



Briefing

FOR SIGNING: COVID-19 PUBLIC HEALTH RESPONSE (PROTECTION FRAMEWORK) ORDER 2021

To: Hon Chris Hipkins
Minister for COVID-19 Response

Date	30/11/2021	Priority	High
Deadline	30/11/2021	Briefing Number	DPMC-2021/22-959

Purpose

Attached to this briefing is the proposed COVID-19 Public Health Response (Protection Framework) Order 2021, which we recommend that you sign. This order establishes the COVID-19 Protection Framework (the Framework) and replaces the current Alert Level system as part of the Government's ongoing response to COVID-19. This briefing provides an explanation of the structure of this new order, outlines the remaining policy issues and related amendments, and confirms that the necessary procedural requirements for the making of COVID-19 Orders have been complied with.


Recommendations

1. **Note** this briefing provides an explanation of the structure and summary of the key provisions of the proposed order;
2. **Note** the necessary procedural requirements for the making of COVID-19 Orders have been complied with;
3. **Sign** the COVID-19 Public Health Response (Protection Framework) Order 2021 (Attachment A);

YES / NO


4. **Agree** this briefing is proactively released, with any appropriate redaction where information would have been withheld under the Official Information Act 1982, in January 2022.

YES / NO



Ruth Fairhall
Head of Strategy & Policy, COVID-19 Group, DPMC

30/11/2021



Hon Chris Hipkins
Minister for COVID-19 Response

30/11/2021

Contact for telephone discussion if required:

Name	Position	Telephone	1st contact
Ruth Fairhall	Head of Strategy & Policy, COVID-19 Group, DPMC	s9(2)(a)	✓
Nita Sullivan	Senior Policy Advisor, COVID-19 Group, DPMC	s9(2)(a)	

Minister's office comments:

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- Withdrawn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

FOR SIGNING: COVID-19 PUBLIC HEALTH RESPONSE (PROTECTION FRAMEWORK) ORDER 2021

Executive Summary

1. Attached to this briefing is the proposed COVID-19 Public Health Response (Protection Framework) Order 2021 (the Order), which we recommend you sign.
2. This order establishes the COVID-19 Protection Framework (the Framework) for New Zealand and replaces the current Alert Level system as a means to respond to COVID-19 in a domestic context. The Framework represents the next phase in the government's response to managing COVID-19 in the community.
3. This briefing provides an explanation of the structure of this order, as it adopts a different approach from previous orders used in the response to COVID-19. In this order, a wide range of provisions are included. These provisions will only have legal effect if made active by being specified in a relevant schedule (a COVID-19 response schedule). The COVID-19 provisions in this order include public health measures that have previously been used (such as face covering requirements), as well as those that are new to the Protection Framework (such as COVID-19 vaccination certificate (CVC) requirements).
4. There are new requirements that relate to the use of CVCs to control access to a business or service (including an event) or a gathering. The briefing confirms businesses' obligations to "check" and "verify" CVCs and the guidance which will support those operating with them; clarifies the way businesses may "close" and "operate" at Orange and Red for those not operating with CVCs; and confirms the application of CVCs at gatherings and events.
5. It also confirms that the necessary procedural requirements for the making of COVID-19 Orders have been complied with. Subject to your signing, this order will come into force at 11.59pm Thursday 2 December 2021.

Summary of the Protection Framework Order

Structure of the Order

6. This order adopts a different approach from previous orders used to give effect to the government's domestic response to COVID-19. The key difference is that, in this order, a wide range of provisions are included. These provisions will only have legal effect if made active by being specified in a relevant schedule (a COVID-19 response schedule).
7. The COVID-19 provisions are set out in Part 2 of the Order. They include public health measures that have previously been used (such as face covering requirements), as well as those that are new to the Protection Framework (such as CVC requirements).
8. Each COVID-19 response schedule is structured in the same way. Part 1 of the schedule describes the geographical area to which the schedule applies. Part 2 of the schedule then lists the COVID-19 provisions that apply in that area. In some cases, the schedule

may also specify modifications to a particular COVID-19 provision. Those modifications apply only to the area described in Part 1 of the schedule.

9. The COVID-19 response schedules are as follows:
 - a) Schedule 5 – provisions that apply at Green;
 - b) Schedule 6 – provisions that apply at Orange;
 - c) Schedule 7 – provisions that apply at Red; and
 - d) Schedule 8 – establishes the cross-boundary rules (on commencement, this schedule will establish the cross-boundary rules for Auckland until the boundary is lifted on 15 December through an amendment to the Order).
10. Schedule 4 contains maps showing the boundaries of local government regions and districts.

Cross-boundary rules for Auckland are unchanged

11. The cross-boundary rules for Auckland are substantially the same as those that were in force under the Alert Level system. Two additional travel permissions are added for those attending tertiary education institutions and those attending a scheduled appointment at an embassy or consulate. They are set out in Schedule 8 of the Order.

Public health measures at education entities

12. The public health measures that currently apply to registered schools under the Alert Level system will remain unchanged for the remainder of 2021 (this is provided for in Schedule 1 of the Order). Registered schools in Auckland will continue to operate under the previous Alert Level 3 requirements, and schools in the rest of New Zealand will continue to operate under the previous Alert Level 2 requirements.
13. The public health measures that apply to other education entities, including licensed early childhood services and tertiary education providers, are as specified in the relevant COVID-19 response schedule.

Exemptions

14. The COVID-19 provisions are subject to the exemptions set out in clauses 103 to 105. These include an exemption for assisting in, or responding to, an emergency.

Requirements for the use of CVCs/My Vaccine Pass (MVP)

15. There are new requirements that relate to the use of CVCs to control access to a business or service (including an event) or a gathering. Under the Framework, some businesses or services must make a choice between operating with CVCs (CVC rules) or operating under more restrictive settings (non-CVC rules). The CVC and non-CVC rules for those businesses or services are set out in Part 3 of each of the relevant schedules for Green (schedule 5), Orange (schedule 6) and Red (schedule 7).

16. The Order also specifies the businesses or services that are prohibited from operating with CVC restrictions. These include supermarkets, health services, and most public transport services (see clause 10). Such businesses or services must not deny a person entry to the premises or access to services on vaccination grounds (see clauses 31 and 32 of the Order).
17. Clauses 25 to 27 set out the rules that relate to regulated businesses or services. In summary:
 - a) a regulated business or service must choose to operate under either CVC or non-CVC rules (see clause 25), and must communicate that choice at the main entrance of the premises (see clause 26);
 - b) if a regulated business or service chooses to operate under CVC rules, it must:
 - i) check that each person on the premises is carrying a CVC (clause 27(1)); and
 - ii) verify that CVCs are valid and have been issued to the person in question in relation to a reasonable number of people (clause 27(2));
 - c) if a regulated business or service displays a sign indicating that it is operating under CVC rules, a person who enters the premises must produce their CVC on request (see clauses 29 and 30); and
 - d) a regulated business or service may alternate between operating under CVC and non-CVC rules, but must comply with certain requirements when alternating between the two (see clause 25(2)).

Compliance with the obligations to “check” and “verify”

18. The Order draws a distinction (at clause 27) between “checking” CVCs, which is required in respect of each person on the premises of a business or service operating under the CVC rules and “verifying” CVCs which is required in respect of a reasonable number of people on the premises. Checking means to confirm that a person is carrying a CVC. Verifying means to check that the CVC is valid and belongs to the person in possession of it.
19. For the obligation on businesses to check CVCs, the guidance will say that businesses should sight CVCs as soon as possible on/after people enter the premises (e.g. the waiter at the table, server at the counter or bouncer at the door). This flexibility reflects the range of settings at which CVCs will need to be checked and provides options for businesses in meeting this requirement.
20. The CVC requirements do not apply to a child who is younger than 12 years and 3 months. This allows for a 3-month grace period (starting from the child’s 12th birthday) for the child to be vaccinated and obtain a CVC. From the age of 12 years and 3 months, a child will be required to produce their CVC on request as described above. Businesses and services comply with their obligations with regard to CVC compliance if they believe on reasonable grounds that the person is younger than 12 years and 3 months. Guidance will encourage operators to apply judgement and discretion when assessing those close to the age of 12.

“Closing” and “operating” at Orange and Red for businesses not operating with CVCs

21. There are businesses and services which, if they choose not to operate with CVCs/MVP at Orange and Red, will have to either operate contactlessly (e.g. hospitality) or close (e.g. gyms, hairdressers, beauty salons).
22. For those that must “close”, this would mean not allowing any customers/patrons onsite. However this would allow for members of staff to continue to access the site for any ongoing work functions (e.g. writing gym plans, processing accounts etc.). This approach is supported by public health advice, as businesses not being open to the public in any way has the intended effect of mitigating public health risk.
23. Further, there may be businesses that ordinarily operate as a close-proximity ones (e.g. hairdressers), which could choose at certain Orange or Red to continue to operate for the purposes of a different function (i.e. retail). In this scenario, these businesses would be able to operate as any other “retail” business – “open with capacity limits based on 1 m distancing” under Orange and Red. Public health officials have confirmed that not being a close contact business and only operating as a retail business (according to relevant conditions for retail businesses) achieves the public health risk mitigation intent. The drafting in the Order has been amended to reflect these clarifications.

Application of CVCs to gatherings and events

24. There are also new types of permitted gatherings and events that rely on the use of CVCs:
 - a) clauses 43 to 46 set out various options for CVC-compliant gatherings (as required for the Green, Orange, and Red schedules); and
 - b) clauses 52 and 53 set out corresponding options for CVC-compliant events.
25. Under Green, Orange, and Red, gatherings and events that do not use CVCs will have stricter requirements imposed than those that do.

Resolution of outstanding policy issues

Amendments to clause 102 to mitigate legal risk [subject to legal professional privilege]

26. The current Alert Level Order contains a provision that prohibits people changing their home or place of residence after more restrictive requirements are to be imposed (clause 17A). Officials have proceeded on the basis that this provision should also be available under the COVID-19 Protection Framework, in case restrictions on movement need to be imposed, for example in the case of a localised lockdown (see new clause 102). s9(2)(h)

Specific classes for infringement offences under the COVID-19 Protection Framework

27. Infringement offences are specified in the attached Order and will be available for use by enforcement agencies on commencement of this order.
28. On Saturday 4 December, new regulations will come into effect, which set three classes of infringement offence for breaches of COVID-19 Orders based on public health risk (high, medium and low) and corresponding penalties for each class. To operationalise this

penalty framework, infringement offences contained in COVID-19 Orders will need to specify the applicable infringement offence class, so that the maximum penalties do not apply by default. However, this cannot be put into force before the regulations come into effect and so has not been completed in this order. An amendment order is being prepared to achieve this for the attached order. This will coincide with the regulations coming into effect.

Procedural Requirements for a COVID-19 Order

29. This proposed order is a COVID-19 Order. It revokes and replaces the COVID-19 Public Health Response (Alert Level Requirements) Order 2021. You can make these orders pursuant to sections 11 and 15 of the COVID-19 Public Health Response Act 2020 (The Act). The Act imposes certain requirements for the form, publication and making of COVID-19 Orders. You must be sure that these requirements have been complied with before making a COVID-19 Order.

48 Hour Notification Period

30. The Act requires that a COVID-19 Order must be published and gazetted at least 48 hours before it comes into force. The Prime Minister has publicly announced that the COVID Protection Framework will be introduced at 11.59pm Thursday 2 December. Provided you sign this order by 11.59pm Tuesday 30 November, you will have complied with the requirement to publish and gazette the Order 48 hours prior to it coming into force.

Ministerial Consultation

31. The Act requires that before making a COVID-19 order, you must consult with the Prime Minister, the Minister of Justice and the Minister of Health. You may also consult with any other Minister you think fit.
32. A draft version of the Order and a cover briefing summarising the outstanding policy issues at that time was sent to your office on Monday 22 November, for Ministerial consultation. Ministerial feedback was then incorporated into further amendments to the Order last week. Further to this, a summary of additional outstanding issues was provided to your office on Thursday 25 November, to enable Ministerial consultation on those issues in advance of this final version being provided to you for signing.

Public Health Advice

33. The Act requires that before making a COVID-19 order, you must have had regard to advice from the Director-General of Health about the risks of the outbreak or spread of COVID-19 and the nature and extent of measures (whether voluntary or enforceable) that are appropriate to address those risks.
34. We have consulted with the Ministry of Health during the drafting of this order and briefing. They have confirmed it aligns with public health advice provided previously on various aspects of the COVID-19 Protection Framework about the appropriate settings for shifting to a new phase of the Government's COVID-19 response. Accordingly, this requirement has been met.

New Zealand Bill of Rights Act 1990 [subject to legal professional privilege]

35. The Act also requires that you are satisfied that an order under section 11 of the Act does not limit, or is a justified limit, on the rights and freedoms in the New Zealand Bill of Rights Act 1990 (NZBORA).

36. s9(2)(h) 

Next steps

37. Following the signing of this Order, it will come into effect at 11.59pm Thursday 2 December 2021.

38. Cabinet will next review settings (which regions are at which colours) in the Framework and communicate any decisions taken on Monday, 13 December 2021.

Attachments:	
Attachment A:	COVID-19 Public Health Response (Protection Framework) Order 2021 (Signature Copy)
Attachment B:	Attachment B withheld in full under section 9(2)(h) of the Act

Proactively Released

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