



Briefing

COVID-19 PUBLIC HEALTH RESPONSE (ALERT LEVEL REQUIREMENTS) ORDER (NO 12) AMENDMENT ORDER (NO 9) FOR SIGNING

To Minister for COVID-19 Response (Hon Chris Hipkins)			
Date	22/10/2021	Priority	URGENT
Deadline	22/10/2021	Briefing Number	DMPC-2021/22-628

Purpose

Attached to this briefing is the proposed COVID-19 Public Health Response (Alert Level Requirements) Order (No 12) Amendment Order (No 9), which we recommend that you sign. The Order lifts restrictions to allow students in years 11 to 13 to return to school and introduces new requirements to allow this to happen safely.

This briefing:

- seeks your agreement to permit year 9 to 13 students, teachers and other staff to travel across the Alert Level boundary to get to school; and
- summarises the effect of the amendments and confirms that the necessary procedural requirements for the making of COVID-19 Orders have been complied with.

Recommendations

1. **Note** that this brief provides a summary of the key provisions of the proposed order.
2. **Note** Ministers with Power to Act agreed to allow year 11 to 13 students to return to schools in Auckland for face-to-face onsite teaching from Tuesday, 26 October with additional public health controls in place [Education Report 1274782 refers].
3. **Agree** to the following expansion of the permission in recommendation 2 (supported by public health advice) to schools in the Waikato Alert Level 3 area.

YES / NO

IN CONFIDENCE

4. **Agree** to amend Alert Level boundary permissions to allow staff and year 9 to 13 students to travel across Alert Level boundaries (and return home) for the purposes of going to the registered schools that they ordinarily attend or work at.
5. **Note** that the necessary procedural requirements for the making of COVID-19 Orders have been complied with
6. **Sign** the COVID-19 Public Health Response (Alert Level Requirements) Order (No 12) Amendment Order (No 9) 2021 (**Attachment A**)

YES / NO

YES / NO

Ben White
 Ben White
**Manager Strategy & Policy
 COVID-19 Group, DPMC**

22/10/21

Chris Hipkins
 Hon Chris Hipkins
Minister for COVID-9 Response

22/10/21

Contact for telephone discussion if required:

Name	Position	Telephone	1st contact
Ben White	Manager Strategy & Policy COVID-19 Group, DPMC	Section 9(2)(a)	
Jess Gorman	Principal Solicitor, DPMC	Section 9(2)(a)	✓

Minister's office comments:

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- Withdrawn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

ALERT LEVEL REQUIREMENTS AMENDMENT ORDER FOR SIGNING

Summary of the amendments

Education amendments

Auckland and Waikato reopening decisions and public health controls

1. On 19 October 2021, Ministers with Power to Act¹ agreed to allow year 11 to 13 students to return to schools in Auckland for face-to-face onsite teaching from Tuesday 26 October [Education Report 1274782 refers]. A number of additional public health controls were agreed to support reopening. However we understand that you wish for the same to apply for all schools in the current Alert Level 3 area – currently Auckland and part of the Waikato.
2. Accordingly, this briefing seeks your agreement to allow year 9 to 13 students to return to schools for face-to-face learning in the Waikato Alert Level 3 area as well. Public health advice supports the reopening of schools in the Waikato Alert Level 3 area for these students. The public health controls agreed to for schools and early learning services in Auckland will also apply to schools reopening in the Waikato Alert Level 3 area.
3. One of the additional public health controls you have agreed to needs an amendment to the Order – the requirement that people aged 12 and over wear face coverings on school transport nationwide (not just in Alert Level 3 areas). Currently, school transport services are exempt from the public transport face covering requirements. The Order will be amended to remove this exemption. Children under the age of 12 will continue to be exempt from face covering requirements.
4. Year 9 and 10 students who are preparing for NCEA exams will be enabled to return to school through a direction we understand the Secretary of Education will issue. Public health advice supports year 9 and 10 students who are preparing for NCEA exams attending school in Alert Level 3 areas.

Amended Alert Level boundary permissions to enable more students to attend schools

5. When Cabinet last considered the reopening of Auckland schools and early learning services on 18 October, it noted that you (as Minister for COVID-19 Response) would bring a proposal to Cabinet on Monday 1 November on permissions to cross Alert Level boundaries to support this reopening. Specifically, to enable students, teachers and support staff to cross Alert Level boundaries to get to their schools or early childhood centres in the Auckland region [CAB-21-MIN-0422 refers]. These permissions are also needed to support the return of more students to Waikato schools.
6. Accordingly, this briefing seeks agreement to amend boundary permissions to support travel to and from schools in Alert Level 3 areas. Ministerial consultation on this briefing and proposed amendments will fulfil consultation requirements.

¹ This group of Ministers comprised the Prime Minister, Minister of Education, Associate Minister of Education (Māori Education), Associate Minister of Education (Hon Jan Tinetti) and Associate Minister of Health (Hon Ayesha Verrall).

7. Staff and year 9 to 13 students can travel across Alert Level boundaries (and return home) for the purposes of going to the registered school that they ordinarily attend or work at. This travel is permitted across all Alert Level boundaries in all directions – i.e. it includes travel from Alert level 2 into Waikato, travel from Alert Level 2 into Auckland, travel from Auckland to Waikato, travel from Waikato to Alert Level 2 and travel from Auckland to Alert Level 2. If the Alert Level 3 area was expanded it would also apply to additional areas.
8. Public health advice did not recommend there be a requirement for staff and students travelling across the Alert Level boundaries to go a school be required to have had a COVID test due to operational challenges it would present and confidence in other measures to manage the risk.
9. Public health advice is that any students crossing Alert Level boundaries should be strongly encouraged to be vaccinated and be especially alert to any COVID-19 symptoms. It is further advised that students should, as an extra precaution to mitigate transmission risk, be encouraged to wear a face covering while in the Alert Level 2 area. This messaging will be included in guidance.

Minor clarifying amendments

10. The Amendment changes clause 19 to make it clear that certain testing requirements only apply to those travelling out of the Auckland part of the Alert Level 3 area.
11. It also amends clause 4 of the principal Order to insert definitions of registered school and tertiary institution by reference to those used in the Education and Training Act 2020.

Procedural Requirements for a COVID-19 Order

12. This proposed Order amends a COVID-19 Order, which you can do pursuant to sections 11 and 15 of the COVID-19 Public Health Response Act 2020 (The Act). The Act imposes certain requirements for the form, publication and making of COVID-19 Orders. You must be sure that these requirements have been complied with before making a COVID-19 Order.

48 Hour Notification Period

13. The Act requires that a COVID-19 Order must be published and gazetted at least 48 hours before it comes into force. However, this notice period is not required to be observed where you are satisfied that the Order should come into force urgently to prevent or contain the outbreak or spread of COVID-19 or where the effect of the Order is only to remove or reduce requirements imposed by a COVID-19 Order.
14. This Amendment Order generally reduces requirements, introducing additional personal movements between Alert Levels. The 48-hour notice period does not need to be observed with respect to these amendments.
15. Amendments to require face coverings on school transport introduce new restrictions. We consider that these are necessary to prevent the spread of COVID-19 and should come into force immediately.

Ministerial Consultation

- 16. The Act requires that before making a COVID-19 order, you must consult with the Prime Minister, the Minister of Justice and the Minister of Health. You may also consult with any other Minister you think fit.
- 17. We understand that your office had undertaken Ministerial consultation.

Public Health Advice

- 18. The Act requires that before making a COVID-19 Order, you must have had regard to advice from the Director-General of Health about the risks of the outbreak or spread of COVID-19 and the nature and extent of measures (whether voluntary or enforceable) that are appropriate to address those risks.
- 19. We have consulted with the Ministry of Health on the proposed amendments, which has confirmed that these amendments align with public health advice provided by the Director-General of Health.

New Zealand Bill of Rights Act 1990

- 20. Section 9(2)(h) [Redacted]
- 21. Section 9(2)(h) [Redacted]

Attachments:	
Attachment A:	Covid-19 Public Health Response (Alert Level Requirements) Order (No 12) Amendment Order (No 9) (Signature Copy)

Proactively Released