

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 Not relevant to your request

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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

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Not relevant to your request

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Not relevant to your request

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Proposed face covering requirements

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Not relevant to your request



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Released under the Official Information Act 1982

	Not relevant to your request
16.3	
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17	Not relevant to your request
17.1	Not relevant to your request
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Released under the Official Information Act 1982

Not relevant to your request

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Director-General's advice on face coverings

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Not relevant to your request

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Released under the Official Information Act 1982

Exemptions and definition of face coverings

29 Not relevant to your request

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Implementation and enforcement

31 Not relevant to your request

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33.1 Not relevant to your request



Not relevant to your request



Released under the Official Information Act 1982

33.2 Not relevant to your request

34 Not relevant to your request

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Mandatory record keeping requirements for contact tracing purposes

36 Good record keeping supports efficient contact tracing. Currently the only record keeping requirement is for businesses in limited scenarios at Alert Level 3 to have systems and processes to ensure (as far as is reasonably practicable) a record is kept, and for attendees of social gatherings at Alert Level 2.

37 Contact tracing supports public health workers to quickly establish the parameters of an outbreak, identify those that need to be quarantined and tested, and take action to break chains of transmission. Consistent record keeping is important across all Alert Levels to better enable rapid and effective contact tracing, helping to reduce the likelihood of a potential community outbreak becoming widespread. Ministry of Health officials note that records gathered via the App, when accurate, are particularly valuable for identified cases, as they provide speed and accuracy in identifying locations of interest, from which contacts are identified.

38 During periods when there are no active cases in the community and the perceived risk of transmission is low, we have seen low usage of the App, which slows down notification of contacts. For example, on 2 August 2021 there were 2.9 million registered users of the App, but only just over 500,000 daily scans of QR codes that day. Frequent reminders, targeted advertising campaigns and other non-regulatory levers have only resulted in small temporary increases in scans, which are a good proxy of general record keeping behaviours.

39 Previous advice has emphasised the importance of non-regulatory levers (e.g. Tracer App campaigns) to promote record keeping. However, this approach has had limited positive impacts on scanning behaviours. Scanning increases significantly when we go up Alert Levels then drops off soon after. The “I Scan NZ” campaign began shortly after Wellington moved to Alert Level 2 in June 2021. Following Wellington’s move back to Alert Level 1, there was an average 19% daily decrease in scanning nationally. While this decrease was less than was seen following Auckland moving down Alert Levels in February and March 2021 (on average 36%), s9(2)(g)(i)

40 The Ministry of Foreign Affairs and Trade (MFAT) advises that over the past year, states and territories across Australia have shifted from voluntary to mandatory use of government check-in QR codes. The range of businesses required to host the QR codes has also expanded from hospitality and larger venues to virtually any premises members of the public may visit. The approaches taken across Australia are much broader than the mandatory record keeping proposals in this paper, and the penalties for breaching the Public Health Orders in specific states are also more significant.² s9(2)(f)(iv)

41 It is timely to consider the use of mandatory record keeping requirements at all Alert Levels in some settings, in order to add a further layer of protection and normalise making and keeping records for contact tracing purposes. Any mandatory record keeping requirement would continue to sit alongside, and be complemented by, non-regulatory approaches to encourage and promote record keeping.

42 I recommend that record keeping be required at:

- 42.1 courts and tribunals, social service customer offices, indoor public facilities (e.g. libraries, museums and swimming pools), indoor event facilities (e.g. cinemas, theatres, concert venues and casinos) and aged care and health facilities (for visitors only);
- 42.2 exercise facilities, massage parlours, beauticians, barbers, hairdressers and hospitality venues (e.g. cafes, restaurants, bars and nightclubs) (for customers); and
- 42.3 social gatherings including those held at marae, weddings, funerals, faith-based services, except where held at private residences.

43 There are other situations and settings where the record keeping requirement could be applied, but on balance I do not think it should be applied because there are risk mitigating factors and/or practical considerations. The proposed

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

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

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

On whom should the obligation be placed?

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

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

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

[Redacted]

62 s9(2)(g)(i)

[Redacted]

63 These measures would go some way to mitigate the privacy risks but people using alternative record keeping methods will still face additional privacy risks. The OPC has indicated it is not satisfied there is a sufficient evidence base of the public health benefit to conclude that enforcing record keeping is a proportionate or effective response given the privacy implications of the proposal. OPC would welcome evidence being provided that clearly demonstrates those health benefits or enforcement considerations.

64 The OPC believes there remain significant issues associated with enforcement that have not been addressed and have potential to negatively impact people's privacy. They are concerned about the potential for unintended consequences including the potentially "chilling effect" on the reporting of close contacts, equity issues, the potential for certain groups to be the focus of surveillance and enforcement action, and social license generally. OPC does not believe the proposals should proceed until Ministers have been provided with advice addressing these issues.

65 Like the proposed approach for expanded requirements for face coverings, Police have indicated that they intend to apply the Graduated Response Model to enforcement. WorkSafe note's that their authorisation under the COVID-19 Act does not extend to enforcement in respect of the organiser of social gatherings (e.g. weddings and funerals). In these settings, the compliance role would have to be undertaken by the Police. WorkSafe officials also note that placing an obligation solely on the person responsible for a place or gathering will create significant compliance monitoring and enforcement issues. s9(2)(g)(i)

[Redacted]

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 Not relevant to your request

- 70.1 Not relevant to your request

- 70.2 Not relevant to your request

- 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 s9(2)(g)(i) [Redacted]

78 Not relevant to your request [Redacted]

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 text block]

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

s9(2)(h) [Redacted text block]

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

82.1 s9(2)(h) [Redacted text block]

82.2 s9(2)(h) [Redacted text block]

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

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

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

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

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

Released under the Official Information Act 1982

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.

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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 Not relevant to your request

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5.1 Not relevant to your request

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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

Hon Chris Hipkins

Minister for COVID-19 Response

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Cabinet Social Wellbeing Committee

Minute of Decision

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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

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4.1 Not relevant to your request

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Not relevant to your request

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Released under the Official Information Act 1982

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 Not relevant to your request

4 Not relevant to your request

5 Not relevant to your request

Released under the Official Information Act 1982

Not relevant to your request



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Not relevant to your request



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Released under the Official Information Act 1982

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. **YES / NO**
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). **YES / NO**
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. **YES / NO**
12. **Agree** in principle that record keeping for contact tracing purposes is required at either:
- 12.1. all Alert Levels (**recommended**); **YES / NO**
- OR**
- 12.2. only at Alert Level 2 and above. **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. Not relevant to your request

18.

19.

20.

21.

22.

22.1 Not relevant to your request

22.2

22.3

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23. Not relevant to your request



23.1. Not relevant to your request



23.2.



23.3.



23.4.



24. Not relevant to your request



24.1. Not relevant to your request



24.2.



24.3.



24.4.



24.5.



24.6.



25. Not relevant to your request



25.1. Not relevant to your request



OR

25.2.



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

27
/...../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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