Briefing

COVID-19 Mandates and future disease status

Date due to MO:	11 August 2023	**Action required by:**	N/A
Security level:	IN CONFIDENCE	**Health Report number:**	H2023029981
To:	Hon Dr Ayesha Verrall, Minister of Health		
Consulted:	Health New Zealand: ☒ Māori Health Authority: ☒		

Contact for telephone discussion

Name	Position	Telephone
Dr Andrew Old	Deputy Director-General, Public Health Agency	s 9(2)(a) [redacted]
Dr Nicholas Jones	Director of Public Health, Public Health Agency	

Minister's office to complete:

☐ Approved ☐ Decline ☐ Noted

☐ Needs change ☐ Seen ☐ Overtaken by events

☐ See Minister's Notes ☐ Withdrawn

Comment:

COVID-19 Mandates and future disease status

Security level:	IN CONFIDENCE	**Date:**	11 August 2023
To:	Hon Dr Ayesha Verrall, Minister of Health		

Purpose of report

1. You requested advice on the future statutory status of COVID-19 and the implications that might result from the removal of mandates and the shift in overall management of COVID-19.

2. This briefing discloses all relevant information.

Summary

3. Removing or changing the remaining mandates under the COVID-19 Public Health Response Act 2020 will not affect the current status of COVID-19 which is scheduled as both a "notifiable infectious disease" and a "quarantinable disease" under the Health Act 1956 (the Act). The COVID-19 schedule entries in the Act operate independently of the Orders made under the COVID-specific legislation.

4. As new variants of the disease are still a global threat, we do not advise amending the current Health Act Schedule entries to change the status of COVID-19 at this time. Genomic surveillance is of particular importance for COVID-19, both domestically and internationally, and removing the notifiable status may reduce the number of samples available for sequencing, and therefore the visibility of variants of SARS-CoV-2 in Aotearoa.

5. Further advice will be provided within the next 6 to 9 months on the most appropriate settings for COVID-19 within the Act to support the shift in its overall management.

Dr Andrew Old
Deputy Director-General of Health
Te Pou Hauora Tūmatanui
Date: 11 August 2023

Hon Dr Ayesha Verrall
Minister of Health
Date:

COVID-19 Mandates and Future Disease Status

Background / context

1. COVID-19 and 'novel coronavirus capable of causing severe respiratory illness' are both scheduled as notifiable infectious diseases and also separately as quarantinable diseases under the Health Act 1956 (the Act). The longer, generic entry was included in order to future proof the schedules for any novel coronaviruses that may emerge.

2. Making a disease notifiable and/or quarantinable requires a Cabinet decision and a Governor-General Order in Council, but no parliamentary process. Specific disease entries can be amended, removed or replaced in the same way.

3. COVID-19 was made a notifiable infectious disease on 30 January 2020 (to support surveillance and management) and a quarantinable disease on 11 March 2020 (to allow action at the border for arriving craft and travellers).

4. The removal of, or changes to, the mandates under the COVID-19 Public Health Response Act 2020 will have no consequences for either the notifiable or quarantinable status under the Act as they operate independently from each other.

Implications of COVID-19 being a notifiable infectious disease

5. The Act requires health practitioners and medical laboratories to notify the medical officer of health if they identify a case of notifiable infectious disease. In practice, PCR confirmed cases are reported by laboratories and loaded into EpiSurv – the national notifiable disease surveillance database operated by ESR on behalf of the Ministry. Cases that are diagnosed by health practitioners using Rapid Antigen Tests (RATs) are notified by the practitioner through their Practice Management System. Cases identified through self-testing with RATs are voluntarily reported and are not required to be notified under the Health Act.

6. While rarely used, medical officers of health have considerable infectious disease management powers, duties and functions which apply specifically to notifiable infectious diseases. For example, in Part 3A of the Act, should the circumstances pose a public health risk, they can, subject to statutory protections from arbitrariness:

    - issue mandatory written directions to cases and contacts
    - arrange contact tracing to obtain manage disease transmission risks
    - impose an urgent public health order detaining a case for up to 72 hours
    - apply to the courts for court orders, including for treatment.

7. Because of the various Orders under the COVID-19 Public Health Response Act, the powers under Part 3A have not been needed for the management of COVID-19[1]. They continue to be available if so required.

Implications of COVID-19 being a quarantinable disease

8. Under the Act, only quarantinable diseases engage the border health protection provisions in Part 4 of the Act. Part 4 provides for the management of public health risks for arriving craft, travellers and goods. In particular, the medical officer of health or health protection officer may detain a ship or aircraft (ie, withhold *pratique*) if they have reason to believe a traveller has a quarantinable disease. The officer may examine any arriving traveller believed to have a quarantinable disease. They may also require the craft's captain to take reasonable steps to limit the spread of infection.

9. Cases and contacts may be detained under Part 4 for up to 28 days to allow examination or to prevent them infecting others. Alternatively, the person may be kept under surveillance in the community if they undertake to report to a medical practitioner at required times and places.

10. Under the Epidemic Preparedness Act 2006, the Prime Minister may only issue an epidemic notice for events involving quarantinable diseases as specified in the Act. Such notices grant medical officers of health very wide powers under Part 3 of the Act (special powers such as those noted above), and also allow modification orders to be issued. The special powers authorise medical officers of health to prohibit public gatherings, quarantine or isolate people, animals and aircraft and to requisition any item to be used to accommodate and treat patients. The special powers can also be triggered by the Minister of Health or the declaration of a state of emergency under the Civil Defence Emergency Management Act 2002. When made available to medical officers of health, the special powers can be exercised for a broader category called 'infectious diseases' which need not be notifiable or quarantinable diseases. Prior to COVID-19, the Act's special powers relating to quarantinable diseases had never been used.

Future options

11. As part of the shift in the overall management of COVID-19, it is timely to review its status as both a notifiable infectious, and a quarantinable, disease. Given the established nature of COVID-19, its ongoing prevalence, the reduced emphasis on case management, the applicability of other surveillance strategies and the potential disruption for international travellers (if *pratique* were to be withheld even only briefly for an arriving aircraft), its continued inclusion on these two schedules may no longer be appropriate.

12. Assessing future scheduling options will be undertaken in the context of the recently released *Aotearoa New Zealand Strategic Framework for Managing COVID-19* and alongside consideration of the implications for surveillance and consultation with Te Whatu Ora, Te Aka Whai Ora, ESR and others. This is planned to occur over the next six to nine months.

[1] Note that this is separate to the special powers in Part 3 of the Act (e.g. the use of Section 70 Orders) that were used on numerous occasions for COVID-19 in the early phase of the response, but less so once the use of Orders under the COVID-19 Public Health Response Act became available.

13. One option that will be considered is for COVID-19 to be listed on Part 2 of Schedule 1 as an 'other infectious disease', like seasonal influenza. As well as engaging the Eligibility Direction[2], subject to some procedural requirements, the powers for outbreak prevention and control, and case and contact management provided for in Parts 3 and 3A of the Act can also be used, if required, for diseases listed as 'other infectious diseases'[3].

14. In May 2023, while acknowledging that the pandemic was ongoing, the World Health Organization (WHO) determined that COVID-19 no longer constituted a public health emergency of international concern under the International Health Regulations 2005. WHO advises that states should transition to managing COVID-19 like other infectious diseases. This transition could see COVID-19 surveillance integrated with other respiratory diseases, where possible. However, WHO has also cautioned that the risk of new variants emerging could still cause spikes in cases and to guard against dismantling member states' response infrastructure prematurely.

Surveillance considerations

15. Whole genome sequencing (WGS) for SARS-CoV-2 depends on the level of testing that is undertaken at diagnostic laboratories and on the referral of samples for sequencing. If COVID-19 was no longer notifiable, there may be less samples available for WGS (due to a decrease in PCR testing) potentially affecting the ability to monitor variants. However, even if clinical sample availability for WGS were to be reduced, the presence and trends of SARS-CoV-2 variants can also be assessed through wastewater-based epidemiology (WBE). Furthermore, positive samples detected as part of general practice and hospital surveillance will also continue to be available for WGS.

16. Laboratory surveillance for non-notifiable respiratory pathogens is currently being considered and is dependent on a successful privacy impact assessment to enable widespread collection of laboratory data for specific non-notifiable diseases. There are also IT and other data issues to be addressed. If COVID-19 were no longer notifiable but with this laboratory surveillance in place, it would comprise another source of information on trends, including test positivity rates.

Equity

17. There are several systems in place monitoring other non-notifiable respiratory pathogens such as influenza in order to identify trends and impacts on particular population groups (eg, ethnic and age groups). These include surveillance in primary and secondary care. However, while WBE can provide genomic data regionally, and so to that extent provide coverage for Māori and Pacific communities, the resolution of genomic data by ethnicity requires clinical samples from WGS.

18. The effects of COVID-19 are still likely to be a particular risk for a number of groups including Māori, Pacific, the elderly, the immunocompromised, pregnant women, and people with disabilities.

---

[2] The *Health and Disability Services Eligibility Direction 2011* applies to publicly fund people who require services for 'other infectious diseases' as well as for ''notifiable infectious diseases'.

[3] Part 3A powers can only be used for 'other infectious diseases' with the prior consent of the Director of Public Health - under delegation from the Director-General.

19. Potential impacts on health equity will be considered in the development of further advice on scheduling options.

Next steps

20. Decisions on the remaining Orders under the COVID-19 Public Health Response Act have no direct bearing on the status of COVID-19 under the Health Act.

21. Further advice will be provided within the next 6 to 9 months on the most appropriate settings for COVID-19 within the Act to support the shift in its overall management.

ENDS.

Minister's Notes