

Responding to COVID-19: The issue of an epidemic notice under the Epidemic Preparedness Act 2006

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It goes without saying that yesterday's [announcement by the Prime Minister](#) that New Zealand's COVID-19 response was moving to Alert Level 3 immediately, and to Alert Level 4 by midnight Wednesday 25 March, was unprecedented. No doubt everyone is still digesting the impact of the announcement, as well as preparing to live and, if possible, work within the wide-ranging restrictions that are now in place.

In the Q&A session that followed the announcement, the Prime Minister advised that she would be issuing an epidemic notice under the [Epidemic Preparedness Act 2006](#) (EP Act). The Prime Minister may issue an epidemic notice if that is recommended by the Director-General of Health, with the agreement of the Minister of Health, and if she is satisfied that the effects of an outbreak of COVID-19 are "...likely to disrupt or continue to disrupt the central government and business activity in New Zealand (or stated parts of New Zealand) significantly". An epidemic notice – the [Epidemic Preparedness \(COVID-19\) Notice 2020](#) has been issued, and comes into effect on 25 March 2020.

As summarised in our [recent legal update](#), the government already had a broad range of legal powers available to assist with its response to COVID-19, such as the powers given to the Director-General, Minister of Health, and medical officers of health under the Health Act 1956 (see [Responding to COVID-19: The Government's legal powers](#)).

However, the issuing of an epidemic notice under the EP Act gives the government further powers to fully implement New Zealand's COVID-19 response, as summarised below.

First, medical officers of health are able to exercise all of the special powers set out in sections 70 and 71 of the Health Act while an epidemic notice is in force, without needing to be expressly authorised by the Minister of Health to do so (although the Minister has already authorised the use of some of those powers). These special powers include the power to require that:

- People report or submit for medical examinations or testing if the spread of COVID-19 would be a significant risk to the public
- People, places, buildings, ships, vehicles, and aircrafts be isolated and quarantined.

Second, if the Director-General is satisfied that there will, or is likely to be, a shortage of medicines, he can, by notice in the *Gazette*, require that anyone prescribing, supplying, dispensing, or administering medicines do so in accordance with any priorities and conditions set out in the notice.

Third, the Prime Minister is able to activate other measures already set out in other legislation by issuing an epidemic management notice that expressly provides for those powers to be activated. For example:

- Section 74D of the Health Act provides that an epidemic management notice can be given that allows medical officers of health to require pilots to redirect aircraft to land elsewhere
- Section 64 of the Social Security Act 2018 provides that an epidemic management notice can be given that allows the Ministry of Social Development to grant emergency benefits to people who would otherwise not be entitled to such benefits
- Section 78 of the Immigration Act 2009 provides that an epidemic management notice can be given that extends temporary entry class visas that expire during an epidemic.

The Prime Minister has already issued the [Epidemic Preparedness \(Epidemic Management—COVID-19\) Notice 2020](#), which activates a range of provisions in both the Social Security Act (from 25 March) and the Immigration Act (from 2 April) in order to deal with the practical effects of the outbreak of COVID-19, including as set out in the examples above.

Finally, once the epidemic notice comes into force, the Governor-General may, by Order in Council (ie, on recommendation of all Cabinet Ministers), modify requirements and restrictions set out in almost all existing laws. Specifically, the EP Act provides that modification orders can be made that modify requirements and restrictions in:

- Laws administered by the Ministry of Health, if the Director-General considers it necessary to enable the effective management of COVID-19

- Other laws, if the Minister responsible for the law and the Chief Executive of the relevant department consider that the effects of a serious outbreak of COVID-19 might be such that the requirement would be impossible or impracticable to comply with. However, modifications cannot be made to constitutional laws such as the Constitution Act 1986, the Electoral Act 1993, or the New Zealand Bill of Rights Act 1990.

The EP Act provides that modification orders can be prospective (ie, come into force on a future date specified in the notice) or have immediate effect. Immediate modification orders are subject to additional scrutiny as they can be disallowed by Parliament within six sitting days of being made. Modification orders can be subject to conditions, can specify alternative ways of compliance with the requirement or restriction being modified, and can make compliance with the requirement or restriction discretionary.

Once issued, an epidemic notice remains in force for three months, but it can be renewed and/or modified by the Prime Minister. The Director-General must keep the epidemic notice under review and advise the Prime Minister if the notice should be revoked.

Once issued, an epidemic notice must be presented to Parliament. Parliament is next meeting on Wednesday 25 March at 2pm, and we expect that there will be further announcements about the powers the government will be using to respond to COVID-19. Like everyone, we will be watching this rapidly evolving situation very closely.

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