

Briefing

MANAGEMENT OF POLICE CHECKPOINTS DURING RESTRICTED MOVEMENTS UNDER COVID-19 RESPONSE

To: Hon Chris Hipkins
Minister for COVID-19 Response

Hon Poto Williams
Minister of Police

Date	8/06/2021	Priority	High
Deadline	9/06/2021	Briefing Number	Police: BR/21/58 DPMC: 2020/21-1066

Purpose

1. This briefing seeks your approval to amend section 22 of the COVID-19 Public Health Response Act 2020, so that enforcement officers, and not only Police constables, may stop vehicles at checkpoints established for the purpose of enforcing or monitoring compliance with section 11 Orders that restrict movement.

Recommendations

1. **Note** that section 22(3) of the COVID-19 Public Health Response Act 2020 currently only enables constables to stop a vehicle and this limits Police's ability to effectively implement section 11 Orders that restrict movement.
2. **Agree** to support an amendment to the COVID-19 Public Health Response Act 2020 so that enforcement officers, acting under the supervision of a constable, may stop vehicles at road blocks or check points established for the purpose of enforcing or monitoring compliance with section 11 Orders that restrict movement.
3. **Direct** officials to draft a Cabinet paper seeking Cabinet's agreement to amend the COVID-19 Public Health Response Act 2020 to give effect to recommendation 2.

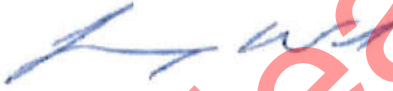
YES / NO

YES / NO


- 4. **Note** that officials are seeking an urgent decision from Ministers on this proposal by 9 June 2021 in order to meet drafting and Cabinet approval timelines for the COVID-19 Public Health Response Amendment Bill 2021, which is the current legislative vehicle for changes to the Act and is scheduled for introduction in August 2021.


Ruth Fairhall
Head of Strategy and Policy
COVID-10 Group, DPMC

8/6/21
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Jeremy Wood
Executive Director
Policy and Partnerships, New Zealand
Police

04/06/2021


Hon Chris Hipkins
Minister for COVID-19 Response

9/6/2021
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Hon Poto Williams
Minister of Police

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Contact for telephone discussion if required:

Name	Position	Telephone		1st contact
Ruth Fairhall	Head of Strategy and Policy, COVID-19 Group, DPMC	N/A	s9(2)(a)	
Jeremy Wood	Executive Director, Policy and Partnerships, Police	N/A	s9(2)(a)	✓

Minister's office comments:

- Noted
- Seen
- Approved
- Needs change
- Withdrawn
- Not seen by Minister
- Overtaken by events
- Referred to

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MANAGEMENT OF POLICE CHECKPOINTS DURING ALERT LEVEL CHANGES

Section 22 of the COVID-19 Public Health Response Act 2020 provides Police with the powers to stop vehicles to manage movement restrictions

1. Section 5 of the COVID-19 Public Health Response Act defines an enforcement officer as:
 - (a) the Director-General:
 - (b) a medical officer of health:
 - (c) a constable:
 - (d) in relation to any function or power, a person authorised to perform that function or power under section 18 or a person in a class of persons authorised to perform that function or power under section 18.
2. Enforcement officers have various powers in the legislation including under section 22(2) of the Act. This section states an enforcement officer, acting under the authority and supervision of a constable, can assist with prohibiting or restricting public access, with or without vehicles, to any road or public place within an area specified in a section 11 Order.
3. Under section 22(3), the legislation specifies that for the purpose of a section 11 Order that provides for restriction of movement, only a constable may stop a vehicle. In contrast to section 22(2), it does not explicitly authorise the assistance of enforcement officers.
4. On 25 March 2021, the Commissioner of Police received a delegation from the Director-General of Health under section 18 of the Act. This delegated power enables the Commissioner to authorise enforcement officers to assist police with the management of Alert Level boundaries that have been mandated by any Order.
5. The delegation provides that the Commissioner may only authorise suitably trained and qualified persons, or class of persons, who are employed or engaged by the Crown or a Crown entity. In exercising the delegation, the Commissioner must comply with all relevant statutory obligations and relevant obligations in minimum standards of conduct and integrity set by the Public Service Commissioner. Documentation relating to the delegation must be provided to the Ministry of Health and will be published on the Ministry of Health website.

Current provision limits ability for Police to effectively implement section 11 Orders that restrict movement

6. s9(2)(h)

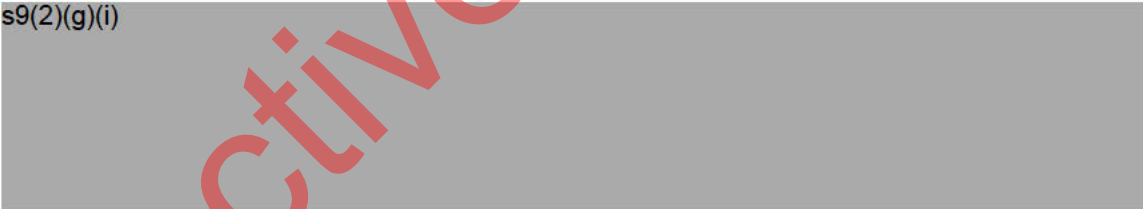


7. Restriction of movement is enforced through checkpoints and involves stopping vehicles to manage traffic movements. Checkpoints are put in place as required under section 11 Alert Level Orders either when areas are:
 - a) at Alert Level 3 or 4 – i.e. where there are restrictions on movement within the area; or
 - b) at different Alert Levels when there is a prohibition on travel in and out of the area at the higher Alert Level – e.g. in August 2020 and February 2021 when Auckland was at Alert Level 3 and the rest of the country was at Alert Level 2.
8. Police has managed checkpoints most effectively in the past where assistance was provided by way of New Zealand Defence Force (NZDF) staff. NZDF staff were not allowed to stop vehicles but supported Police by initiating conversations with drivers entering the checkpoint and undertaking an initial review of exemption documentation. The benefits provided by support to Police at checkpoints could be further enhanced with the ability for enforcement officers to stop vehicles at checkpoints in addition to other duties currently authorised under 22(2) of the Act. Increased efficiency will be important should checkpoints be required at a larger scale than experienced to date.
9. In August 2020, Tāmaki Makaurau District experienced significantly reduced capacity when required to enforce Alert Level boundaries during the community outbreak of COVID-19 in Auckland. Approximately 60 constables were required for each shift of eight hours to manage the boundaries. This level of resource means there are fewer officers available to monitor movement restrictions within the Alert Level 3 area and to meet other crime and non-crime demand.
10. During a pandemic, there is always potential for Police to be operating at reduced capacity. For example, in the event of a community outbreak, a substantial number of Police constabulary staff could be affected by the outbreak. Without the ability to use enforcement officers, Police's ability to enforce movement restrictions by stopping vehicles, is reduced. As a result, Police operations to restrict movement could be compromised.
11. s9(2)(h)
- 12.
13. Iwi and communities have also expressed an interest in collaborating with Police specifically to manage checkpoints due to welfare concerns for whānau living in isolated communities. Revised provisions around the use of enforcement officers would enable Police to work with iwi and communities to stop vehicles and provide support to vulnerable communities and effectively deliver its Te Tiriti obligations.

Opportunity to amend section 22 via the COVID-19 Public Health Response Amendment Bill

14. On 17 May 2021, Cabinet agreed to proposed amendments to the Act to future-proof and strengthen the current legislative framework [SWC-21-SUB-0067 and CAB-21-MIN-0167 refer]. The COVID-19 Public Health Response Amendment Bill 2021 (the Bill) is the current legislative vehicle for these changes.
15. The proposed amendments in the Bill recognise that the Act was developed at pace, and at the time, there was uncertainty around how long the COVID-19 response would need to last or how complex and comprehensive the system would become. Police has since had the opportunity to implement restricted movement models, establish a better understanding of what provisions are required to manage these effectively, and identify where further changes are needed.
16. The Bill provides a timely opportunity to progress additional changes to improve the operating model for managing restricted movements under COVID-19 orders, and make sure the legislation is fit for purpose now and in the future.
17. We recommend amending the Act to enable “enforcement officers”, acting under the supervision of a constable, to assist Police with the management of section 11 Orders that provide for restricted movements by stopping vehicles at checkpoints is recommended.

Risks

18. Enabling trained enforcement officers to stop vehicles under the supervision and authority of Police will support the management of COVID-19 risks. Increased capacity provided by enforcement officers’ ability to stop vehicles will strengthen the enforcement of section 11 Orders to prevent transmission and keep New Zealand communities safe. This will also support a more collaborative approach between Police, iwi, and communities and enable the sustainability of any future and subsequent controls where movement restrictions exist.
19.  s9(2)(g)(i)
20. In order to mitigate risks associated with providing enforcement officers with the power to stop vehicles at checkpoints, a robust implementation plan will be developed. This will include a thorough selection process with criterion for appointment, vetting, assessment, consultation with iwi and training for individuals who are put forward for the role of enforcement officers. The role will be clearly communicated to those appointed by way of detailed training, including health and safety to manage checkpoint sites. Ratios of constables to enforcement officers on each site will also be carefully considered to ensure an appropriate level of supervision is provided at all times. In addition, the delegation from the Director General Health to the Commissioner specifies controls around the authorisation process.

There is a short timeframe to include further changes to the COVID-19 Public Health Response Amendment Bill

21. Drafting of the Bill is currently underway. This is scheduled to be completed by July 2021 to enable the Ministry of Justice to undertake vetting under the New Zealand Bill of Rights 1990 and Cabinet Legislation Committee approval to introduce the Bill.
22. This means that there is some urgency in progressing the proposed amendment to section 22, including seeking Cabinet approval, before the Bill is finalised. To enable the proposed change to be included in time, Cabinet would need to consider this matter no later than 28 June 2021. The table below sets out the timeline for decisions. Any significant delays in seeking Cabinet agreement means it is unlikely that the proposed change can be progressed via the current Bill.

Table 1: Timeline for Cabinet decisions on proposed change to section 22

Step	Date
Provide Minister for COVID-19 Response with draft Cabinet paper for review and Ministerial consultation	10 June 2021
Lodge final Cabinet paper	17 June 2021
Cabinet paper considered by Cabinet Social Wellbeing Committee	23 June 2021
Cabinet considers Cabinet paper	28 June 2021

Next Steps

23. Subject to your agreement, DPMC will draft a Cabinet paper seeking agreement to include the proposed change to the Act based on the proposal in this briefing. As per the timeline above, you will be provided with a draft Cabinet paper for review and to commence Ministerial consultation on 10 June 2021.
24. If the proposed amendment is progressed, Police will consult with the Ministry of Health with a view to seeking a broader delegation for the Commissioner of Police to appoint enforcement officers. The delegation will need to enable Police to authorise enforcement officers to support the effective implementation of checkpoints whether they are at the border of Alert Levels or within Alert Level areas.
25. In addition, a robust implementation plan will be developed for the selection and training of enforcement officers. Police has a draft plan completed and will seek to further progress this work in consultation with other relevant agencies.

Consultation

26. Crown Law Office, Ministry of Business, Innovation and Employment, Ministry of Justice, Te Puni Kōkiri and the Ministry of Health were consulted on the contents of this briefing.

27.

s9(2)(ba)(i)



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