



## Briefing: Changes to record keeping requirements

<b>Date:</b>	03/03/2022	<b>Report No:</b>	DPMC-2021/22-1579
		<b>Security Level:</b>	<del>IN CONFIDENCE</del>
		<b>Priority level</b>	Priority

	<b>Action sought</b>	<b>Deadline</b>
Hon Chris Hipkins <b>Minister for COVID-19 Response</b>	agree to the recommendations in this paper	04/03/2022

<b>Name</b>	<b>Position</b>	<b>Telephone</b>
Kay Baxter	Policy Manager	s9(2)(a)
Sam Willis	Senior Policy Advisor	N/A

### Minister's Office

**Status:**

Signed

Withdrawn

**Comment for agency**

**Attachments:** Yes/No

# Briefing

## Changes to record keeping requirements

To: Hon Chris Hipkins, Minister for COVID-19 Response			
Date	3/03/2022	Security Level	<del>IN CONFIDENCE</del>

### Purpose

1. This briefing proposes changes to record keeping requirements in response to Phase Three of the Omicron outbreak, including:
  - a. Removing the legal requirement for business and services, events and gatherings to have systems and processes in place to ensure people entering workplace or premises scan QR code or provide contact record;
  - b. Maintaining the requirement for workplaces, public transport services and events to continue to display QR codes; and
  - c. Removing the requirement for workplaces and events to have alternative contact record systems and processes in place.

### Recommendations

We recommend you:

1. **note** that as a result of the move to Phase Three of the Omicron Response, changes have been made to the contact tracing system, from contacting close contacts to only managing cases and high-risk exposure events;
2. **agree** to remove the legal requirement for business and services, events and gatherings to have systems and processes to ensure people entering workplace or premises scan a QR code or provide a contact record, with a review of the ongoing role of record keeping provided as part of the broader assessment of COVID-19 measures on the downside of the Omicron peak;
3. **note** that scanning and record keeping will continue to be encouraged through public communications;
4. **agree** to maintain the legal requirement for workplaces, public transport services and events to display a QR code in a prominent place, and that this is designated as a low-risk infringement offence;

YES  NO

YES  NO


5. **agree** to remove the requirement for workplaces and events to have alternative contact record systems and processes in place;

YES  NO

6. **note** the importance of Government communication to ensure these changes are well understood and individuals and businesses are aware of what is expected of them;

7. **agree** to proactively release this report, subject to any appropriate withholding of information that would be justified under the Official Information Act 1982.

YES  NO

  
Kay Baxter  
**Policy Manager**  
**Strategy and Policy,**  
**COVID-19 Group, DPMC**

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03/03/2022

  
Hon Chris Hipkins  
**Minister for COVID-19 Response**

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I agree to these changes, in principle, but want to them incorporated into the forthcoming Cabinet Paper on future COVID-19 settings. CH

## Background

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2. On 16 August 2021 Cabinet noted that in light of the increasing prevalence of more transmissible COVID-19 variants such as Delta, that good record keeping supported efficient contact tracing in response to a COVID-19 outbreak.
3. Cabinet subsequently 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 in certain places and that the obligation will be borne by the person responsible for the place or gathering who will 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 on a contact tracing record [CAB-21-MIN-0315].
4. Currently, record keeping for contact tracing purposes (including through the use of the NZ COVID Tracer App for QR code scanning) is mandatory at:
  - a. 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);
  - b. Exercise facilities, massage parlours, beauticians, barbers, hairdressers, and hospitality venues (e.g. cafes, restaurants, bars and nightclubs) (for customers); and
  - c. Most social gatherings including those held at marae, church weddings, funerals, and faith-based services.
5. The legal requirements for record keeping are part of the COVID-19 Public Health Response (Protection Framework) Order 2021, which outlines that:
  - a. Workplaces, public transport services and events are required to display a QR code in a prominent place;
  - b. Workplaces and events are required to provide alternative contact record systems and processes; and
  - c. Business and services, events and gatherings must have systems and processes to ensure people entering the workplace or premises scan a QR code or provide a contact record.
6. On 1 February 2022 Cabinet agreed that while the overall strategy will remain to minimise and protect, once the Omicron variant has seeded in the community, the focus will be on protecting the most vulnerable, ensuring equity, and limiting the impact on society through the protection of critical infrastructure and workforces.
7. Changes to the Testing, Tracing, Isolation, and Quarantine approach have been made to account for Omicron, such that a three phased approach (referred to as Phase One, Phase Two, and Phase Three) will be taken to implement those changes [CAB-22-MIN-0007].
8. The Ministry of Health has also highlighted that under the Pandemic Plan, an important function post-peak will be to stay vigilant, which requires, for example retaining systems that enable a timely response to new variants of concern.
9. In light of changes to the contact tracing system, DPMC has identified an issue regarding mandatory record keeping as part of our constant review of the COVID-19 Protection Framework settings to ensure that they are fit for purpose.

## **There is limited contact tracing that takes place in Phase Three of the Omicron response**

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10. As part of Phase Three of the Omicron Response there is a significant difference in how contact tracing is applied. In Phase Three, locations of interest are no longer being published and any contacts outside the household are not required to self-isolate or test, but are still advised to get tested if symptoms develop.
11. There has been a shift to digital self-management of cases and contact tracing to remove the burden on public health units. As a result, cases are now directed to an online self-investigation tool to focus contact tracing resources on household contacts and very high-risk settings. Only the highest risk contacts will be traced using the existing centralised contact tracing system and required to isolate.
12. The contact tracing system will still manage a limited number of cases and high-risk exposure events including:
  - a. Residential housing (Transitional housing, boarding houses, youth justice, soup kitchens, homeless shelter);
  - b. Faith based places of worship;
  - c. Aged residential care; and
  - d. Marae / Tangihanga.
13. This means that contact tracing is no longer being used for the majority of exposure events in workplaces, public facilities, public transport, event facilities and businesses, unless they are deemed a high-risk exposure event. The information captured by record keeping in these settings is no longer being used for contact tracing purposes, locations of interest will not be published by the Ministry of Health and people will no longer receive push notifications from the NZ COVID Tracer App identifying them as a close contact.
14. However, while record keeping is not as useful at this moment, it may be useful again in the future and should be kept under review.
15. Scanning is still encouraged so that it can be used as a digital diary for a case when they test positive. By people scanning in, it means that when a person tests positive, they can recall where they have been and who they may have been with and advise people that they have been in contact with a case and need to self-monitor for symptoms. There is still value in scanning in, but the mandatory nature of record keeping is no longer considered proportionate.
16. Based on the information above, DPMC consider there is a case for changing record keeping requirements within the COVID-19 Protection Framework (the Framework) so that the measure remains proportionate to the public health risk.

## **We recommend that the legal requirement for record keeping be removed**

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17. Given the limited contact tracing activity in Phase Three of the Omicron outbreak, information captured from scanning or providing an alternative contact record is not often used to identify and manage the spread of Omicron in the community.
18. There is therefore very limited public health value in continuing to require that businesses have systems and processes in place for ensuring that people scan QR codes or provide a contact record at this point in time.

19. In addition, record keeping requirements continue to place a burden on employers and organisers of events and gatherings to implement and ensure compliance. While this was necessary while contact tracing played an important role in limiting the spread of COVID-19, there is limited value in maintaining this requirement when it is not required from a public health perspective.
20. The Ministry of Business, Innovation and Employment have outlined that anecdotal evidence from some employers is that this requirement continues to create problems with some customer interactions, particularly in the hospitality industry. Removing this requirement would ease obligations on employers, and would help to avoid customer interactions of this kind.
21. We therefore recommend removing the legal requirement for all business and services, events and gatherings to have systems and processes to ensure people entering workplace or premises scan a QR code or provide a contact record.
22. While scan data is not useful at the moment, it may be in the future. We also recommend that further consideration is given to the ongoing role of contact tracing post the Omicron peak, which will be considered as part of a broader assessment of COVID-19 measures.
23. We consider that record keeping should still be encouraged for individuals and business that continue to choose to do so, through clear public communications.

#### *Privacy Commissioner comment*

24. The Privacy Act 2020 requires that personal information is not collected by an agency unless it is necessary for a lawful purpose connected with a function or activity of the agency. The Office of the Privacy Commissioner (OPC) has worked to support mandatory record-keeping where there is a clear public health purpose for doing so. It has also expressed the view that the Ministry of Health is the agency responsible for providing expert public health advice. If there is no public health justification for the collection of personal information via record keeping, then the Acting Privacy Commissioner is of the view that the mandatory record keeping requirement should cease (particularly in relation to businesses collecting personal information through alternate record keeping methods).
25. The public health advice from the Ministry of Health indicates that evolving circumstances with COVID-19 are complex, and there may be some situations where mandatory record-keeping could be necessary or proportionate in the future, such as for high-risk settings (e.g. retirement homes). In light of this, the Acting Privacy Commissioner is of the view that further consideration should be given to the public health criteria that underpin a decision on whether to utilise mandatory record-keeping. However, at this time the Acting Privacy Commissioner has not been provided clear public health advice that demonstrates an ongoing need for mandatory record keeping. Further public health and privacy advice will be sought as part of the review of the COVID-19 Protection Framework.

### **The requirement for workplaces to display QR codes can be maintained**

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#### *We recommend maintaining the requirement for businesses to provide QR codes*

26. While there is limited centralised contact tracing taking place in Phase Three of the Omicron response, we consider that there is still value in maintaining the existing requirements for workplaces, public transport services, and events to display QR codes during the peak of the current Omicron outbreak. We recommend that this requirement should be maintained.
27. Maintaining the requirement to display QR codes would enable individuals to continue to manage their own record keeping. In particular, this would enable individuals to continue to keep track of their movements using the self-investigation tool and digital diary.

28. This would help people to identify if they have been in any very high-risk locations. For example, they may be contacted by a very high-risk business or organisation where there has been an outbreak of positive COVID-19 cases, and could use their scanning record to recall the time of the visit and determine whether they have been a close contact.
29. In addition, maintaining QR codes and encouraging people to scan in and keep a record of where they have been will support cases to identify their contacts. This allows cases to advise people that they are close contacts and need to self-monitor for symptoms.
30. It is also likely that some workplaces will also continue to encourage the use of record keeping for individuals visiting their premises, as part of health and safety processes.
31. Therefore, maintaining the record keeping infrastructure (QR code posters) in place is supported by the Ministry of Health. It would also support case contact tracing in the future if it was considered an appropriate tool to be re-activated. The Ministry of Health recommends this is reviewed in a month as part of a broader assessment of COVID-19 measures.
32. The requirement to display a QR code has a very low compliance cost for employers, particularly if the requirement to have systems and processes in place to ensure people scan or use an alternative contact record is removed.
33. There are also no ongoing privacy concerns with the display and use of QR codes. OPC consider that the use of QR codes for scanning in via phone is relatively privacy protective, as the individual retains their personal information and maintains privacy of data. However, given the fundamental change in how the COVID tracer Apps work (i.e. that the locations of interest are no longer routinely collected by contact tracers, no push notifications will be made, etc), OPC consider that the new role of QR codes for *only* personal record keeping needs to be carefully explained.
34. The National Iwi Chairs Forum (Pandemic Response Group) expressed a desire for people to continue scanning and so enabling individuals to be able to do so remains an important part of the response. They support keeping the infrastructure in place to allow people to maintain habits like record keeping, even when the legal obligation to do so has been removed.

*The requirement to display a QR code can be a low-risk infringement offence*

35. Clauses 19(4) and 20(4) of the COVID-19 Public Health Response (Protection Framework) Order 2021 provide that a breach of the requirement for workplaces, public transport services and events to display a QR code is a “medium risk infringement offence.”
36. The requirement to display a QR code was initially deemed as a medium risk was due to the critical nature of contact tracing for preventing spread and transmission. Given the current context, DPMC and the Ministry of Health consider that this could now be considered a low risk offence, as the impact of contact tracing on limiting the spread or transmission is lessened with it being limited to household contacts and the highest risk events and setting such as hospitals and aged care.
37. In line with the intention of the proposal, we recommend reducing this to a low risk infringement offence.

### **We recommend removing the requirement for businesses to provide alternative contact record systems and processes**

38. We consider that the requirement for workplaces and events to have alternative contact record systems and processes in place should be removed. This requirement has no value in

supporting individuals to keep track of their own movements and is onerous for employers and organisers to comply with.

39. OPC have also raised concerns over the use of alternative contact record systems (eg, paper or manual record keeping) as it requires businesses to hold personal information including names, numbers, and locations that the individual has recently visited. There are therefore ongoing privacy implications on collecting this information, especially if it is not going to be used for contact tracing purposes.
40. New Zealand Police have indicated that the requirement for written record keeping can create situations where Police are required, such as customer anger at being asked to note down their details, and are supportive of removing this requirement.

### **Clear communications are required to support changes to record keeping**

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41. Encouraging people to maintain good behaviours in order to limit the spread of COVID-19, including to scan in wherever they go has been the focus of much of the public health messaging and campaigns. This ensured record keeping has become an entrenched behaviour among a large portion of the general public.
42. Following the Delta Outbreak in late 2021 scanning increased to 2.17million daily scans from an average of 1.2million daily scans in the six months prior. This was due in part to the increased emphasis placed on record keeping and amplified using Unite Against COVID-19 mass-media campaigns.
43. Clear messaging on the changes to record keeping requirements is essential in supporting individuals and businesses to understand what is expected of them. In particular, it will be important to emphasise the difference between updates to legal requirements, and behaviour that is now encouraged or recommended.
44. It will also be important to clearly communicate that the primary use of QR codes would be to support individuals to keep track of their own movements, and that these would only be used for contact tracing purposes in very limited situations, for example when visiting a very high-risk location. Clear messaging is essential in ensuring the overall social license of record keeping as a COVID-19 response tool and to avoid undermining the potential future use of the tool.
45. Communications for individuals will focus on the voluntary use of QR codes to promote individual safety through the management of a personal record.
46. Messaging and engagement with the business and events sector can still take place concurrently to support them to continue utilising record keeping, where appropriate.

### **Human rights (Legally Privileged)**

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47. s9(2)(h)

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## Legislative amendments to action recommendations

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49. Record keeping provisions are contained in the COVID-19 Public Health Response (Protection Framework) Order 2021 (CPF Order). In order to amend the current record keeping requirements, an amendment must be made to the CPF Order.
50. The following clauses will need to be disapplied in the Red Schedule: clauses 21 and 22 (businesses or services); clauses 46(6) and 47(4) (gatherings); and clause 53(7), plus the requirement to have alternative contact record systems in clause 53(6) (events); clause 54A(6), plus the requirement to have alternative contact record systems in clause 54A(5) (education outside the classroom). The medium risk offences set out in clauses 19(4) and 20(4) regarding a breach of the requirement for workplaces and public transport to display a QR code would also need to be amended to become low risk infringement offences.
51. We suggest at this stage amendments are confined to the Red setting. Officials will keep under review whether corresponding or similar changes are required at the Orange and Green settings.
52. Once you have made a decision, officials will issue drafting instructions to PCO to prepare the required amendment order. In addition, consultation will take place with the Prime Minister, Minister of Health and Minister of Justice on the legal amendments required.
53. It is likely that the changes would be ready to be signed by the Minister for COVID-19 Response by Thursday 10 March 2022 and will come into effect 48 hours after being made. We therefore advise that a decision consistent with this could be given effect by Saturday 12 March 2022.

## Consultation

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54. The paper was developed by The Department of the Prime Minister (COVID-19 Group) in consultation with the Ministry of Health, the Ministry of Justice, the Ministry of Social Development, the Ministry of Business, Innovation and Employment, NZ Police, the Office of the Privacy Commissioner, Crown Law and WorkSafe.

## Next steps

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55. Officials will continue to review the ongoing role of record keeping as part of the broader assessment and ongoing review of COVID-19 measures and the Framework settings during the downside of the Omicron peak. Initial advice on this is expected to be provided in late March 2022.