

Responding to COVID-19: Moving New Zealand to Alert Level 4 and beyond

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At midnight on Wednesday 25 March New Zealand moved into Alert Level 4; a full nationwide lockdown. In two previous updates we summarised the broad range of legal powers that are available to the government to implement its COVID-19 response, including powers in the Health Act 1956, the Epidemic Preparedness Act 2006 (EP Act), and Civil Defence Emergency Management Act 2002 (CDEM Act). See:

- [Responding to COVID-19: The government's legal powers](#)
- [Responding to COVID-19: the issue of an epidemic notice under the Epidemic Preparedness Act 2006](#)

This legal update describes the key legal powers used to put in place the Alert Level 4 lockdown, being the issue of an order under the Health Act and the declaration of a state of national emergency under the CDEM Act. We also set out some of the many steps taken by the government in this first week of the lockdown as part of its COVID-19 response.

Health Act order: closing premises and banning gatherings

The issue of an [epidemic notice](#) by the Prime Minister on 24 March means that medical officers of health are able to exercise a range of special powers in [sections 70 and 71](#) of the Health Act. Accordingly, on 25 March, the Director-General, acting as the national medical officer of health for all of New Zealand, issued an [order under section 70\(1\)\(m\)](#) to give effect to Alert Level 4.

Section 70(1)(m) provides that a medical officer may close premises and forbid people from congregating. To that end, the order issued by the Director-General requires the closure of all premises within New Zealand, except for:

- Private dwelling houses (such as people's homes, care facilities, and boarding houses)
- Premises necessary for the delivery of 'essential business' (see below)
- Some other exceptions (eg, Parliament, courtrooms, prisons, and ships/aircraft/vehicles to which access is required).

The order defines 'essential business' as "businesses that are essential to the provision of the necessities of life and those businesses that support them". It includes a link to the essential services list on covid19.govt.nz, which is being regularly reviewed and updated by the Ministry of Business, Innovation & Employment.

The order also forbids people from congregating in outdoor places unless 'physical distancing' is maintained, which is defined as being at least two meters from another person (or, if you are closer than two meters, being there for less than 15 minutes).

The order also includes a request that the Police "do anything reasonably necessary to assist in ensuring compliance with this instruction". Under [section 71A](#) of the Health Act, Police constables are able to exercise a range of powers to assist medical officers of health with the COVID-19 response. These powers include compelling, enforcing, and ensuring compliance with the [section 70\(1\)\(m\)](#) order described above.

State of national emergency

On 25 March it was [announced that a state of emergency has been declared](#) by the Minister of Civil Defence under the CDEM Act.

While the Ministry of Health remains the lead agency responsible for co-ordinating the government's response to COVID-19, the declaration of a state of emergency means that a wide range of powers are now available. In particular:

- The Director of Civil Defence Emergency Management can co-ordinate the resources (including personnel, material, and information) of a wide range of people and government organisations (including emergency services and the New Zealand Defence Force)

- Each Civil Defence Emergency Management (CDEM) Group, which is a consortium of the local authorities and emergency services working in partnership in that region, have emergency powers set out in [section 85](#) of the CDEM Act, including the power to provide for the conservation and supply of food, fuel, and other essential supplies, prohibit or regulate traffic on land, water, and in the air, and to close roads and public places.

The CDEM Act provides that a declared state of emergency can last for up to seven days, but can be extended (for up to another seven days) or ended at any time. The state of emergency has already been extended once (on 31 March) and, given New Zealand is expected to be at Alert Level 4 for at least four weeks, we expect that the state of emergency will be extended again.

Other steps taken

We have seen in this last week a range of steps taken as part of New Zealand's COVID-19 response. Parliament sat on Wednesday 25 March, and passed three new laws.

The [COVID-19 Response \(Urgent Management Measures\) Legislation Act 2020](#) amended a number of existing laws in order to (quoting Hon Chris Hipkins) "enable a more effective response by the Government to the outbreak of COVID-19". That includes:

- Amendments to the Residential Tenancies Act 1986 intended to protect tenants by freezing rent increases and limiting the circumstances in which residential tenancies can be terminated
- Amendments to the Education Act 1989 to enable the Secretary of Education to give binding directions to education providers like schools and universities as to how they operate during and after the COVID-19 outbreak
- An amendment to the EP Act to enable District Court judges to modify the rules of District Courts while an epidemic notice is in force
- Amendments to the Local Government Official Information and Meetings Act 1987 to enable local government and CDEM Groups to meet via teleconference/audioconference (rather than in person).

The [COVID-19 Response \(Taxation and Social Assistance Urgent Measures\) Act 2020](#) amended various tax laws and the Social Security Act 2018 to (quoting Hon Grant Robertson) "...help New Zealand weather the economic storm, which we are already going through, and assist in the recovery." The changes relate to depreciation deductions for non-residential buildings, deferring requirements to pay provisional tax, changes to low-value asset deduction rules, changes to R&D refundability rules to encourage R&D to continue, changes to in-work tax credit to reflect some individuals will (through no fault of their own) be working fewer hours, and increasing the winter energy payment.

The [Imprest Supply \(Third for 2019/20\) Act 2020](#) was also passed, giving the government the authority to spend up to \$40b in operating expenditure, and \$12b in capital expenditure. That funding will be used for the financial support packages already announced by the government, and future expenditure designed to (quoting Hon Grant Robertson) "...cushion the blow for workers, businesses, and the economy through this and to position our economy and our society to be in the best position to recover on the other side."

There have also been a range of orders, notices, directions, and policy statements issued, and amendments to regulations made, as part of the government's ongoing COVID-19 response. A summary of the relief and regulatory changes announced by New Zealand's financial markets regulators and regulation makers in response to COVID-19 is available [here](#).

We expect that there is much more to come, which will probably include further modifications to existing laws that can be made by the issuing of an epidemic management notice under the EP Act (as explained in our update [here](#)). We are keeping a very close eye watching further developments.

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