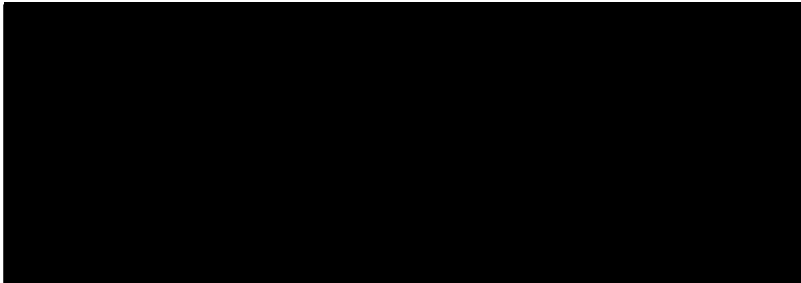


20 April 2020



**Re Official Information Request – Advice to Medical Officers of Health**

I refer to your official information request dated 2 April 2020 requesting the following information:

**I wish to be sent any guidance received by your Medical Officers of Health or their staff within the last month (ie. March 2020) on the exercise of their powers under Part 3 of the Health Act and especially sections 70 and 71.**

**Further, I wish to receive a copy of any administrative guidelines that may influence the exercise of Medical Officer of Health powers under Parts 3 and 3A of the Act, such as what non-statutory factors ought to be considered, or whether Medical Officers of Health are asked to consult the Ministry of Health or Civil Defence before issuing a directive, order or exercising their powers under sections 70 and 71.**

**For clarity, I am particularly interested in any guidance or checklists used by Medical Officers of Health in the exercise of their powers in accordance with the Bill of Rights Act 1990 or to avoid successful claims for judicial review. I would be happy to receive guidance considered 'legal advice' insofar as this be released consistently with s 9(2)(h) of the Official Information Act. I am not interested in the guidance given to any particular Medical Officer of Health or in respect of any particular instance where the use of these powers may have been considered.**

I am responding from Auckland District Health Board (ADHB) as the DHB responsible for Auckland Regional Public Health Service (ARPHS).

ARPHS provides public health services to all three metro Auckland District Health Boards – Waitemata District Health Board, Counties Manukau Health and Auckland District Health Board, and the populations they serve. ARPHS's core role is to protect and promote public health.

Notwithstanding competing pressures on ARPHS with respect to COVID-19, please find attached the following:

1. Dr Caroline McElnay, Director of Public Health, Ministry of Health, email and attachments to Medical Officers of Health, dated March 30<sup>th</sup> 2020.
2. ARPHS' General Manager, Jane McEntee, email to ARPHS' Medical Officers of Health, dated March 25th 2020.

Please note we have redacted the contact numbers of those named in the attachments under section 9(2)(a) to protect the privacy of those individuals.

I trust this is information you were seeking.

You are entitled to seek a review of the response by the Ombudsman under section 28(3) of the Official Information Act. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or freephone 0800 802 602.

Please note that this response, or an edited version of this response, may be published on the Auckland DHB website.

Yours faithfully



Ailsa Claire, OBE  
**Chief Executive**

**Natasha Johannes (ADHB)**

**Subject:** FW: Special Powers Section 70 of the Health Act 1956  
**Attachments:** Guidance for MOoH about s70 powers 27 March 2020.docx; notice for isolation quarantine 27 March 2020.doc; Checklist for isolation quarantine 27 March 2020.docx; FINAL s70(1)(m) Order.pdf

**From:** [sharon.smith@health.govt.nz](mailto:sharon.smith@health.govt.nz) [<mailto:sharon.smith@health.govt.nz>] **On Behalf Of**  
[Caroline.McElnay@health.govt.nz](mailto:Caroline.McElnay@health.govt.nz)

**Sent:** Monday, 30 March 2020 11:57 a.m.

**To:** Catherine Jackson (NDHB); Jose Ortega Benito (NDHB); Denise Barnfather (ADHB); Michael Hale (ADHB); Jay Harrower (ADHB); Shanika Perera (ADHB); Julia Peters (ADHB); Lavinia Perumal (ADHB); Maria Poynter (ADHB); David Sinclair (ADHB); Felicity Dumble (Waikato DHB); [richard.hoskins@waikatodhb.govt.nz](mailto:richard.hoskins@waikatodhb.govt.nz); Richard Vipond; Richard Wall (Waikato DHB); Phil Shoemack - Toi Te Ora PHS (BOP); Jim Miller - Toi Te Ora PHS (BOP); Neil De Wet Toi Te Ora PHS (BOP); Jonathan Jarman (Taranaki DHB); Greg Simmons (Taranaki DHB); Rachel Eyre (Hawke's Bay DHB); Nicholas Jones (Hawke's Bay DHB); [Patrick.O'Connor@midcentraldhb.govt.nz](mailto:Patrick.O'Connor@midcentraldhb.govt.nz); Robert Weir (MidCentral DHB); [Craig.Thornley@midcentraldhb.govt.nz](mailto:Craig.Thornley@midcentraldhb.govt.nz); Jill McKenzie (Hutt Valley DHB); Annette Nesdale (Hutt Valley DHB); Stephen Palmer (Hutt Valley DHB); Craig Thornley (HVDHB); [stephen.bridgman@nmdhb.govt.nz](mailto:stephen.bridgman@nmdhb.govt.nz); Andrew Lindsay (NMPHS); Cheryl Brunton (C&PH); Alistair Humphrey (C&PH); [ramon.pink@cdhb.govt.nz](mailto:ramon.pink@cdhb.govt.nz); [Susan.Jack@southerndhb.govt.nz](mailto:Susan.Jack@southerndhb.govt.nz); [Anura.Jayasinghe@southerndhb.govt.nz](mailto:Anura.Jayasinghe@southerndhb.govt.nz); Bart Willems (NDHB); Donna Campbell (ADHB); Claudine Bjorklund (ADHB); [Osman.Mansoor@tdh.org.nz](mailto:Osman.Mansoor@tdh.org.nz); [Richard.Jaine@health.govt.nz](mailto:Richard.Jaine@health.govt.nz)

**Cc:** [Caroline.McElnay@health.govt.nz](mailto:Caroline.McElnay@health.govt.nz)

**Subject:** Special Powers Section 70 of the Health Act 1956

Hi medical officers of health

Please find attached a 'document pack' regarding the use of the special powers at section 70 of the Health Act 1956 (primarily the use of s70(1)(f) to lessen the spread of COVID-19. The documents include: some short guidance about their use and practical concerns, a 'proportionality checklist' which can be used to determine whether it is an appropriate use of the power, and a notice which can be filled out and issued to the persons being quarantined/isolated. I have also attached the order made by Dr Ashley Bloomfield under s70(1)(m) for your information.

I understand that the use of these powers are unprecedented, and do not currently expect you to exercise them without Ministry of Health/NHCC guidance. If you are faced with a circumstances where the use of the powers is necessary, the Ministry/NHCC will either arrange for a national medical officer of health to exercise the power, or assist you with the process.

There will be further information provided by Police to follow which will summarise the legal powers available in this pandemic.

Caroline

Dr Caroline McElnay  
 Director of Public Health  
 Population Health and Prevention  
 Ministry of Health

M: [REDACTED]

<http://www.health.govt.nz>  
<mailto:Caroline.McElnay@health.govt.nz>

\*\*\*\*\*

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This e-mail message has been scanned for Viruses and Content and cleared by the Ministry of Health's Content and Virus Filtering Gateway

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133 Molesworth Street  
PO Box 5013  
Wellington 6140  
New Zealand  
T+64 4 496 2000

27 March 2020

### Medical officer of health special powers

This guidance is designed to assist medical officers of health with the use of the special powers under section 70 of the Health Act 1956 (Health Act). Currently, the powers have only been used by national medical officers of health (i.e. medical officers of health who are employed by the Ministry of Health and are medical officers of health for all health districts in New Zealand).

The Ministry of Health and the National Health Coordination Centre (NHCC) understand that this is a huge amount of responsibility to be placed on medical officers of health. At this stage, all use of powers should initially be referred to the Ministry and/or the NHCC to ensure national consistency. If you are not sure who to call, you can get in touch with either:

*Vicki Blake (NHCC Operations)* - [REDACTED]

or [REDACTED]

*Andrew Forsyth (Public Health policy)* - [REDACTED]

or [REDACTED]

Medical officers of health may use the powers listed under section 70 of the Health Act if authorised by the Minister of Health, if an epidemic notice is in force (in accordance with the Epidemic Preparedness Act 2006) or if a state of emergency has been declared (in accordance with the Civil Defence Emergency Management Act 2002).

There is currently a written order issued by the Director-General of Health (holding the functions of a medical officer of health in accordance with section 22 Health Act) which has forbidden outdoor congregations (section 70(1)(m)(iii)) and has closed all premises of non-essential business (section 70(1)(m)(i)).

An earlier order was issued (16 March 2020) by the Deputy Director of Public Health requiring all persons arriving in New Zealand to self-isolate for 14 days. This remain in force until 16 June, unless revoked sooner.

Police may enforce these orders without consulting with a medical officer of health. However, Police may wish to consult a medical officer of health on specific situations, for example where the level of risk to public health is unclear or to discuss / agree the nature of the proposed enforcement action.

However, constables do not currently have the power to generally enforce the government's self-isolation directive. These being the instruction to stay at home (with certain exemptions) and avoid all non-essential travel, as included in the COVID-19 Alert Level 4 which entered into force at 2359 hrs on Wednesday 25 March 2020. Medical officers of health may, on a case-by-case basis, determine whether a person should be required to be quarantined/isolated using the power at section 70(1)(f). This power may be used to lessen or prevent the spread of COVID-19 and may be in a manner in which the medical officer of health sees fit.

If a medical officer of health requires a person to be quarantined/isolated, they may request constables to assist. Constables may detain someone who is non-compliant and transport them to a quarantine/isolation facility (or any other place that the medical officer of health has determined appropriate e.g. home).

Attached is a checklist, written by Health Legal and Crown Law, which determines whether the use of the power is proportionate with the risk to public health. This should be used to determine whether the use of the power is appropriate to be used in the circumstances.

A notice template is also attached for you to fill in with the details of any person/s that you are requiring to be quarantined/isolated.

Some examples where the it is clearly appropriate to use the power at section 70(1)(f) are:

- A party or other gathering at a private dwellinghouse where there is a congregation of people (i.e. clearly more people than live on the premises). The notice may be issued to the group of people; the requirement can be for a clearly identifiable group (e.g. "all persons on the premises at [address] at [time] and [date]" and for each attendee to be quarantined at the place where they were at 2359 hrs on Wednesday 25 March 2020 or other suitable place.
- A person or persons who a constable has stopped for a routine check on the street and has indicated that they do not intend to comply with the government direction (e.g. they are going to see family, friends or other people who are not part of their immediate household).

You may issue the quarantine/isolation requirement orally and follow up with a written notice if that is the most pragmatic course of action. Please email a copy of the completed notice to [REDACTED] for the Ministry of Health records.

*This guidance has been created by the Ministry of Health and Crown Law to assist a medical officer of health authorised by the Minister of Health to use the powers under section 70(1)(f) of the Health Act 1956*



### **Use of s70(1)(f) powers from the Health Act 1956**

- If you are a medical officer of health for a particular health district, have you consulted the National Health Co-ordination Centre or a Medical Officer of Health for all health districts of New Zealand?
- Is the isolation/quarantine for the purpose of preventing the spread of COVID-19?
- Has the person or group of people failed to isolate at home while Alert Level 4 is in place, in accordance with the Government's advice?
- Are you satisfied the person or group of people are not providing essential services?
- Has the individual or group of people been given the opportunity to voluntarily go to their self-isolation location or a quarantine facility?
- If applicable, have they been offered information, accommodation, and appropriate support to help them effectively self-isolate?
- Have you considered the duration of the order, and is it for a length of time which is necessary to address the public health risk?
- If you are directing them to go to a quarantine facility, are you satisfied that they will be treated humanely whilst quarantined? Are there any known vulnerabilities or special circumstances that need to be considered (e.g. mental health concerns, disability)?
- Will the person or group in question be given the appropriate notice and information? (please see the notice which outlines the legislative power and the reasons for this action being taken)

### **For those recently arrived in New Zealand only –**

- Are you requiring the person to be quarantined at a hospital or quarantine facility under surveillance? If so:
  - have you considered whether surveillance at large (i.e. requiring someone to report daily – see s 97E(5)) is an option which achieves the same objective?
  - Quarantine under surveillance cannot continue for more than 14 days unless you are satisfied that the person is infected with COVID-19 and still likely to be able to pass it on. After 14 days they could be kept under surveillance at large or self-isolation.

*You are required by a medical officer of health to be isolated/quarantined [delete which is inapplicable] (Health Act 1956, s 70(1)(f).*

*Constables may do anything reasonably necessary to assist in ensuring compliance with this requirement (Health Act 1956, s 71A)*

Date of notice:

Name of medical officer of health issuing the requirement in accordance with s70(1)(f)  
Health Act 1956:

Name of public health official or constable assisting with this order:

#### **Order**

Acting as a Medical Officer of Health for [all health districts of New Zealand][or specify health district], with the authority of the Minister of Health and/or in circumstances where a state of emergency has been declared under the Civil Defence Emergency Management Act 2002 and/or there being an epidemic notice in force, for the purpose of preventing the spread of COVID-19, an infectious disease, I make the following order pursuant to s 70(1)(f) of the Health Act 1956:

I require [insert name here, or describe group of people] to be isolated/quarantined [delete which is inapplicable] for [insert number] days, at [insert place here, or if address unknown, "his or her home address"].

The person or group of people to whom this order applies must stay at [insert isolation/quarantine location], except for the purposes listed on the Alert Level 4 page on the covid19.govt.nz internet site maintained by the New Zealand government.

**It is an offence to fail or refuse to comply with a requirement of a medical officer of health, punishable by up to 6 months' imprisonment and/or up to a \$4000 fine.**





*You are required by a medical officer of health to be isolated/quarantined (Health Act 1956, s 70(1)(f)).*

**Personal details (if known):**

Full name:

New Zealand address:

Date of birth:

Nationality:

**Details of isolation/quarantine:**

Isolation/Quarantine location?

Time period for isolation/quarantine?

If temporary visa holder, has this been referred to an immigration officer to consider deportation under s 157 of the Immigration Act?

## SECTION 70(1)(m) HEALTH ACT ORDER

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

This allows the use of special powers by Medical Officers of Health in accordance with section 70 of the Health Act 1956 for the purposes of preventing the outbreak and spread of COVID-19.

For the purpose of preventing the spread of Covid-19, an infectious disease, I, Dr Ashley Bloomfield, Director-General of Health, acting as medical officer of health for all districts of New Zealand (that is, nationally) with the authority of the Minister of Health and/or in circumstances where a state of emergency has been declared under the Civil Defence Emergency Management Act 2002 and/or there being an epidemic notice in force, make the following order pursuant to s 70(1)(m) of the Health Act 1956:

1. I require to be closed, until further notice, all premises within all districts of New Zealand except those listed in the Appendix to this order.
2. I forbid people to congregate in outdoor places of amusement or recreation of any kind or description (whether public or private) in all districts of New Zealand until further notice.

For the purpose of this order "congregate" does not include people maintaining at all times physical distancing as defined in the Appendix to this order.

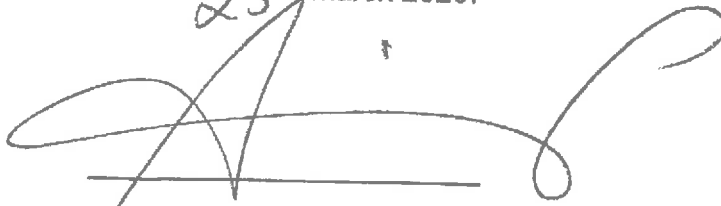
Under section 71A of the Health Act, I request that constables do anything reasonably necessary to assist in ensuring compliance with this instruction. This includes, but is not limited to:

- helping a Medical Officer of Health, or any person authorised by a Medical Officer of Health, in the performance of functions under s70;
- 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 the exercise of performance of powers or functions under s70.

Under section 72 of the Health Act, a person who breaches this order commits an offence and is liable on conviction to imprisonment for a term not exceeding 6 months, a fine not exceeding \$4,000, or both.

This order takes effect from 11.59pm Wednesday 25 March 2020 and remains in force until further notice.

Dated 25<sup>th</sup> March 2020.

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke.

Dr Ashley Bloomfield  
Director-General of Health

## APPENDIX

This order does NOT apply to:

- (a) any premises that are, or any part of any premises that is, used solely as a private dwellinghouse; or
- (b) any premises within the parliamentary precincts (within the meaning of section 3 of the Parliamentary Service Act 2000); or
- (c) any premises whose principal or only use is as a courtroom or judge's chambers, or a court registry; or
- (d) any premises that are, or are part of, a prison (within the meaning of section 3(1) of the Corrections Act 2004); or
- (e) any premises necessary for the performance or delivery of essential businesses as defined further below; or
- (f) any vehicle, ship, or aircraft, or any premises that need to remain open to provide access to that vehicle, ship, or aircraft.

For the purposes of this order:

- **"essential businesses"** means businesses that are essential to the provision of the necessities of life and those businesses that support them, as described on the Essential Services list on the [covid19.govt.nz](https://www.covid19.govt.nz) internet site maintained by the New Zealand government
- **"physical distancing"** means remaining two (2) metres away from other people, or if you are closer than two (2) metres, being there for less than 15 minutes. Physical distancing is important to help protect you and others from COVID-19, which spreads via droplets from coughing and sneezing. Staying 2 metres away from others is an effective measure.

**Natasha Johannes (ADHB)**

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**From:** Jane McEntee (ADHB)  
**Subject:** FW: Special powers under Section 70 of the Health Act - MOH process to follow  
**Importance:** High

**From:** Jane McEntee (ADHB)  
**Sent:** Wednesday, 25 March 2020 7:29 p.m.  
**To:** Julia Peters (ADHB); Shanika Perera (ADHB); Michael Hale (ADHB); Denise Bamfather (ADHB); Lavinia Perumal (ADHB); Jay Harrower (ADHB); David Sinclair (ADHB); William Rainger (ADHB)  
**Cc:** Subha Rajanaidu (WDHB); Sue Waters (ADHB)  
**Subject:** Special powers under Section 70 of the Health Act - MOH process to follow  
**Importance:** High

Kia ora

From tonight with the activation to L4 there are special powers under Section 70 of the Health Act that come into force. At a PHU teleconference yesterday the Ministry requested the following process to be followed in the interim:

- Initially these powers are only to be used by Caroline McElnay and Harriette Carr
- If you believe there is the need to use these powers then you are requested to ring Vicki Blake on [REDACTED] - 24/7 - to discuss and if appropriate they will enforce and will be liaising with CD and Police around enforcement
- This is an interim measure as they work out how these will work

Ngā mihi,  
Jane

Jane McEntee  
General Manager

### Auckland Regional Public Health Service

Tel: +64 9 623 4600 Ext: [REDACTED] | DDI: + [REDACTED] | Mob: +64 [REDACTED] | Fax: +64 9 623 4633  
 Level 3, Building 15, Cornwall Complex, Greenlane Clinical Centre, Auckland  
 Visit: [www.arphs.health.nz](http://www.arphs.health.nz) | [Auckland Regional Public Health Service](#) | [@aklpublichealth](#)

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Welcome *Haere Mai* | Respect *Manaaki* | Together *Tuhono* | Aim High *Angamua*

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