

Hon Andrew Little, Minister of Justice

For approval: Immediate Modification Orders under Epidemic Preparedness Act 2006

Date	15 April 2020	File reference	
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Action Sought

Timeframe

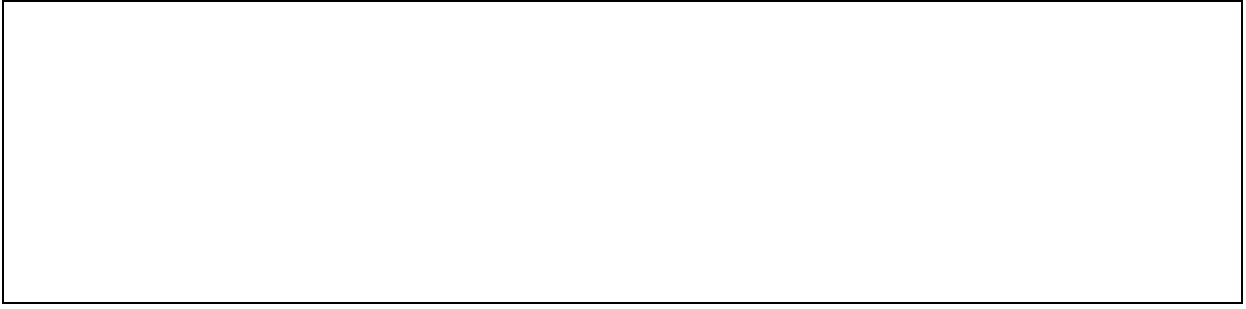
Agree to the recommendations in this paper	15 April 2020
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Contacts for telephone discussion (if required)

Name	Position	Telephone		1st contact
		(work)	(a/h)	
Sam Kunowski	General Manager, COVID-19 Response Policy	04 913 9172	s9(2)(a)	✓
Jenna Reid	Policy Manager, COVID-19 Response Policy	04 918 8649		
Kerryn Frost	Senior Advisor, Policy Group	04 466 0384		

Minister's office to complete

<input type="checkbox"/> Noted	<input type="checkbox"/> Approved	<input type="checkbox"/> Overtaken by events
<input type="checkbox"/> Referred to: _____		
<input type="checkbox"/> Seen	<input type="checkbox"/> Withdrawn	<input type="checkbox"/> Not seen by Minister
<p>Minister's office comments</p> 		



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15 April 2020

Hon Andrew Little, Minister of Justice

For approval: Immediate Modification Orders under Epidemic Preparedness Act 2006

Purpose

1. This briefing seeks your approval of four Immediate Modification Orders (**Attachments 2 – 5**) under s 15 of the Epidemic Preparedness Act 2006 ('EPA'). It also seeks your approval of, and agreement to progress, the attached Cabinet paper (**Attachment 1**).

Background

2. On 25 March 2020, the epidemic notice issued by the Prime Minister under s 5 of the EPA came into force. The issuing of an epidemic notice enables the Governor-General to, by Order in Council and on the recommendation of the Minister responsible for the legislation, modify any requirement or restriction imposed by the legislation under s 15 of the EPA.

3. In a briefing dated 7 April 2020, you agreed to progress s9(2)(h) [REDACTED]

3.2. Sections 3, 4, 8, 9, 11 and 12 of the Oaths and Declarations Act 1957;

3.3. Section 9 A of the Protection of Personal and Property Rights Act 1988;

3.4. Section 103 of the Sale and Supply of Alcohol Act 2012; and

3.5. Section 11 of the Wills Act 2007.

4. At that time, Andrew Kibblewhite, Secretary for Justice, advised you that he was satisfied that the proposed modifications met the criteria set out in s 15. s9(2)(h) [REDACTED]

5. On 9 April 2020, you advised Cabinet that you were satisfied that the six proposed modifications across the four statutes met the s 15 criteria, on the basis that you and the Secretary for Justice considered:
 - 5.1. the requirements and restrictions that are to be modified are impossible or impracticable to comply with while the Epidemic Notice and associated measures impacting on public life are in place; and
 - 5.2. you are both of the opinion that the modifications go no further than is, or is likely to be, reasonably necessary in the circumstances, as required by s 15(2)(a)(ii).
6. Cabinet agreed to the modifications and authorised drafting instructions to be issued to Parliamentary Counsel Office ('PCO') [CAB-20-MIN-0130 refers].

Three of the Immediate Modifications Orders have been drafted

7. Following Cabinet authorisation, the Ministry of Justice issued drafting instructions to PCO to develop the Immediate Modification Orders. Three of those Orders have been drafted and are attached to this briefing (**Attachments 2 – 4**).
8. The Immediate Modification Order relating to the Protection of Personal and Property Rights Act is still being drafted by PCO. In the interests of time and recognising the urgent nature of the remaining modifications, we recommend that you seek approval of the three complete Immediate Modification Orders as planned. The Protection of Personal and Property Rights Act Order can then follow once it is complete.
9. We seek your approval of the Immediate Modification Orders to the following Acts:

Oaths and Declarations Act (Attachment 2)

10. Modifies the Oaths and Declarations Act ('the OD Act') to provide that a person taking an oath or making an affirmation or declaration need not be physically with the person administering the oath or taking the affirmation or declaration, nor physically sign the same document.
11. The modification provides that the person administering or taking the oath, affirmation, or declaration remotely must keep a record of that occurring due to the Epidemic Notice being in force, and the remote means used. Audio-visual links ('AVL') will be the preferred, but not legislatively required, method of remotely taking oaths or making affirmations or declarations. All other existing core requirements for taking oaths or making affirmations or declarations remain the same.
12. The OD Act Order would make a further modification to reduce the risk that the requirement to provide a statutory declaration acts as a barrier to people accessing services they need. Entities that would usually receive a statutory declaration (for example, KiwiSaver providers dealing with withdrawal applications on the grounds of significant financial hardship) could

authorise an officer or employee to take the statutory declaration in place of one of the people authorised under the OD Act.

Sale and Supply of Alcohol Act (Attachment 3)

13. Modifies the Sale and Supply of Alcohol Act ('SSA Act') to suspend the obligations on Police and Medical Officers of Health to inquire into any new or renewal alcohol licence application received or underway. Also suspends the District Licensing Committees' ('DLC') ability to assume that neither party opposes the application while the COVID-19 Epidemic Notice is in force. A further modification extends the timeframe for Police and Medical Officers of Health to file a report with the DLC once the notice is lifted from 15 working days to 30 working days.

Wills Act (Attachment 4)

14. Modifies the Wills Act to remove requirements for witnesses to be physically present with the will maker and to physically sign the same document while the Epidemic Notice is in force. Relevant documents can instead be signed and witnessed remotely via AVL, with the will maker and witnesses having a copy of the document before them.
15. Witnesses will be required to include a statement that they have witnessed the maker signing the relevant document and that they have signed a copy of the same document by AVL due to the Epidemic Notice being in force. Scans or photos of the copies must be taken as soon as possible after signing and these must be sent to and held by one person. Other core requirements for making or modifying wills remain in place.

Next steps

16. If you approve the three Immediate Modification Orders, I recommend that you take the attached paper (**Attachment 1**) to the COVID-19 Ministerial Group meeting on 16 April. Following its approval, the Orders can be sent to the Executive Council and signed by the Governor-General. We have proposed that the Immediate Modification Orders come into force the day after they are gazetted, on Friday 17 April. The paper accordingly seeks approval to waive the 28-day rule on the grounds that the Orders are made in response to an emergency.
17. Proposed timeframes for finalising the Immediate Modification Orders are set out below:

Date	Step
14 April	Minister receives draft Cabinet paper attaching Immediate Modification Orders. Potential Ministerial consultation overnight

Date	Step
15 April	Lodge with Cabinet Office by 4pm
16 April	COVID-19 Group of Ministers
At its next meeting	Send Immediate Modification Orders to Executive Council Governor-General signs Immediate Modification Orders
16 April	PCO publishes Immediate Modification Orders on the New Zealand Legislation website
17 April	Immediate Modification Orders in effect
ASAP	Immediate Modification Orders presented to the House of Representatives as soon as practicable after they are made

18. These timeframes have been discussed with your office and officials are available to discuss them with you if necessary.

Consultation

19. Due to timing constraints, relevant government agencies were briefly consulted on the draft Immediate Modification Orders and draft Cabinet paper earlier today. Agencies that were consulted include the Department of Internal Affairs, Inland Revenue Department, Land Information New Zealand, Ministry of Health, Ministry of Business, Innovation and Employment, New Zealand Police, Office for Disability Issues, Office for Seniors, and the Treasury.
20. The Department of the Prime Minister and Cabinet (Policy Advisory Group) has been informed. The judiciary were consulted briefly on the proposed modifications. The Alcohol Licensing and Regulatory Authority and New Zealand Law Society where relevant, were also consulted on the policy proposals.

Recommendations

21. It is recommended that you:
- Note** that, as Secretary for Justice, is of the opinion that the requirements and restrictions to be modified are impossible or impracticable to comply with while the epidemic notice is in force and that the modifications go no further than is, or is likely to be, reasonably necessary in the circumstances;

2. **Note** that you previously agreed that you were satisfied that the requirements and restrictions to be modified are impossible or impracticable to comply with while the epidemic notice is in force and that the modifications go no further than is, or is likely to be, reasonably necessary in the circumstances;
3. **Approve** the following Immediate Modification Orders:
- 3.1. Epidemic Preparedness (Oaths and Declarations Act 1957) Immediate Modification Order; **YES / NO**
- 3.2. Epidemic Preparedness (Sale and Supply of Alcohol Act 2012 – Licence Application Inquiries) Immediate Modification Order; **YES / NO**
- 3.3. Epidemic Preparedness (COVID-19 – Wills Act 2007 – Signing and Witnessing of Wills) Immediate Modification Order; **YES / NO**
4. **Note** that the Immediate Modification Order relating to the Protection of Personal and Property Rights Act 1988 is being drafted and will follow at a later date.
5. **Agree** to take the attached paper to the COVID-19 Ministerial Group seeking approval of three of the Immediate Modification Orders and authorisation to submit them to the Executive Council. **YES / NO**

Sam Kunowski

General Manager COVID 19 Response Policy

APPROVED / SEEN / NOT AGREED

Hon Andrew Little

Minister of Justice

Date: / /

Attachments:

s18(d)



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