

Reprint
as at 21 May 2020



COVID-19 Public Health Response (Alert Level 2) Order 2020

(LI 2020/84)

This order is made in accordance with sections 9 and 11 of the COVID-19 Public Health Response Act 2020 by the Minister of Health.

Contents

		Page
1	Title	2
2	Commencement	2

Part 1 Preliminary provisions

3	Purpose	2
4	Interpretation	2
5	Transitional, savings, and related provisions	4
6	Application of this order	4

Part 2 Measures imposed by this order

Subpart 1—Application of requirements, and requirement to comply

7	Guide to requirements in this order	4
8	People must comply with COVID-19 measures	4
9	Persons that carry on businesses and services must comply with general and specific requirements	5

Subpart 2—Businesses and services

10	General requirements for all businesses and services	6
11	Specific controlled access requirements for businesses and services and other entities	7

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This order is administered by the Ministry of Health.

12	Specific food and drink requirements for businesses and services	7
13	Specific proximity requirements for businesses and services	8
	Subpart 3—Gatherings	
14	Exclusion for residing in home or residence	9
15	Types of gatherings	9
16	Higher-risk gatherings	9
17	Gatherings of friends and whānau	10
18	Lower-risk gatherings	10
19	Authorised funeral or tangihanga gathering	11
	Subpart 4—Exclusions and exemptions	
20	Exclusion for emergencies	11
21	Specific exclusions from this order	11
22	Exemptions from this order	12
23	Authorisations from this order	13

Part 3
Other matters

24	Revocation	13
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Schedule 1 13
Transitional, savings, and related provisions

Order

- 1 Title**
This order is the COVID-19 Public Health Response (Alert Level 2) Order 2020.
- 2 Commencement**
This order comes into force at 12.01 am on 14 May 2020.

Part 1
Preliminary provisions

- 3 Purpose**
The purpose of this order is to prevent, and limit the risk of, the outbreak or spread of COVID-19 by putting in place obligations in relation to businesses and services, and gatherings.
- 4 Interpretation**
In this order,—

businesses and services—

- (a) includes (except to the extent set out in paragraph (b))—
 - (i) voluntary and not-for-profit services; and
 - (ii) both public sector and private sector businesses and services; and
 - (iii) businesses and services that provide space for other businesses and services to operate within, such as shopping malls and marketplaces; and
 - (iv) businesses and services that provide venues for events that people pay to attend or activities that people pay to do, such as music concerts and ten-pin bowling; and
 - (v) the playing of sports professionally or semi-professionally; but
- (b) does not include—
 - (i) voluntary or not-for-profit sporting, recreational, social, or cultural activities; or
 - (ii) households carrying out family activities in their household unit

customer or client includes any non-paying customer or client

gathering of friends and whānau has the meaning given in clause 17(1)

household unit—

- (a) means a building or group of buildings, or part of a building or group of buildings, that is—
 - (i) used, or intended to be used, only or mainly for residential purposes; and
 - (ii) occupied, or intended to be occupied, exclusively as the home or residence of not more than 1 household; but
- (b) does not include a hostel or boardinghouse

keep records to enable contact tracing means collecting and maintaining the following information:

- (a) a person's full name;
- (b) their residential address;
- (c) an effective means of communicating with them (for example, an active phone number or email address);
- (d) the date on which, and the times at which, the person arrived and left the relevant place

worker—

- (a) means, in the context of a business or service that is required to comply with clauses 10 to 13, any person who carries out work in any capacity for that business or service (whether paid or unpaid); and

- (b) to avoid doubt, includes professional and semi-professional sports players

workplace has the same meaning as in section 20 of the Health and Safety at Work Act 2015.

5 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

6 Application of this order

- (1) This order applies to all areas of New Zealand.
- (2) If the Director-General of Health makes a section 11 order under the COVID-19 Public Health Response Act 2020 that applies only within the boundaries of a single territorial authority district, that order applies (rather than this order) to the extent of any inconsistency.

Part 2

Measures imposed by this order

Subpart 1—Application of requirements, and requirement to comply

7 Guide to requirements in this order

- (1) To the extent that people intermingle in the workplace of a business or service, clauses 10 to 13 govern the activities of those people.
- (2) In all other circumstances, people must—
 - (a) stay, to the greatest extent practicable, 2 metres apart (*see* clause 15(1)(b)(i)); or
 - (b) comply with the requirements of—
 - (i) a gathering of friends and whānau (*see* clause 17); or
 - (ii) a lower-risk gathering (*see* clause 18); or
 - (iii) an authorised funeral or tangihanga gathering (*see* clause 19).
- (3) This clause is a guide only to the general scheme of the requirements that apply to people.

8 People must comply with COVID-19 measures

- (1) A person (**person A**) must comply with reasonable measures that—
 - (a) are put in place by a business or service or by the organiser of a gathering to meet the requirements of this order; and
 - (b) are notified to, or brought to the attention of, person A.

- (2) A breach of subclause (1) is an infringement offence for the purposes of section 26(3) of the COVID-19 Public Health Response Act 2020.
- (3) In this clause, **organiser of a gathering** means a person who arranges or organises—
 - (a) a gathering of friends and whānau (*see* clause 17); or
 - (b) a lower-risk gathering (*see* clause 18); or
 - (c) an authorised funeral or tangihanga gathering (*see* clause 19).

9 Persons that carry on businesses and services must comply with general and specific requirements

- (1) Any reference to a requirement applying to a business or service in clauses 10 to 13 must be read as a requirement that applies, in accordance with this clause, to the person who is carrying on the business or service.
- (2) All businesses and services must comply, so far as is reasonably practicable, with—
 - (a) the general requirements in clause 10; and
 - (b) each of the specific requirements in clauses 11 to 13 to the extent that they apply to them or their activities (for example, a business or service that sells food or drink must comply with clause 10 (regardless of whether it sells takeaway food or drink or food or drink that is consumed on site), and with clause 12 if it sells food or drink that is consumed on site).
- (3) If there is a difference between the general requirements and the specific requirements that apply to a business or service, the business or service must comply with the specific requirements, except in relation to physical distancing requirements for people who are part of a gathering of friends and whānau (who are permitted, in all circumstances other than circumstances described in clause 10(2)(d), to be less than 1 metre away from each other).
- (4) More than 1 business or service may operate in the same, or a shared, space (for example, a shopping mall, a marketplace, or a cafe that operates in an office building) provided that each of those businesses and services is able to comply with all of the requirements in clauses 10 to 13 to the extent that they apply to them or their activities.

Example

Jess, her husband, and their 3 children meet together with their close friends, Emily, Tessa, George, Wally, and Nicola (the **group**) at the park. They are allowed to be within 1 metre of each other because they are part of a gathering of friends and whānau (*see* clause 17). But they must stay 2 metres away from other people at the park (*see* clause 15(1)(b)(i)).

The group walks to the shopping mall and visits some shops in the mall together. The mall is owned and operated by Company A. Company A is required to ensure

that the group stays 2 metres away from other people in the mall (see clause 10). The general requirements for all businesses and services in clause 10 apply.

Each of the different businesses in the shopping mall can operate provided they (and Company A) each comply with all of the requirements for businesses and services in clauses 10 to 13 that apply to them.

The group decides to eat at a cafe that is operating in the shopping mall's concourse and is keeping records to enable contact tracing. They are seated at a table together and served by 1 staff member. The tables in the cafe are arranged so there is at least a 1-metre separation between the group and customers at neighbouring tables. The other specific food and drink requirements for businesses and services also apply (see clause 12).

After finishing their meal, the group goes to a hairdresser's salon. The special proximity requirements for businesses and services apply because cutting and styling someone's hair requires physical proximity (see clause 13).

Wally goes back to the cafe to buy some food to take home. The general requirements for all businesses and services in clause 10 apply, but the specific food and drink requirements for businesses and services in clause 12 do not apply because the food is not sold for consumption in the cafe (see clause 9(2)(b)).

Subpart 2—Businesses and services

10 General requirements for all businesses and services

- (1) This clause applies to all businesses and services.
- (2) Businesses and services must—
 - (a) ensure that all people who enter the workplace or use its services remain 2 metres away from each other and from the workers (to the greatest extent practicable), except—
 - (i) to the extent that paragraph (b) applies; and
 - (ii) for people who are part of a gathering of friends and whānau; and
 - (b) ensure that all workers who enter the workplace or carry out work for the business or service remain 1 metre away from each other (to the greatest extent practicable), except for workers who are part of a gathering of friends and whānau; and
 - (c) mitigate the risks that arise to the extent that the physical distancing requirements in paragraphs (a) and (b) (or the specific physical distancing requirements in clauses 11 to 13 that apply instead) are not fully maintained; and
 - (d) permit no more than 10 people who are part of a gathering of friends and whānau (at any one time) to be in the workplace and less than 1 metre away from each other; and
 - (e) keep records to enable contact tracing of all workers who enter the workplace or carry out work for the business or service; and

- (f) ensure that food or drink is not sold or provided for consumption in the workplace that sells or provides it, except in accordance with clause 12.
- (3) A breach of subclause (2) (as applied by clause 9) is an infringement offence for the purposes of section 26(3) of the COVID-19 Public Health Response Act 2020.

11 Specific controlled access requirements for businesses and services and other entities

- (1) This clause—
 - (a) applies to—
 - (i) businesses and services to the extent that they largely have a consistent group of workers and usually have a fixed workplace, such as office workplaces and factories; and
 - (ii) businesses and services to the extent that their customers or clients are members of the business or service, such as gyms; and
 - (iii) public facilities that are located within a building or structure, such as swimming pools, libraries, and museums; and
 - (iv) event facilities such as cinemas, theatres, stadiums, concert venues, conference venues, and casinos; and
 - (v) courts and tribunals; but
 - (b) does not apply to retail businesses, such as shopping malls, supermarkets, marketplaces, takeaway-food stores, and retail stores.
- (2) The businesses and services and other entities to which this clause applies must—
 - (a) ensure that all people who enter the workplace or use its services remain 1 metre away from each other and from workers (to the greatest extent practicable); and
 - (b) keep records to enable contact tracing of people who enter the workplace or use its services; and
 - (c) if they are an event facility of the kind described in subclause (1)(a)(iv), permit no more than 100 customers or clients to be in the workplace at any 1 time (not including workers).
- (3) A breach of subclause (2) (as applied by clause 9) is an infringement offence for the purposes of section 26(3) of the COVID-19 Public Health Response Act 2020.

12 Specific food and drink requirements for businesses and services

- (1) This clause applies to the extent that customers or clients enter the workplace of a business or service and food or drink is sold or provided for consumption (or offered for consumption) to those customers or clients in that workplace, such as—

- (a) a restaurant or cafe; or
 - (b) a soup kitchen or other place where food or drink is provided without charge.
- (2) Businesses and services must—
- (a) permit no more than 100 customers or clients to be in the workplace at any 1 time; and
 - (b) ensure that each customer or client is seated at a table (other than when entering, using a toilet or bathroom, paying, or departing); and
 - (c) ensure that no more than 10 customers or clients are seated at a table together; and
 - (d) ensure that adjacent tables are arranged so there is at least a 1-metre separation between the seated customers or clients at adjacent tables; and
 - (e) ensure that only 1 worker serves at any table; and
 - (f) keep records to enable contact tracing of customers or clients who enter the workplace or use its services.
 - (g) *[Revoked]*
- (3) Nothing in this clause applies to—
- (a) accommodation services selling or providing food or drink for residents (including room service):
 - (b) businesses or services providing food or drink to their workers:
 - (c) vending machines that are located and used within a workplace:
 - (d) cinemas or theatres selling food or drink to customers or clients when they are seated inside the cinema or theatre.
- (4) A breach of subclause (2) (as applied by clause 9) is an infringement offence for the purposes of section 26(3) of the COVID-19 Public Health Response Act 2020.
- (5) *[Revoked]*
- Clause 12(2)(g): revoked, at 8 am on 21 May 2020, by clause 5.
Clause 12(5): revoked, at 8 am on 21 May 2020, by clause 5.

13 Specific proximity requirements for businesses and services

- (1) This clause applies to the extent that a business or service cannot operate without physical contact, or close proximity, between people, such as massage and hairdressing services, small passenger services, and professional or semi-professional sports.
- (2) Businesses and services must—
- (a) ensure that all people who enter the workplace or use its services remain 1 metre away from each other and from workers (to the greatest extent practicable), except for workers and the people they are required to have

- physical contact with, or close proximity to, in order to carry out the activities of that business or service; and
- (b) keep records to enable contact tracing of people who enter the workplace or use its services.
- (3) A breach of subclause (2) (as applied by clause 9) is an infringement offence for the purposes of section 26(3) of the COVID-19 Public Health Response Act 2020.
- (4) In this clause, **small passenger service** has the same meaning as in section 2(1) of the Land Transport Act 1998.

Subpart 3—Gatherings

14 Exclusion for residing in home or residence

Nothing in this subpart prevents people from residing together in their home or place of residence.

15 Types of gatherings

- (1) A **gathering**—
- (a) means a group of people who are intermingling, and includes both public and private activities; but—
 - (b) does not include—
 - (i) activities where people remain 2 metres away from each other to the greatest extent practicable (for example, activities carried out by people who are at a playground, beach, or park);
 - (ii) activities (other than an authorised funeral or tangihanga gathering) undertaken at a business or service in compliance with clauses 10 to 13.
- (2) A gathering is one of the following:
- (a) a higher-risk gathering (*see* clause 16); or
 - (b) a gathering of friends and whānau (*see* clause 17); or
 - (c) a lower-risk gathering (*see* clause 18); or
 - (d) an authorised funeral or tangihanga gathering (*see* clause 19).

16 Higher-risk gatherings

- (1) A **higher-risk gathering** is a gathering other than—
- (a) a gathering of friends and whānau; or
 - (b) a lower-risk gathering; or
 - (c) an authorised funeral or tangihanga gathering.
- (2) Higher-risk gatherings are not permitted.
- (3) A person must not be part of a higher-risk gathering.

- (4) A person must not organise a higher-risk gathering.
- (5) A responsible person must not allow a higher-risk gathering to occur.
- (6) A **responsible person** is,—
 - (a) in relation to any gathering at any premises, the person who controls those premises; and
 - (b) in relation to a funeral or tangihanga, the funeral director or other person who arranges or organises the gathering.
- (7) A breach of subclause (3), (4), (5), or (6) is an infringement offence for the purposes of section 26(3) of the COVID-19 Public Health Response Act 2020.

17 Gatherings of friends and whānau

- (1) A **gathering of friends and whānau** is a gathering—
 - (a) where every person who is part of the gathering knows, and can identify for the purposes of contact tracing, every other person who is part of the gathering; and
 - (b) that consists of either—
 - (i) no more than 10 people; or
 - (ii) more than 10 people who reside together in their household unit (**household unit A**), which includes—
 - (A) children in shared custody arrangements who visit or live in household unit A for some of the time, and who visit or live in another household unit for some of the time; and
 - (B) a shared caregiver (or someone acting on behalf of a shared caregiver) who visits or stays in household unit A for some of the time in order to visit or stay with children who are the subject of the shared caregiving arrangement, and who usually lives in another household unit.
- (2) A gathering of friends and whānau is permitted.

18 Lower-risk gatherings

- (1) A **lower-risk gathering** is a gathering—
 - (a) of no more than 10 people; and
 - (b) where any person who is part of the gathering does not know, or cannot identify for the purposes of contact tracing, every other person who is part of the gathering; and
 - (c) at which a person who is part of the gathering keeps records to enable contact tracing of the people who gather.
- (2) A lower-risk gathering is permitted.

19 Authorised funeral or tangihanga gathering

- (1) An **authorised funeral or tangihanga gathering** is a gathering—
 - (a) that is held for the purposes of a funeral service or tangihanga; and
 - (b) of no more than 50 people (not including workers); and
 - (c) is authorised under clause 23; and
 - (d) for which the funeral director or any other person who arranges or organises the funeral service or tangihanga—
 - (i) registers the funeral service or tangihanga with the Ministry of Health (before it takes place); and
 - (ii) declares that it is authorised under clause 23; and
 - (iii) keeps records to enable contact tracing of all people who attend the funeral service or tangihanga.
- (2) An authorised funeral or tangihanga gathering is permitted.

Subpart 4—Exclusions and exemptions

20 Exclusion for emergencies

Nothing in this order prevents any person from assisting in, or responding to, an emergency.

21 Specific exclusions from this order

- (1) Nothing in this order applies—
 - (a) to the provision of health services:
 - (b) to people using a service for the carriage of passengers for hire or reward that is contracted or funded by the Ministry of Education, local authorities, or Auckland Transport for the sole or primary purpose of transporting school children to and from school:
 - (c) to people using public transport services:
 - (d) to residences (including care and protection and youth justice residences) established under section 364 of the Oranga Tamariki Act 1989:
 - (e) within a corrections prison as defined in section 3(1) of the Corrections Act 2004:
 - (f) to custodial or detention services managed by the New Zealand Police, the Department of Corrections, or the Ministry of Justice, or within a courthouse:
 - (g) to people being transported for the purposes of the Department of Corrections and New Zealand Police fulfilling their purposes and performing their functions and duties:
 - (h) to the New Zealand Defence Force:

- (i) to the New Zealand Police;
 - (j) to Fire and Emergency New Zealand.
- (2) Nothing in this order applies to people who are at an education entity for the purposes of receiving or providing, or assisting in or supporting the receipt or provision of, education services, provided that the education entity has systems and processes in place to—
- (a) enable suitable contact tracing of people who enter the relevant workplaces, or deliver or use the relevant services; and
 - (b) mitigate the risks that arise to the extent that the physical distancing requirements in this order that would otherwise apply to the workplace or service are not fully maintained.
- (3) Subclause (2) does not apply to—
- (a) inter-school activities; or
 - (b) activities at (or connected with) an education entity that are attended by people who are otherwise not ordinarily at that education entity for the purposes of receiving or providing, or assisting in or supporting the receipt or provision of, education services.
- (4) In this clause,—

education entity has the same meaning as in section 476B of the Education Act 1989

health service has the same meaning as in section 5(1) of the Health Practitioners Competence Assurance Act 2003

public transport service has the same meaning as in section 5(1) of the Land Transport Management Act 2003, but includes air transport that is available to the public generally and excludes small passenger service vehicles (as defined in that Act).

22 Exemptions from this order

- (1) The Minister may exempt any class of persons, businesses, or services from the application of any provision of this order or from the requirement to comply with any provision of this order if the Minister is satisfied that—
- (a) the exemption is necessary or desirable in order to promote the purposes of the Act or the purposes of this order; and
 - (b) the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.
- (2) The Minister may impose conditions on the exemption as the Minister considers necessary.
- (3) The exemption must—
- (a) be published on a publicly accessible Internet site maintained by or on behalf of the New Zealand Government; and

(b) be notified in the *Gazette*.

23 Authorisations from this order

- (1) The Director-General of Health may, after having had regard to the purposes of the COVID-19 Public Health Response Act 2020, authorise, on conditions that the Director-General thinks fit, any class of funerals or tangihanga for the purposes of clause 19(1)(c).
- (2) The exemption must—
 - (a) be published on a publicly accessible Internet site maintained by or on behalf of the New Zealand Government; and
 - (b) be notified in the *Gazette*.

**Part 3
Other matters**

24 Revocation

The Health Act (COVID-19 Alert Level 3) Order 2020 (LI 2020/69) is revoked.

**Schedule 1
Transitional, savings, and related provisions**

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**Part 1
Provisions relating to this order as made**

1 Revocation of on-licence requirements relating to businesses and services providing food or drink

Clause 12(2)(g) and (5) are revoked at 8 am on 21 May 2020.

Dated at Wellington this 13th day of May 2020.

Hon Dr David Clark,
Minister of Health.

Reprints notes

1 *General*

This is a reprint of the COVID-19 Public Health Response (Alert Level 2) Order 2020 that incorporates all the amendments to that order as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

COVID-19 Public Health Response (Alert Level 2) Order 2020 (LI 2020/84): clause 5