

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

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Hercus et al., 2020

COVID-19 Timeline

9 April 2020

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, 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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SECTION 70(1)(e), (ea), and (f) HEALTH ACT ORDER

On 24 March 2020, the Prime Minister, with agreement of the Minister of Health, issued an epidemic notice under s 5 of the Epidemic Preparedness Act 2006.

The epidemic notice allows the use of special powers by the Medical Officer of Health in accordance with s 70 of the Health Act 1956 for the purpose of preventing the outbreak and spread of COVID-19.

A state of national emergency was declared under the Civil Defence Emergency Management Act 2002, with effect from 12:21pm 25 March 2020. It has been extended twice (on 1 April 2020 and 8 April 2020).

From 31 March 2020, an order under section 70(1)(f) of the Health Act 1956 applied to arrivals into New Zealand providing certain isolation or quarantining requirements.

For the purpose of preventing the outbreak and spread of COVID-19, an infectious disease, I, Dr Ashley Bloomfield, Director-General of Health, exercising the functions of a Medical Officer of Health for all districts of New Zealand (that is, nationally), in circumstances where a state of emergency has been declared under the Civil Defence Emergency Management Act 2002, there is an epidemic notice in force, and as the spread of COVID-19 is a significant risk to the public, make the following order pursuant to s 70(1)(e), (ea), and (f) of the Health Act 1956:

Medical examination and testing and isolation or quarantining requirements

1. I require all persons arriving in New Zealand by air (other than excluded arrivals) to-
 - a. report, and submit themselves, for the medical examination and testing permitted by clause 2, as soon as practicable after their arrival, at the security designated aerodrome at which they arrive; and
 - b. be isolated or quarantined, for the period required by clause 3, as follows:
 - i. to remain at the place of isolation or quarantine determined under clause 4, except as permitted for essential personal movement for arrivals; and
 - ii. to maintain physical distancing, except from fellow residents; and
 - c. after paragraph (b) ceases to apply, be isolated or quarantined in accordance with the general isolation and quarantine order at the place of residence they choose for the purposes of that order.
2. The medical examination and testing under clause 1(a) may only involve testing for temperatures, seeking information on symptoms, chest auscultation, and mouth or nose swabs required to test for COVID-19.
3. The period of isolation or quarantine under this order must be-
 - a. 14 days; or

- b. if a medical officer of health or a health protection officer is not satisfied they meet the low risk indicators at the end of the 14-day period, any longer period needed to satisfy the officer of that fact (but no more than 28 days in total).
- 4. A medical officer of health or health protection officer must determine that the place of isolation or quarantine is-
 - a. a place in a high risk facility, if the person is assessed as have been diagnosed with COVID-19, has COVID-19 symptoms, is being or has been tested for COVID-19, or has been in close contact with someone with suspected, probable or confirmed COVID-19 in the last 14 days; and
 - b. a place in a low risk facility, in any other case (unless paragraph (c) applies); and
 - c. another place of quarantine or isolation, if necessary due to the individual physical or other needs of the person.

Permissions for essential personal movement for arrivals

- 5. For the purposes of clause 1 of this order, the following are permitted as **essential personal movement for arrivals**:

Limited recreation purposes

- a. if the person is placed in a low risk facility, leaving that place for the purpose of exercise or other recreation if-
 - i. it is done in an outdoor place within a 2 kilometre radius; and
 - ii. they wear personal protective equipment; and
 - iii. it is done in compliance with clause 1(b)(ii) of this order (the physical distancing requirements) and the order forbidding congregation in outdoor places made under s 70(1)(m) of the Health Act 1956 on 25 March 2020; and
 - iv. 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:

Emergencies, medical services, court orders, etc

- b. a person leaving their place of isolation or quarantine if necessary, as a matter of emergency, to preserve their own or any other person's life or safety;
 - c. a person leaving their place of isolation or quarantine if necessary to access hospital health services or any court or tribunal;
 - d. a person leaving or changing their place of isolation or quarantine,-
 - i. if required by a medical officer of health or a health protection officer to move to another place of isolation or quarantine; or
 - ii. if required under Part 4 of the Health Act 1956; or
 - iii. if necessary to use another temporary or emergency place of isolation or quarantine (for example, if necessary for care while sick) approved by a medical officer of health or a health protection officer; or
 - e. a person changing their place of isolation or quarantine if required as a result of a court order or any other power under any enactment to order a person to be detained, to change their place of detention, or otherwise determine their place of residence (for example, a direction of the New Zealand Parole Board or a probation officer):

- f. a person leaving their place of isolation or quarantine to assist or accompany a child or other person to travel to or from a place under paragraph (b) to (e) with the consent of a medical officer of health or health protection officer:

Authorised travel

- g. a person leaving their place of isolation or quarantine to undertake travel that is permitted under a framework approved by the Director-General (and published on the covid19.govt.nz internet site maintained by the New Zealand government) for travel that is appropriate both-
- i. so as to enable persons entering New Zealand to travel to their intended residence after they cease to be isolated or quarantined under clause 1 of this order or on other compassionate grounds; and
 - ii. on the basis that it has a relatively low risk of transmission or otherwise reduces the overall risk of outbreak or spread of COVID-19 for New Zealand's health system:

Exceptional circumstances

- i. a person leaving or changing their place of isolation or quarantine for any other exceptional reason approved by the Director-General after taking into account any impact on the risk of outbreak or spread of COVID-19.

Definitions

6. In this order, the following definitions apply:

Director-General means the Director-General of Health exercising the functions of a Medical Officer of Health for all districts of New Zealand

excluded arrival means-

- a. aircraft pilots, flight crew members, and medical attendants assisting with medical air transfers; and
- b. any person designated by the Director-General as critical to provide services to assist with the response to COVID-19; and
- c. any person who is for the time being entitled to any immunity from jurisdiction by or under the Diplomatic Privileges and Immunities Act 1968 (other than a person referred to in section 10D(2)(d) of that Act) or the Consular Privileges and Immunities Act 1971 (or any order under either of those Acts); and
- d. any person who arrives on a flight that left its point of departure on or before the time at which this order takes effect

fellow resident, for any person A, means another person who is isolated or quarantined with person A at the same place of isolation or quarantine

general isolation and quarantine order means the order made under s 70(1)(f) of the Health Act 1956 on 3 April 2020

high risk facility means a facility designated by a medical officer of health for the purposes of detention in a way appropriate for people with high risk of transmitting COVID-19

low risk facility means a facility designated by a medical officer of health for the purposes of detention in a way appropriate for people with low risk of transmitting COVID-19

low risk indicators means medical tests and information that indicate that a person is at a low risk of having or transmitting COVID-19

physical distancing means remaining 2 metres away from other people or, if you are closer than 2 metres, being there for less than 15 minutes

place of isolation or quarantine means, for any person, a place determined under clause 4 of this order (for example, a room at a facility)

previous arrivals order means the order made under s 70(1)(f) of the Health Act 1956 on 31 March 2020 in relation to persons arriving in New Zealand

security designated aerodrome has the same meaning as in the Civil Aviation Act 1990.

Effect of order

7. This order (rather than the previous arrivals order) applies to persons arriving in New Zealand on a flight that left its point of departure after the time at which this order comes into effect.

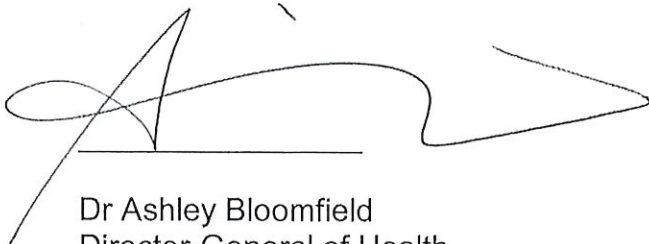
Assistance from Constables

8. Under s 71A, I request that constables do anything reasonably necessary to assist in ensuring compliance with this order. This includes, but is not limited to:
- helping a Medical Officer of Health, or any person authorised by a Medical Officer of Health, in the performance of functions under s 70;
 - preventing persons from obstructing or hindering a Medical Officer of Health, or any person authorised by a Medical Officer of Health;
 - compelling, enforcing, or ensure compliance with a requirement of a Medical Officer of Health, or any person authorised by a Medical Officer of Health;
 - preventing or reducing the extent of the doing of a thing that a Medical Officer of Health, or any person authorised by a Medical Officer of Health, has forbidden or prohibited in this order or otherwise in the exercise of performance of powers or functions under s 70.

Period of this Order

This order has effect from 11:59pm on 9 April 2020, and expires on 11:59pm on 22 April 2020 (unless earlier revoked or extended).

Dated 9 April 2020



Dr Ashley Bloomfield
Director-General of Health