



Briefing about orders made under section 70 of the Health Act 1956

Report of the Regulations Review Committee

August 2023

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Hon Judith Collins
Chairperson

Briefing about orders made under section 70 of the Health Act 1956

Recommendation

The Regulations Review Committee has considered a briefing about orders made under section 70 of the Health Act 1956, and recommends that the House take note of its report.

About this report

Section 70 of the Health Act 1956 gives medical officers of health broad powers to help contain the outbreak or spread of an infectious disease.¹ For this reason, section 70 was heavily used in the initial legislative response to COVID-19, and was the mechanism used to place New Zealand into its initial March 2020 lockdown.

On 13 May 2020, the House passed the COVID-19 Public Health Response Act 2020.² This bespoke legislation largely superseded section 70 orders as the main legislative response to the COVID-19 pandemic. The COVID-19 Public Health Response Act provided broader powers specifically tailored to prevent and limit the risk of the outbreak or spread of COVID-19 in New Zealand. An example was giving the Minister of Health the power to make COVID-19 orders. The power for the Director-General of Health to make COVID-19 orders under the COVID-19 Public Health Response Act was limited to within the boundaries of a single territorial authority district and only where the need for an order was urgent.

Section 70 orders continued to be used occasionally, for example, setting out requirements for people who attended a location of interest.

The COVID-19 Public Health Response Act has subsequently been amended a number of times. In 2022, the Act was amended to extend its duration and to remove a number of powers. For example, it removed the power for the Director-General to make COVID-19 orders under that Act.

Role of the committee

The Regulations Review Committee scrutinises all secondary legislation and the powers in bills to make secondary legislation. It is part of the committee's job to check that those with delegated powers to make legislation use them in the ways Parliament intended. This function is constitutionally significant. It helps Parliament to retain control over the content of laws made under delegated powers.

¹ Medical officers of health are designated by the Director-General of Health who determines the health district or health districts within which powers and duties under the Health Act may be exercised. A medical officer of health must be a medical practitioner suitably qualified and experienced in public health.

² The COVID-19 Public Health Response Act 2020 [can be accessed here](#).

Our scrutiny function has been particularly important during emergencies, such as the COVID-19 pandemic. During periods of emergency, secondary legislation is used to manage extraordinary circumstances and may adversely affect the rights and freedoms that New Zealanders usually enjoy. So it is important that there are safeguards to ensure that those rights are kept in balance with the other work that emergency laws need to do.

Our consideration of section 70 orders

On 25 August 2021, as part of our role in scrutinising secondary legislation made in response to the COVID-19 pandemic, we initiated a briefing about orders made under section 70 of the Health Act. In the months preceding our decision to start this briefing, we had observed numerous issues with section 70 orders being created by medical officers of health.

We published an interim report to the House in November 2021.³ Our interim report recommended that the Government:

- encourage the Director-General of Health to ensure that future section 70 orders requiring periods of isolation and quarantine specify criteria to guide decisions about when those periods must end
- ensure that all revoked and expired section 70 orders, and previous versions of current orders, are published on a government website
- provide additional legislative drafting support to the Director-General of Health.

Government response to our interim report

The Government presented its response to our interim report on 21 June 2023.⁴ This was more than 350 working days after we had presented our interim report. We note that Standing Order 256(1) requires the Government to respond to the recommendations in a select committee report within 60 working days of it being presented to the House.

In its response to our interim report, the Government noted that since February 2022 there has been a shift from the use of section 70 orders to the use of orders made under section 11 of the COVID-19 Public Health Response Act. This change was due to the COVID-19 response transitioning from an emergency response to a longer-term management approach. It meant that section 70 orders were a less appropriate instrument to support the response.

However, the Government agreed to implement our recommendations on any future orders that might be made under section 70. This includes orders that might be made to combat COVID-19 or any future infectious disease outbreaks.

Committee conclusion

We are disappointed at the time taken by the Government to respond to the recommendations in our interim report. While we understand that the Government was

³ Our interim report on this briefing [can be read here](#).

⁴ The Government response to our interim report [can be read here](#).

occupied with responding to COVID-19, taking over five times the 60 working day timeframe for presenting a response to the House is simply not good enough. It is important that the Government's actions demonstrate respect for Parliament.

We are pleased that the Ministry of Health has agreed to implement our recommendations on any future orders made under section 70 of the Health Act. We note, however, that by the time the response to our interim report was presented, COVID-19 restrictions had largely finished. The delay makes it difficult for the general public to understand what action the Government is taking to respond to the concerns raised by the committee.

In the time between the presentation of our interim report and this report, we have conducted an inquiry into COVID-19 secondary legislation.⁵ In that report, we have made several recommendations to the Government based on our experiences scrutinising secondary legislation related to COVID-19, including section 70 orders.

⁵ Our final report on our Inquiry into COVID-19 Secondary Legislation [can be read here](#).

Appendix

Committee procedure

We met between 25 August 2021 and 16 August 2023 to consider this briefing. We received advice from the Office of the Clerk's Legislative Counsel.

Committee members

Hon Judith Collins (Chairperson and member from 18 October 2022)

Chris Penk (Chairperson and member until 18 October 2022)

Camilla Belich (from 23 August 2022 to 8 February 2023)

Chris Bishop (until 8 December 2021)

Hon Rachel Brooking (until 8 February 2023)

Steph Lewis (until 23 August 2022 and from 8 February 2023)

Joseph Mooney (from 8 December 2021 to 3 August 2022)

Hon Eugenie Sage

Toni Severin

Sam Uffindell (from 3 August 2022)

Vanushi Walters

Helen White (from 8 February 2023)