



22 October 2021

[Redacted]

Ref: OIA-2021/22-0177

Dear [Redacted]

Official Information Act request regarding the efficacy of mask wearing

Thank you for your Official Information Act 1982 (the Act) request received on 29 August 2021. You requested:

"Please provide the evidence/studies and efficacy with wearing any type of masks to prevent/reduce the spread of covid19 and any other respiratory illness, the risk and safety factors and the decision paper where it was decided to implement mask requirements."

The time frame for responding to your request was extended under section 15A of the Act by 20 working days because it necessitated consultations to be undertaken before a decision could be made on the request. Following this extension, I am now in a position to respond.

In response to the first part of your question relating to evidence/studies supporting the efficacy of wearing any type of masks to prevent/reduce the spread of COVID-19, the following sources signpost some significant studies in relation to the role that face coverings can play in reducing transmission of COVID-19. The evidence indicates that face coverings or masks can help stop infectious droplets spreading when an infected person speaks, laughs, coughs or sneezes. This is referred to as 'source control'.

As stated on the Centre for Disease Control website (linked below), face coverings also help reduce inhalation of these droplets by the wearer ("filtration for wearer protection"). As a result, there is a broader community benefit of both infected and susceptible (not infected) people wearing face coverings to reduce transmission; the individual protections conferred increase with increasing numbers of people using face coverings consistently and correctly.

The realised benefit of face covering policies will vary based on: the environments within which they are used; the degree of (known or unknown) community transmission; correct face covering or mask usage; and the quality/type of the face covering or masks involved.

The Office of the Prime Minister's Chief Science Advisor has released the following documents regarding mask wearing:

1. Masks prevent the spread of COVID-19 – 13 August 2020: A short document on the evidence base for mask wearing to prevent the spread of COVID-19 plus explanation of the different types of masks.

<https://cpb-ap-se2.wpmucdn.com/blogs.auckland.ac.nz/dist/f/688/files/2020/01/Mask-Wearing-MOH-formatted-13-08-2020.pdf>

2. Face coverings are mentioned on page 18 of our Sept-Oct-Nov 2020 Bundle Framework for assessing risk of modes of transmission of COVID-19 Draft prepared under urgency at the request of Minister Verrall – 18 November 2020.

<https://cpb-ap-se2.wpmucdn.com/blogs.auckland.ac.nz/dist/f/688/files/2021/01/Sept-Oct-Nov-Bundle-v2.pdf>

Further information is available on the following websites:

1. <https://www.health.govt.nz/our-work/diseases-and-conditions/covid-19-novel-coronavirus/covid-19-health-advice-public/covid-19-use-masks-and-face-coverings-community>
2. [https://www.who.int/publications/i/item/advice-on-the-use-of-masks-in-the-community-during-home-care-and-in-healthcare-settings-in-the-context-of-the-novel-coronavirus-\(2019-ncov\)-outbreak](https://www.who.int/publications/i/item/advice-on-the-use-of-masks-in-the-community-during-home-care-and-in-healthcare-settings-in-the-context-of-the-novel-coronavirus-(2019-ncov)-outbreak)
3. <https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/masking-science-sars-cov2.html>

In response to the final part of your request, I have decided to release the Cabinet paper and associated Minutes *Mandatory Face Coverings and Record Keeping for Contact Tracing Purposes*, dated 11 August 2021, subject to information being withheld as noted. The relevant grounds under which information has been withheld are:

1. Section 9(2)(f)(iv), to maintain the confidentiality of advice tendered by or to Ministers and officials;
2. Section 9(2)(g)(i), to maintain the effective conduct of public affairs through the free and frank expression of opinion;
3. Section 9(2)(h), to maintain legal professional privilege.

In making my decision, I have taken the public interest considerations in section 9(1) of the Act into account.

You have the right to ask the Ombudsman to investigate and review my decision under section 28(3) of the Act.

This response may be published on the Department of the Prime Minister and Cabinet's website during our regular publication cycle. Typically, information is released monthly, or as otherwise determined. Your personal information including name and contact details will be removed for publication.

Yours sincerely



Amber Bill
Acting Deputy Chief Executive, COVID-19 Response

In Confidence

Office of the Minister for COVID-19 Response

Social Wellbeing Committee

MANDATORY FACE COVERINGS AND RECORD KEEPING FOR CONTACT TRACING PURPOSES

Proposal

- 1 This paper seeks agreement to further mandate the use of face coverings and to mandate record keeping for contact tracing purposes at specified locations and Alert Levels.

Relation to government priorities

- 2 This proposal relates to the ongoing response to COVID-19. It strengthens measures in light of the increasing prevalence of more transmissible variants such as Delta.

Executive Summary

Face coverings

- 3 Where it is difficult to maintain physical distancing, I propose that face coverings be mandated at Alert Levels 2 for:
 - 3.1 all people in specified high-risk settings, such as retail businesses where physical distancing is more challenging; and
 - 3.2 groups of people who are in other specified high-risk settings, such as staff at businesses whose work involves close contact with the public.
- 4 I propose not requiring the use of face coverings in some other high-risk settings, because it would be impractical to wear face coverings in these settings and/or there are other mitigating factors in place. Examples include customers at hospitality venues, all people at education entities, people at social gatherings (except where held at private residences), and other controlled access businesses.
- 5 While it is difficult to judge the overall level of risk reduction associated with these proposed changes, I believe any negative impacts would be significantly less than those associated with moving to higher Alert Level restrictions due to community transmission.
- 6 The Director-General advises that the legal requirements for face coverings should be strengthened at Alert Level 2 and that the current Alert Level 1 settings should be retained. Clear and easy-to-follow communications should support these broadened requirements.

Record keeping for contact tracing

- 7 An argument can be made for mandating record keeping at all Alert Levels either by using the COVID-19 Tracer App (the App) or alternative methods to support efficient contact tracing. However, there are significant issues in relation to compliance, enforcement, privacy, social licence and proportionality of any additional mandatory record keeping measures.
- 8 I propose to mandate record keeping at all Alert Levels for courts, tribunals and social service customer offices, indoor public and event facilities, indoor social gatherings (except where held at private residences), aged care and healthcare facilities, exercise facilities, close contact businesses, restaurants, bars and cafes.
- 9 The obligation to meet the record keeping requirement will sit with the person responsible for the place or gathering (i.e. businesses or PCBU – Person Conducting a Business or Undertaking). This person is responsible for taking steps to ensure that a record is kept and they will need to have systems and processes in place to ensure, so far as is reasonably practicable, that people scan the QR code for the place or gathering or provide details in a contact tracing record.
- 10 The Director-General of Health supports introducing a record keeping mandate in a limited set of close-contact business settings (e.g. restaurants and hair salons), where there are benefits to ensuring consistent records are made given the potential risk of undetected transmission in these settings, alongside implementing non-regulatory options.
- 11 I propose that we announce the new settings for mandatory face coverings and record keeping immediately after Cabinet's decisions, to set out expectations and take an "encourage" approach before the legal obligations take effect in October 2021. This will give New Zealanders and businesses time to follow the public guidance and begin practising the new measures.

Proposed face covering requirements at Alert Level 2 and above

- 12 Experimental and epidemiological data supports the wearing of face coverings when there is evidence of infectious diseases, like COVID-19, spreading. The prevention benefit of face coverings (when worn effectively while there is community transmission) is derived from the combination of source control and protection for the person wearing the face covering.
- 13 In November 2020, Cabinet agreed to require people to wear face coverings on all public transport in Auckland and on all domestic air traffic services in New Zealand [CAB-20-MIN-0477 refers]. In February 2021, Cabinet extended mandatory face covering use to all passengers on public transport at all Alert Levels in New Zealand (with some exemptions) [CAB-21-MIN-0031 refers]. Anecdotally, use of face coverings on aircraft is relatively high, possibly because wearing is more linked to being able to board the plane and the requirement being well-communicated prior to boarding. However, usage on public transport is more variable, perhaps because of there being no

immediate repercussions for non-compliance or uncertainty about whether the requirement is mandatory.

- 14 Further extending the mandatory use of face coverings in specified settings could provide an additional layer of protection. Reducing the risk of further transmission and minimising further cases could mean these measures (in conjunction with others) may help reduce transmission and the time spent at higher Alert Levels. It enables us to step down to Alert Level 2 at the appropriate time with additional precautions in place. I am particularly interested in additional protections at Alert Level 2 potentially reducing the need for a move to Alert Level 3 (with its attendant high social and economic costs) in the event of community transmission. The Strategic COVID-19 Public Health Advisory Group noted in its June 2021 report to Minister Verrall on the Future of the Elimination Strategy that increased use of face coverings could form part of responses to future outbreaks.

Proposed face covering requirements

- 15 DPMC officials completed a face covering risk assessment by categorising activities and places by the level of risk of spread of COVID-19. This included consideration of the practicality of wearing a face covering in different settings and what other public health measures are in place at Alert Level 2 (particularly physical distancing and limits on attendees). On the basis of this advice, I recommend mandating the use of face coverings for all people (staff and customers) over the age of 12 at Alert Levels 2 or higher, in:
- 15.1 retail businesses (including supermarkets, shopping malls, indoor marketplaces, takeaway food stores);
 - 15.2 any indoor or outdoor point of arrival or departure for any public transport (including any indoor terminals where the use of a face covering is required for the journey), e.g. where people are waiting for their service or have recently arrived on a service;
 - 15.3 indoor public facilities (such as libraries, museums and recreation centres, but excluding swimming pools); and
 - 15.4 taxis/ride share vehicles (drivers are already required to at Alert Level 1 and above, passengers would now be required to at Alert Level 2 and above).
- 16 In some higher-risk situations it is not practical for all people to use face coverings, as the wearing of masks for customers at close contact businesses or hospitality venues would significantly impact the activity taking place (e.g. eating and drinking). I therefore recommend the use of face coverings for the following groups in specific situations at Alert Levels 2 or higher:
- 16.1 visitors to aged care and healthcare facilities;
 - 16.2 staff and visitors in public areas within courts and tribunals (although in a courtroom judicial officers could exercise discretion regarding the use

of face coverings, given the importance of effective communication in court), local and central Government agencies, and social service providers with customer service counters;

- 16.3 staff at close contact businesses (for example, massage parlours, beauticians, barbers and hairdressers); and
- 16.4 public facing staff in hospitality venues (where there are other protections for patrons, such as having to be separated and seated).
- 17 There are some situations and settings that could be considered higher risk, but on balance I do not recommend mandating face coverings due to there being significant mitigating factors in place and practical considerations. Mitigations include physical distancing requirements, limits on gathering sizes, and places with well-established record keeping systems. s9(2)(f)(iv)
- 17.1 s9(2)(f)(iv)
- 17.2 s9(2)(f)(iv)
- 17.3 s9(2)(f)(iv)
- 17.4 s9(2)(f)(iv)
- 17.5 s9(2)(f)(iv)
- 18 The proposed settings for mandatory face coverings are set out in further detail in Appendix 1.
- 19 Increased respiratory exertion, typical in gyms and some indoor sports can facilitate the spread of COVID-19 through increased particle spread, especially where patrons are spending prolonged time with others in a poorly ventilated area. However, this increased exertion also makes it impractical to require the wearing of a face covering.
- 20 Other situations in which it is not proposed face coverings are worn mostly relate to consumption of food and drink, places with well-established record keeping mechanisms s9(2)(f)(iv), or where face coverings would present significant barriers to communication and learning. These exceptions might be perceived to weaken the justification for mandatory face coverings on health grounds if the requirement to wear a face covering applies to some "high risk" locations, but not others. However, DPMC officials have attempted to develop an approach that balances the desired outcomes with the risks and practicality posed by any new requirements.
- 21 Not mandating face coverings where their wearing is impractical, or where there are other transmission mitigations, make this proposal less restrictive than the approach taken in Australia. For example, in New South Wales

(NSW) face coverings are currently required in non-residential indoor areas and for some situations in outdoor areas. In Victoria people must wear face covering whenever they leave their home, indoors or outdoors. Both Victoria and NSW currently mandate face coverings when using taxis and ride share services, which differs from the approach I am proposing. I note that these current settings are in response to widespread community transmission currently in NSW, and new community cases in Victoria.

- 22 The requirement for people to wear face coverings on public transport and domestic air transport services and for drivers of taxis/ride share vehicles to wear face coverings will remain at Alert Level 1 and above. However, at Alert Level 2 and above, both drivers and passengers in taxis/ride share services will be required to wear face coverings.

Director-General's advice on face coverings

- 23 Under section 9 of the COVID-19 Public Health Response Act, I must have regard to advice from the Director-General 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.
- 24 Face coverings provide an additional layer of protection against COVID-19, especially more transmissible variants such as the Delta variant. While other public health measures, such as physical distancing, provide some protection against transmission, there are certain settings and activities which are permissible at Alert Level 2 where face coverings could provide an additional form of protection against transmission, or may be a primary form of protection.
- 25 On the proposal to mandate face coverings in certain scenarios at Alert Level 2 and above, the Director-General supports retaining the current face covering settings at Alert Level 1 including mandatory face coverings on public transport services, as these are proportional to the potential risk. In addition, the Director-General supports encouraging people to voluntarily wear face coverings at Alert Level 1 in similar settings as those being mandated at Alert Level 2 in order to provide additional protection against potential undetected transmission of the virus.
- 26 Further, the Director-General supports making face coverings mandatory at Alert Level 2 in public facing indoor settings (subject to the exemptions noted below) where physical distancing is difficult. For example, this would include settings such as crowded supermarkets and indoor gatherings.
- 27 This should be supported by clear and easy-to-follow communications produced to encourage mask wearing in such settings at all Alert Levels, with a shift to these being mandatory for people in public facing indoor settings at level 2, should Cabinet agree.
- 28 The proposed new measures align with the intent of the Director-General's advice but are slightly narrower due to practical considerations.

Exemptions and definition of face coverings

- 29 Under this proposal, the current definition of face coverings would not change. The current definition is not prescriptive. People can use either medical grade or non-medical-grade face coverings, which can be either single-use or reusable, and can be a scarf or bandana. The exemptions for the wearing of face coverings will also remain largely consistent.¹ However, at Alert Level 2 and above, both drivers and passengers in taxis/ride share services will be required to wear face coverings (passengers remain exempt from the requirement at Alert Level 1). As part of the implementation process, officials will update guidance to address any health and safety impacts of face covering use. This would cover managing risks for people required to wear masks for long periods of time and who need to dispose of discarded face coverings left by patrons. I accept that there will be some additional costs for some businesses and services.
- 30 My officials have engaged with Retail New Zealand, Business New Zealand, Hospitality New Zealand and the New Zealand Council of Trade Unions on the proposals. While some were supportive of mandatory face coverings as an additional measure to mitigate against Alert Level changes, there are concerns stemming from risks to staff health and safety (e.g. customers can be confrontational and hostile, even when only being encouraged to comply), employment relations issues, and supply requirements. The importance of clarifying obligations, clear communications and guidance was emphasised.

Implementation and enforcement

- 31 Existing enforcement options for face coverings (which include an infringement offence for not wearing a face covering when required to do so) would apply to the new requirements.
- 32 This proposal does not intend to put any explicit obligation on the person responsible for the place or gathering to ensure that their passengers/patrons are wearing face coverings. This is consistent with the current approach and reflects safety and welfare considerations for operators and their staff. Their role is to educate and encourage patrons and passengers to do the right thing.
- 33 For any expanded face covering requirement, Police have advised they will continue to apply the Graduated Response Model: Engage, Encourage, Educate and Enforce (4Es):
- 33.1 Police advise that education will be the primary focus, unless there is wilful or intentional breach of the requirement.

¹ Currently, the requirement to wear a face covering on public transport does not apply to a person who is a passenger in a passenger service vehicle, on a pre-booked public transport service, on a ferry service between the North Island and South Island, on a ship that has no enclosed space for passengers, or on school transport services. People are also exempt from the requirement to wear face coverings in an emergency; wearing is not safe in all of the circumstances; the person is in a defined or enclosed space separate from the passenger area; for communication or identity reasons; because removal or not wearing is required or authorised by law; the person is under the age of 12 years; the person has a physical, mental illness or condition or disability that makes wearing a face covering unsuitable; removal is necessary to take medicine, or to eat or drink.

- 33.2 If widespread non-compliance occurred, creating a significant public health risk, Police advise they would apply the Graduated Response Model at a population level. This would involve clear encouragement and education to the public, followed by rapid escalation to enforcement action for all non-compliant individuals, where there is evidence of a breach.
- 34 Expanded face covering requirements will present some enforcement challenges. Police advise responses will need to be balanced with other Police priorities and are therefore more likely to be in response to Police-observed breaches and breaches in high-risk locations. Striking the right balance between enforcement and encouraging compliance will be important to continue the Government's social license.
- 35 Any health and safety impacts for staff will need to be resolved as part of the implementation process. Engagement on how face covering requirements will be managed in relation to the employer-employee relationship will need to take place with the affected sector bodies prior to the requirements coming into force. As this requirement will be mandated under a legal Order, it does not need to be in an employment agreement. However, there may need to be discussions between employers and employees and Government will need to provide clear guidance. DPMC will continue to work with the Ministry of Health and the Ministry of Business, Innovation and Employment (MBIE) on these issues, including to develop supporting education material for employees.

Mandatory record keeping requirements for contact tracing purposes

- 36 Good record keeping supports efficient contact tracing. Currently the only record keeping requirement is for businesses in limited scenarios at Alert Level 3 to have systems and processes to ensure (as far as is reasonably practicable) a record is kept, and for attendees of social gatherings at Alert Level 2.
- 37 Contact tracing supports public health workers to quickly establish the parameters of an outbreak, identify those that need to be quarantined and tested, and take action to break chains of transmission. Consistent record keeping is important across all Alert Levels to better enable rapid and effective contact tracing, helping to reduce the likelihood of a potential community outbreak becoming widespread. Ministry of Health officials note that records gathered via the App, when accurate, are particularly valuable for identified cases, as they provide speed and accuracy in identifying locations of interest, from which contacts are identified.
- 38 During periods when there are no active cases in the community and the perceived risk of transmission is low, we have seen low usage of the App, which slows down notification of contacts. For example, on 2 August 2021 there were 2.9 million registered users of the App, but only just over 500,000 daily scans of QR codes that day. Frequent reminders, targeted advertising campaigns and other non-regulatory levers have only resulted in small temporary increases in scans, which are a good proxy of general record keeping behaviours.

- 39 Previous advice has emphasised the importance of non-regulatory levers (e.g. Tracer App campaigns) to promote record keeping. However, this approach has had limited positive impacts on scanning behaviours. Scanning increases significantly when we go up Alert Levels then drops off soon after. The “I Scan NZ” campaign began shortly after Wellington moved to Alert Level 2 in June 2021. Following Wellington’s move back to Alert Level 1, there was an average 19% daily decrease in scanning nationally. While this decrease was less than was seen following Auckland moving down Alert Levels in February and March 2021 (on average 36%), s9(2)(g)(i)
- 40 The Ministry of Foreign Affairs and Trade (MFAT) advises that over the past year, states and territories across Australia have shifted from voluntary to mandatory use of government check-in QR codes. The range of businesses required to host the QR codes has also expanded from hospitality and larger venues to virtually any premises members of the public may visit. The approaches taken across Australia are much broader than the mandatory record keeping proposals in this paper, and the penalties for breaching the Public Health Orders in specific states are also more significant.² s9(2)(f)(iv)
- 41 It is timely to consider the use of mandatory record keeping requirements at all Alert Levels in some settings, in order to add a further layer of protection and normalise making and keeping records for contact tracing purposes. Any mandatory record keeping requirement would continue to sit alongside, and be complemented by, non-regulatory approaches to encourage and promote record keeping.
- 42 I recommend that record keeping be required at:
- 42.1 courts and tribunals, social service customer offices, indoor public facilities (e.g. libraries, museums and swimming pools), indoor event facilities (e.g. cinemas, theatres, concert venues and casinos) and aged care and health facilities (for visitors only);
 - 42.2 exercise facilities, massage parlours, beauticians, barbers, hairdressers and hospitality venues (e.g. cafes, restaurants, bars and nightclubs) (for customers); and
 - 42.3 social gatherings including those held at marae, weddings, funerals, faith-based services, except where held at private residences.
- 43 There are other situations and settings where the record keeping requirement could be applied, but on balance I do not think it should be applied because there are risk mitigating factors and/or practical considerations. The proposed

² For example, currently in NSW the maximum penalties for breaching the relevant Public Health Order are a fine of \$11,000, or imprisonment for six months, or both. A further \$5,500 penalty may apply for each day the offence continues for individuals, and \$55,000, with a further \$27,500 penalty which may apply for each day the offence continues for “any corporation”.

settings for mandatory record keeping are set out in further detail in Appendix 1.

- 44 The current QR code display requirements in the COVID-19 Public Health Response (Alert Level Requirements) Order (No 8) 2021 will continue to apply to all people in control of a workplace or public transport service (subject to existing exceptions), regardless of whether a mandatory record keeping requirement applies to that workplace or service.
- 45 Alternative record keeping requirements will not apply to some of the businesses and service providers required to display a QR code, including public transport providers and transport terminals (e.g. airports, and bus stations). This is due to the number of assets and size and number of access points at terminals making alternative contact tracing systems impracticable. Therefore, I am recommending that it be made clear in the amended Alert Level Order that public transport operators (and associated facilities) not be required to provide an alternative record keeping system.

On whom should the obligation be placed?

- 46 In the context of mandatory record keeping, I am proposing that the legal obligation is borne by the person responsible for the place or gathering (i.e. businesses or PCBU's). This means that the business is responsible for taking steps to ensure that a record is made by visitors and customers and they will need to have systems and processes in place to ensure, so far as is reasonably practicable, that people scan the QR code for the place or gathering or provide details in a contact tracing record. This is consistent with the approach we have taken for Alert Level 3 for certain businesses and at Alert Level 2 for organisers of social gatherings. I am also recommending that the requirements placed on the person responsible for the place or gathering would not apply for visitors or customers under the age of 12.
- 47 I have considered alternative options for where the record keeping obligation could be placed. These included placing the obligation on the person attending the place or gathering (an individual obligation) or placing it on both the person responsible for the place and gathering and the person attending that place or gathering (a dual obligation).
- 48 On balance, I discounted these options because any record keeping obligation borne by an individual would create significant privacy, compliance monitoring and enforcement issues. The potential for the unintended consequences of this requirement to undermine contact tracing efforts in practice was also a concern. An example is a person being deterred from disclosing their presence at a location of interest to a contact tracer out of fear of admitting that they had failed to comply with the record keeping requirement. That is not to say that placing an obligation solely on the person responsible for the place or gathering does not also create significant compliance monitoring and enforcement issues.
- 49 Public transport operators (and operators of associated facilities like terminals) will be exempt from these new requirements.

Director-General's advice on record keeping for contact tracing purposes

- 50 The Director-General acknowledges that there are certain benefits to applying a record keeping mandate in some spaces, especially in crowded and closely confined spaces where it is hard to identify people around you. The experiences from other jurisdictions (such as Australia) has indicated that transmission of the Delta variant can occur from fleeting encounters of unknown people, particularly in poorly ventilated indoor settings. Therefore, introducing a record keeping mandate for certain close-confined business settings may bring overall benefits for our contact tracing system while limiting some of the issues and unintended consequences that may result from a mandate.
- 51 On balance, the Director-General supports having the obligation placed on those responsible for the place or gathering, given that a potential mandate on individuals could create a disincentive for individuals to record keep in non-mandated areas and impact on the ability to contact trace. ^{s9(2)(h)}
- 52 The Director-General notes that while introducing non-regulatory options would avoid the issues and unintended consequences associated with a mandate, the potential for a limited mandate applying to those close-confined businesses settings, alongside implementing non-regulatory options to remove barriers to record keeping/scanning, could increase record keeping adherence and improve our ability to contact trace. Furthermore, it is important that businesses and customers/individuals have the necessary support and information to enable them to comply and adhere to the requirement.
- 53 DPMC officials note that the proposals outlined in this paper will be complemented by both new and existing non-regulatory efforts to promote and encourage face covering and record keeping behaviours, including but not limited to:
- 53.1 technology updates to the App;
 - 53.2 Unite Against COVID-19 (UAC) information campaigns and engagement with affected businesses and locations;
 - 53.3 UAC collateral that can be ordered directly from the Unite Against COVID-19 website, including free hard copy record keeping booklets, available in 27 languages; and
 - 53.4 specific implementation guidance prepared and distributed by the Public Service Commission, MBIE and the Office of the Privacy Commissioner (OPC).
- 54 ^{s9(2)(f)(iv)}

Implementation and enforcement

- 55 This new requirement will go beyond current record keeping-related requirements placed on a person in control of an applicable workplace at all Alert Levels, to ensure that a copy of a QR code for the workplace is displayed in a prominent place. Businesses will be required to have systems and processes in place to ensure that there are record keeping methods for those both with the App (the preferred method of record keeping), but also for those who do not, or cannot, use the App.
- 56 The person responsible for the place or gathering will need to have systems and processes in place to ensure (as far as reasonably practicable) that customers or visitors make a record (e.g. this could include staff being stationed at the entrance asking customers to scan a QR code). Businesses and services will need to have alternative record keeping options available for people who do not or cannot use the App. There will also need to be options to assist people to find the QR code, to locate a manual record keeping station, or available details of the location for those holding a diary or personal record.
- 57 I accept that there will be some additional costs for some businesses and services, and that the proposal will significantly increase the amount of personal information businesses hold. They will be encouraged to take steps to secure this information.
- 58 There is a risk that employees may be exposed to abuse from customers. Feedback received from the business, restaurant, retail and hospitality sector has reflected these concerns. Officials advise that there will be no explicit obligation on the person responsible for the place or gathering to ensure that their passengers, visitors or patrons are making a record. As noted above in relation to face coverings, their role is to educate and encourage visitors and patrons to do the right thing. They will not be required or expected to turn people away who may refuse to make a record of their visit.
- 59 Guidance will be made available on the Unite Against COVID-19 website to support businesses' compliance. Some of the settings may need more tailored support and advice. MBIE recommends that a table of settings outlines the broad settings for industry bodies (or government agencies) to then develop guidance documents on how to interpret the settings for their sector. This guidance will also draw on feedback received from stakeholders and agencies, including from the Office for Disability Issues, Te Puni Kōkiri and Ministry for Ethnic Communities.
- 60 Under current legislation, if a person responsible for the place or gathering intentionally failed to comply with this new requirement, they would commit an offence and be liable on conviction to a fine not exceeding \$4,000 or term of imprisonment of up to 6 months. Failing to display a QR code will continue to be an infringement offence carrying an infringement fee of \$300 or court imposed fine not exceeding \$1,000.³

³s9(2)(f)(iv)

- 61 Ensuring businesses comply with their obligations in the Privacy Act 2020, will be important because of the increased amount of personal information businesses will hold. The Office of the Privacy Commissioner provides guidance on how long businesses should keep the information in their COVID-19 guest register and advice on methods to keep this information private (e.g. by using a ballot box to keep personal information secure and private). s9(2)(g)(i)
- 62 Further protections could also be put in place around the copying and disclosure of a person's records. There will be guidance on the UAC website about the storage and security, retention, retrievability, purpose and use requirements.
- 63 These measures would go some way to mitigate the privacy risks but people using alternative record keeping methods will still face additional privacy risks. The OPC has indicated it is not satisfied there is a sufficient evidence base of the public health benefit to conclude that enforcing record keeping is a proportionate or effective response given the privacy implications of the proposal. OPC would welcome evidence being provided that clearly demonstrates those health benefits or enforcement considerations.
- 64 The OPC believes there remain significant issues associated with enforcement that have not been addressed and have potential to negatively impact people's privacy. They are concerned about the potential for unintended consequences including the potentially "chilling effect" on the reporting of close contacts, equity issues, the potential for certain groups to be the focus of surveillance and enforcement action, and social license generally. OPC does not believe the proposals should proceed until Ministers have been provided with advice addressing these issues.
- 65 Like the proposed approach for expanded requirements for face coverings, Police have indicated that they intend to apply the Graduated Response Model to enforcement. WorkSafe note's that their authorisation under the COVID-19 Act does not extend to enforcement in respect of the organiser of social gatherings (e.g. weddings and funerals). In these settings, the compliance role would have to be undertaken by the Police. WorkSafe officials also note that placing an obligation solely on the person responsible for a place or gathering will create significant compliance monitoring and enforcement issues. s9(2)(g)(i)
- 66 In the settings that these requirements are proposed, WorkSafe's PCBU enforcement role is one lever to ensure the new duty is met. WorkSafe's

s9(2)(f)(iv)

inspectors are authorised by the Director-General of Health to undertake COVID-19 enforcement activity in workplaces and are currently responsible for enforcing the requirements that fall upon businesses, such as QR code display. WorkSafe's enforcement role under the COVID regime is only able to be delivered on a reactive, complaints-driven basis under current settings.


- 67 WorkSafe advises that the proposed requirements on the person responsible for the place or gathering for record keeping are likely to generate significant additional demand (including public expectation) on its frontline resource. WorkSafe does not consider that it will be able to undertake meaningful enforcement of the proposed duty. They are also concerned the safety of workers tasked with encouraging record-keeping by individuals could be compromised.

Financial Implications

- 68 There are no direct financial implications for the recommendations in this paper.

Legislative Implications

- 69 Subject to Cabinet decisions and further work by officials, drafting instructions will be issued to the Parliamentary Counsel Office (PCO) to draft the requirements. Once instructions are provided, PCO estimates that it will take two to three weeks to finalise the drafting for the new requirements.
- 70 Depending on which Alert Level(s) applies when the drafting is completed, the new requirements for face coverings will be:
- 70.1 prepared as a new section 11 Order for me to sign into force (following consultation with relevant Ministers); or
 - 70.2 included in the template Alert Level Orders and provided to me for approval (and relevant Ministers for consultation) so that the requirements are ready to use if the Alert Level is increased in future.

- 71 s9(2)(f)(iv)
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Impact analysis

- 72 The Regulatory Impact Analysis Team (RIAT) at the Treasury has determined that the regulatory proposals in this Cabinet paper are exempt from the requirement to provide a Regulatory Impact Statement (RIS) on the basis that they are technical and intended to make, amend, or modify or suspend the effect of, primary or secondary legislation, under powers only able to be exercised by the government during a declared emergency or emergency transition period.

- 73 While RIAT considers that a technical exemption can be granted, the provision of a RIS would have been appropriate and desirable to support the proposals in this paper.

Population Implications

- 74 Groups such as older people, disabled people, Māori, Pacific peoples, some ethnic communities and rural communities have been more affected by both the health and non-health impacts of COVID-19 than others. Disabled people, Māori and Pacific peoples are more likely to experience these impacts, as they have higher rates of underlying health conditions and co-morbidities.
- 75 The implications of mandatory record keeping and face coverings for some disabled people need to be considered and monitored. The App is not accessible for some (especially those with visual impairments) and is also incompatible with some older mobile phones. s9(2)(f)(iv)
- Clear guidance on the requirements and exception process will be critical, with communications provided in a range of alternate formats to ensure key messages are accessible.
- 76 The Department of Internal Affairs, Ministry for Ethnic Communities and the Ministry for Pacific Peoples highlighted digital exclusion as an issue for some people. For the mandatory record keeping proposals, this emphasises the need for alternative record keeping systems to ensure those without smartphones (or other digital devices) are able to record their movements. This is particularly important for Pacific peoples, who are among the most digitally excluded within New Zealand.
- 77 s9(2)(g)(i)
- 78 Mandatory face covering requirements could negatively impact those who are exempt from them, because the grounds for exemption are often invisible to the casual observer. There is a risk that the amount of negative commentary and stigma directed at those unable to wear a face covering may increase.

Te Tiriti o Waitangi implications

- 79 There may be potential concerns from iwi, hapū and whānau that mandatory record keeping requirements could undermine the agency of iwi, hapū and whānau to protect their own wellbeing, afforded to them under the principle of tino rangatiratanga. In the past, and particularly throughout the COVID-19 response, iwi, hapū and whānau have exercised, and in many cases exceeded, good practice in line with government guidelines to maintain the

wellbeing of their own whānau. Implementation will include engagement with iwi, hapū and whānau to ensure that the new expectations will support tikanga (particularly on marae) and whānau perspectives to ensure the protection of their wellbeing.

Human Rights

80 s9(2)(h) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

81 s9(2)(h) [Redacted]
[Redacted]
[Redacted]
[Redacted]

s9(2)(h) [Redacted]

82 s9(2)(h) [Redacted]
[Redacted]

82.1 s9(2)(h) [Redacted]

82.2 s9(2)(h) [Redacted]

82.3 s9(2)(h) [Redacted]
[Redacted]
[Redacted]
[Redacted]

83 s9(2)(h) [Redacted]
[Redacted]
[Redacted]

84 s9(2)(h) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

85 s9(2)(h) [Redacted]
[Redacted]
[Redacted]

86 s9(2)(h) [Redacted]
[Redacted]

s9(2)(h)

Consultation

- 87 The following agencies were consulted on this briefing: The Treasury, Ministry for Pacific Peoples, Ministry of Social Development, Ministry of Health, Ministry of Justice, Ministry of Transport, Ministry of Education, Ministry of Business, Innovation and Employment, Department of Internal Affairs, Crown Law Office, the Ministry for Ethnic Communities, Parliamentary Counsel Office, Office of the Privacy Commissioner, New Zealand Police, New Zealand Customs Service, Public Service Commission, Oranga Tamariki, Ministry for Primary Industries, the Ministry for Women, Te Puni Kōkiri, Te Arawhiti, and WorkSafe.
- 88 My officials also consulted Retail New Zealand, Business New Zealand, Hospitality New Zealand and the New Zealand Council of Trade Unions on the proposals contained in this paper.

Communications

- 89 I propose that the Prime Minister and I announce Cabinet's high-level decisions on face covering and record keeping requirements following the Cabinet meeting on 16 August 2021.
- 90 Clear public messaging on the new requirements, including what is expected of those responsible for the place or gathering, and by when, will be communicated to the public and key stakeholders via official Unite Against COVID-19 channels. This will be informed by engagement with stakeholders and groups who represent those most affected by the proposed changes.
- 91 For those who do not speak English as a first language, there may be difficulties in both understanding and meeting the new requirements, particularly if they are a responsible person for the purposes of the mandatory record keeping regime. Public communications will be tailored to specific audiences (e.g. translation of materials into nine core Pacific languages and a further 18 languages including New Zealand Sign Language, as is currently done with UAC content) and guidance will also be provided where appropriate.
- 92 The Public Service Commission will prepare implementation guidance for public service employers that will be informed by public health guidance. This will help to ensure consistency of implementation across the significant number of front line and public facing public service roles.

Proactive Release

- 93 I intend to proactively release this paper following Cabinet consideration, with redactions made as appropriate.

Released under the Official Information Act 1982

Recommendations

The Minister for COVID-19 Response recommends that Cabinet:

- 1 note that in light of the increasing prevalence of more transmissible variants such as Delta, strengthening COVID-19 protections is desirable;

Face coverings

- 2 note the Director-General advises that the legal requirements for face coverings should be strengthened at Alert Level 2 and that the current Alert Level 1 settings should be retained;
- 3 agree that at Alert Level 2 or higher, an appropriate public health measure would be that face coverings must be worn by all people in:
 - 3.1 retail businesses (including supermarkets, shopping malls, indoor marketplaces, takeaway food stores);
 - 3.2 any indoor or outdoor point of arrival or departure for any public transport (including any indoor terminals where the use of a face covering is required for the journey), e.g. where people are waiting for their service or have recently arrived on a service;
 - 3.3 indoor public facilities (such as libraries, museums and recreation centres, but excluding swimming pools); and
 - 3.4 taxis/ride share vehicles (previously at Alert Level 1 and above, only drivers were required to);
- 4 agree that at Alert Level 2 or higher an appropriate public health measure would be that face coverings must be worn by:
 - 4.1 visitors to aged care and healthcare facilities;
 - 4.2 staff and visitors in public areas within courts and tribunals (although in a courtroom judicial officers could exercise discretion regarding the use of face coverings, given the importance of effective communication in court), local and central Government agencies, and social service providers with customer service counters;
 - 4.3 staff at close contact businesses (for example, massage parlours, beauticians, barbers and hairdressers); and
 - 4.4 public facing staff in hospitality venues (where there are other protections for patrons, such as having to be separated and seated);
- 5 agree that due to other risk mitigating factors being in place (such as physical distancing and limits on gathering sizes) and/or practical considerations, face coverings not be required at:

Table: Proposed settings for mandatory face coverings and record keeping for contact tracing, as at 16 July 2021

Settings	Face covering requirements <u>at Alert Level 2 and above</u>		Mandatory record keeping requirements <u>at all Alert Levels</u>		Notes
	Current settings	PROPOSED SETTINGS	Current settings	PROPOSED SETTINGS	
Category one: situations where face coverings are generally not recommended because other protections exist (e.g. people are more easily able to physically distance and/or there are record keeping measures in place)					
Outdoors	×	×	×	×	Physical distancing is considered easier in these settings.
Private residences	×	×	×	×	People more likely to belong to same bubble and/or know or have recorded all visitors.
Group tours (boats and buses)	×	×	×	×	There are existing mechanisms for recording attendees on tours.
Staff and patients at healthcare and aged care facilities	×	×	×	×	There are existing healthcare practices for PPE and record keeping.
Category two: situations where face coverings and/or record keeping is recommended because physical distancing is more difficult					
Public transport	✓	✓	×	×	Mandatory record keeping not recommended due to practicality issues.
Flights	✓	✓	×	×	There are existing mechanisms for recording passengers on flights.
Drivers and passengers in taxi/ride share vehicles	✓*	✓	×	×	*At Alert Level 1 only drivers of taxi/ride share vehicles are required to wear masks. Mandatory record keeping not recommended because there are existing mechanisms to record drivers' clock in/off times and passenger journeys.
Public transport departure points (airports, train stations, bus stops)	×	✓	×	×	Mandatory record keeping not recommended due to practicality issues.
Staff at massage parlours, beauticians, barbers, hairdressers	×	✓	×	×	Mandatory record keeping not recommended because there will be existing mechanisms to record staff clock in/off times.
Public facing staff in hospitality venues	×	✓	×	×	Mandatory record keeping not recommended because there will be existing mechanisms to record staff clock in/off times.
All people in retail businesses (supermarkets, shopping malls, indoor marketplaces, takeaway food stores)	×	✓	×	×	Mandatory record keeping not recommended due to practicality issues.
Staff and visitors* in public areas within courts and tribunals (although in a courtroom judicial officers could exercise discretion regarding the use of face coverings, given the importance of effective communication in court), local and central Government agencies, and social service providers with customer service counters;	×	✓	×	✓	*The mandatory record keeping requirement only applies to visitors to courts and tribunals as there will be existing mechanisms to record staff clock in/off times.
All people in indoor public facilities (libraries, museums, swimming pools*)	×	✓	×	✓	*An exception for face coverings at swimming pools (even for spectators) is recommended due to public health advice on the efficacy of face coverings in moist environments.

Settings	Face covering requirements at Alert Level 2 and above		Mandatory record keeping requirements at all Alert Levels		Notes
	Current settings	PROPOSED SETTINGS	Current settings	PROPOSED SETTINGS	
					The mandatory record keeping requirement only applies to visitors to indoor event facilities as there will be existing mechanisms to record staff clock in/off times.
Visitors to aged care and healthcare facilities	X	✓	X	✓	High-risk venue due to residents likely being more vulnerable to COVID-19.
Category three: situations where face coverings would be desirable but are impractical (and so record keeping has been considered as an additional measure)					
Schools and education entities	X	X	X	X	Other existing mechanisms to record visitors and unlikely to host large events at higher Alert Levels. Face coverings not required for those under 12 years generally and may restrict communication in a learning environment.
Controlled access businesses (exercise facilities*, office workplaces, factories)	X	X	X	X	*There is a requirement for exercise facilities as many won't have mechanisms in place to record users/visitors. Noting that if where some facilities (e.g. gyms) have existing sign in systems already (e.g. via membership scans) than that will suffice to meet the requirement.
Customers at massage parlours, beauticians, barbers, hairdressers	X	X	X	✓	Mandatory face coverings not recommended due to practicality considerations.
Customers at hospitality venues (cafes, restaurants, bars/nightclubs)	X	X	X	✓	Mandatory face coverings not recommended due to practicality considerations.
Indoor event facilities (cinemas, theatres, concert venues, casinos)	X	X	X	✓	The mandatory record keeping requirement only applies to visitors to indoor event facilities.
Social gatherings (weddings, funerals, faith based services)	X	X	✓	✓	<p>The mandatory record keeping requirement only applies to customers/visitors at social gatherings.</p> <p>Noting that where a gathering is at a place captured by the record keeping settings (i.e. a bar) the obligation can sit with either the organiser, the owner of the place, or another guest; where the gathering is at a place with no owner (e.g. a wedding at the beach) the obligation sits with the organiser or guest.</p> <p>Noting also that for gatherings where everyone can identify everyone else, the record keeping requirement will not apply – this is how the existing requirement already operates at higher alert levels.</p>



Cabinet Social Wellbeing Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Mandatory Face Coverings and Record Keeping for Contact Tracing Purposes

Portfolio COVID-19 Response

On 11 August 2021, the Cabinet Social Wellbeing Committee **agreed to recommend** that Cabinet:

Background

- 1 note that in light of the increasing prevalence of more transmissible COVID-19 variants such as Delta, strengthening COVID-19 protections is desirable;
- 2 note that in February 2021, Cabinet agreed to the requirement for face coverings on public transport at Alert Level 1 to be continued (with some exceptions), and noted that the Minister for COVID-19 Response would report back to Cabinet with further advice on the issues concerning the options for improving record keeping and use of the COVID Tracer App for contact tracing purposes [CAB-21-MIN-0031];

Face coverings

- 3 note that the Director-General of Health advises that the legal requirements for face coverings should be strengthened at Alert Level 2 and that the current Alert Level 1 settings should be retained;
- 4 agree that at Alert Level 2 or higher, an appropriate public health measure would be that face coverings must be worn by all people in:
 - 4.1 retail businesses (including supermarkets, shopping malls, indoor marketplaces, takeaway food stores);
 - 4.2 any indoor or outdoor point of arrival or departure for any public transport (including any indoor terminals where the use of a face covering is required for the journey), e.g. where people are waiting for their service or have recently arrived on a service;
 - 4.3 indoor public facilities (such as libraries, museums and recreation centres, but excluding swimming pools);

- 5 agree that at Alert Level 2 or higher an appropriate public health measure would be that face coverings must be worn by:
- 5.1 visitors to aged care and healthcare facilities;
 - 5.2 staff and visitors in public areas within courts and tribunals (although in a courtroom judicial officers could exercise discretion regarding the use of face coverings), local and central government agencies, and social service providers with customer service counters;
 - 5.3 staff at close contact businesses (for example massage parlours, beauticians, barbers, and hairdressers);
 - 5.4 public facing staff in hospitality venues (where there are other protections for patrons);
 - 5.5 passengers of taxi/ride share vehicles;
- 6 agree that due to other risk mitigating factors being in place (such as physical distancing and limits on gathering sizes) and/or practical considerations, face coverings not be required at:
- 6.1 s9(2)(f)(iv)
 - 6.2 s9(2)(f)(iv)
 - 6.3 s9(2)(f)(iv)
 - 6.4 s9(2)(f)(iv)
 - 6.5 s9(2)(f)(iv)
- 7 note that the current requirements and exemptions for face coverings to be worn on public transport and domestic air transport services at all Alert Levels will remain, except for the change agreed in paragraph 5.5 above;
- 8 agree that existing enforcement options (including an infringement offence) will apply to the new requirements in paragraphs 4 and 5 above;
- 9 note that Police intend to apply the Graduated Response Model (4Es – Engage, Encourage, Educate and Enforce) to any expanded face covering requirement, however, they will not be able to respond to every public report of a breach of face covering requirements;
- 10 agree that the current exemption that allows people to remove their face covering to eat or drink on public transport and air transport be extended to retail businesses, public transport arrival and departure points, and indoor public facilities, acknowledging that food and beverages are served at some of these businesses (e.g. food courts in shopping malls or airport terminals);
- 11 agree that the current exemptions for wearing face coverings at Alert Level 1 (including people under the age of 12 or with physical or mental illness or conditions or disability that makes wearing a face covering unsuitable) will also apply at higher Alert Levels, except for the change agreed in paragraph 5.5 above;

Record keeping for contact tracing purposes

- 12 note that good record keeping supports efficient contact tracing in response to a COVID-19 outbreak, however, low usage of the COVID Tracer App slows down notification of contacts when community transmission appears to be present;
- 13 agree that an appropriate public health measure would be that record keeping for contact tracing purposes be made compulsory in New Zealand at all Alert Levels through an amendment to the current Alert Level Order at:
- 13.1 courts and tribunals, social service customer offices, indoor public facilities (e.g. libraries, museums and swimming pools), indoor event facilities (e.g. cinemas, theatres, concert venues and casinos) and aged care and health facilities (for visitors only);
- 13.2 exercise facilities, massage parlours, beauticians, barbers, hairdressers, and hospitality venues (e.g. cafes, restaurants, bars and nightclubs) (for customers);
- 13.3 social gatherings including those held at marae, weddings, funerals, faith-based services, except where held at private residences;
- 14 agree that the obligation will be borne by the person responsible for the place or gathering who will have to take steps to have systems and processes in place to ensure, so far as is reasonably practicable, that people scan the QR code for the place or gathering or provide details in a contact tracing record;
- 15 agree that public transport operators (and operators of associated facilities like terminals) will be exempt from these new record keeping requirements;
- 16 note that the Director-General of Health acknowledges that introducing a record keeping mandate for certain close-confined business settings may bring overall benefits for the contact tracing system while limiting some of the issues and unintended consequences that may result from a mandate;
- 17 agree that enforcement options to address non-compliance with the new requirements set out in paragraph 13 above be limited to the criminal offence (not infringement offence) provided in section 26 of the COVID-19 Public Health Response Act 2020;
- 18 note that guidance which draws on feedback received from stakeholders and agencies will be made available on the Unite Against COVID-19 website to support businesses' compliance;
- 19 note that the Office of the Privacy Commissioner believes there remain significant issues associated with enforcement of the proposed record keeping requirements that have not been addressed and have potential to negatively impact people's privacy;
- 20 note that for the proposed record keeping requirements, WorkSafe and Police's enforcement role under the COVID-19 regime will only be able to be delivered on a reactive, complaints-driven basis.

Rachel Clarke
Committee Secretary

Present: (see over)

Present:

Rt Hon Jacinda Ardern
Hon Grant Robertson
Hon Kelvin Davis
Hon Chris Hipkins
Hon Carmel Sepuloni (Chair)
Hon Andrew Little
Hon Poto Williams
Hon Kris Faafoi
Hon Peeni Henare
Hon Jan Tinetti
Hon Dr Ayesha Verrall
Hon Aupito William Sio
Hon Meka Whaitiri
Hon Priyanca Radhakrishnan

Officials present from:

Office of the Prime Minister
Office of the SWC Chair
Officials Committee for SWC

Released under the Official Information Act 1982



Cabinet

Minute of Decision

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Mandatory Face Coverings and Record Keeping for Contact Tracing Purposes

Portfolio **COVID-19 Response**

On 16 August 2021, following reference from the Cabinet Social Wellbeing Committee, Cabinet:

Background

- 1 **noted** that in light of the increasing prevalence of more transmissible COVID-19 variants such as Delta, strengthening COVID-19 protections is desirable;
- 2 **noted** that in February 2021, Cabinet agreed to the requirement for face coverings on public transport at Alert Level 1 to be continued (with some exceptions), and noted that the Minister for COVID-19 Response would report back to Cabinet with further advice on the issues concerning the options for improving record keeping and use of the COVID Tracer App for contact tracing purposes [CAB-21-MIN-0031];

Face coverings

- 3 **noted** that the Director-General of Health advises that the legal requirements for face coverings should be strengthened at Alert Level 2 and that the current Alert Level 1 settings should be retained;
- 4 **agreed** that at Alert Level 2 or higher, an appropriate public health measure would be that face coverings must be worn by all people in:
 - 4.1 retail businesses (including supermarkets, shopping malls, indoor marketplaces, takeaway food stores);
 - 4.2 any indoor or outdoor point of arrival or departure for any public transport (including any indoor terminals where the use of a face covering is required for the journey), e.g. where people are waiting for their service or have recently arrived on a service;
 - 4.3 indoor public facilities (such as libraries, museums and recreation centres, but excluding swimming pools);
 - 4.4 taxi/ride share vehicles (drivers and passengers);
- 5 **agreed** that at Alert Level 2 or higher an appropriate public health measure would be that face coverings must be worn by:
 - 5.1 visitors to aged care and healthcare facilities;

- 5.2 staff and visitors in public areas within courts and tribunals (although in a courtroom judicial officers could exercise discretion regarding the use of face coverings), local and central government agencies, and social service providers with customer service counters;
- 5.3 staff at close contact businesses (for example massage parlours, beauticians, barbers, and hairdressers);
- 5.4 public facing staff in hospitality venues (where there are other protections for patrons);
- 6 **agreed** that due to other risk mitigating factors being in place (such as physical distancing and limits on gathering sizes) and/or practical considerations, face coverings not be required at:
- 6.1 s9(2)(f)(iv)
- 6.2 s9(2)(f)(iv)
- 6.3 s9(2)(f)(iv)
- 6.4 s9(2)(f)(iv)
- 6.5 s9(2)(f)(iv)
- 7 **noted** that the current requirements and exemptions for face coverings to be worn on public transport and domestic air transport services at all Alert Levels will remain, except that passengers in taxis/rideshare vehicles will have to wear face coverings at Alert Level 2 and above;
- 8 **agreed** that existing enforcement options (including an infringement offence) will apply to the new requirements in paragraphs 4 and 5 above;
- 9 **noted** that Police intend to apply the Graduated Response Model (4Es – Engage, Encourage, Educate and Enforce) to any expanded face covering requirement, however, they will not be able to respond to every public report of a breach of face covering requirements;
- 10 **agreed** that the current exemption that allows people to remove their face covering to eat or drink on public transport and air transport be extended to retail businesses, public transport arrival and departure points, and indoor public facilities, acknowledging that food and beverages are served at some of these businesses (e.g. food courts in shopping malls or airport terminals);
- 11 **agreed** that the current exemptions for wearing face coverings at Alert Level 1 (including people under the age of 12 or with physical or mental illness or conditions or disability that makes wearing a face covering unsuitable) will also apply at higher Alert Levels except that passengers in taxis/rideshare vehicles will have to wear face coverings at Alert Level 2 and above;

Record keeping for contact tracing purposes

- 12 **noted** that good record keeping supports efficient contact tracing in response to a COVID-19 outbreak, however, low usage of the COVID Tracer App slows down notification of contacts when community transmission appears to be present;

- 13 **agreed** that an appropriate public health measure would be that record keeping for contact tracing purposes be made compulsory in New Zealand at all Alert Levels through an amendment to the current Alert Level Order at:
- 13.1 courts and tribunals, social service customer offices, indoor public facilities (e.g. libraries, museums and swimming pools), indoor event facilities (e.g. cinemas, theatres, concert venues and casinos) and aged care and health facilities (for visitors only);
 - 13.2 exercise facilities, massage parlours, beauticians, barbers, hairdressers, and hospitality venues (e.g. cafes, restaurants, bars and nightclubs) (for customers);
 - 13.3 social gatherings including those held at marae, weddings, funerals, faith-based services, except where held at private residences;
- 14 **agreed** that the obligation will be borne by the person responsible for the place or gathering who will have to take steps to have systems and processes in place to ensure, so far as is reasonably practicable, that people scan the QR code for the place or gathering or provide details in a contact tracing record;
- 15 **agreed** that public transport operators (and operators of associated facilities like terminals) will be exempt from these new record keeping requirements;
- 16 **noted** that the Director-General of Health acknowledges that introducing a record keeping mandate for certain close-confined business settings may bring overall benefits for the contact tracing system while limiting some of the issues and unintended consequences that may result from a mandate;
- 17 **agreed** that enforcement options to address non-compliance with the new requirements set out in paragraph 13 above be limited to the criminal offence (not infringement offence) provided in section 26 of the COVID-19 Public Health Response Act 2020;
- 18 **noted** that guidance which draws on feedback received from stakeholders and agencies will be made available on the Unite Against COVID-19 website to support businesses' compliance;
- 19 **noted** that the Office of the Privacy Commissioner believes there remain significant issues associated with enforcement of the proposed record keeping requirements that have not been addressed and have potential to negatively impact people's privacy;
- 20 **noted** that for the proposed record keeping requirements, WorkSafe and Police's enforcement role under the COVID-19 regime will only be able to be delivered on a reactive, complaints-driven basis.

Michael Webster
Secretary of the Cabinet

- 5.1 s9(2)(f)(iv) [redacted]
[redacted]
- 5.2 s9(2)(h) [redacted]
- 5.3 s9(2)(h) [redacted]
- 5.4 s9(2)(h) [redacted]
[redacted]
- 5.5 s9(2)(h) [redacted]
[redacted]

- 6 note that the current requirements and exemptions for face coverings to be worn on public transport and domestic air transport services at all Alert Levels will remain except that passengers in taxis/rideshare vehicles will have to wear face coverings at Alert Level 2 and above;
- 7 agree that existing enforcement options (including an infringement offence) will apply to the new requirements proposed in recommendations 3 and 4;
- 8 note Police intend to apply the Graduated Response Model (4Es – Engage, Encourage, Educate and Enforce) to any expanded face covering requirement, however, they will not be able to respond to every public report of a breach of face covering requirements;
- 9 agree that the current exemption that allows people to remove their face covering to eat or drink on public transport and air transport be extended to retail businesses, public transport arrival and departure points, and indoor public facilities, acknowledging that food and beverages are served at some of these businesses (e.g. food courts in shopping malls or airport terminals);
- 10 agree that the current exemptions for wearing face coverings at Alert Level 1 (including people under the age of 12 or with physical or mental illness or conditions or disability that makes wearing a face covering unsuitable) will also apply at higher Alert Levels except that passengers in taxis/rideshare vehicles will have to wear face coverings at Alert Level 2 and above;

Record keeping for contact tracing purposes

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- 12 agree that an appropriate public health measure would be that record keeping for contact tracing purposes be made compulsory in New Zealand at all Alert Levels through an amendment to the current Alert Level Order at:
- 12.1 courts and tribunals, social service customer offices, indoor public facilities (e.g. libraries, museums and swimming pools), indoor event

facilities (e.g. cinemas, theatres, concert venues and casinos) and aged care and health facilities (for visitors only);

- 12.2 exercise facilities, massage parlours, beauticians, barbers, hairdressers and hospitality venues (e.g. cafes, restaurants, bars and nightclubs) (for customers); and
- 12.3 social gatherings including those held at marae, weddings, funerals, faith-based services, except where held at private residences;
- 13 agree that the obligation will be borne by the person responsible for the place or gathering who will have to take steps to have systems and processes in place to ensure, so far as is reasonably practicable, that people scan the QR code for the place or gathering or provide details in a contact tracing record;
- 14 agree that public transport operators (and operators of associated facilities like terminals) will be exempt from these new record keeping requirements;
- 15 note the Director-General acknowledges that introducing a record keeping mandate for certain close-confined business settings may bring overall benefits for our contact tracing system while limiting some of the issues and unintended consequences that may result from a mandate;
- 16 agree that enforcement options to address non-compliance with the new requirements proposed in recommendation 12 above be limited to the criminal offence (not infringement offence) provided in section 26 of the COVID-19 Public Health Response Act 2020;
- 17 note that guidance which draws on feedback received from stakeholders and agencies, including from the Office for Disability Issues, Te Puni Kōkiri, Ministry for Ethnic Communities and MBIE, will be made available on the Unite Against COVID-19 website to support businesses' compliance;
- 18 note that the Office of the Privacy Commissioner believes there remain significant issues associated with enforcement of the proposed record keeping requirements that have not been addressed and have potential to negatively impact people's privacy;
- 19 note that for the proposed record keeping requirements, WorkSafe and Police's enforcement role under the COVID regime will only be able to be delivered on a reactive, complaints-driven basis;

Communication and implementation

- 20 note that I propose we announce the new settings for mandatory face coverings and record keeping immediately after final decisions are taken by Cabinet, to set out expectations and take an "encourage" approach ahead of regulatory systems being in place in October 2021.

Authorised for lodgement

~~IN CONFIDENCE~~

Hon Chris Hipkins

Minister for COVID-19 Response

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~~IN CONFIDENCE~~