



8 March 2022



Ref: OIA-2021/22-0244

Dear 

Official Information Act request relating to advice on masks in education facilities

Thank you for your request made under the Official Information Act 1982 (the Act), received by the Department of the Prime Minister and Cabinet (DPMC) as a transfer from the Ministry of Health on 9 September 2021. You requested:

“all advice to the Government/Cabinet/Ministers in the last four weeks about whether to make mask-wearing mandatory in educational facilities such as schools and universities.”

I note the time limits for responding to your request were extended under section 15A of the Act by 20 working days to allow for further consultations to be undertaken before a decision could be made on your request. In addition to this, as DPMC is directly involved in the government response to COVID-19, our timeframes to respond to requests have been impacted. I apologise for this delay, and I'm now in a position to respond.

The following documents have been identified as relevant to your request, and I have decided to release these to you under the Act:

Item	Date	Type	Title
1	2 July 2021	Briefing	Mandatory Face Coverings and Record Keeping for Contact Tracing Purposes
2	11 August 2021	Cabinet material	Mandatory Face Coverings and Record Keeping for Contact Tracing Purposes

Some information has been withheld under the following sections of the Act:

- Section 9(2)(a), to protect the privacy of natural persons;
- Section 9(2)(f)(iv), to maintain the confidentiality of advice tendered by or to Ministers and officials;
- Section 9(2)(g)(i), to maintain the effective conduct of public affairs through the free and frank expression of opinion; and
- 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 will be published on DPMC'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



Ruth Fairhall
Head of Strategy & Policy

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. These situations and settings are:
- 17.1 social gatherings (including weddings, funerals and cultural or faith-based services);
 - 17.2 customers at hospitality venues and close contact businesses;
 - 17.3 education entities;
 - 17.4 event facilities such as cinemas, theatres, stadiums, concert venues and casinos; and
 - 17.5 other controlled access facilities and businesses (including exercise facilities, office workplaces, factories).
- 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 (e.g. school attendance rolls), 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 My officials will provide me with advice on the efficacy of the Australian approach to record keeping, particularly how compliance with these requirements have been monitored and enforced.

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 DPMC officials are also progressing work to enhance the display of QR codes and make it easier for users of the App to scan.

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

³ If passed, the COVID-19 Public Health Response Amendment Bill 2021 will amend the COVID-19 Public Health Response Act 2020 to increase the maximum penalties contained in section 26 of the Act. This includes

- 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). Protections could be imposed so that information provided to contact tracers can only be used for the management of infectious diseases.
- 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. It is unlikely that enforcement officers will be able to maintain a constant presence to observe compliance or respond to every report of non-compliance. Increased demand on enforcement officers may present resourcing challenges if it means they are unable to adequately respond to breaches, which may lead to a public perception of inaction, which could erode public trust and confidence in enforcement agencies and increase non-compliance.
- 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

increasing the maximum penalties for infringement offences to include an infringement fee of \$1,000 (currently \$300) and court imposed fine of \$3,000 (currently \$1,000).

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 The new requirements for record keeping for contact tracing will be prepared as a new section 11 Order for me to sign into force in October (following consultation with relevant Ministers).

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. The work that DPMC is progressing to enhance the display of QR codes will support improved accessibility for users of the app and record keeping generally. There are some people who are unable to wear a face covering, and they can also reduce effective communication (i.e. lip reading) for some people. 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 The proposed mandatory record keeping proposals will impact Pacific peoples, including Pacific churches. Therefore, support will need to be provided to Pacific churches (and other organisations) to help them understand what is required of them under these new rules, including other mechanisms for record keeping beyond the COVID-19 App.
- 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]

81 s9(2)(h) [Redacted]

s9(2)(h) [Redacted]

82 s9(2)(h) [Redacted]

82.1 s9(2)(h) [Redacted]

82.2 s9(2)(h) [Redacted]

82.3 s9(2)(h) [Redacted]

83 s9(2)(h) [Redacted]

84 s9(2)(h) [Redacted]

85 s9(2)(h) [Redacted]

86 s9(2)(h) [Redacted]

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s9(2)(h)

[REDACTED]

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:

- 5.1 social gatherings (including weddings, funerals and cultural or faith-based services);
 - 5.2 customers at hospitality venues and close contact businesses;
 - 5.3 education entities;
 - 5.4 event facilities such as cinemas, theatres, stadiums, concert venues and casinos; and
 - 5.5 other controlled access facilities and businesses (including exercise facilities, office workplaces, factories);
- 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

- 11 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;
- 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

IN CONFIDENCE

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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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	✓	✓	The mandatory record keeping requirement only applies to customers/visitors at social gatherings. 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. 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.



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 social gatherings (including weddings, funerals and cultural or faith-based services);
 - 6.2 customers at hospitality venues and close contact businesses;
 - 6.3 education entities;
 - 6.4 event facilities such as cinemas, theatres, stadiums, concert venues, and casinos;
 - 6.5 other controlled access facilities and businesses (including exercise facilities, office workplaces, factories);
- 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

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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 social gatherings (including weddings, funerals and cultural or faith-based services);
- 6.2 customers at hospitality venues and close contact businesses;
- 6.3 education entities;
- 6.4 event facilities such as cinemas, theatres, stadiums, concert venues, and casinos;
- 6.5 other controlled access facilities and businesses (including exercise facilities, office workplaces, factories);
- 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

Briefing

MANDATORY RECORD KEEPING FOR CONTACT TRACING PURPOSES AND FACE COVERINGS

To: Hon Chris Hipkins
Minister for COVID-19 Response

Date	2/07/2021	Priority	Urgent
Deadline	5/07/2021	Briefing Number	DPMC-2020/21-1174

Purpose

This briefing outlines a set of options to mandate record keeping for contact tracing purposes and the use of face coverings.

Recommendations

1. **Note** Ministers have requested advice that considers options to mandate record keeping for contact tracing purposes and face coverings, in light of the increasing prevalence of the more transmissible Delta variant.
2. **Note** DPMC officials have received feedback from agencies raising concerns relating to the implementation, compliance and enforcement, privacy, social licence, complexity and proportionality of the proposed changes in the paper.
3. **Note** that based on interim public health advice, the Ministry of Health disagrees with the proposals in relation to both record keeping for contact tracing purposes and face coverings.

4. s9(2)(h)

5. **Agree** to discuss the set of options outlined in this briefing with your Cabinet colleagues on Monday, 5 July 2021 (a table of proposed options and talking points are provided as Attachments A and B).

YES / NO

6. **Note** further work is required on implementation and enforcement to mitigate the concerns and risks outlined in this paper and that officials will progress work on these issues and report back to you by Friday, 9 July 2021.
7. **Direct** officials to prepare a Cabinet paper to reflect your decisions on preferred settings in this briefing, for discussion at Cabinet on Monday, 12 July 2021.

YES / NO

Mandatory record keeping for contact tracing purposes

8. **Note** mandating record keeping for contact tracing purposes (by either or both individuals and businesses, with QR code scanning using the COVID-19 Tracer App being one record keeping method) could support faster notification of contacts during any community outbreak, helping to ensure contacts are aware they need to isolate and be tested.
9. **Agree** in principle to make record keeping for contact tracing purposes compulsory, subject to final public health advice and further work mentioned in recommendation 6.
10. **Agree** in principle that individuals will be required to make a record for contact tracing purposes by using the COVID-19 Tracer App to scan a QR code or an alternative contact tracing record (in the event that they do not have the App or it is not reasonably practicable for them to use it).
11. **Agree** in principle that businesses be required to have systems and processes to ensure so far as is reasonably practicable that a contact tracing record is created.
12. **Agree** in principle that record keeping for contact tracing purposes is required at either:
 - 12.1. all Alert Levels (**recommended**);
 - OR**
 - 12.2. only at Alert Level 2 and above.

YES / NO

YES / NO

YES / NO

YES / NO

YES / NO

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13. **Agree** in principle, that record keeping for contact tracing purposes is required for either:

EITHER (recommended)

- | | |
|--|----------|
| 13.1. visitors or customers at aged care and healthcare facilities; | YES / NO |
| 13.2. indoor event facilities (cinemas, theatres, concert venues, casinos); | YES / NO |
| 13.3. retail businesses (supermarkets, shopping malls, indoor marketplaces, takeaway food stores); | YES / NO |
| 13.4. customers at massage parlours, beauticians, barbers, hairdressers; | YES / NO |
| 13.5. indoor public facilities (libraries, museums, swimming pools); | YES / NO |
| 13.6. public facing staff and visitors to courts and tribunals (except in courtrooms where judicial officers should exercise judicial discretion regarding use of face coverings), local and central Government agencies, and social service providers with customer service counters; | YES / NO |
| 13.7. social gatherings (weddings, funerals, faith based services), and | YES / NO |
| 13.8. customers at hospitality venues (cafes, restaurants, bars/nightclubs); | YES / NO |

OR

- | | |
|--|----------|
| 13.9. when a person attends any location required to display a QR code. | YES / NO |
| 14. Agree that the current requirement for transport operators, including airports and terminals, to display QR codes compatible with the NZ COVID Tracer App will not be extended to require them to provide an alternative record keeping system because of the practical difficulties. | YES / NO |
| 15. Agree that, because of the existing record keeping systems in place, the current exemption from the requirement to display a QR code will continue for: | |
| 15.1. public transport services that require all passengers to provide their name and a contact telephone number (in order to use the service), such as air passenger services, some interregional bus services, and some interregional passenger train services; | YES / NO |
| 15.2. school buses (meaning dedicated school services contracted by: the Ministry of Education, local Authorities, school boards or Auckland Transport); and | |
| 15.3. car sharing or carpooling services (e.g. app-based systems like Uber). | |

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16. **Agree** that any mandatory record keeping for contact tracing purposes settings be reviewed in November 2021 to ensure they remain fit-for-purpose. YES / NO

Face coverings at Alert Level 2

17. **Note** the use of face coverings in higher risk situations may help to prevent COVID-19 spreading in the community (depending on type, how they are worn, and where they are worn), and possibly prevent a shift to a higher Alert Level (which would further restrict social and economic activity).
18. **Note** DPMC officials have categorised activities and places by the level of risk of spread of COVID-19, factors that could contribute to higher spread of COVID-19, and the practicality of wearing a face covering.
19. **Note** higher risk situations include poorly ventilated, crowded indoor settings where there is difficulty physically distancing, potential contact with a higher number of unknown people, higher proportions of people vulnerable to the impact of COVID-19 (particularly before they are vaccinated), and behaviour that could lead to greater risk of airborne transmission.
20. **Agree** in principle to make the wearing of face coverings in specific settings compulsory, subject to final public health advice and further work mentioned in recommendation 6. YES / NO
21. **Note** in all cases where a face covering requirement is proposed, the existing exemptions should remain in place based on the existing rationale for these exemptions.
22. **Agree** in principle to mandating the use of face coverings for all people (except those exempt) at Alert Levels 2 or higher, where it is practical to do so, at the following high-risk locations:
- 22.1. any indoor or outdoor point of departure for any public transport service (airports, train stations, bus stops); YES / NO
- 22.2. retail businesses (including supermarkets, shopping malls, indoor marketplaces and takeaway food stores); and YES / NO
- 22.3. indoor public facilities (libraries and museums). YES / NO

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23. **Agree** in principle to mandating the use of face coverings for people at Alert Levels 2 or higher where it is practical to do so, for individuals who are in the following high-risk situations:
- 23.1. visitors in aged residential care and healthcare facilities (not including patients); YES / NO
- 23.2. public facing staff and visitors to courts and tribunals (except in courtrooms where judicial officers should exercise judicial discretion regarding use of face coverings), local and central Government agencies, and social service providers with customer service counters; YES / NO
- 23.3. staff at close contact businesses such as massage parlours, beauticians, barbers and hairdressers; and YES / NO
- 23.4. public facing staff in hospitality venues. YES / NO
24. **Agree** that although the following may be high-risk locations and settings, for practicality reasons, the use of face coverings will not be required at:
- 24.1. social gatherings (including weddings, funerals, faith-based services); YES / NO
- 24.2. passengers of taxi/ride share; YES / NO
- 24.3. customers at hospitality venues (cafes, restaurants, bars/nightclubs); YES / NO
- 24.4. schools and education entities; YES / NO
- 24.5. other controlled access facilities and businesses (including gyms, office workplaces and factories); and YES / NO
- 24.6. indoor event facilities (cinemas, theatres, concert venues, casinos) and swimming pools. YES / NO
25. **Agree** with regard to existing settings for face coverings at Alert Level 1, to either:
- 25.1. retain all existing settings; YES / NO
- OR**
- 25.2. remove mandated use of face coverings on public transport services at Alert Level 1 but retain them on domestic air transport services (**recommended**). YES / NO

Enforcement

26. **Note** further work is needed on enforcement mechanisms including creating infringement offences.

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27. **Note** that public health considerations form a critical part of justifying the application of a criminal offence for breaching an Alert Level requirement.
28. **Note** Police have advised they will continue to employ the "4 Es" approach (Engage, Encourage, Educate, Enforce) to any non-compliance with health orders.
29. **Agree** that this briefing is proactively released, with any appropriate redactions where information would have been withheld under the Official Information Act 1982 at the same time as any resulting Cabinet Paper is released.

YES / NO

Ruth Fairhall
Head of Strategy and Policy

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/...../2021

Hon Chris Hipkins
Minister for COVID-19 Response

...../...../2021

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Contact for telephone discussion if required:

Name	Position	Telephone	1st contact
Ruth Fairhall	Head of Strategy & Policy, COVID-19 Group	s9(2)(a)	✓
Ben White	Manager, Strategy & Policy, COVID-19 Group	s9(2)(a)	

Minister's office comments:

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

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MANDATORY RECORD KEEPING FOR CONTACT TRACING PURPOSES AND FACE COVERINGS

Executive Summary

1. The increasing prevalence of the Delta variant around the world, which is understood to be significantly more transmissible than previous variants of COVID-19 has, in part, prompted Ministers to request advice that considers options to mandate record keeping for contact tracing purposes and face coverings in New Zealand.
2. The settings outlined in this briefing provide options to mandate these actions (record keeping and use of face coverings), while seeking to balance transmission risk against infringement on an individual's freedoms, convenience and comfort. In general, we have not recommended mandating either action where individuals can easily maintain their bubbles through distancing (i.e. lower risk locations). However, where it is difficult to maintain separate bubbles it is recommended that face coverings should be mandated, unless their wearing is impractical (e.g. where food and drink is consumed). In such cases other protective measures should be put in place (e.g. being seated at a table), and if a form of record keeping does not already exist, one is required.
3. DPMC considers that requiring face coverings and record keeping for contact tracing purposes in specific settings would bolster the "prepare for it" pillar of the Elimination Strategy by reducing the spread of an outbreak before it is detected, and work alongside other approaches to "keep it out" (e.g. pausing QFT and introducing PDT for all QFT travellers). The proposals would also strengthen the "stamp it out" pillar by reducing the likelihood of a nascent outbreak becoming widespread and resulting shift up Alert Levels. While it is hard to judge the overall level of risk reduction, the negative impacts on individual freedoms would be significantly less than those associated with Alert Level 3 restrictions.
4. Further work is required to address the concerns raised by agencies relating to the effectiveness (both scientific evidence and how effective the proposal is in practice given implementation challenges), compliance and enforcement, privacy, social licence, complexity and proportionality (including costs to business) of the proposed measures. However, the more complex we make settings to address concerns about effectiveness and proportionality, the more difficult it becomes to communicate, understand and enforce.

Record keeping for contact tracing purposes

5. Good record keeping is essential to support efficient contact tracing in response to a COVID-19 outbreak, but it is only currently required in limited scenarios for businesses (as far as is reasonably practicable) at Alert Level 3 in New Zealand. Partly due to high public complacency, use of the COVID-19 Tracer App (the App) is consistently low which slows down notification of contacts when community transmission appears to be present.
6. Mandating record keeping would work alongside existing non-regulatory approaches to promote and encourage improved record keeping, including current or planned government educational initiatives, communications, engagement, guidance and physical resources. While these non-regulatory approaches have had limited success in driving increased or consistent record keeping, they will continue as one of the ways to influence positive record keeping behaviours.

7. Options are provided about on whom, where, how, and for how long a record keeping requirement would apply. The suite of possible options outlined limit the requirement's application in different ways, with it being recommended that the App is specified as the primary record keeping method across the options (with alternative methods provided, subject to exemptions). For example, whether the requirement applies at all Alert Levels, or only Alert Level 2 or higher; at all locations or only at more risky locations; only to businesses (to have systems and processes to ensure a record is kept) or also on individuals (make a record). The different limits incorporated in the options seek to balance the stated benefits of mandating against interference with rights, privacy and legal risks, as well as maintenance of social licence ^{s9(2)(h)}

8. Changing the rules will not necessarily influence all New Zealanders' record keeping behaviour. Research indicates that mandating record keeping behaviours may increase the occurrence of the behaviour overall but reduce the behaviour among some key groups (e.g. due to perceived inequity or unfairness). It is anticipated that some non-compliance will persist.
9. The Ministry of Pacific Peoples, the Privacy Commissioner and the Government Chief Privacy Officer do not support the record keeping proposals as set out in this briefing. The Ministry of Health does not presently support the proposals but will be providing further advice on these matters.

Face coverings at Alert Level 2

10. Experimental and epidemiological data support community face covering wearing to reduce the spread of infectious diseases, like SARS-CoV-2. The prevention benefit of face coverings (when worn effectively while there is community transmission) is derived from the combination of source control and wearer protection for the person wearing the face covering. Face coverings may help to reinforce physical distancing behaviours, without replacing them.
11. Most Australian states and territories now have rules around the use of face coverings in a range of indoor settings. All states mandate the use of face coverings for people while inside State Government controlled airport terminals and during commercial flights.
12. DPMC officials have completed a face covering risk assessment by categorising activities and places by overall risk level and assessing this against the potential impact of spread to vulnerable populations. We have then assessed any mitigating factors and practical implications in order to recommend whether the use of face coverings should be mandated in each distinct setting. The current definition of face coverings and exemptions has been retained.
13. Based on this risk assessment, we recommend mandating the use of face coverings for all people at Alert Levels 2 or higher, where it is practical to do so, at the indoor or outdoor point of departure for any public transport, retail businesses, and indoor public facilities. We are recommending the use of face coverings at the outdoor point of departure for public transport due to the risk of individuals not maintaining physical distancing while waiting to depart, particularly for buses.
14. Further, we recommend mandating the use of face coverings for people at Alert Levels 2 or higher where it is practical to do so, for individuals who are visitors to aged residential care and healthcare facilities, staff at massage parlours, beauticians, barbers, hairdressers, public facing staff and visitors to courts and tribunals (except in courtrooms where judicial officers should exercise judicial discretion regarding use of face coverings),

local and central Government agencies, and social service providers with customer service counters, and public facing staff in hospitality venues.

15. Considering the intent and practicality of measures, we do not recommend mandating the use of face coverings at social gatherings (including weddings, funerals, faith-based services), customers at hospitality venues, schools and education entities, other controlled access facilities and businesses (gyms, office workplaces, factories), passengers of taxi/ride share services, indoor event facilities (cinemas, theatres, concert venues, casinos) and swimming pools.
16. The Ministries of Health and Pacific Peoples do not support the face coverings proposals as set out in this briefing. The Ministry of Health will provide further advice on this matter.

Enforcement mechanisms

17. Monitoring compliance and enforcement of these requirements will be challenging. Further work is required on what mechanisms should be available to enforce non-compliance with any requirement for mandatory scanning (e.g. whether an infringement offence is created and how non-compliance might be monitored, or an obligation imposed in a way that breaches Google and Apple's terms of service).

Mandatory record keeping for contact tracing purposes

18. Our ability to slow or stop the spread of COVID-19 relies heavily on the pace and efficiency of contact tracing. Currently, record keeping for contact tracing purposes (including through the use of the App for QR code scanning) is strongly encouraged in New Zealand but is only required in limited scenarios for businesses (so far as reasonably practicable) at Alert Level 3.¹
19. Uptake and use of the App is currently low and inconsistent, with the number of QR poster scans typically fluctuating between 400,000 and 1 million scans per day.² With the emergence of new, likely more transmissible, variants of COVID-19 there is arguably a more pronounced need for improved record keeping behaviours, especially while the majority of New Zealanders are unvaccinated.
20. Making record keeping for contact tracing purposes compulsory could support faster notification of contacts (e.g. through push notifications in the App) during a community outbreak of COVID-19. This will help to limit any outbreak by ensuring close and casual contacts are aware that they need to isolate and get tested (noting that contacts will still need to act on this information), and may help to prevent shifts to higher Alert Levels.
21. The Strategic COVID-19 Public Health Advisory Group's 24 June 2021 report to Minister Verrall echoed this sentiment in the context of Reconnecting New Zealand, recommending enhanced contact tracing (including through mandated QR code scanning at some venues) to assist in "stamping out" any clusters of COVID-19. Compulsory record keeping in New Zealand would also increase assurance for QFT-purposes and make it easier for people to understand what is expected of them in both countries, considering use of check-in apps is now mandated in most Australian states and territories.³

¹ Clauses 24(1)(f)(ii) and 24(1)(g)(iii) of the (now revoked) COVID-19 Public Health Response (Alert Level Requirements) Order (No 4) 2021 outline the limited scenarios referred to. These provisions are part of our Alert Level 3 Template Order.

² DPMC commissioned TRA to undertake research in May 2021 to understand how NZ COVID-19 Tracer app behaviours could be influenced by targeted communications. 60% of TRA's sample (n = 1,921) reported that they were not scanning consistently. Only 38% stated that it was important to use the NZ COVID Tracer app wherever they went.

³ Western Australia, which has a population of 2.67 million, mandated the use of the contract registration in December 2020. The state government COVID-19 check-in app "SafeWA" registered an approximate 1.9 million daily average scans in May. Following the Sydney Northern Beaches outbreak over the December-January period, NSW, which has a population of 8.2 million,

22. Any strengthened new measures related to the Alert Level framework, which impinge on individual freedoms and rights, need to be proportionate. The mandatory requirement will have a greater impact on people who are not able to use the App, because alternative means of record keeping are generally more inconvenient and less privacy protective. The privacy implications of complying with, and enforcing, mandatory record keeping on individuals are significant regardless of the method of information sharing used (e.g. implications apply for both electronic and paper-based information sharing systems).
23. Options are available in the settings (discussed more below) to ensure proportionality relative to the public health risk and to help to mitigate the risks and concerns that relate to this proposal, as set out in this paper. Notwithstanding the benefits outlined above, we are also aware that any new requirements on businesses create compliance costs and any new requirements on individuals interfere with fundamental rights. The Ministry of Health will provide further advice on the public health risks.

Proposed settings

24. s9(2)(h)

The following options differ in the broadness of their application and associated risk profile. If your preference is for a suite of narrow options (e.g. only applying the requirement at Alert Levels 2 and above, only in the narrowest categorisation of locations and only on businesses), the legal risk will be lower. Broader options carry significantly higher risk.

25. In terms of who the requirement applies to, a section 11 order under the COVID-19 Public Health Response Act 2020 could be used to make record keeping for contact tracing purposes compulsory, by requiring:
- a) specified businesses and services to have systems and processes to ensure that, so far as is reasonably practicable, a contact tracing record is created;⁴ AND/OR
 - b) individuals to make a contact tracing record.
26. If an individual fails to comply with the requirements of any order created by section 11 could be subject to criminal prosecution.⁵ A business or service that failed to comply would be subject to possible prosecution. Enforcement is discussed below in paragraphs 57 to 64.
27. Record keeping could be required at all Alert Levels, or only at higher alert levels when community transmission is present or more likely. We propose two options for this setting, which would complement current communications strategies to influence record keeping behaviour:
- a) Requiring record keeping at all Alert Levels (recommended). Record keeping for contact tracing purposes is something that we want to encourage New Zealanders to do at all times, especially at lower Alert Levels. From a public health perspective, being

recorded 66 million Service NSW app check-ins. This dropped to 54.4 million for the month of February. By April there were 48.3 million a month with the data for May showing similar levels of app usage.

⁴ Note that a person in control of a workplace (with exceptions) is currently required to display a QR code at all alert levels (section 9 of the COVID-19 Public Health Response (Alert Level Requirements) Order (No 7) 2021 refers). At alert level 2, there is also a requirement to have other record-keeping systems and processes in place (with certain exceptions).

⁵ Section 26 of the COVID-19 Public Health Response Act 2020 refers.

able to rapidly contact trace early in an outbreak/positive case of COVID-19 is critical. Good record keeping may mitigate the need to change Alert Levels.

- b) Requiring record keeping at Alert Levels 2, 3 and 4 only, with record keeping for contact tracing purposes still only strongly encouraged at Alert Level 1. Having different requirements at different Alert Levels may be problematic from a compliance perspective, as it may be confusing when individuals do and do not need to make a record of their movements. However, this option may go some way to preserving social licence for scanning and the Alert Level framework more generally while the country is at the lowest Alert Level.

28. The locations where record keeping for contact tracing purposes is mandatory is also flexible. We propose two options:

- a) Adopting a risk-based approach, requiring record keeping for visitors or customers at: visitors to aged care and healthcare facilities, indoor event facilities (cinemas, theatres, concert venues, casinos), retail businesses (supermarkets, shopping malls, indoor marketplaces, takeaway food stores), customers at massage parlours, beauticians, barbers, hairdressers, indoor public facilities (libraries, museums, swimming pools), public facing staff and visitors to courts (but excluding judiciary and legal counsel), tribunals, local and central government agencies, and social service providers with customer service counters, social gatherings (weddings, funerals, faith based services), and customers at hospitality venues (cafes, restaurants, bars/nightclubs). This approach would support prompt notification of contacts following an instance of a positive COVID-19 case attending one of these gatherings, and at other venues where physical distancing is not always practical. However, under this option drafting will be complex and it may be difficult for some individuals to easily identify when and where they should be making a record of their movements.

OR

- b) Requiring record keeping for contact tracing purposes everywhere that a QR code is currently required to be displayed (not recommended as we consider that it has the highest likelihood of undermining social licence).

29. DPMC officials would recommend social gatherings are exempt from this requirement at Alert Level 1, due to the risk of adding complexity where there are currently no other legal requirements on gatherings. Hosts of social gatherings would continue to be encouraged to keep a record for gatherings held at Alert Level 1 but this would not be a legal requirement.

30. DPMC officials recommend that the App is specified as the preferred method of record keeping, acknowledging that businesses will need to be required to provide alternative record keeping methods for those who do not, or cannot, use the App (with some exceptions). For example, enabling businesses to electronically register contact details on a patron's behalf or updating the App to enable a single app user to check in multiple people.

31. Practical limitations mean it will be unfeasible for some businesses and service providers to have alternative systems in place, such as public transport providers and in transport terminals (e.g. airports, and bus stations). Transport operators are currently required to display QR codes for their transport assets. This includes on buses and trains, and throughout terminals and stations. Because of the number of assets and size and number of access points at terminals for example, requiring alternative contact tracing systems to be in place, other than QR codes, will not be practicable. We recommend that public

transport operators (and associated facilities) not be required to provide an alternative record keeping system.

32. Requiring people to download and use a specific app contravenes Apple and Google's terms of service and would likely result in the App being removed from both platforms. This issue can be avoided by making a broader record keeping requirement (as is proposed), where the App is the preferred method of record keeping for contact tracing purposes, but still only one of several record keeping options available to a person. Meeting the requirement would not be dependent on a person downloading and using the App. However, further complications arise over the how compliance with any mandatory record keeping obligation would be monitored and enforced. s9(2)(g)(i)

33. Some services are currently exempted from the requirement to display a QR code and, based on the existing rationale for these exemptions, we recommend they continue, including for:

- a) public transport services that require all passengers to provide their name and a contact telephone number (in order to use the service), such as air passenger services and some interregional train and bus services;
- b) school buses (dedicated school services contracted by the Ministry of Education, local authority, school board or Auckland Transport); and
- c) car sharing services and carpooling services.

34. s9(2)(f)(iv)

The effectiveness of this option in improving record keeping is not guaranteed

35. Changing a rule does not always change behaviour; mandating record keeping for contact tracing purposes will not guarantee effective record keeping by all New Zealanders. For example, some individuals may hold their phone up to a QR code without scanning to appear compliant. November 2020 research carried out by PWC indicated that mandating some public health activities (such as scanning using the App) may make some people less willing to carry out that activity, and there is also a high risk that it will diminish social licence and erode adherence with future lockdowns.⁶ There is also a risk that people will see their civil liberties being reduced without an end point in sight, resulting in low public acceptance of the requirement.

36. Research indicates that mandating record keeping behaviours may increase the occurrence of the behaviour overall, but reduce the behaviour among some key groups, due to perceived inequity and unfairness. It is anticipated that some non-compliance will persist.⁷

37. There are also possible unintended consequences of mandating record keeping. Someone who visited a location of interest but did not record this movement may be more

⁶ *Applying behavioural science techniques to increase NZ COVID Tracer app adoptions*, PWC, November 2020.

⁷ *Applying behavioural science techniques to increase NZ COVID Tracer app adoptions*, PWC, November 2020 refers. An example of a possible inequity is an individual who has English as a second language and does not have a smart phone, who may feel uncomfortable (or who may be unable to) write down their details on a paper-based register.

hesitant to get a COVID-19 test for fear of revealing their non-compliance. A person may refuse to share their movement records with contact tracers because they have not complied with the requirement to make a record of their movement, which would frustrate contact tracing efforts.

38. A new Unite Against COVID-19 (UAC) Tracer App campaign in July aims to encourage New Zealanders to download the App, turn on Bluetooth tracing and scan QR codes. The campaign repositions the scanning messaging from scanning being an activity to stop the virus, to scanning being something we need to do to protect the things we love. It also includes engagement with businesses to make it easier to encourage patrons to scan, including developing messaging and resources for them to use.

Face coverings at Alert Level 2

Current evidence

39. Experimental and epidemiological data support community masking to reduce the spread of infectious diseases, like SARS-CoV-2. Face coverings can help prevent transmission in certain situations (e.g. when there is wide-spread transmission of COVID-19 and proper use of face coverings) by:
 - a) reducing the emission of virus-laden particles (“source control”); and
 - b) reducing inhalation of these particles by the wearer (“wearer protection”).
40. These two effects combine to provide the overall community benefit, aiding other existing public health efforts to “stamp it out” through reducing the number of transmissions in the first place.
41. Face coverings can (depending on the type of covering) block most large droplets and can also block the exhalation of fine droplets and particles (also often referred to as aerosols), which increase in number with the volume of speech. Studies have shown that face coverings can block fine droplets and particles and limit the range of particles that are not captured.
42. Some studies also demonstrate that face coverings can reduce wearers’ exposure to infectious droplets through filtration, including filtration of fine droplets and particles. However, the relative filtration effectiveness of various face coverings has varied widely across studies, in large part due to variation in experimental design and particle sizes analysed. Use of face coverings has been found to be safe and is not associated with clinically significant negative impacts, for instance on respiration.

Current settings

43. At all Alert Levels the wearing of face coverings is mandatory on public transport and domestic flights and is recommended when people use taxis or rideshare services (it is mandatory for drivers of these services), or if they cannot maintain physical distancing in crowded indoor places [CAB-21-MIN-0031 refers]. UAC’s “cover for each other” campaign is strategically placed in public transport hubs and on public transport, in places where face coverings are currently mandated.
44. We consider the current definition of face coverings and exemptions related to the wearing of them should remain the same. The definition would not be prescriptive, with people able to use either medical grade or non-medical-grade face coverings, which can be either single-use or reusable, and can be made from other kinds of covering, like a bandana, scarf or t-shirt to cover the mouth and nose. High use of medical-grade masks may

inadvertently create supply issues, along with equity issues if people could not afford them.

45. The current exemptions for wearing face coverings would continue to apply (based on the existing rationale for the exemptions), and expectations around proof of exemption would not change. This means the following would not be required to wear a face covering:

- a) children under 12;
- b) passengers on a small passenger service vehicle;
- c) on ferry services carrying passengers between the North and South Islands;
- d) on charter or group tours, or private flights;
- e) drivers, pilots, staff or crew of the service if they are in a space completely separated from passengers, for example pilots in a cockpit or train drivers in a train cab;
- f) on ships with no enclosed spaces for passengers (e.g. water taxis);
- g) school transport services; and
- h) pre-booked public transport services provided by bus or rail that operate only within Alert Level 1 areas.

46. People also do not need to wear face coverings if (non-exhaustive list):

- a) it is unsafe, or if you have a physical or mental health illness or condition or disability that makes wearing a face covering unsuitable
- b) there is an emergency;
- c) you need to prove your identity;
- d) if visibility of the mouth or face is required for communication e.g. you need to communicate with someone who is deaf or hard of hearing, or to effectively communicate in courts and tribunals;
- e) you need to eat, drink or take medicine; or
- f) if wearing a face covering could make it unsafe to operate a vehicle (e.g. wearing a face covering means drivers or staff are unable to properly communicate, or it causes the eyeglasses of a driver to fog).

Approach to face coverings in Australia

47. Australian states have differing approaches to face coverings depending on their particular circumstances (see summary in Attachment 1). Some states have strengthened their requirements in the last few weeks in response to outbreaks to mandate face coverings while others recommend use in some lower risk locations.

48. All states have mandated the use of face coverings for people while inside State Government controlled airport terminals and during commercial flights at all Alert Levels. Some states have further requirements related to travel at different Alert Level settings. In Tasmania, mandatory face coverings extend to the state's maritime port and terminal, and in Western Australia extends to people transporting a person subject to a quarantine

direction (e.g. in a personal vehicle, private car, hired car, ride-share vehicle or taxi). Exemptions are generally consistent with those in New Zealand.

49. In New South Wales (NSW) and Victoria there are additional legal requirements mandating face coverings:
50. Since 17 June 2021, in regional Victoria, face coverings must be carried at all times and worn inside (except at private residences) and outside if people cannot maintain physical distancing. In metropolitan Melbourne, people must wear a face covering indoors and outdoors (except at private residences), unless an exemption applies. Face coverings are also strongly recommended outdoors where physical distancing cannot be maintained.
51. From 21 June 2021, NSW requires face coverings both when waiting for and using all forms of public transport. In Greater Sydney, people must also wear them at an extensive range of indoor areas (which are non-residential premises), including workplaces, and at COVID-safe outdoor gatherings or controlled outdoor public gatherings.

Options for wider use of face coverings at Alert Level 2

52. Face coverings can help to reinforce physical distancing behaviours but do not replace them. Extending the mandatory use of them in specified settings may provide an additional layer of protection if individuals do not get a false sense of security and stop exercising other public health actions. As we are proposing they only apply at Alert Level 2 and above, by definition, there will be a greater level of risk present in the community. If effective in reducing transmission, these measures (in conjunction with others) may reduce the likelihood of moving to higher Alert Levels.
53. DPMC officials have completed a risk assessment. While reviewed by the Ministry of Health, it does not include detailed public health input. The Ministry of Health intends to do further work around specific settings where face coverings should and should not be used and advise that this will take time.
54. We categorised activities and places by overall risk level, based on whether the venue is indoor or outdoor, the number of potential contacts, whether riskier behaviour is likely (in terms of projecting more aerosolised droplets), and the level of physical distancing. We have also assessed the potential impact of spread to vulnerable populations. In general we have assumed that the highest risk factors are whether the activity is indoors or outdoors, and whether there is riskier behaviour present (in terms of speaking, singing, or shouting) that would likely lead to more spread, or could lead to super spreading.
55. There are some settings in which we do not recommend mandating face coverings due to significant mitigating factors and/or practical considerations (detail below). The intent of the proposed settings is to reduce the number of environments in which COVID-19 could easily spread.
56. The Ministry of Health's interim public health advice does not support the proposals in this paper, but their general view is that any mandatory requirement should be as simple as possible so that people are aware of what is required of them (e.g. wear face coverings in enclosed spaces where it is not possible to physically distance). However, we think that, while such an approach works well for guidance, it creates compliance issues if we are creating legal requirements as it would be hard for people to know exactly when they are required to wear a face covering.
57. DPMC officials recommend mandating the use of face coverings for all people at Alert Levels 2 or higher, in:

- a) any indoor or outdoor point of departure for any public transport service (airports, train stations, bus stops);
- b) retail businesses (including supermarkets, shopping malls, indoor marketplaces and takeaway food stores); and
- c) indoor public facilities (libraries, museums)
58. In some situations it is not practical for people to use face coverings. DPMC therefore recommend the use of face coverings for select groups at Alert Levels 2 or higher for:
- a) visitors to aged residential care and healthcare facilities (not patients);
- b) public facing staff and visitors to courts and tribunals (except in courtrooms where judicial officers should exercise judicial discretion regarding use of face coverings), local and central Government agencies, and social service providers with customer service counters
- c) staff at massage parlours, beauticians, barbers and hairdressers; and
- d) public facing staff in hospitality venues.
59. There are some situations and settings that could be considered higher risk, but on balance DPMC officials do not recommend mandating face coverings due to significant risk mitigating factors (including physical distancing and limits on gathering sizes) and/or practical considerations. Examples include:
- a) social gatherings (including weddings, funerals, faith based services);
- b) customers at hospitality venues (cafes, restaurants, bars/nightclubs);
- c) schools and education entities;
- d) other controlled access facilities and businesses (gyms, office workplaces, factories);
- e) passengers of taxi/rideshare services; and
- f) indoor event facilities (cinemas, theatres, concert venues, casinos) and swimming pools.
60. 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. Gyms and some indoor physical activities have been linked to significant transmission events in other countries. However, this increased exertion also makes it impractical to enforce face covering wearing during physical activity that occurs in a gym. Further, gyms (alongside several other indoor settings) are required to enforce physical distancing at Alert Level 2, and often have good contact tracing records through gym memberships and scanning of membership cards.
61. The other situations in which it is not proposed face coverings are mandatory mostly relate to consumption of food and drink, where there is good contact tracing mechanisms (e.g. attendance rolls) and where they would create barriers to communication and learning at education entities. Further, indoor event facilities could present as high risk due to them being large indoor settings with potentially high traffic areas, however these settings usually have ticketing mechanisms and seating requirements to mitigate some risk. In addition, we note that at social gatherings on marae, face coverings would not be required.

However, iwi and hapū are able to require people on marae to wear face coverings if they consider it appropriate.

62. s9(2)(h)

We consider that the proposal balances the need to reduce at least some risk while not being disproportionate or reducing social licence by going too far.

63. To prevent further erosion of social licence, we also recommend removing mandated use of face coverings in all existing settings (excluding on aircraft) at Alert Level 1. The proposal outlined in this paper provide an opportunity to reset face covering settings and reducing restrictions on rights as far as possible at Alert Level 1 will maintain social licence and may encourage compliance with requirements at higher Alert Levels. DPMC considers this is consistent with the current public health advice on use of face coverings.
64. These changes will add an additional layer of complexity to the Alert Level Orders because the face covering requirements do not always apply to the same groups as the physical distancing requirements. This may create confusion and compliance implications for individuals and business, and expectations might be difficult to communicate clearly.

Implementation considerations

65. Further work is required on whether there are any health and safety impacts for staff, e.g. as a result of having to wear face coverings for long periods of time, or as a result of needing to dispose of discarded face coverings left by patrons or passengers.

Compliance and enforcement considerations in relation to record keeping and face coverings

66. As noted throughout this paper, there are several outstanding monitoring, compliance and enforcement issues that will need to be worked through prior to any of the requirements proposed could come into effect.

Mandatory record keeping for contact tracing purposes

67. Under current Alert Level settings (at all levels), the onus with regard to record keeping measures falls to businesses and people responsible for social gatherings, rather than to individuals. The approach to enforcement is calibrated accordingly. For example, WorkSafe's inspectors have been utilised to ensure that businesses comply with relevant Alert Level settings. As has been identified by WorkSafe, this comes at the cost of limited resources being applied to other work of such agencies.
68. Placing the onus on businesses with regard to record keeping measures would avoid many of the privacy, compliance and legal risks identified in this paper. However, the retail sector has indicated concerns with any further obligations being placed on businesses because of the potential for negative public response.
69. Monitoring in a meaningful way for enforcement purposes will be problematic because it will not be outwardly evident when an individual has complied with the requirement. In particular, the scanning of QR codes is an activity that occurs up to 2.5 million times per day during a response (with fewer than 1 million scans per day more typical when there is no community transmission).
70. If non-compliance were identified, there are limited enforcement options available to address this (e.g. there is currently no infringement offence for failing to make a record for contact tracing purposes). Further work is required on what enforcement mechanisms

should be made available to enforcement officers to address any non-compliance; specifically, whether an infringement office should be created so that infringement notices can be issued to non-compliers.

Mandatory face coverings at Alert 2 and above

71. Face coverings are currently required on public transport at all alert levels and there is an associated infringement offence for failing to comply with the order that gives effect to this requirement. Public messaging and the agreed policy approach have been that it is not expected that drivers and transport operators will stop people without face coverings from boarding public transport and that, where possible, drivers will encourage passengers to wear a face covering.
72. A number of enforcement issues need to be worked through for face coverings, including the appropriateness of denying entry to a courthouse for non-compliance with this requirement resulting in non-compliance with a court summons or the colour of the face covering (e.g. gang colours) prompting security incidents or intimidation at the courthouse.
73. Consideration must be given to the extent that compliance with new Alert Level settings is expected to be enforced and by whom. Officials propose to retain the current approach with respect to what is not expected of business owners, operators, staff and drivers. Their role is to educate and encourage compliance with any requirements agreed to. There is no expectation that these individuals would be expected or required to assume the role of an enforcement officer (including because doing so may be counter-intuitive for businesses due to it resulting in reduced revenue).
74. Following the decisions arising from this briefing, officials will work with agencies to determine the most appropriate approach to setting the obligations for the respective adjusted settings, including which agencies will be responsible for monitoring such compliance. That advice will be provided to the Minister for COVID-19 Response in conjunction with any orders giving effect to changes to Alert Level settings.
75. Consistency and proportionality of enforcement and active enforcement of non-compliance will be challenging. If Ministers require greater assurance of improvement in compliance as a result of these proposed measures, agencies would need to redeploy significant resources to accommodate active monitoring and enforcement of both record keeping for contact tracing purposes and face coverings.
76. Where the Police are required to become involved in the enforcement of these requirements, Police advise that they intend to continue with its current "4 Es" approach – Engage, Encourage, Educate, Enforce.

Legal implications of record keeping and face coverings

s9(2)(h)

77. s9(2)(h)

a) s9(2)(h)

b)

78.

s9(2)(h)

79.

80.

a)

s9(2)(h)

b)

c)

s9(2)(h)

81.

s9(2)(h)

82.

83.

s9(2)(h)

84.

s9(2)(h)

85.

Released under the Official Information Act 1982

s9(2)(h)

s9(2)(h)

86. s9(2)(h)

87.

Next Steps

88. We recommend you discuss the options outlined in this briefing with your colleagues at Cabinet on Monday 5 July 2021. The attached table of current and proposed settings and talking points (Attachments A and B) are provided to support this discussion.
89. Following this Cabinet discussion, we propose you advise DPMC of your preferred settings from the options outlined in this briefing. DPMC will work with agencies to prepare a paper for you to take to Cabinet on Monday 12 July 2021 seeking agreement to your preferred options.
90. Officials will undertake the further work required on enforcement mechanisms for both proposals and will report back to you on recommended options by Friday 9 July 2021. This will include consideration of who bears the obligation for record keeping for contact tracing purposes – the individual or businesses and services, s9(2)(g)(i)
91. An update on readiness to implement any adjusted settings agreed to following these conversations will be provided to you at the same that any draft amended template Alert Level Order and/or amended Alert Level Order is provided to you for approval or signature, respectively, s9(2)(f)(iv)
92. Subject to Cabinet decisions, drafting instructions will be issued to the Parliamentary Counsel Office (PCO) to draft the requirements. PCO estimates that, after instructions are provided, it will take up to five days to finalise the drafting for the full suite of changes, due to the likely complexity involved. However, the record keeping requirements could be completed sooner if they needed to be progressed separately.
93. Depending on which Alert Level(s) applies when the drafting is completed, the new requirements will be:



- a) prepared as a new section 11 Order for you to sign into force (following consultation with relevant Ministers); or
 - b) included in the template Alert Level Orders and provided to you for approval (and relevant Ministers for consultation), so that the requirements are ready to use if the Alert Level is increased in future.
94. Officials will engage with the business community on how the proposals are likely to impact them and whether the Government can support them to facilitate record keeping for contact tracing purposes or provide additional guidance to support any new face covering requirements. Officials also intend to consult Apple and Google on these proposals.

Consultation

95. The following agencies were consulted on this briefing: Ministry for Pacific Peoples, Ministry of Social Development, Ministry of Health, Ministry of Justice, Ministry of Transport, Ministry of Education, Oranga Tamariki: Ministry for Children, Ministry of Business, Innovation and Employment, Department of Internal Affairs, Crown Law Office, Parliamentary Counsel Office, Office of the Privacy Commissioner, New Zealand Police and New Zealand Customs Service, Public Service Commission, Ministry for Primary Industries, Ministry for Women, and Te Puni Kōkiri.
96. The following agencies and officers expressly stated they do not support the proposals as set out in this paper:
- a) Ministry of Health (record keeping and face coverings – they will provide further advice)
 - b) Ministry for Pacific Peoples (record keeping and face coverings)
 - c) Privacy Commissioner (record keeping)
 - d) Government Chief Privacy Officer (record keeping).
97. Based on interim public health advice, the Ministry of Health do not support the proposals for the following reasons:
- a) Making record keeping for contact tracing purposes using the App risks the App being removed from Apple and Google platforms, there are enforcement challenges and equity issues. The Ministry of Health also questions the proportionality of this proposal and believe that there is insufficient evidence about the effectiveness of mandatory record keeping for contact tracing purposes to justify the proposal. The Ministry of Health also believe other options to increase scanning should be analysed and presented in this advice. (It should be noted, however, that the proposals relate to record keeping generally, not just scanning.)
 - b) The Ministry of Health are not convinced that extending the mandatory use of face coverings to the proposed settings would be effective, given there are other tools available to mitigate risk of transmission at Alert Level 2 – e.g. banning or limiting the size of gatherings. They have concerns about the proportionality of the proposed approach, and do not agree that mandating face coverings at Alert Level 2 for the places in this proposal is a proportionate response to the presenting risks and may undermine compliance with other measures (e.g. staying at home if you are unwell).

98. We understand you will receive updated public health advice from the Director-General on these proposals.
99. The Ministry for Pacific Peoples do not support mandatory record keeping for contact tracing purposes or use of face coverings, for the same reasons as outlined by the Ministry of Health as well as the BORA analysis provided by Crown Law. In relation to face coverings, Ministry for Pacific Peoples' opposition is mainly due to the possible requirement applying to social gatherings such as places of worship, and the disproportionate impact this requirement would therefore have on cultures who place significant importance on faith and spirituality from a cultural and social perspective. (We note it is not proposed to require face coverings at social gatherings). Ministry for Pacific Peoples is concerned that other options (other than mandatory action) to meet the overarching protection objective have not been explored and analysed in this advice.
100. The Privacy Commissioner does not support compulsory record keeping for contact tracing purposes. Imposing a mandatory requirement on individuals to record their movements would represent a significant intrusion into individual privacy rights. The Privacy Commissioner considers that the privacy implications are significant regardless of whether the individual uses the App, or provides their personal details to the business, as any compliance and enforcement action would necessarily be intrusive. The Commissioner considers there is insufficient evidence to justify this incursion.
101. The Government Chief Privacy Officer (GCPO) agrees with and supports both the Ministry of Health's and the Office of the Privacy Commissioner's opposition to the proposal on mandatory record keeping for the reasons that each party has described in this paper. The GCPO notes that there is significant risk that social licence will be eroded by enforcement actions required for mandatory use and disclosure of personal information and would support further work to look at options to improve record keeping while maintaining social licence and privacy.

102. s9(2)(h)

Communications

103. Pending decisions on this work (this briefing and subsequent papers), clear public messaging on the new record keeping and face coverings requirements, including what is expected of individuals, will be communicated to the public and key stakeholders via official Unite Against COVID-19 channels. Communications will be tailored to specific audiences (e.g. translation of materials into nine core Pacific languages, as is currently done with UAC content) and guidance will also be provided where appropriate.
104. In addition to these general communications, the Public Service Commission will, depending on Ministerial decisions, prepare implementation guidance for public service employers that will be informed by public health guidance. This is due to the significant number of front line and public facing public service roles.

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