication to the public to support compliance and enforcement. However, it would not meet the needs of all employers in adjacent regions and therefore there will be continued pressure for the Director-General to grant further exemptions as are provided for under the current Order.

**Analysis of options**

- 61 The following table summarises the options against key criteria.

Option	Indicative estimated travel volumes across the Auckland boundary	Public Health Risk (i.e. of transmission)	Negative Economic Impact	Implementation, Compliance and Enforceability – feasibility
Option 1	10 percent of normal flows	Lower risk	Higher impact	Lower feasibility
Option 2	45 percent of normal flows	Higher risk	Lower impact	Higher feasibility
Option 3	20 percent of normal flows	Mid-range risk	Mid-range impact	Lower to Mid-range feasibility

- 62 The key objective of the resurgence strategy and the Alert Level framework is to limit person-to-person contact and the movement of people in order to eliminate COVID-19. This comes at economic cost and personal sacrifice in order to save lives. This is still well accepted by the public. However, we note that has not been specifically tested in respect of different Alert level settings across different regions. Many people have experience in the previous Alert Level settings and who can travel inter-regionally which was largely accepted, and having a different set of requirements to date has caused significant confusion. Any decision to exempt businesses and people from the regulatory framework will come under strong scrutiny and ought not to be taken lightly.
- 63 Having said that there is a legitimate rationale to allow some movement to support workplace attachment and economic activity. We note that Option 2 addresses the issues identified by officials across agencies as outlined in paragraph 23. While Options 1 and 3 are more restrictive.
- 64 As noted above, the current inter-regional travel restrictions have reduced travel at the nine checkpoints between Auckland and adjacent regions to around 23,000 vehicles per day (both directions). This is estimated to be around 10 percent of normal traffic flows, and likely to be close to the average level of inter-regional movement that could be expected under Option 1.
- 65 Travel under Option 2 would increase considerably due to the ability of all workers that need to travel to access their normal place of work to do so. In the time available, it has been impossible to model this increase with any certainty. However, analysis of traffic levels during the previous Alert Level 3 in April/May 2020 suggests that traffic flows under these options could increase to 45 percent of normal flows. Conversely, Option 3 may be approximated by the travel experienced under Alert Level 4 in March/April, at around 20 percent of normal flows.
- 66 In addition, significant movement between Alert Levels across regional boundaries is likely to cause issues and potential confusion on the protocols that apply between, for example home at Alert Level 3 and work at Alert Level 2, and raise the potential for suboptimal compliance. We note that settings work best when they are clear, communicated well and accepted by the public.

### Expiring provisions that enable travel home

67 The Alert Levels 3 and 2 Order does not have an expiry date, however the provisions in Schedule 1 that enable essential personal movement for people to return home, expire at 11:59pm on 14 August 2020. No other part of the Order expires. Schedule 1 enables:

67.1 anyone in Auckland to return home to their principal place of residence in another part of New Zealand; and

67.2 anyone to travel through Auckland on their way home to their principal place of residence.

68 There are three broad options for enabling travel out of the Auckland region (or any region at Alert Level 3) to return home:

68.1 allow the provisions to expire and rely on individuals applying for individual exemptions from the Ministry of Health;

68.2 renew the provisions for a further three days but communicate to the public that they need to leave now and will not be able to leave after the three days are up, except with an exemption from the Ministry of Health; and

68.3 remove the expiry date and allow individuals to return home at any time.

69 Officials recommend allowing individuals to return home at any time. Allowing the provision to expire will create major difficulties. If people are only given a three day window to return home, this is likely to result in a number of people leaving the region in the next three days. If they are allowed to leave at any time some of those people are more likely to continue with original plans and stay in Auckland until later. From a public health perspective, it is preferable that they stay in the region at higher Alert Levels. Given Ministers' previous decision not to require self-isolation after returning home from the region, it makes no sense to impose a self-isolation requirement on any future returnees. The highest risk is associated with those who have already left, when we had the least information about likely spread.

70 The issue of transiting Auckland (or other Alert Level 3 areas) beyond travelling home, is picked up below.

71 Given the timing of the expiry, any extensions of the return home provision could only be made through an exemption granted by the Director-General of Health. The Director-General may also decide to create a short term exemption for transiting through Auckland to bridge the time between the expiry of the current provisions and the coming into effect of any new provisions in a new Order made by the Minister of Health.

### **General transit provisions**

72 The current Order does not make provision for people to transit the Auckland region other than for the purpose of returning home – for example to travel from the Waikato to Northland. This has meant no one from outside Auckland can travel to Northland or from Northland to anywhere south of Auckland. This was not an intention of the Order. We therefore propose the current Order be amended to allow people to transit the Auckland region by road on the condition they proceed through the region as

expeditiously as possible and only stop for the purpose of buying fuel or in the event of an emergency.

- 73 Police advise this provision would be virtually impossible to enforce. While this is far from ideal, we still think the provision is necessary to not impact unnecessarily on the rights of people living outside the Auckland region.

### **Implementation**

- 74 Following any decisions made today by the Minister of Health, I will publicly announce any changes to the Alert Level settings. If necessary, the Minister of Health may consider amending the current Order.
- 75 We know from our time at previous Alert Levels that a wide range of questions will arise from businesses, communities and individuals regarding the application of public health measures to particular activities. This means that one of the most critical aspects of our response is to have clear guidance ready.
- 76 Updated guidance is being prepared by the COVID-19 All-of-Government Communications and Public Engagement team, who are working across government and with media to communicate our decisions.
- 77 Public services are also preparing themselves, including local government services, education, transport and the justice sector.

### **Financial Implications**

- 78 This paper has no direct financial implications.

### **Legislative Implications**

- 79 This paper outlines Cabinet's decisions on the management of flow of people across the Auckland boundary to support the operation of some businesses. Any decisions to change the current management of the flow of people will be made by the Minister of Health, having regard to the Director-General's advice 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. The Minister may also have regard to our decisions on the level of public health measures appropriate to respond to those risks and avoid, mitigate, or remedy the effects of the outbreak or spread of COVID-19, before making any amendment to the current Alert Levels 3 and 2 Order.
- 80 Parliamentary Counsel Office and Crown Law Office have been consulted on this paper and the potential legislative implications.

### **Implications for priority communities**

- 81 The health impact of COVID-19 on priority groups such as the elderly, Māori, Pacific people, and ethnic communities is clear. We know that some groups are more at risk of severe illness from COVID-19 due to age or underlying health conditions. Modelling from the University of Auckland shows a high risk of severe COVID-19 disease from age 60 for Māori and Pacific people. Similarly, a proportion of the disability community is at greater risk of COVID-19, either due to underlying

conditions and/or because they are exposed to more people as a result of requiring support for everyday living.

## Human Rights

- 82 As Cabinet has been previously advised, implementing Alert Level measures will impose significant limitations on the New Zealanders' human rights. Where the limitations imposed at these Levels continue to restrict human rights and freedoms, they will require justification as necessary and proportionate interferences.
- 83 Limitations which arise from the proposals in this paper are: freedom of movement, freedom of expression and discrimination on the grounds of employment status. These limitations may be justified by the seriousness of the health emergency that New Zealand and the world faces, and may also be a proportionate response to the public health, social and economic impacts of the COVID-19 pandemic.

## Consultation

- 84 This paper was prepared by officials in the COVID-19 All-of-Government Response Group. Crown Law Office, Ministry of Business, Innovation and Employment, Ministry of Education, Ministry of Foreign Affairs and Trade, Ministry of Health, Ministry of Justice, Ministry of Primary Industries, Ministry of Social Development, Ministry of Transport, New Zealand Customs Service, New Zealand Police, Parliamentary Council Office, and Treasury have been consulted.
- 85 Engagement with iwi in relation to the matters traversed in this paper will occur in accordance with the proposals on engagement iwi/Māori contained in the paper 'COVID-19 Resurgence: First Review of Alert Levels'.

## Communications

- 86 Following the decisions made by Cabinet today I will publicly announce the overall changes to the Alert Level rules.
- 87 The COVID-19 All-of-Government Communications and Public Engagement team, who are working across government and with media, are preparing updated guidance. It is intended that messages will be customised for certain population groups.

## Proactive Release

- 88 I intend to proactively release this Cabinet paper following Cabinet consideration.

## Recommendations

- 89 The Prime Minister recommends that the Committee:

1 **note** that on 11 August 2020 the Group of Ministers with Power to Act on COVID-19 matters [CAB-20-Min-0387 refers] convened, and in accordance with their Power to Act [CMG-20-MIN-0001 refers]:

- 1.1 agreed that the whole of the Auckland region should move to Alert Level 3 for 60 hours until midnight Friday, 14 August 2020, to allow time for further

investigation of the case, identify the source of transmission, and undertake contact tracing and more testing;

- 1.2 agreed that the rest of New Zealand outside Auckland should move to Alert Level 2 during this period for 60 hours until midnight Friday, 14 August 2020;
- 2 **note** that the COVID-19 Public Health Response (Alert Levels 3 and 2) Order 2020 came into force at 11:59pm on 12 August which largely replicates the content of the previous Alert Level 2 and 3 Orders issued in April and May except it allows much less inter-regional movement (i.e. travel in and out of the Auckland region) in particular for workers;
- 3 **note** that the limited on interregional travel reflected the intent to contain the spread of the virus within Auckland if possible, as Health authorities ought to understand the origin of the outbreak;
- 4 **note** that the regional movement restrictions have been implemented through road checkpoints operated by the Police and controls at airports;
- 5 **note** that at road checkpoints Police stopped around 25,000 vehicles over the first 26 hours of the Alert Levels 3 and 2 Order having come into effect;
- 6 **note** that Cabinet is able to decide the appropriate level of public health measures to respond to the current public health risks and avoid, mitigate, or remedy the effects of the outbreak or spread of COVID-19 (taking into account the social, economic, or other factors) and to that end.
- 7 **agree** that in situations where regions are at different Alert Levels in respect of the movement of people across regional boundaries, appropriate public health measures are:
  - EITHER**
  - 7.1 continuing the current order provisions – restricting movement across regional boundaries as under the current order, and allowing exemption on a case by case basis (Option 1);
  - OR**
  - 7.2 reinstating the previous exemptions that applied for inter-regional movement when the whole of NZ was at Alert Level 3 (Option 2);
  - OR**
  - 7.3 an approach should apply that enables greater inter-regional movement than is allowed currently, but less than is proposed in Option 2 to specifically manage the public health risk of inter-regional infection transfer (Option 3);
- 8 **note** that the Director-General of Health has the power to issue class exemptions from the Alert Level 3 and 2 Order under Clause 27 and could use that power to enable people to return home, when the current provisions expire at 11:59pm on 14 August 2020;



- 9 **note** that the Director-General of Health has advised me that allowing all workers in managed isolation and quarantine facilities to travel across inter-regional boundaries for the purposes of this work is an appropriate public health measure;
- 10 **agree** that allowing inter-regional travel for the following purposes, is an appropriate public health measure;
  - 10.1 accessing medical services; and
  - 10.2 for the purpose of urgent care for a child or for the purpose of supporting a person in a critical or terminal condition; and no other appropriate person is able to provide that care or support;
- 11 **agree** that allowing people to transit the Auckland region by road for purposes other than returning home on the condition they travel through Auckland as expeditiously as possible and do not stop except to buy fuel and for an emergency is an appropriate public health measure;
- 12 **note** the Minister of Health, in making any changes to the current Order, will have regard to Cabinet's decisions and advice from Ministers arising out of consultation on the review of the Order, as well as considering what is appropriate to achieve the purpose of the Act.

Authorised for lodgement

Rt Hon Jacinda Ardern

Prime Minister



# Cabinet

## Minute of Decision

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### Managing Regional Boundary Issues During Alert Levels

**Portfolio**                      **Prime Minister**

On 14 August 2020, Cabinet:

- 1        **deferred** consideration of the submission *Managing Regional Boundary Issues During Alert Levels* [CAB-20-SUB-0397] until Cabinet on 17 August 2020;
- 2        **noted** that the Prime Minister will be considering the issues further in consultation with relevant portfolio Ministers and will submit an updated paper for Cabinet.

Michael Webster  
Secretary of the Cabinet

PROACTIVELY RELEASED



# Cabinet

## Minute of Decision

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### Managing the Boundary Between Auckland at Alert Level 3 and Other Regions

Portfolio                      Prime Minister

On 17 August 2020, Cabinet:

#### Background

- 1        **noted** that on 11 August 2020 the Group of Ministers with Power to Act on COVID-19 matters [CAB-20-MIN-0387] convened, and in accordance with their Power to Act:
  - 1.1      agreed that the whole of the Auckland region should move to Alert Level 3 for 60 hours until midnight Friday, 14 August 2020, to allow time for further investigation of the case, identify the source of transmission, and undertake contact tracing and more testing;
  - 1.2      agreed that the rest of New Zealand outside Auckland should move to Alert Level 2 during this period for 60 hours until midnight Friday, 14 August 2020;

[CMG-20-MIN-0001]

- 2        **noted** that the COVID-19 Public Health Response (Alert Levels 3 and 2) Order 2020 (the Order) came into force at 11:59pm on 12 August which largely replicates the content of the previous Alert Level 2 and 3 Orders issued in April and May 2020 except it allows much less inter-regional movement (i.e. travel in and out of the Auckland region) in particular for workers;
- 3        **noted** that on 14 August 2020 Cabinet agreed that the Auckland region remain at Alert Level 3 and the rest of New Zealand to remain at Alert Level 2 [CAB-20-MIN-0396];

#### Public health view on the movement of people in and out of the Auckland region

- 4        **noted** that the boundary around Auckland serves to limit the potential spread of COVID-19 outside of Auckland and the purpose of the inter-regional travel restriction is to significantly limit the flow of people into and out of Auckland;
- 5        **noted** that the above described containment measure will be undermined if there are significant numbers of people who are permitted to cross the boundary for employment purposes, potentially on a daily basis;

- 6 **noted** that:
- 6.1 Alert Level 3 restrictions, including encouraging the use of face coverings, have been put in place in Auckland to manage the spread of COVID-19 amongst people in the Auckland region;
  - 6.2 the restrictions do allow for some limited types of interaction between people and while the restrictions minimise the risk of COVID-19 being transmitted, there remains a risk that COVID-19 may continue to be spread between people beyond their household bubble;
- 7 **noted** that it is therefore crucial that there is restricted travel into and out of the Auckland region to prevent COVID-19 spreading to other regions and this is needed to ensure the rest of New Zealand can remain at a lower Alert Level;
- 8 **noted** that exemptions for movement across the Auckland regional boundary should be granted only where absolutely necessary and the number of people travelling across the boundary should be as limited as possible;

**Proposed approach to movement across the Auckland regional boundary**

- 9 **noted** that, given the longer period for these arrangements, there is a need to ensure that permitted inter-regional movement is extended to include those providing critical infrastructure and services, without compromising public health objectives of maintaining the integrity of the Auckland region quarantine zone;
- 10 **agreed** that permitting the following inter-regional movement is an appropriate public health measure:
- 10.1 building and construction work for large and critical infrastructure projects, or where this is needed for immediate health or life safety risks;
  - 10.2 scientific services, particularly those related to supporting the COVID-19 response;
  - 10.3 adding waste to the category of transport and logistical services;
  - 10.4 utilities and communication providers (including news and broadcast media);
  - 10.5 any emergency services not exempted from the current Order;
  - 10.6 social services and related goods required to maintain physical and mental wellbeing to ensure people and communities in need are well supported;
  - 10.7 movement required to support and deliver robust Managed Isolation and Quarantine including movement from (non-Auckland) ports to Managed Isolation and Quarantine;
  - 10.8 employees of, and contractors to the Electoral Commission for the purposes of electoral preparation;
  - 10.9 electoral candidates, as defined in section 3(a) and 3(b) of the Electoral Act, to allow the election to proceed without giving current Members of Parliament an extra incumbency advantage;
  - 10.10 national security agencies;

## Transiting through Auckland

- 11 **agreed** to maintain the status quo and not allow people to transit the Auckland region by road, unless they are returning to their principal home; but with the addition of also allowing people to transit between Alert Level 2 areas through Auckland purely for the purposes of work;
- 12 **authorised** a group of Ministers comprising the Prime Minister, Deputy Prime Minister, Minister for Economic Development, Minister of Health and Minister of Police to take final decisions in respect of any matters concerning the exemption and enforcement regime to give effect to the decision in paragraph 11 above;

## Approach to further exemptions

- 13 **noted** that the current Order outlines an approach for the Director-General of Health to exemptions for movement across the boundary, on a case by case basis, which can include exemptions for individuals or classes of persons;
- 14 **noted** that the Director-General of Health has made a number of exemptions to date based on public health, economic and social considerations;
- 15 **noted** that:
- 15.1 exemption applications can be made via the Ministry of Health or COVID-19 website and will be processed by the Ministry of Health, for decision by the Director-General of Health;
  - 15.2 exemptions may be granted where:
    - 15.2.1 there is a risk to life, health or safety of an individual, for example, where a person needs to travel to assist a vulnerable relative;
    - 15.2.2 there is a clear and urgent need for the travel, for example, visiting a dying relative;
    - 15.2.3 there are additional extraordinary circumstances which justifies an exemption;
    - 15.2.4 a critical business or service in Auckland is unable to operate as a large portion of its workers live outside the travel boundary;
    - 15.2.5 there is a need to maintain the operation of critical networks or strategic infrastructure or supply chains (where this is not covered by the permissions);
    - 15.2.6 there is a risk to public health or safety or risk to life, for example an exemption for travel for workers for medical businesses or other personnel needed for the COVID-19 response;
- 16 **noted** that in deciding whether or not to grant an exemption the Director-General of Health will give consideration to the overall risk level of the activity and may impose conditions on the exemption;
- 17 **noted** that applicants who are declined an exemption to travel in or out of the Auckland region will have a right to have the decision reviewed by the Ministry of Health;

- 18 **noted** that all exemptions must be published online and in the Gazette, which is appropriate for class exemptions but not appropriate for individual exemptions for privacy reasons;
- 19 **agreed** that amending the publication requirements for exemptions in the Order to limit it to class exemptions only, and that exemptions for individuals would be authorised through a letter from the Director-General, is an appropriate public health measure;

### **Giving effect to changes to Alert Level settings**

- 20 **noted** that the Minister of Health, in making any changes to the current Order, will have regard to Cabinet's decisions and advice from Ministers arising out of consultation on the review of the Order, as well as considering what is appropriate to achieve the purpose of the COVID-19 Public Health Response Act 2020;
- 21 **noted** that, pending the Minister of Health's decision to amend the current Order, any new Order would not be drafted before 19 August 2020 and would come into effect 48 hours after that;
- 22 **noted** that the inter-regional travel restrictions will be implemented primarily through road checkpoints operated by the Police with support from the New Zealand Defence Force and controls applied at Auckland Airport by AVSEC staff to confirm the purpose of travel;
- 23 **noted** that clear guidance for Police and public messaging will be issued to support public compliance with the measures;
- 24 **noted** that the Cabinet's decisions on the management of flow of people across the Auckland boundary will be given effect through an Order made under COVID-19 Public Health Response Act 2020 by the Minister of Health, having regard to the Director-General of Health's advice.

Michael Webster  
Secretary of the Cabinet