Briefing to review secondary legislation made in response to COVID-19

Third interim report of the Regulations Review Committee

July 2020

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Briefing to review secondary legislation made in response to COVID-19

Recommendation
The Regulations Review Committee is considering a briefing to review secondary legislation made for the purposes of responding to the outbreak of COVID-19, and recommends that the House take note of its third interim report.

Background
Sections 9 and 11 of the COVID-19 Public Health Response Act 2020 give the Minister of Health broad powers to control the actions of people for the purposes of limiting the outbreak or spread of COVID-19. These powers include the ability to impose isolation, quarantine, and physical distancing requirements, as well as powers to close premises and restrict entry into New Zealand ports.

Section 16 of that Act provides that any section 11 order made by the Minister is revoked on the expiry of 10 sitting days or 60 days (whichever is longer) unless the order is first approved by the House of Representatives.

On 24 June 2020, the House adopted a sessional order that provides for how the House will deal with consideration of section 11 orders. In particular, the sessional order requires the Regulations Review Committee to examine each section 11 order and report to the House no later than 12 working days after the order was presented to the House.

This report discusses the committee's examination of the following orders:

- COVID-19 Public Health Response (Air Border) Order 2020

COVID-19 Public Health Response (Air Border) Order 2020
This Air Border Order was made on 20 June 2020. It was presented to the House and came into force on 22 June 2020.

The Air Border Order requires persons arriving in New Zealand by air (subject to some exclusions) to report for medical examination and testing, and then isolate or quarantine for a specified period. It provides that medical examination and testing may only involve testing for temperature, seeking information on symptoms, carrying out chest auscultation, and taking mouth or nose swabs (or both), as required to test for COVID-19.

The required period for isolation or quarantine is generally 14 days after the date on which the person arrives in New Zealand if the Director-General is satisfied toward the end of that period that the person meets low risk indicators. These are either that the person has had a negative test for COVID-19, or other tests or information relating to the person indicate that the person is at low risk of having or transmitting COVID-19.
COVID-19 Public Health Response (Maritime Border) Order 2020

The Maritime Border Order was made on 26 June 2020. It came into force on 30 June 2020 and was presented to the House on 6 July 2020.

The Maritime Border Order provides that New Zealand ships or warships may not arrive in New Zealand unless the master of the ship is reasonably satisfied that every person on board is either a New Zealand citizen or permitted to be in New Zealand under visa requirements for non-New Zealand citizens. Foreign ships are not permitted to arrive in New Zealand, except for limited passage or transit through the territorial sea.

The order also provides that persons arriving in New Zealand on board a ship may not disembark unless they first remain in isolation or quarantine on the ship for at least 14 days (with specific exceptions). If a person is unable or unwilling to remain in isolation or quarantine on the ship, a medical officer of health or a health protection officer has a power to transfer the person to a managed isolation or quarantine facility.

This committee’s examination

We have examined both orders and have no concerns to raise.

On examination of the Air Border Order, we noted possible uncertainty about its intended interaction with a Notice to Arrivals dated 31 March 2020 which was made under section 70(1)(f) of the Health Act 1956 by Dr Niki Stephanogiannis, Medical Officer for all health districts. That notice, which was still in force, applied restrictions on all persons arriving in New Zealand after 1:00am on 16 March (except air crew who had used Personal Protective Equipment).

We note, however, that the Maritime Border Order revoked that notice to arrivals. Accordingly, we have no concerns about either order.
Appendix

Committee procedure
We initiated this briefing on 29 April 2020 and are currently considering it.

Committee members
Alastair Scott (Chairperson)
Sarah Dowie (from 27 May 2020)
Harete Hipango
Jo Luxton
Rino Tirikatene
Dr Duncan Webb
Nicola Willis (until 27 May 2020)