

**Government Response to the
Report of the Regulations Review Committee
on its
Briefing about orders made under section 70 of the Health Act 1956
- Interim report**

Presented to the House of Representatives

In accordance with Standing Order 256

Government response to interim report of the Regulations Review Committee on its Briefing about orders made under section 70 of the Health Act 1956

Introduction

- 1 The Government has considered the Regulations Review Committee's (the Committee's) interim report on orders made in 2021 under section 70 of the Health Act 1956 as part of the response to COVID-19. In particular, the Government has closely considered the three recommendations the Committee has addressed to the Government.
- 2 The Government response to the report is being presented to the House of Representatives later than the deadline of 60 working days as set out in Standing Order 256. An explanation for the delay has been provided in the House as part of the response to Written Parliamentary Question 37449 (2022).
- 3 The Secondary Legislation Act 2021 changed the terminology from orders to notices from 28 October 2021. The Government response refers to orders to align with the language used by the Committee.

Context

- 4 The Government appreciates the Committee's ongoing role in scrutinising and advising on orders made under section 70 of the Health Act 1956 (section 70 orders) issued during the COVID-19 response. As the response has continued, decision makers have sought to take on the Committee's feedback and the Director-General of Health has provided ongoing responses to the Committee's questions, as noted in the report to which this response relates.
- 5 This is reflected in the Director-General's responses to the Committee throughout the pandemic, which addressed such concerns as:
 - 5.1 Having prescribed time limits where possible.
 - 5.2 Minimising the use of technical language; and
 - 5.3 Ensuring clear reference to prescriptive requirements, rather than guidance.
- 6 As the Committee is aware, section 70 of the Health Act 1956 sets out special powers of Medical Officers of Health in an emergency. Orders may be issued by those officers (including the Director-General of Health) to close buildings and quarantine people, and similar powers. The powers are for the purpose of preventing the outbreak or spread of any infectious disease and the Medical Officers of Health have statutory independence in the exercise of their functions.

- 7 From 24 February 2022, there was a shift from the use of section 70 orders to the use of orders made under section 11 of the COVID-19 Public Health Response Act 2020 (section 11 orders) for isolation and quarantine. This was on the grounds that the COVID-19 response was transitioning from an emergency phase to a longer-term management approach as part of the Omicron response. That meant section 70 orders were a less appropriate instrument to support broad-based measures going forward.
- 8 Since this time, section 70 orders were primarily used in exceptional and urgent circumstances where a section 11 order was not practical. There are no authorisations currently in place to permit the use of section 70 orders as part of the COVID-19 response.

Recommendation 1 and Government response

- 9 Recommendation 1: The Committee recommended to the Government that it encourage the Director-General of Health to ensure that future section 70 orders requiring periods of isolation and quarantine specify criteria to guide decisions about when those periods must end.
- 10 Response: The Government has been advised that the Director-General of Health agrees with the Committee's advice to ensure that future section 70 orders have clear end points if periods of isolation or quarantine are required, and that this was reflected in the later section 70 orders that were made.
- 11 This recommendation touches on the principle of certainty in the law, and that secondary legislation must continue to provide this to the maximum extent possible. While it is acknowledged that there are some limitations in setting generalised and detailed criteria in orders to apply to all COVID-19 cases, the Director-General ensured that many of the later section 70 orders did have a prescribed end date.
- 12 Examples of criteria that may be considered when determining when a period of isolation or quarantine given effect by any future section 70 order should end could include:
- 12.1 The proportionality of the response generally
 - 12.2 Equity considerations
 - 12.3 The potential risk to public health. This could be the overall risk, but also the risk to the local community, and/or to vulnerable/priority populations
 - 12.4 The overall strategic objectives of the public health response (for example, elimination, stamp-it-out, minimisation and protection, etc)
 - 12.5 Characteristics of the disease in question (for example transmissibility, mode of transmission, incubation period, severity, etc)
 - 12.6 The ability and level of compliance by cases and contacts with non-mandatory measures

- 12.7 The availability of other public health interventions that could be used to achieve the strategic outcomes

Recommendation 2 and Government response

- 13 Recommendation 2: The Committee recommended to the Government that it ensure that all revoked and expired section 70 orders, and previous versions of current orders, are published on a government website.
- 14 Response: The Government agrees that section 70 orders, and previous versions of current orders, should be published on a government website to support accessibility, and that key orders are now available on the Parliamentary Council Office and Manatū Hauora websites.
- 15 Section 70 orders are currently published on the Manatū Hauora website. This includes the section 70 orders that set-out self-isolation and quarantine requirements generally, and supported implementation of the initial stages of the COVID-19 response. A significant number of orders were issued to either notify passengers on a specific flight to isolate, or to provide updated locations of interest, many of which were updated on a twice-daily basis. As this constitutes a very large number of Orders they have not been published online in their entirety. However, examples of these have been published to provide an indication of their form and requirements.
- 16 It is also worth noting that some section 70 orders may not be published if it would breach the privacy of natural persons. For example, individual section 70 directions issued by local Medical Officers of Health may inadvertently identify natural persons and should not be published for privacy reasons.
- 17 Manatū Hauora periodically reviews the Gazette for redundant pieces of secondary legislation, and subsequently revokes them. The Manatū Hauora website is reviewed for out-of-date information and updated as necessary. This process is also undertaken on an ad-hoc basis following changes to legislative settings. The Government has also been advised that pieces of secondary legislation with expiration dates do not require a revocation notice.
- 18 The Government also notes that the publication of any orders needs to be done in a way that minimises the risk of confusion to the public. The Government has delegated this responsibility to Manatū Hauora.

Recommendation 3 and Government response

- 19 Recommendation 3: The Committee recommended to the Government that it provide additional legislative drafting support to the Director-General of Health.
- 20 Response: The Government agrees that additional legislative drafting support be provided to the Director-General of Health, noting that this is already available and used.
- 21 As part of the process of drafting section 70 orders, Manatū Hauora has access to support from both Crown Law and the Parliamentary Counsel Office

and draws upon it as required, including the use of standard order templates developed in conjunction with those agencies.

- 22 The Government has been advised that the guidance provided by the Committee, as attached to the interim briefing, is appreciated by the Director-General. The Government supports the messages in the guidance and has been assured that is taken onboard as part of the development of future section 70 orders.
- 23 The Government has an expectation that Medical Officers of Health, including the Director-General of Health, fully appreciate the scope of their responsibilities when making section 70 orders, with regards to both public health and wider legal responsibilities.

Conclusion

- 24 The Government supports the Committee's report, which seeks to improve the quality of this secondary legislation used to manage the extraordinary circumstances presented by COVID-19.
- 25 The Government extends its appreciation and thanks to the Committee for its ongoing advice, support and patience in this matter.