

Responding to COVID-19: A further Health Act order clarifies the lockdown rules

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On Friday 3 April the Director-General of Health Ashley Bloomfield made a further order under the Health Act 1956 that clarifies what people and businesses can and cannot do during the Alert Level 4 lockdown period.

The order formalises requirements that, in practice, have been operating in New Zealand since the move to Alert Level 4 on 25 March, and provides a clearer and more predictable enforcement framework during this unprecedented time. While the government acknowledges that there has been a high level of compliance to date with the self-isolation requirements, there has been some evidence of non-compliance.

The order is made by the Director-General in his capacity as the medical officer of health for all districts of New Zealand pursuant to section 70(1)(f) of the Health Act. That section authorises medical officers of health to require people to be isolated or quarantined (if a state of emergency or an epidemic notice is in force, as is currently the case).

The key provisions of the new order are that it requires all people to be isolated or quarantined by:

- Remaining at their current place of residence, except for 'essential personal movement'
- Maintaining physical distancing (ie the two-meter rule), except from their fellow residents or to the extent necessary to access or provide an essential business.

'Essential personal movement' includes:

- **Either accessing, or providing, an essential business:** 'Essential business' is defined by reference to the order given under [section 70\(1\)\(m\) of the Health Act](#) on 25 March, which in turn refers to the [essential businesses list on the Government's COVID-19 website](#). This new order clarifies that, in order to qualify as essential personal movement, a person must be accessing an essential business that is "either within the same territorial authority district [of a person's residence] or be the nearest essential business of a particular kind"
- **Limited recreation purposes:** The order confirms that people can leave their residence for exercise or other recreation, but only if:
 - it is done in an outdoor place that can be readily accessed from their residence
 - they comply at all times with physical distancing requirements
 - it does not involve "swimming, water-based activities (for example, surfing or boating), hunting, tramping, or other activities of a kind that expose participants to danger or may require search and rescue services"
- **Movement in respect of shared bubble arrangements:** This part of the order describes the range of situations in which two residences (ie 'bubbles') can be joined as a single residence (a 'shared bubble'), including shared child-care arrangements
- **Emergency situations or movement required by a court order (or similar):** Among other things, this part of the order clarifies that a person may leave their place of residence to preserve their own or any other person's life or safety, or to use an emergency place of residence (such as a Women's Refuge)
- **Authorised travel:** This permits individuals to leave their residence to undertake certain travel permitted under the relevant framework approved by the Director-General (and published on the [Government's COVID-19 website](#)).

The order also includes a request that Police "do anything reasonably necessary to assist in ensuring compliance with this order". This range of powers includes "compelling, enforcing, or ensur[ing] compliance" with a requirement of a Medical Officer of Health, and "preventing...a thing that a Medical Officer of Health...has forbidden or prohibited in this order...".

This order should reduce confusion about what is and is not permitted while we remain at Alert Level 4. It formalises the conservative approach that the government has been advocating people take to their personal movements – particularly in respect of the requirement that people not go swimming or undertake other activities that may 'expose participants to danger'. Importantly, it provides the Police with clear guidance on how to manage those people who are not complying with self-isolation requirements.

We were very interested to see that the order gives formal legal weight to the term 'bubble', and are keeping a close eye on further developments. A copy of the full order is available [here](#).

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