



Briefing

PROTECTION FRAMEWORK ORDER: POLICY AMENDMENTS TO THE DRAFT ORDER

To Minister for COVID-19 Response (Hon Chris Hipkins)

Date	22/11/2021	Priority	High
Deadline	23/11/2021	Briefing Number	DPMC-2021/22-887


Purpose

This briefing has been drafted to be read alongside the draft COVID-19 Public Health Response (Protection Framework) Order 2021 which is now with you for Ministerial consultation. This briefing summarises issues identified to date by agencies and outlines the recommended approach for Ministers' awareness and direction. Officials plan to instruct the Parliamentary Counsel Office (PCO) on the basis of this briefing.

Recommendations

1. **Note** that this briefing highlights for Ministers any issues that have already been identified to date and outlines the recommended approach;
2. **Agree** to consult the Prime Minister, Minister of Justice and Minister of Health (and any other Minister you identify) on the content of this briefing and the attached draft order; **YES / NO**
3. **Note** that officials plan to instruct the Parliamentary Counsel Office (PCO) on the basis of this briefing;

4. **Agree** that this briefing is proactively released, with any appropriate redaction where information would have been withheld under the Official Information Act 1982, in January 2022. **YES / NO**



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22/11/2021

Hon Chris Hipkins
Minister for COVID-9 Response

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Contact for telephone discussion if required:

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Minister's office comments:

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- Withdrawn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

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Executive summary

1. This briefing has been drafted to be read alongside the draft COVID-19 Public Health Response (Protection Framework) Order 2021 which is now with you for Ministerial consultation. This Order enables the shift from the Alert Level Framework to the COVID-19 Framework as part of the Government's ongoing response to COVID-19.
2. The purpose of this briefing is to highlight for Ministers any issues that have already been identified to date and outline the recommended approach. The following section summarises the various issues either raised by agencies or identified by DPMC, during the draft Order consultation process, along with proposed amendments to provide clarification in the order. Most (but not all) of the issues outlined below are reflected in a specific part of the draft order.
3. Officials recommend that you consult the Prime Minister, Minister of Justice and Minister of Health (and any other Minister you identify) on the content of this briefing and the attached draft order.
4. Officials plan to instruct the Parliamentary Counsel Office (PCO) on the basis of this briefing.

Summary of issues

Critical financial services

5. Officials received advice from the Ministry of Business Innovation and Employment (MBIE) that critical financial services should be included in the Framework order, given that they had been an Alert Level 4 business or service under the previous Alert Level Requirements Order. They will be included as a Category 1 business in schedule 2, meaning that workers in these services can travel into and out of Auckland and can be considered in the list of businesses that could remain open during a localised lockdown.

Serving of food and drink, retail operating in transport settings

6. Ministry of Transport officials have advised on an issue related to the serving of food and drink on all public transport service (e.g. ferries, planes, trains) – including in publicly and privately accessed ferry or airline transit lounges (e.g. Wellington Airport, Britomart station, Koru club) – and related to the CVC requirements or capacity limits under existing settings of the Framework. Currently, these settings and services are captured by requirements either creating capacity limits or needing to operate with CVCs, despite operational challenges related to varying levels of access to their premises or service.
7. An additional subclause will create an exemption for these specified settings and scenarios, specifically:
 - a) where an airline lounge food and drink business or service (i.e. a food and drink business or service operated by airlines for the exclusive use of passengers on a public transport service);

- b) where a transport station food and drink business or service (i.e. a food and drink business or service operating within a transport station in a space that is not its own distinct defined space); and
 - c) at a transport station retail business or service (i.e. a retail business or service operating within a transport station in a space that is not its own distinct defined space).
8. These services will be therefore be exempt from the requirements to operate with CVCs or capacity limits under the settings in the Framework.

Additional Auckland boundary permissions

9. Officials from the Ministry of Foreign Affairs and Trade (MFAT) have recommended adding 'travel for scheduled visa appointments' to an embassy, high commission or consulate and the Ministry of Education for 'tertiary students travelling for study at tertiary institution' (i.e. those travelling back and forward each day) to the list of permitted cross-boundary travel for the Auckland boundary. This will be enabled by additional items in schedule 3 of the order.

Broadening the face coverings obligation in business/workplaces

10. MBIE and WorkSafe officials recommend amending clause 21 to provide a new obligation for businesses or services to "have systems or processes to ensure face coverings are worn" so that businesses have more responsibility for ensuring staff wear masks. Previously this obligation was just on the individual, but agency feedback has advised that it should also sit with the business or service to ensure their workers wear a face covering, to enable better enforcement of these rules in the workplace. MBIE advise that as businesses don't have the ability to constantly supervise and enforce wearing for customers, it is preferable for the existing obligation to remain on the individual as the customer in any particular setting. This additional obligation will be amended to only apply to workers.

Requirements relating to CVC use

11. Premises must display their CVC status (whether they are operating under CVC or non CVC rules) using a prominently displayed sign and if they are operating under the CVC rules the sign must indicate that a CVC is required before a person may enter. At this stage, this requirement does not apply to businesses who opt to operate with CVCs, however officials are continuing to consider whether those businesses who decide to opt in, should be required to comply with cl 21B. Despite this ongoing work, any amendments will not be part of next week's Protection Framework Order for signing.

Requirements in Education settings

12. In order to provide tertiary settings with a reasonable ability to operate CVC requirements (including the collection and storage of information related to this requirement) the Ministry of Education have advised that they can only "take steps to ensure that everyone entering the premises is CVC compliant". In this case "premises" include teaching, learning and research spaces, students support and advisory services (excluding health services covered by cl 9) and any other on-campus indoor spaces not covered by other requirements (e.g. retail). It will not include onsite student accommodation. Officials note that this represents a different threshold of obligation for tertiary settings to meet their obligations, compared to all other settings (e.g. hospitality, events) operating with CVCs under the Framework.

13. The Ministry of Education are also proposing that licensed playgroups are included in the definition of 'Close proximity businesses and services' (CPB) in the Framework order to enable them to operate at all levels of the Framework. Playgroups who choose not to operate with CVCs would be unable to operate at Orange and Red levels, and at Green, face coverings and distancing requirements would apply. This addition of playgroups to CPBs would not cover play groups that happen at a private dwellings/houses or in public parks, as those will be defined as gatherings.
14. Given Cabinet's decision to move to the Framework as early as the week of the 29th November, the Ministry of Education has recommended all registered schools in Green, Orange and Red settings continue to operate as at current AL3 until the beginning of the 2022 academic year. This will enable greater continuity for students still learning at this stage of the year, and likely allow a smoother transition to the new settings in the new academic year for both teachers and students.
15. There are other minor amendments that relate to education settings which have been advised by the Ministry of Education. These are: the obligation for education entities to have systems and processes in place to restrict attendance to be restricted to registered schools only, a requirement for adult visitors to ECE settings to wear face coverings on-site, and to require ECEs and tertiary settings have systems and processes in place to manage groups of learners in accordance with the associated public health risk and sector guidance.

Specified government services as prohibited settings for vaccine requirements

16. Ministry of Health advise that exempted health services in the new order as prohibiting use of vaccine requirements should be specified as all health services (as defined under s 5(1) of the Health Practitioners Competence Assurance Act) that are partly or wholly funded by the Ministry of Health, Oranga Tamariki, Ministry of Social Development, Department of Corrections, District Health Boards, Veterans Affairs and ACC. This will mean that these settings will be prohibited from requiring vaccination as a condition of entry under the Framework.
17. This definition would include a relatively wide array of services, including primary care services funded by District Health Boards, publicly funded residential care and public hospital services, and ensure continued access for all to these services irrespective of vaccination status. This change remains consistent with the policy intent of the CVC prohibited settings work.
18. MBIE have also recommended including civil defence emergency housing for purposes relating to a civil defence emergency in the prohibited settings. This amendment remains within the spirit of the decisions made by you on the prohibition of vaccine requirements for the purposes of emergency housing, despite this specific example not being included in that advice.

Proposed infringement offences under the COVID-19 Protection Framework

19. You have previously received advice on the specification of infringement offences under the Framework, in the briefing *Specification of Infringement Offences under the COVID-19 Protection Framework* (DPMC-2021/22-830). This briefing provided you with information about how offences are specified and classified under the Framework, based on new information about how New Zealand Police enforce infringement offences.

- 20. The briefing noted that officials propose to consider Police’s enforcement approach when providing advice about how offences are specified (as either criminal or infringement offences) in COVID-19 orders moving forward. It confirmed that the Ministry of Justice and Legislation Design and Advisory Committee’s guidelines on creating infringement offences will continue to be referred to in the first instance to assist in determining the appropriateness of dealing with prohibited conduct as an infringement offence.
- 21. Officials will then consider whether arrest, search and seizure powers are likely to be needed before making a final recommendation about whether the offence should be specified as an infringement offence. Where these powers are likely to be needed to respond to the offending, officials will be less inclined to specify the offence as an infringement offence. For those offences that are still specified as infringement offences, the Order will also set out the applicable class (low, medium, high) and corresponding penalty using the Regulations mentioned in the previous paragraph.
- 22. On this basis, officials from the Ministry of Health, NZ Police, Crown Law office and DPMC have completed work to determine which obligations under the Order should be infringement offences and propose the following approach.

Proposed infringement offences

- 23. s9(2)(h)
[Redacted text block]

- 27. The full list of classified infringements under the Framework is in Attachment A.

Procedural Requirements for a COVID-19 Order

- 28. Given that this draft order is not being presented to you for signing, and is seeking Ministerial consultation only, the procedural requirements do not need to be met at this

stage. Before the final order is presented to you for signing, officials will undertake consultation with the Ministry of Health and seek New Zealand Bill of Rights Advice in order to meet these procedural requirements.

Attachments:	
Attachment A:	List of Infringement Offences under the COVID-19 Protection Framework

Proactively Released

List of Infringement Offences under the COVID-19 Protection Framework

QR codes and contact records

- QR code must be displayed in a workplace.
- QR code must be displayed on public transport services.
- Businesses or services must have systems and processes to keep contact records.

Face coverings

- Face covering rule.

Requirements relating to CVC

- Premises must display their CVC status (whether they are operating under CVC or non CVC rules) using a prominently displayed sign and if they are operating under the CVC rules the sign must indicate that a CVC is required before a person may enter.
- A person entering a premise must produce their CVC when requested by an authorised person.
- A business or service must ensure (as far as reasonably practicable) that only people who can produce their CVC enter the premises.

Physical distancing

- 1 metre physical distancing rule.
- 2 metre physical distancing rule.
- A worker at a workplace must keep 1 m away from each other 2 metres away from other people

Gatherings

CVC compliant permitted gatherings

- A person at a *gathering of CVC compliant people* must produce their CVC when requested by a person responsible for that gathering.
- A person responsible for a *gathering of CVC compliant people that has a capacity limit* must ensure the number of people in a defined space at any one time does not exceed the number limit.
- A person at a *gathering of CVC compliant people that has a capacity limit* must produce evidence of their CVC when requested by a person responsible for that gathering.
- A person responsible for a *gathering of CVC compliant people that has a fixed capacity limit* must ensure the number of people in a defined space at any one time does not exceed the number limit.
- A person at a *gathering of CVC compliant people that has a fixed capacity limit* must produce evidence of CVC compliance when requested by a person responsible for that gathering.

Other types of permitted gatherings

- A person responsible for a *fixed capacity gathering* must ensure the number of people in defined space at any one time does not exceed the number limit.
- A person responsible for a *fixed number gathering* must ensure the gathering does not exceed the number limit.
- Not special occasion gathering or limited outdoor gathering

Events

- A person on or after entering an *event for CVC compliant people only* must produce evidence of their CVC compliance when requested by an authorised person.
- A person on or after entering a *fixed capacity event for CVC compliant people only* must produce evidence of their CVC compliance when requested by an authorised person.
- An organiser of a *fixed capacity event for CVC compliant people only* must ensure that the number of people in a defined space at any one time does not exceed the number limit.
- An organiser of a *fixed capacity event* must ensure that number of people in a defined space at any one time does not exceed the number limit.

Restrictions on opening

- A person in control of premises must *close those premises* unless they are undertaking necessary work as specified in 54(2).

Other requirements for businesses and services

- A customer or client at a food and drink business or service must comply with seating requirements.
- If a food or drink business or service holds an on-license or a club licence and the customers or clients cannot meet the requirements of 60(2) then the activity is prohibited.
- A worker delivering goods must comply with the face covering rule.
- A passenger on a public transport service that is in use must remain seated while the vehicle in motion.
- A passenger on public transport service must remain seated while the vehicle is in motion.
- A greengrocer; butcher or fishmonger may open only if their premises are indoors and have a fixed location.
- A person in control of outdoor sports facility must close all indoor parts of the facility to customers and clients.

Restrictions on movement

- A person must stay at home (subject to permitted movement exceptions).
- A person must remain in their area unless undertaking permitted cross boundary travel (travelling with a CVC; with evidence of negative test; and/or for a permitted purpose)
- A person must, when requested by an enforcement officer, produce evidence of negative COVID-19 test result.
- A person must, when requested by an enforcement officer, produce evidence of having had a COVID-19 test (non-work activities).
- A person must, when requested by an enforcement officer, produce evidence of having had COVID-19 test (work activities).