

## Responding to COVID-19: The Government's legal powers

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The country is moving into unprecedented territory in response to COVID-19. The framework that is driving the Government's response is the [New Zealand Influenza Pandemic Plan: a framework for action](#), the most recent version of which was published in 2017. The plan sets out a wide range of increasingly far reaching steps that the Government could take depending on the stage that the pandemic may reach.

One thing is clear, as the response ramps up, we will all be asked to accept restrictions on our daily life. Ultimately, success in the response will depend on goodwill and cooperation from all of us. However, there are significant legal powers at the Government's disposal to require compliance with these public health measures. The Health Act 1956 and the Epidemic Preparedness Act 2006 are the key pieces of legislation that provide such powers to the Government. The Civil Defence Emergency Management Act 2006 also provides powers if the situation becomes more severe.

### Health Act 1956

The Health Act gives significant powers to medical officers of health (typically senior clinicians at DHBs appointed by the Director-General of Health and working through Public Health Units), the Director-General, and the Minister of Health to respond to outbreaks of diseases specified in a schedule to the Health Act.

On 30 January 2020, 'Novel coronavirus capable of causing severe respiratory illness' was listed on the schedule as a notifiable infectious disease. As a result, a wide range of powers has been available to medical officers of health from then, including:

- If a medical officer of health considers a person has (or may have) 'novel coronavirus', and that there is a substantial risk of serious harm to one or more other persons, the medical officer can give a range of directions to the person and contacts of the person, including that they refrain from working, using public transport or travelling, and stay in a specified residence (ie, isolation)
- The power to direct that educational institutions (including early childhood centres) be closed
- The power to carry out contact tracing in relation to people who have, or are suspected of having, 'novel coronavirus' in order to identify the source of the disease, make contacts aware that they might be infected, and limit transmission. Specifically, medical officers of health and other 'contact tracers' can require people with, or suspected of having, 'novel coronavirus' to provide information about their contacts and to require persons such as employers, educational institutions, businesses, and event co-ordinators to provide names and addresses of known contacts of the person infected.

The Health Act also provides that, while the paramount consideration when exercising the above powers is the protection of public health, individuals subject to such powers must:

- Be treated with respect
- Be given the chance to voluntarily comply before compulsory powers are used (if appropriate)
- Be fully informed about any powers being exercised that have implications for the individual.

On 11 March 2020, the schedule to the Health Act was updated so that both 'novel coronavirus' and COVID-19 were also designated as quarantinable infectious diseases. Powers available from that date include the power to:

- Require any persons believed or suspected to have novel coronavirus or COVID-19 on board an aircraft arriving in New Zealand to be examined, provide bodily samples, and to supply information - including by requiring persons to provide health information on arrival cards
- Require such persons to be kept under surveillance.

Further powers are available to medical officers of health if authorised by the Minister of Health under sections 70 and 71 of the Health Act. These include the power to:

- Require persons to report or submit for medical examinations or testing if the spread of the disease would be a significant risk

to the public

- Require persons, places, buildings, ships, vehicles, and aircrafts to be isolated and quarantined.

The Health Act also provides that medical officers of health may ask the Police for assistance when exercising those powers. Ministerial authorisations for the use of some of those powers have already been given, and assume that more will be given if necessary.

The Health Act contains various enforcement provisions, which means there is the possibility of convictions, fines, and other actions (such as potential deportation) for people who do not comply.

## **Epidemic Preparedness Act 2006**

The Epidemic Preparedness Act 2006 contains further powers, which are triggered if the Prime Minister issues an epidemic notice in the Gazette. To issue an epidemic notice, the Prime Minister must act on a recommendation from the Director-General and be satisfied that the effects of an outbreak of a quarantinable disease "are likely to disrupt or continue to disrupt the central government and business activity in New Zealand (or stated parts of New Zealand) significantly". At the time of publication of this update there has been no such notice.

If and when a notice is made, medical officers of health can exercise certain powers in the Health Act (including those set out in sections 70 and 71). In addition, once an epidemic notice is in force, the Prime Minister can issue an epidemic management notice, which can trigger responses under other legislation. For example, section 64 of the Social Security Act 2018 provides that, if an epidemic management notice is in force, the Ministry of Social Development may grant emergency benefits to people who would otherwise not be entitled to such benefits.

The Epidemic Preparedness Act enables the Governor-General to, by Order in Council, make changes to legislation as needed to respond (referred to as 'modification orders' in the New Zealand Influenza Pandemic Plan). However, because that is an extraordinary use of powers that is generally reserved only for emergency situations, there is a very high threshold for that.

## **Civil Defence Emergency Management Act**

The Civil Defence Emergency Management Act 2002 sets out further powers available if a state of emergency is declared, and expressly provides that an emergency can include a plague or an epidemic. The New Zealand Influenza Pandemic Plan observes that the powers in this Act would only be used in a very severe situation, and presumably when the wide-ranging powers set out in the Health Act and Epidemic Preparedness Act are insufficient to implement a response.

While the Government has a range of powers at its disposal to respond to COVID-19, we hope first that goodwill and cooperation will be sufficient, and that, if the formal powers are utilised, they will be complied with. While enforcement is clearly possible, we hope that stretched government resources do not have to be used for this purpose.

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