

## Responding to COVID-19: The isolation and quarantine rules for new arrivals

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On Thursday 9 April – the halfway point of the Alert Level 4 lockdown period - the Director-General of Health Ashley Bloomfield issued a further notice under the Health Act 1956 that sets out new lockdown rules for people arriving in New Zealand. The new rules set out strict requirements for the 'managed isolation' and quarantining of new arrivals.

### Previous Health Act notices for Alert Level 4

As described in our previous legal updates, the key powers that have been exercised in order to put Alert Level 4 in place are set out in [section 70](#) of the Health Act. In particular, two notices given by the Director-General (acting as medical officer of health for all of New Zealand) under section 70(1)(m) on [25 March](#), and under section 70(1)(f) on [3 April](#):

- Closed all premises in New Zealand with some specified exceptions, including most importantly private houses and premises used in relation to 'essential business'
- Forbade people from congregating outdoors, except when maintaining physical distancing (the two-meter rule)
- Required everyone in New Zealand to be isolated or quarantined at their current place of residence (to "stay at home", as the Prime Minister would say), with some specified exceptions including that people can leave to access essential businesses or for limited recreational purposes.

Our updates on those notices are available [here](#) and [here](#).

### Previous Health Act notices for new arrivals

In addition, two notices have previously been issued under section 70 that are directed at people arriving in New Zealand. The first was issued on [16 March](#) - over a week before New Zealand moved to Alert Level 4, and the second on [31 March](#).

Both notices involved the exercise of powers under sections 70(1)(f) and 70(1)(h) of the Health Act, which give medical officers of health powers to require people to be isolated and/or quarantined until they have been medically examined and are free from COVID-19, and have undergone treatment for COVID-19. The notices were directed at persons arriving in New Zealand from anywhere overseas (though the 16 March notice did not apply to persons arriving from some Pacific countries).

Both notices referred to persons arriving in New Zealand being quarantined for 14 days in accordance with Ministry of Health guidance on self-isolation, which set out how people should self-isolate in their homes. A key difference between the notices is that the 16 March notice referred to an 'expectation' that people arriving in New Zealand would comply with those guidelines, whereas the 31 March notice upgraded the rule from an expectation to requiring compliance with the guidelines.

Both notices also gave the Deputy-Director of Public Health (who issued the notice as medical officer of health for all of New Zealand) the discretion to impose tighter isolation and quarantine requirements on individuals, if the guidelines on self-isolation were not being followed. For example, such individuals could have been quarantined for up to 14 days in a specified facility.

The two Health Act notices applied in addition to requirements imposed through immigration decisions that effectively closed New Zealand's borders to everyone but returning citizens and permanent residents.

### The new Health Act notice – managed isolation and quarantining of new arrivals

The Prime Minister had signalled at the beginning of last week that the government was considering imposing tighter restrictions on people arriving from overseas, and that quarantining such people was one option being considered.

The notice issued by the Director-General on [9 April](#) sets out those tighter restrictions. This notice is given pursuant to section 70(1)(e) and 70(1)(ea) of the Health Act, which enable medical officers of health to require people to report and submit for medical testing, as well as section 70(1)(f), which as set out above provides that a medical officer can require persons to be 'isolated' and/or 'quarantined' as they think fit.

The terms 'isolated' and 'quarantined' are used in section 70, but are not defined in the Act. The 9 April notice explains that the isolation and quarantining requirements being imposed are as follows:

- All persons arriving in New Zealand (with limited exceptions, eg some flight staff and persons critical to providing services to assist with the COVID-19 response) must report and submit for medical testing at a designated aerodrome as soon as practicable after arriving
- That testing can involve checking temperatures, seeking information on symptoms, chest auscultation (eg, listening to the chest through a stethoscope), and swabbing
- If a person is diagnosed with COVID-19, has COVID-19 symptoms, is being or has been tested for COVID-19, or has been a close contact with someone with COVID-19 in the last 14 days, that person must be placed in a 'high risk facility', which the government has advised will be a hotel being used by the government solely for quarantining people
- A person who does not meet any of the above criteria must be placed in a 'low risk facility', which will be a different hotel to those for persons who are high risk. This is referred to as 'managed isolation' on the covid19.govt.nz website
- A key difference between being quarantined in a 'high risk facility' and subject to 'managed isolation' in a 'low risk facility' is that a person in a 'low risk facility' may temporarily leave for limited exercise and recreation, provided they meet specified requirements (including that they must be outdoors, in a 2-kilometre radius of the facility, and wear personal protective equipment). In contrast, a person in a 'high risk facility' may not leave for exercise and recreation
- Persons in both high and low risk facilities are permitted to leave for certain specified purposes (eg, for emergencies, to receive medical services, or if required by a court order)
- A person must remain in either a high or low risk facility for 14 days, or up to 28 days if the person is not considered to be at low risk of having or transmitting COVID-19 at the end of the 14 day period. It is not entirely clear from the notice whether it is likely that persons who are at first required to be quarantined in a 'high risk facility' might be moved to a 'low risk facility' if, for example, they test negative for COVID-19
- Once a person is no longer required to be isolated or quarantined in a high or low risk facility, the person may travel to their intended place of residence for the remainder of the Alert Level 4 lockdown, and will be subject to the same rules that apply to everyone else in New Zealand
- There are some exceptions to the above rules for persons who have specific physical or other needs. For example, if a person has a medical condition that cannot be managed if the person is in quarantine or managed self-isolation in a hotel, the person could be quarantined where their condition can be managed.

The government has made it very clear that it expects the rules relating to the quarantining and isolation of new arrivals into New Zealand to be in place for some time, even after New Zealand begins to move out of Alert Level 4. It may be that a further exercise of section 70 powers will be needed, and further notices issued, as and when the government's response to COVID-19 evolves over time.

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