Regulatory Impact Statement: Public health measures under the COVID-19 Public Health Response Act 2020

Coversheet

Purpose of Document	
Decision sought:	*Analysis produced for the purpose of informing:* decisions on whether to continue mandatory public health measures under the COVID-19 Public Health Response Act 2020
Advising agencies:	*Manatū Hauora – Ministry of Health*
Proposing Ministers:	*Minister of Health*
Date finalised:	9 August 2023

Problem Definition

To assess whether the two remaining Orders which impose mandatory restrictions under the COVID-19 Public Health Response Act 2020 (the Act) are appropriate and proportionate. These Orders are:

- the COVID-19 Public Health Response (Self-isolation Requirements) Order 2022 (the Self-isolation Order)
- the COVID-19 Public Health Response (Masks) Order 2022 (the Masks Order).

Executive Summary

Assessment and preferred option

The assessment is that the two remaining mandatory restrictions are no longer appropriate and proportionate. The preferred option is for these to be revoked. This follows from an assessment of public health risks, measures in place to protect vulnerable populations, and practical implementation considerations.

Context

Under the Act the Minister of Health must:

- have regard to the advice from the Director-General of Health (Director-General) about the risks of the outbreak or spread of COVID-19
- consider the appropriate measures to address those risks
- be satisfied that the measures are appropriate to achieving the purpose of the Act
- be satisfied those measures do not limit, or are a justified limit, on the rights and freedoms in the BORA.

Public Health risks

On 13 July 2023 the Director of Public Health conducted a Public Health Risk Assessment (PHRA) in which the latest surveillance and analysis was considered.

The Director of Public Health's overall assessment is that:

- the risk of COVID-19 remains relatively low for most New Zealanders
- the Self-isolation Order is no longer a proportionate response to the risk
- effective mask polices do not require the Masks Order
- reducing transmission to people at risk of severe disease is still important and can be addressed through other, non-mandatory support measures.

Operational and implementation considerations

Te Whatu Ora has advised that from an operational perspective it requires 5 working days from a decision to allow it sufficient time to make operational changes. Lead times of other agencies are also consistent with the revocation of orders not later than 31 August 2023.

Implementation of the change will require the revocation of the Self-isolation Order and the Masks Order. The operational changes necessary, noted above, can be implemented in a timely manner.

The need for any measures under the Act will be reviewed through regular PHRAs.

Limitations and Constraints on Analysis

There are no significant limitations or constraints.

This RIS draws on information and analysis in, and consultation feedback on, a range of parallel and other products in relation to COVID-19 including the most recent PHRA and associated Cabinet paper.

In this context, consultation relating to the possible revocation of Orders involved approximately 30 government entities, including Te Whatu Ora, Te Aka Whai Ora and Whaikaha. Some parties consulted liaised in turn with non-government stakeholders (eg, transport sector). Additional consultation has not been undertaken with agencies in preparing this document.

Responsible Manager(s) (completed by relevant manager)

Jane Chambers 11 August 2023

Group Manager, Public Health Policy and Regulation

Public Health Agency, Manatū Hauora

Quality Assurance (completed by QA panel)

Reviewing Agency:	Manatū Hauora
Panel Assessment & Comment:	The Ministry of Health QA panel has reviewed the Impact Statement titled *"Continuing with mandatory public health measures under the COVID-19 Public Health Response Act 2020*", produced by the Ministry of Health and dated 9 August 2023. The panel considers that the Impact Statement **Meets** the quality assurance criteria. The Impact Statement is clear, concise, complete, consulted and convincing. The analysis is balanced in its presentation of the information and impacts are identified and assessed.

Section 1: Diagnosing the policy problem

Context behind the policy problem

New Zealand currently uses both mandatory and non-mandatory public health measures to manage COVID-19. These seek to reduce the risk of transmission, encourage testing, maintain high vaccination coverage, provide a system of care including antivirals for those at high risk, and maintain ongoing surveillance of the virus.

Pre-requisite to use of COVID-19 Orders

COVID-19 orders (which impose mandatory restrictions) may be used under the COVID-19 Public Health Response Act 2020 (the Act) only:

- while an epidemic notice under section 5 of the Epidemic Preparedness Act 2006 is in force for COVID-19, or
- while a state of emergency or transition period in respect of COVID-19 under the Civil Defence Emergency Management Act 2002 is in force, or
- if the Prime Minister has authorised the use of COVID-19 orders.

The Prime Minister has authorised the use of COVID-19 Orders until 31 August 2023.

Orders must be proportionate

The Minister of Health must be satisfied that any order made under the Act is appropriate to achieving the purpose of the Act and does not limit, or is a justified limit on, the rights and freedoms in the New Zealand Bill of Rights Act 1993 (the BORA).

In June 2023, the Minister of Health agreed to retain the following COVID-19 mandatory public health measures:

- 7-day self-isolation for positive COVID-19 cases, and
- mask requirements for visitors to health service premises.

As COVID-19 orders are emergency measures, used to respond to the risk of an outbreak or the spread of COVID-19, they must be regularly reviewed to ensure that they remain appropriate and justified.

How is the situation developing?

On 13 July 2023 the Director of Public Health conducted a Public Health Risk Assessment (PHRA) in which the latest surveillance and analysis was considered under the following headings:

- summary of national summary of infection trends
- hospitalisation trends
- mortality trends
- variants of concern
- impact of COVID-19 on workers
- vaccination
- health system capacity.

The key measures of infection used to monitor the COVID-19 epidemic have decreased since the previous review on 22 May 2023 (7-day rolling averages):

- **new cases** are 771, down from 1,672
- **hospital admissions** are 0.67 per 100,000, down from 0.85 per 100,000
- **deaths from COVID-19** are ~2 per day, down from ~4.

Variants are also stable as they evolve and show no increase severity to date.

Policy problem or opportunity

Nature of the problem

The problem is to assess whether the two remaining Orders which impose mandatory restrictions under the COVID-19 Public Health Response Act 2020 (the Act) are appropriate and proportionate. These Orders are:

- the COVID-19 Public Health Response (Self-isolation Requirements) Order 2022 (the Self-isolation Order)
- the COVID-19 Public Health Response (Masks) Order 2022 (the Masks Order).

In June 2023, Cabinet agreed to retain mandated 7-day isolation for cases and mask requirements for visitors to health service premises. This decision was made in the context of uncertainty of case numbers going into winter, and the concern of how removing measures would exacerbate inequities.

The broad policy choice for the Minister of Health at present hinges on whether government-mandated measures (regulation), or guidance (strong recommendations and information rather than regulation), is the most proportionate way to encourage public health behaviour that minimises the spread and impact of the virus at this stage of the pandemic.

What objectives are sought in relation to the policy problem?

The objective is to ensure that measures in place are appropriate and proportionate in addressing public health risks, are operationally effective, and can be implemented sustainably over the relevant period.

In the case of restrictive or mandatory measures, which have been authorised under emergency powers, an additional objective is for them to be in place for no longer than strictly necessary.

Stakeholder interests and perspectives?

The ongoing response to COVID-19 affects everyone in Aotearoa New Zealand, including visitors to New Zealand.

Certain groups, however, are more at risk due to clinical or equity-based reasons. The response also requires ongoing support from business and communities to ensure the public health response remains effective.

Through recent advice and reporting to Ministers, there has generally been support from population agencies (including Te Aka Whai Ora and Whaikaha), for the remaining two mandatory measures to be retained as a precautionary measure until at least the end of winter 2023 (that is, the end of August 2023, or soon after).

Disproportionate impacts on vulnerable population groups

COVID-19 continues to have disproportionate impacts on certain population groups. These are discussed in the Equity section below.

Outline the key assumptions underlying your understanding of the problem

There are no key assumptions relevant to an understanding of the problem.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

Consistent with the requirements in the Act, and other related requirements, we have identified the following criteria.

- **Proportionality** – measures are proportionate to the risks, and any rights-limiting measures are justified by the evidence of benefits
- **Te Tiriti o Waitangi** – alignment with the active protection principle in Te Tiriti
- **Protect the vulnerable** - support the ongoing protection of the populations most vulnerable to COVID-19 and its spread
- **Implementation** - ease and feasibility of implementation, sustainability of the measures over the relevant period, and public communications.

What scope will options be considered within?

Options are considered within the scope of:

- the Government's responsibility to manage the response to COVID-19, within the framework established by the COVID-19 Act (including BORA considerations)
- the current context of the pandemic, as identified by public health analysis and advice.
- other relevant social and economic considerations
- the legislative framework for the Government's response to COVID-19.

Analysing the public health risks and proportionality

Director of Public Health's key conclusions

The risk of COVID-19 remains relatively low for most New Zealanders

The current risk is low relative to other periods of the epidemic and the incidence of hospitalisations has stabilised. Older people, especially those over 80, remain at the highest risk of mortality from COVID-19, with elderly Māori and Pacific peoples being at a higher risk.

There remains uncertainty around:

- the forecast contribution to pressure on the wider healthcare system due to COVID19
- the ongoing stability of the COVID-19 outbreak
- to what extent the orders influence individual behaviour.

The Self-isolation Order is no longer a proportionate response to the risk

The key measures of COVID-19 infection have declined since the last assessment, and have remained stable through winter, and so the Self-Isolation Order is no longer required.

COVID-19 has been estimated to now account for approximately 1.7% of inpatient admissions. Using such a broad restriction as the Self-isolation Order is no longer a proportionate response to the risk, and need not be renewed beyond 31 August 2023.

There may be a case for extending the Self-isolation Order a month to the end of 30 September 2023, if legally possible. This would provide the wider healthcare system a further layer of protection through the remaining winter period while allowing time to signal and implement a transition away from the long-standing use of this Order.

Effective mask polices do not require a Mask Order

There is a need to normalise mask use in health service settings to protect against transmission of other respiratory infections as well as COVID-19. Replacing an order dependent on emergency powers with organisational policy will support the transition to a more enduring infection prevention control measure.

Masks remain a vital part of our COVID-19 response. Their use should continue to be strongly recommended in high-risk settings, especially over winter when influenza and other viruses such as respiratory syncytial virus (RSV) are typically prevalent.

Moving to a policy approach based on health and safety requirements will encourage healthcare providers and those managing other risk settings to set appropriate restrictions that are enforced within existing health and safety frameworks.

Reducing transmission to people at risk of severe disease is still important

When COVID-19 orders are removed people should still be encouraged to isolate when positive for COVID-19, and wear face masks when in healthcare settings (and around vulnerable people generally). Early access to antivirals and vaccine boosters remains essential to address inequity and reduce the risks of severe disease and death.

Also essential is ongoing communications and public health messaging emphasising the following key behaviours: the importance of vaccination, appropriate masking, early testing, reporting positive tests, self-isolation, access to antivirals.

Other factors

Funding decisions

Funding decisions for 2023/24 reflect a significant step-down in the financial resources available for COVID-19-specific initiatives, which was to be expected at this stage of the pandemic. Those decisions reflect the planned and phased reintegration of the management of COVID-19 into business-as-usual.

Role of modelling

Modelling is no longer being performed as a key accompaniment to the PHRA process. The regular modelling results highlighted the impact of changes in transmission on various metrics – cases, hospitalisations, and deaths.

The modelling reports were always careful to emphasise, among other caveats, that the modelling itself was not predicting what the impact of various *policy changes* would be on those metrics. The impact of a policy change on transmission had to be assumed across a range of scenarios.

Identifying and analysing the options

Given the above analysis of the risks to be managed, the options to assess for each mandatory measure may be short-listed as follows:

- retain measures for a further period (ie, extend measures beyond 31 August 2023).
- revoke the measures (eg, by 31 August 2023).

For each of the mandatory measures these options are described and assessed against the criteria as set out in the tables overleaf, and a brief discussion follows.

1. Self-isolation of positive cases

Option 1	Option 2
Retain measure for a further period beyond 31 August 2023 The current requirement that cases self-isolate for 7 days remains in place to limit the spread of COVID-19 beyond the household.	**Revoke measure by 31 August 2023** There would be no mandatory requirement for cases to isolate. Instead, guidance would be issued for cases to self-isolate for the recommended (non-mandatory) period.

Preferred Option	
	Option 2 is preferred. In summary: • Revocation from 31 August 2023 (Option 2) is the preferred option given its score on proportionality which addresses the effective management of public health risk. This option also scores higher on implementation (it can feasibly be implemented, without risk, and the required operational changes can also be put in place as necessary before 31 August 2023). • Retaining the measure for a further period (Option 1) is not supported by the most recent public health risk assessment. It therefore is inferior to Option 2 in managing public health risk. Option 1 also scores lower on implementation (it may not be able to be implemented given the section 8(c) test under the Act). • Each option (in different ways) meets Treaty obligations and protects the vulnerable. Differences in how well an option meets these criteria are difficult to distinguish given the range of considerations and the broad calibration used.

Multi-criteria assessment Scoring is relative to the status quo: **=** similar/same as **+** better than **++** much better than

Option	*Proportionality*	*Te Tiriti*	*Protect the vulnerable*	*Implementation*
Option 1: Retain measure (status quo)				
Option 2: Revoke measure	**++**	**=**	**=**	**++**

2. Wearing of face masks for visitors in health service premises

Option 1	Option 2
Retain measure for a further period beyond 31 August 2023 Face masks remain mandatory for visitors in health service premises including primary and urgent care, pharmacies, hospitals, aged residential care, disability related residential care, allied health, and other settings to help limit the spread of COVID-19.	**Revoke measure by 31 August 2023** There would be no mandatory requirement for mask wearing in health service premises. Instead, guidance would be issued outlining recommended (non-mandatory) mask wearing protocols and practices in various health care settings (for all persons) within Infection, Prevention and Control and other policies.

Preferred Option

Option 2

In summary (and for the same or similar reasons as outlined for self-isolation above):

- Revocation from 31 August 2023 (Option 2) is the preferred option given its score on proportionality which addresses the effective management of public health risk. This option also scores higher on implementation (it can feasibly be implemented, without risk, and the required operational changes can also be put in place as necessary before 31 August 2023).
- Retaining the measure for a further period (Option 1) is not supported by recent public health risk assessments. It therefore is inferior to Option 2 in managing public health risks (effective mask polices do not require the Masks Order). Option 1 also scores lower on implementation (it may not be able to be implemented given the section 8(c) test under the Act).
- Each option (in different ways) meets Treaty obligations and protects the vulnerable. Differences in how well an option meets these criteria are difficult to distinguish given the range of considerations and the broad calibration used.

Multi-criteria assessment Scoring is relative to the status quo: **=** similar/same as **+** better than **++** much better than

Option	*Proportionality*	*Te Tiriti*	*Protect the vulnerable*	*Implementation*
Option 1: Retain measure (status quo)				
Option 2: Revoke measure	**++**	**=**	**=**	**++**

Brief discussion

Where options differ in meeting criteria

As noted in this assessment, the two key criteria that distinguish the merits of the options are *proportionality* and *implementation*:

- The mandatory measures are no longer proportionate given that the public health risks can be managed effectively using non-mandatory measures.

- The continued use of mandatory measures is subject to significant implementation risks. This is because their sustained use cannot be guaranteed as regular legal assessments need to be made that New Zealand is still in the emergency phase in managing the pandemic, and that management of the pandemic would be out of control if mandatory measures are not used.

Where options are harder to distinguish and why

Two of the other criteria - *protecting the vulnerable* and *Te Tiriti o Waitangi* – require judgments that are more nuanced and depend on assumptions about the counterfactual:

- The arguments in favour of maintaining restrictions assume that compliance will be lower and transmission higher without those restrictions, meaning that the effect of those restrictions – via the number of cases, hospitalisations, and mortality – will produce benefits for more vulnerable populations.

- The arguments in favour of removing restrictions assume that they are now having a negligible impact, are eroding social licence (limiting the ability to use restrictive measures if they are needed in future) and delaying more active guidance and messaging - meaning that they are holding up behavioural change and delaying the resulting benefits for more vulnerable populations.

Other judgments required in this context are the extent to which people:

- are aware of the legal requirements, particularly given the level of communications recently, and that the requirements are not actively enforced
- observe safe practices (eg, stay home when sick) irrespective of any legal requirement.

Equity analysis

Vulnerable groups

The burden of COVID-19 does not fall equally, and some people are at higher risk of adverse health outcomes from the virus.

Priority populations such as older people, Māori, Pacific peoples, and disabled people can experience disproportionate impacts of COVID-19 through, for example:

- the direct effects of the virus, for example for those with co-morbidities
- the indirect economic impact of public health measures (eg, some people will choose not to stay home when sick because of financial or job security concerns).

Older people

The strongest risk factor for COVID-19 is age. Older New Zealanders are by far the most at risk as shown in hospital admission and mortality data. In terms of the size and the consistency of the relative differences in outcome over time, age is dominant. On a population basis, people aged 80 or over have consistently had the highest hospital admission rate. From 1 January 2023 there have been 1,542 hospital admissions of people aged 80 years or over.

Māori, Pacific communities, and other vulnerable groups

There are also significant differences in COVID-19 impacts amongst ethnic groups. Based on comparison of age-adjusted rates, Pacific peoples and Māori are more likely than the European and other groups to be hospitalised and have higher mortality. Age-adjusted admission risk ratios for Māori and Pacific peoples are more variable due to smaller numbers but remain generally higher compared to European or Other baseline figures, indicating an ongoing greater risk of hospital admission.

Disability support services recipients also have a higher risk of hospitalisation and mortality than other groups. People with underlying health conditions, and people living in deprived areas, similarly, are more at risk of adverse health outcomes.

Many vulnerable people also fall into more than one risk category (eg, an older, Pacific person, with an underlying condition, living in a deprived area) which means their risk of an adverse outcome from COVID-19 is even higher.

Addressing inequities

Inequities in health outcomes, highlighted in the impacts of COVID-19 throughout the pandemic, have developed over a long period of time. The risks and vulnerabilities of population groups have multiple and complex causes. The strategies and action plans under the Pae Ora framework are expected to address these challenges with a renewed focus, and in more diverse and targeted ways.

Te Tiriti analysis

The Crown's obligations to Māori under Te Tiriti o Waitangi requires a commitment to partnership that includes good faith engagement with and appropriate knowledge of the views of iwi and Māori communities. It is important that public health measures improve health equity and uphold Te Tiriti o Waitangi principles by protecting groups who are most vulnerable to COVID-19.

In December 2021, the Waitangi Tribunal's Haumaru: COVID-19 Priority Report states that Te Tiriti obliges the Crown to commit to achieving equitable health outcomes for Māori and specific focus must be granted to achieving equitable outcomes for Māori. The report found that the Government was failing to meet Te Tiriti obligations, with the rollout of the vaccinations programme, and that this failure would result in disproportionate and lasting impacts of Long COVID on Māori.

Since that time, there has been significant activity to provide access to vaccination and boosters to Māori, to provide anti-viral treatments for positive cases, and to provide ongoing wrap-around services and targeted services utilising Māori providers consistent with the ongoing funding provided (Kaupapa Māori providers are well-placed to provide holistic support for whānau and have deeper reach than some other providers).

Examples of other approaches that may help to reduce inequities include:

- removing protective measures will be accompanied by clear and tailored communication for priority groups prior to stepping down measures
- updated infection prevention and control guidance will empower stakeholders in the health sector to manage the risk levels relevant to their premises and roles
- the low uptake of COVID-19 boosters by Māori means that it is important that this outreach is further prioritised, to reduce adverse impacts of COVID-19 on this group
- readiness to reintroduce if necessary mandatory measures to protect vulnerable populations in response to a worsening risk profile.

Measures targeted at Māori continue to be necessary to reduce inequitable health outcomes for Māori.

Over the last three years there has been engagement with a range of Māori stakeholders on issues arising in the course of the pandemic and during the PHRA process. Stakeholders include the National Iwi Chairs Forum, representatives of non-affiliated iwi, and Māori leaders who are part of Whānau Ora Regional Leadership Groups.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

The assessment in this RIS supports recommendations to revoke the Self-isolation Order and the Masks Order by 31 August 2023.

Section 3: Delivering an option

How will the new arrangements be implemented?

Revocation of Orders

Revocation of the Self-isolation Order and the Masks Order will be implemented by means of Revocation Orders prepared by Parliamentary Counsel Office.

Operational changes

These include: updating the Communicable Disease manual; technology changes to support a change to the pathway of care; communications collateral including translation of materials for priority populations; and development of local IPC guidance. Five working days' notice would allow Te Whatu Ora sufficient time to make these operational changes.

How will the new arrangements be monitored, evaluated, and reviewed?

As noted above, the Government is required under the COVID-19 Act to monitor and review public health measures. Under the Act, mandatory measures through COVID-19 Orders can be introduced or revoked as necessary.

The Ministry will continue to monitor the key metrics (eg, infection levels, hospitalisations), and international trends, and will keep the virus under surveillance. The results of monitoring and surveillance is compiled into a weekly insights report (as well as other ad hoc reporting) to help inform decision making.