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Office of the Minister for COVID-19 Response

Cabinet

COVID-19 RESURGENCE: IMPROVING PUBLIC HEALTH MEASURES AT ALERT LEVEL 1

Proposal

- 1 In light of recent community cases arising from the border, this paper seeks to strengthen public health measures at Alert Level 1. It seeks agreement to make face coverings mandatory on public transport in Auckland and on all domestic flights and outlines future decisions on public transport in other parts of the country and mandatory contact tracing in high risk situations.

Summary

- 2 Under an elimination strategy, New Zealand relies on multiple layers of defence. No single layer is perfect, but they work together to keep the virus out, detect it and stamp it out if it gets in. Our current layers of defence include:
 - 2.1 The border system, including managed isolation and quarantine
 - 2.2 The test-trace-isolate system for cases
 - 2.3 Alert Level One protections
 - 2.4 Good hygiene practices such as handwashing, cough and sneeze etiquette, and staying home when sick.
- 3 There is currently a case in Auckland (Case D) which arose from an infected border worker. Case D has been genomically but not epidemiologically linked to the border worker. This situation demonstrates both the ongoing risk from the border and some of the challenges with contact tracing caused by this tricky virus.
- 4 Based on the advice of the Acting Director-General of Health on 13 November 2020, I do not recommend raising the Alert Level in Auckland at this time. However, I am recommending that we strengthen Alert Level 1 with some basic low-cost measures that could reduce the chances of having to make more costly Alert Level changes in the future.
- 5 To provide additional assurance, I recommend the compulsory use of face coverings on all public transport services that originate, end, or pass through the Auckland region. Face coverings, when used and disposed of correctly, work to both reduce the risk of infected wearers infecting others and they can protect uninfected wearers from catching the virus. I also propose that this requirement apply to the drivers of small passenger service vehicles (taxis, Ubers, etc).

6 I also propose making face coverings mandatory on all domestic flights throughout New Zealand. Domestic flights are the most significant route on which the virus could spread rapidly from one region to another, which has already happened with this cluster. This measure therefore provides some protection across New Zealand.

7 s9(2)(f)(iv)
[Redacted]
[Redacted] s9(2)(f)(iv)
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Process for decision-making

8 The interim view of the Acting Director-General of Health on this case is set out from paragraph 62. The Director-General will provide his final assessment and advice to me as the Minister for COVID-19 Response on Monday 16 November before Cabinet meets.

9 Should Cabinet agree to the recommendations in this paper, the changed settings would be implemented through an Order under Section 11 the COVID-19 Public Health Response Act 2020 to amend the current COVID-19 Public Health Response (Alert Level Requirements) Order 2020.

10 The Crown Law Office has confirmed that while the Act explicitly confers the power to issue an Order under the Act on the Minister of Health, that power may be exercised by another member of the Executive Council under the Constitution Act 1986.

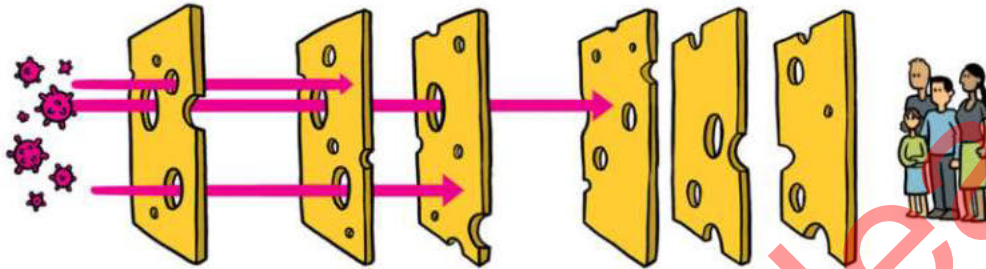
11 As set out in the COVID-19 Public Health Response Act 2020, I may make orders under section 9 and section 11 of the COVID-19 Act. I must have regard to advice from the Director-General of Health, and be satisfied that the order does not limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990. I must also consult with the Prime Minister and Minister of Justice, and any other Ministers I consider necessary.

12 Officials have established a process for the recommended option to be included in an Order signed by me the same day that Cabinet considers this paper. The requirement would then come into effect at 11:59pm on Wednesday 18 November.

Layers of defence

13 Our COVID-19 strategy remains elimination, which means stamping the virus out every time it comes back. We have seen the very significant health, and consequently, economic benefits resulting from a successful elimination strategy. We have indicated that, wherever possible, we want to achieve elimination without resorting to blunt and costly lockdowns, and instead to control the spread of COVID-19 with a flexible mix of restrictions that best reflects the situation.

- 14 This approach can be illustrated with the “Swiss cheese model” for understanding our layers of defence used to protect against COVID-19. The idea is that no single defence is perfect: like a slice of “Swiss cheese”, each layer has holes. Stacking up multiple layers of cheese can lead to a greater chance of successful protection. A hole in any one layer of defence is less likely to be a disaster because other layers provide extra protection. We just need to ensure that the holes don’t all line up and lead to a complete breach.



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- 15 We are currently using the following layers of defence against COVID-19:
- 15.1 The border system, including managed isolation and quarantine
 - 15.2 The test-trace-isolate system for cases
 - 15.3 Alert Level One protections
 - 15.4 Good hygiene practices such as handwashing, cough and sneeze etiquette, and staying home when sick.
- 16 Some layers are systems set up by the government, such as the border system and test-trace-isolate. Other layers are entirely dependent on individual behaviours such as handwashing and cough etiquette. Layers differ in how effective and how costly they are. As we learn more, it is worth refining the set of layers that we use, as well as improving each individual layer.
- 17 The COVID-19 pandemic is large and accelerating with over 53 million cases worldwide. That case tally is increasing by about 500,000 cases per day at the moment. Many countries are moving into lockdown again to try and get their case numbers and hospitalisations under control. As long as we have New Zealanders returning home, we will be exposed to ongoing risks. The border is our first line of defence against cases and it is working very well. We are however still seeing a few cases entering the community from the border, primarily via border workers.
- 18 Our contact tracing system also works very well but cannot always find every possible contact, given the freedoms that we enjoy at Alert Level 1. This paper

is focussed on possible improvements to Alert Level 1 that are low cost but will create some extra layers of defence. These improvements could reduce the risk of needing to use much more costly Alert Level changes to respond to future cases in the community.

Current situation

Auckland

- 19 As at Saturday 14 November, the November Quarantine Cluster consists of 5 cases. These cases are all linked to a Defence Force worker who worked at Jet Park (Case A). Case B worked with Case A and travelled to Wellington where they infected Case C.
- 20 Case D is genomically linked to Case A, though no epidemiological link has been established yet. Case A was in the community while potentially infectious from 3 November to 5 November. Case D worked around the corner from a known exposure location for Case A (Mezze Bar, 5 November). However, there is no clear link as no common locations have been identified between the two cases. Case D was not identified through contact tracing and so was active in the community for a bit longer than Cases B and C before being quarantined. Case E was a close contact of Case D.
- 21 Assuming that Case D was directly infected by Case A, researchers at Te Pūnaha Matatini (TPM), have estimated the likely outbreak size as 4-20 cases, with a median of 11.
- 22 The current estimate for R_0 at Alert Level 1 is between 2.1 and 2.5. R_0 is a measure of the average number of people that each infected person goes on to infect. If that number is below one, then the virus will eventually be eliminated.
- 23 Previous modelling by TPM has shown that a high-quality, rapid contact tracing system, combined with strong support systems for people in quarantine or isolation, could reduce the effective reproduction number R_0 by up to 60% (R_0 0.85-1). If case isolation or contact quarantine are imperfect, or some contacts are not traced or traced more slowly (as happened here), then the reduction in R_0 is only around 40% (R_0 1.25-1.5), meaning that additional layers of defence (such as wearing face coverings) would be required to contain an outbreak.
- 24 Estimates of R_0 are not very accurate when case numbers are low. In addition, COVID-19 is a super-spreading disease: 10-20% of cases cause 80% of infections. Contact tracing is more difficult and has less impact on R_0 if there are any super-spreading events, which generally occur in (en)closed, crowded situations with close contact.
- 25 If we discover that there has already been a super-spreading event, case numbers could increase quickly. But in the absence of super-spreading events, effective contact tracing, testing and isolation measures can limit the numbers of cases in an outbreak, which is detected early, to a handful without the need for the use of higher Alert Levels. We have seen this already a number of times, with small outbreaks connected to the border being detected early and brought quickly under control.

- 26 Case E was a close contact of Case D and was already in quarantine at Jet Park. Given incubation periods for the virus, it is likely that further cases among known contacts will be identified in the coming days. Identification of further connected cases is a signal that the contact tracing system is working, particularly if they are already in isolation.

Outside Auckland

- 27 Case B travelled from Auckland to Wellington on a flight without wearing a face covering. Case C was infected at a Wellington restaurant while dining with Case B and was already in isolation when they became infectious.

Other health system factors

- 28 Testing capacity remains consistent at just under 26,000 tests per day during a surge, and 17,000 on a steady-state basis. Testing volumes have fallen from their peak in August but are relatively steady, with 35,000 being performed in the week to 12 November, of which about 15,000 were in the Auckland region. Of those tests, 24,000 were in the community, 5,000 were of border workers (including MIQ, port and airport workers) and 6,000 were of MIQ guests. Testing capacity has not been a constraint on testing plans since early April.
- 29 Contact tracing capacity remains sufficient to manage 350 new cases per day, and meets the World Health Organisation's guidelines for responsiveness, testing speed and notification of results. The Waikato Public Health Unit (PHU) is being drafted in to support the work of Auckland Regional Public Health Services (ARPHS) in this area.
- 30 As at November 12, around 2.3 million people have registered their details with the Tracer app, and 417,000 QR Code posters have been created. Daily use of the app has continued to decline from a peak in September of over 2 million to an average of 700,000 daily scans over the last week. This suggests a high degree of complacency, in spite of extensive public messaging focussed on app usage and its importance.

No change in Alert Level

- 31 In light of advice from the Director-General of Health, I propose maintaining the current setting of Alert Level One across the country. The case under investigation on Saturday was a previously identified close contact already in isolation. Our contact tracing system has a good chance of getting on top of this current outbreak without additional measures. We will keep the situation under review.

Making face coverings mandatory on public transport

- 32 Given the current situation and other cases in the community since the Americold outbreak in August, I am considering additional low-cost measures that further reduce transmission risk. Face coverings are one such measure.
- 33 There are broadly two public health objectives of wearing face coverings: reducing transmission of the disease by infected people and reducing the risk of people becoming infected. Compared to other risk reduction measures such

as Alert Level changes, face covering usage is low cost. It also serves as a useful visual reminder of ongoing COVID-19 risk.

- 34 The use of face coverings alone is insufficient to adequately mitigate the risk of infection. Other personal and community-level measures such as physical distancing where possible, good hygiene, and use of QR codes and other record keeping for contact tracing purposes must also be in place to limit COVID-19 transmission.
- 35 Unfortunately, there is a gap between behavioural responses to recommended or mandated behaviour changes. Aucklanders were surveyed between 14 and 17 August about their awareness of public health advice and their behaviours. This was at the beginning of the Auckland outbreak, with total community case numbers between 33 and 58 in that period. At the time, face coverings were not mandatory, but their usage was strongly recommended. More than 80% of respondents were aware of the recommendation to wear face coverings and use the NZ COVID Tracer app but only 65% reported wearing face coverings outside and 50% reported using the NZ COVID Tracer app. These results are set out in the chart below.

Awareness of and compliance with behaviours by Aucklanders



Q. Which of the following are you supposed to do under the alert level in your region?
Q. Which of the following are you doing at the moment?

Source: "New Zealanders [sic] Information Needs and Personal and Socials Norms Towards Covid-19" report by TRA to DPMC August 2020

- 36 When mandatory face coverings were introduced on public transport, there were high levels of compliance with the requirements. When these requirements were removed, adherence very quickly dropped to well below 5%. Adherence to public health measures is very strongly correlated with perceptions of risk. We have seen very similar trends in usage of the NZ COVID Tracer app
- 37 The US Center for Disease Control (CDC) have recently updated their scientific brief which recommends the use of face coverings to control the spread of

COVID-19. They cite multiple studies on the data regarding the real-world effectiveness of community use of face coverings, though these are limited to observational and epidemiological studies. The CDC advice also cites a study suggesting that increases in face covering usage in the US could remove the need for future lockdowns.

- 38 I note however that it is unlikely that evidence on face coverings will reach the gold standard of a randomised controlled trial (RCT), partly because an RCT would also pose severe ethical issues. Further, most of the evidence on face covering usage comes from jurisdictions with community transmission. There is very little evidence specifically in the context of an elimination strategy. However, Taiwan has very few restrictions, but they do require face coverings on public transport, and they have not had any cases in the community for more than 200 days. Face coverings sit alongside other measures including hand hygiene, staying home if sick and a highly effective testing and tracing regime. Most Chinese cities also require face coverings on public transport.
- 39 Taiwan and China both have elimination strategies but have chosen slightly different sets of layers of defence to achieve this and other factors may explain their overall performance.
- 40 Overall, the evidence for face covering usage is positive (albeit with limitations).

Face coverings on public transport in Auckland

- 41 Public transport is a situation where there is prolonged and close proximity between strangers in enclosed spaces, making it relatively high risk for transmission. We have seen relatively extensive transmission occurring on flights into New Zealand (though these are generally longer duration than domestic flights) and we have also had cases that were infected on buses in Auckland in the August outbreak. While public transport operators have measures in place to support contact tracing (and must at a minimum display a QR code if they are not collecting passenger contact details), public transport can sometimes be more difficult to contact trace (compared to other situations), which suggests that it is important to try and reduce transmission in this situation.
- 42 The downsides of mandatory face coverings on public transport exist but are manageable. These include public transport workers needing to wear face coverings for long periods of time and impacts for longer rail journeys such as the KiwiRail Northern explorer service. There could also be impacts for other bus operators of inter-regional passenger services into or out of Auckland. My advice however is that overall, the downsides, risks or costs to the wearing of face coverings on public transport are low.
- 43 For these reasons, I am proposing to make it mandatory to wear face coverings on all public transport services that originate, end, or pass through the Auckland region. This would include the drivers of small passenger vehicles e.g. taxi and Uber drivers, but not their passengers. I also propose making face coverings mandatory on all domestic passenger flights. This is defined as 'air transport services, operated for the carriage of passengers for hire or reward, and

available to the public generally” and is intended to exclude charter services and tours, and private flights.

44 Consistent with previous decisions on face covering requirements (at Alert Level 2), the following services would be exempt:

44.1 School bus services contracted or funded by the Ministry of Education, local authorities, or Auckland Transport for the purpose of transporting school children to and from school;

44.2 charter services and tours (which are excluded from the definition of public transport)

44.3 private transport (including private flights).

45 Consistent with previous decisions on face covering requirements (at Alert Level 2), the following persons would be exempt:

45.1 children under the age of 12,

45.2 passengers of small passenger services (although the drivers of these services will be required to wear a face covering),

45.3 persons who have a physical or mental health illness or condition or disability that makes wearing a face covering unsuitable,

45.4 drivers, pilots, staff, or crew of the public transport service or air transport service, if they are in a space completely separated from passengers (e.g. pilots in a cockpit, or train drivers in a train cab);

46 Additionally, consistent with decisions on face covering requirements (at Alert Level 2), face coverings would not need to be worn in the following situations:

46.1 if it is unsafe to wear a face covering (e.g. if the person’s only face covering is wet, or wearing a face covering means a driver cannot safely operate the vehicle),

46.2 if there is an emergency that requires the face covering to be removed (e.g. to perform CPR),

46.3 if removal of the face covering is required to prove identity,

46.4 if visibility of the mouth is required for communication (e.g. when communicating with someone who is deaf),

46.5 if there is a legal requirement to remove, or not to wear, the face covering,

46.6 if there is a reasonable excuse not to wear a face covering.

47 I also recommend adding an additional measure enabling removal of face coverings for the purposes of eating, drinking or taking medicines by those on public transport journeys, where these activities are ordinarily allowed. The

ability to remain hydrated is important for health, and it is particularly important that passengers have access to food and drink over longer journeys. An inability to do so may affect the ability of long-haul services such as the Northern Explorer service to operate successfully.

- 48 The Ministry of Health however advise that this exemption significantly undermines the effectiveness of using face coverings. If people touch, remove and replace face coverings, their effectiveness as an infection prevention tool is likely to be seriously undermined.
- 49 The penalties for non-compliance are stipulated under the COVID-19 Act. Consistent with previous settings I propose that failure to wear a face covering when required be an infringement offence. I understand that Police have generally taken a graduated approach to enforcement in cases where a person refuses to wear a face covering on relevant public transport, beginning with education efforts and warnings, then graduating through to infringement notices as necessary. As previously, there would be no obligation or expectation of transport operators to deny entry to those not wearing a mask.
- 50 DPMC Officials will work with other relevant agencies on enforcement implementation with input and advice from the Ministry of Health.

Extending the requirement to wear face coverings on public transport beyond the Auckland region

- 51 While we currently have cases in Auckland, it may be prudent to extend the requirement for face coverings on public transport to other cities with managed isolation or quarantine facilities: Wellington, Rotorua, Hamilton, Christchurch. I have asked officials for further advice on this question. From a communications perspective, it may be simpler to extend the requirements to the whole country. This would affect public transport networks in other regional centres such as Dunedin, Tauranga, Napier, New Plymouth and Invercargill.

Face coverings on all domestic flights across New Zealand

- 52 In addition to the measures for Auckland, there is a requirement to limit the potential spread of the virus across New Zealand. New Zealanders have high levels of mobility between regions and domestic flights are the most rapid way that spread of the virus could happen. This has already been seen in the current cluster where Case B was infected in Auckland and then travelled by air to Wellington. Additionally, people frequently catch inter-connecting flights in travelling around New Zealand, so the originating city of the flight is not necessarily an indicator of risk. Having outbreaks spanning regions raises particular challenges for the contact tracing process and also increases the potential need for nationwide Alert Level changes.
- 53 In addition, it makes more practical sense to require face coverings on all domestic flights rather than only those to or from Auckland, because other domestic flights may have passengers who have transited from Auckland. As an example, a flight from Christchurch to Dunedin may include passengers who have first flown from Auckland.

54 For these reasons, I am recommending a requirement to wear face coverings on all domestic flights New Zealand at this time. I recommend that this requirement be put in place due to the complexity of the management of the current cluster and the fact that it has already required contact tracing in two regions. I recommend this requirement be kept under review.

Public attitudes and compliance

55 Adherence to compulsory requirements under previous Orders has generally been high. There has also been good adherence when public health officials have given advice to close and casual contacts to self-isolate. On the other hand, adherence to voluntary requirements at Alert Level 1 such as wearing of face coverings on public transport and scanning QR codes has been low. This is despite high knowledge and understanding of the advice. This suggests that if high rates of adherence are required to address the public health risk, then compulsion is likely to be required.

At risk populations

56 We do not yet know the extent of this outbreak and which communities will be most affected.

57 Meeting the legal requirement for a face covering is manageable even for the most materially deprived person in New Zealand. A bandana, scarf or T-shirt is sufficient. However, masks with multiple layers of fabric are more effective than an improvised face covering. I have asked officials for further advice on potential government provision of high quality re-useable masks for distribution to those who may face financial trade-offs in purchasing quality masks.

Improving contact tracing and other layers of defence

QR Codes, contact tracing and other measures

58 Contact tracing is a key layer of defence for managing cases. Contact tracing is particularly challenging at Alert Level 1, when people live normal lives with multiple social interactions in many different places. Scanning QR codes can be very helpful for contact tracing: both in establishing a case's movements and in notifying others who may have been in the same place at the same time. Additionally, if enough people scan QR codes, it can reduce the general publicity around exposure locations and help preserve the privacy of cases and their close contacts.

59 Voluntary compliance with QR code scanning appears to be low, despite repeated and extensive public messaging. I am particularly concerned about the difficulties of contact tracing high risk venues such as bars and events. s

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60 Subject to further advice, I am considering the introduction of Bluetooth functionality to the NZ COVID Tracer app on 10 December. Bluetooth enables

the passive recording of close contacts. It is complementary to QR code scanning which creates a record of where someone has been, rather than who they were with.

- 61 Face coverings and contact tracing are only some of our layers of defence. There is work underway across the system to improve all our layers. Through continuous improvement we are constantly learning from our experiences and adapting our system of defences. Other work underway includes:

s9(2) [REDACTED]
(f)(iv) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
s9(2)(f)(iv) [REDACTED]

Interim view of the Director-General

- 62 The Director-General recommends mandatory face coverings on public transport in Auckland. His interim advice is as follows:

62.1 Although my advice is that Auckland remains at Alert Level 1 (for which mask wearing would ordinarily be strongly encouraged), I have in the past advised mandatory mask wearing in Alert Level 1 where circumstances have indicated this would be a proportionate response to mitigate risk. I consider in this instance, while we continue the case investigation there is merit in mandating face covering on public transport in Auckland and on all domestic flights.

62.2 Although the recent community cases in Auckland linked to the Maritime Company cluster have reminded New Zealanders of the dangers of complacency, anecdotally levels of mask wearing remain low. This is not necessarily a problem unless there is confirmed community transmission of COVID-19. However, the heightened awareness of the risk of COVID-19 in our community as a result of these events provides an opportunity to reinforce the use of face coverings on public transport in Auckland and on planes around New Zealand.

62.3 There are broadly two public health objectives of wearing masks and face coverings: for source control (i.e. reducing the spread of the disease by infected people) and for protection (i.e. reducing the risk of people becoming infected). Which of these objectives is paramount depends on the nature of the public health risk of community transmission. Where this is low, and there is less risk of people becoming infected, the primary public health benefit of mask wearing is source control. If the risk of community transmission is higher, the optimal approach may be to balance both source control and protection for vulnerable groups.

- 62.4 The use of a face coverings alone is insufficient to adequately mitigate the risk of infection, and other personal and community-level measures such as physical distancing, good hygiene and restricting social gatherings must also be in place to limit COVID-19 transmission.
- 62.5 While masks can be beneficial in specific circumstances, there are also some potential downsides and risks associated with mask usage too. For example, there is a danger that people over-rely on masks as their means of preventing infection by COVID-19. This could lead people to neglect other equally, often more important measures, such as washing their hands, staying home when sick and physically distancing from others.
- 62.6 Our previous approach to face covering at different Alert Levels is outlined below.
- 62.6.1 At Alert Level 1, people are strongly encouraged to prepare their pandemic kits by obtaining a set of four reusable face coverings or masks.
- 62.6.2 At Alert Level 2, face coverings are mandatory on public transport. This is the only mandatory mask wearing requirement we have under current settings. As with Level 1, people are encouraged to prepare their pandemic kits by sourcing masks and are also encouraged to wear face coverings in enclosed spaces or where it is not possible to physically distance.
- 62.6.3 At Alert Levels 3 and 4, in addition to mandatory use on public transport face coverings are strongly recommended in enclosed spaces where physical distancing is not always possible and contact with other people outside your bubble may occur.
- 62.7 I consider in this instance, while we continue the case investigation there is merit in mandating face coverings on public transport in Auckland and on all domestic flights. This requirement should be reviewed as we learn more about whether there is wider community transmission from case D.
- 62.8 I consider that the behaviour change rationale for wearing masks when on public transport in Auckland is stronger than the public health rationale at this time.
- 62.9 As face coverings were previously a nationwide requirement on public transport at Alert Level 2, many New Zealanders will already have access to face coverings and will be increasing familiarity with their use. The Ministry is confident that public retailers have sufficient stock of face coverings to provide for people who may not already have acquired face coverings.
- 62.10 I do not recommend any other mandatory measures are required at this time. We should, however, continue with strong public health messaging,

particularly basic hygiene measures and the use of QR codes by everyone.

62.11 I advise that, when considering the matter of mandating masks going forward, it is important, for both social license and Bill of Rights reasons, to retain a clear line of sight between the evidence of the public health risk of COVID-19 spreading and the measures in each Alert Level.

63 The Director-General will provide his final assessment and advice to the Minister for COVID-19 response on Monday 16 November.

Recommendation

64 This paper presents a recommendation to make it mandatory to wear face coverings on all public transport services within the Auckland region and/or that originate, end, or pass through the Auckland region. It also recommends making face coverings mandatory for all drivers of small passenger transport services (Uber, taxis etc) in Auckland, but not their passengers. I also propose making face coverings mandatory on all air transport services, operated for the carriage of passengers for hire or reward, and available to the public generally. Exemptions that were previously agreed for the face covering settings at Alert Level 2, will still apply.

Financial Implications

65 Imposing a requirement for mandatory face coverings has relatively low fiscal costs for the Crown, (although I note the indications from KiwiRail about the possible review of the Northern Explorer rail service). The costs are largely related to the potential supply of face coverings.

Legislative Implications

66 I will consider whether to make an Order under s11 of the COVID-19 Public Health Response Act 2020 that makes face coverings mandatory on public transport services within, and that originate, end, or pass through the Auckland region, and on all air transport services, operated for the carriage of passengers for hire or reward, and available to the public generally at Alert Level 1. Exemptions that were previously agreed for the face covering settings at Alert Level 2, will still apply.

67 Before making a replacement Order, I must have regard to any advice from the Director-General about the risks of the outbreak or spread of COVID-19, and the nature and extent of any measures that are appropriate to address those risks. I may also have regard to Cabinet's decision on the level of public health measures appropriate to respond to those risks and avoid, mitigate, or remedy the effects of the outbreak or spread of COVID-19.

68 The Act requires that there be 48 hours between notifying the Order and its coming into force. This requirement does not apply in the case of urgency, where the Order is made "to prevent or contain the outbreak or spread". I do not consider that this level of urgency applies in this case.

- 69 If Cabinet considers that face coverings should be mandatory, I will consider and then sign an Order. I will publish it online and in the *Gazette*. This Order will then come into effect at 11:59pm on Wednesday 18 November 2020.

Impact Analysis

- 70 In the time available to prepare this paper, a formal impact analysis has not been completed, but the situation is discussed throughout the Cabinet paper.

Human Rights

- 71 The human rights implications of the controls in place to slow the spread of COVID-19 are significant and have been set out in detail in previous papers on Alert Level decisions [CAB-20-MIN-0161, CAB-20-MIN-0176]. Limitations on freedom of expression (s 14 of the Bill of Rights Act) caused by mandatory face coverings on public transport are likely to be minor and fleeting. I consider they can be demonstrably justified on the basis that a precautionary approach to COVID-19 transmission plays a part in the important goal of preventing a resurgence in community transmission, and that face coverings on public transport is a rational method of reducing that risk.
- 72 The face covering requirements are targeted, in that they would apply only to public transport starting or terminating in Auckland, and to nationwide air travel (given that air travel evidently facilitates rapid mobility of Aucklanders to other parts of New Zealand). The requirements apply only during periods of unavoidable prolonged close contact, rather than at other times when people are out of their homes. And, on the basis that a range of exceptions continue to be permitted as under previous Alert Level orders, essential communication can still occur despite the face covering requirements.
- 73 Relevant departments and the Solicitor-General will continue to keep any remaining restrictive measures under review to ensure that they remain necessary and are implemented in a way that is consistent with the New Zealand Bill of Rights Act.

Population impacts

- 74 Impacts for at-risk populations are explored at paragraphs 56-57 above.

Consultation

- 75 This paper was prepared by the COVID-19 Group in the Department of the Prime Minister and Cabinet. The Ministry of Health has provided specific input, including advice on the case, the public health response, and the views and recommendations of the Director-General of Health. The Ministry of Transport, the Ministry of Justice, and the Crown Law Office have been consulted. The Ministry of Education was informed. Further agency consultation has not been possible in the timeframe.

Communications

- 76 The Prime Minister will communicate the decisions set out in this paper after Cabinet agreement. Communications will be co-ordinated with the Government's broader communications around its COVID-19 response.


Proactive Release

77 I intend to proactively release this Cabinet paper following Cabinet consideration.

Recommendations

The Minister for COVID-19 Response recommends that Cabinet:

- 1 **note** that the November Quarantine cluster contains 5 cases, as at 14 November;
- 2 **note** that the Director-General of Health recommends that face coverings be made mandatory on public transport in Auckland, on public transport originating, ending, or passing through the Auckland region and on all domestic flights while the case investigation is underway;
- 3 **agree** that the use of face coverings should be mandatory on all public transportation services in the Auckland region, including those that start, end or pass through the region;
- 4 **agree** that the use of face coverings should be mandatory on all domestic air transport services generally available to the public;
- 5 **agree** that that small passenger services (taxis, Uber etc) are included within the definition of 'public transport' and that the use of face coverings should be mandatory for drivers of small passenger services, and agree the passengers of small passenger services should be excluded from this requirement
- 6 **agree** to exclude from the face covering requirement, a service for the carriage of passengers for hire or reward that is contracted or funded by the Ministry of Education, local authorities, or Auckland Transport for the sole or primary purpose of transporting school children to and from school should be excluded from the face covering requirement;
- 7 **note** the requirement will not apply to the following services, given the definition of 'public transport' and the definition for 'air transport':
 - 7.1 charter services and tours (which are excluded from the definition of public transport)
 - 7.2 private transport (including private flights).
- 8 **agree** the following persons should be excluded from a face covering requirement:
 - 8.1 persons under the age of 12
 - 8.2 persons who have a medical condition or disability that makes it unsuitable for them to wear a face covering

- 8.3 drivers, pilots, staff, or crew of the public transport service or air transport service, if they are in a space completely separated from passengers (e.g. pilots in a cockpit, or train drivers in a train cab).
- 9 **agree** face coverings would not need to be worn in the following situations:
- 9.1 if it is unsafe to wear a face covering (e.g. if the person's only face covering is wet, or wearing a face covering means a driver cannot safely operate the vehicle),
- 9.2 if there is an emergency that requires the face covering to be removed (e.g. to perform CPR),
- 9.3 if removal of the face covering is required to prove identity,
- 9.4 if visibility of the mouth is required for communication (e.g. when communicating with someone who is deaf),
- 9.5 if there is a legal requirement to remove, or not to wear, the face covering,
- 9.6 if temporary removal of the face covering is required for the purposes of eating, drinking, or the taking of medicines by those on public transport journeys where these activities are ordinarily allowed (not supported by the Ministry of Health),
- 9.7 if there is a reasonable excuse not to wear a face covering.
- 10 **note** that the Minister for COVID-19 Response will act on behalf of the Minister of Health in issuing the Order under the COVID Public Health Response Act 2020;
- 11 **invite** the Minister for COVID-19 Response to report back to Cabinet by 23 November 2020 with further advice on whether face coverings should be compulsory on public transport services in Hamilton, Rotorua, Wellington and Christchurch;
- 12  s9(2)(f)(iv)
- 13 **note** that we will continue to monitor our situation closely and adjust quickly if necessary;
- 14 **agree** that Cabinet's decision today will be communicated by the Prime Minister.

Authorised for lodgement

Hon Chris Hipkins
Minister for COVID-19 Response