



# Briefing

## FACE COVERINGS: FURTHER ADVICE ON POLICY CHANGES AT RED

To: Ministers with Power to Act			
Date	28/01/2022	Priority	Urgent
Deadline	31/01/2022	Briefing Number	DPMC-2021/22-1285

### Purpose

This briefing clarifies the approach to an exemption previously agreed by Cabinet for “gatherings which have exclusive use of a premises” and seeks to resolve other technical points that have arisen while preparing drafting instructions.

### Recommendations

- Note** on Sunday 23 January 2022, Ministers with Power to Act agreed to move all New Zealand to the Red COVID-19 Protection Framework setting, following confirmation of a number of positive Omicron cases in the community [DPMC-2021/22-1240 refers];
- Note** on Tuesday 25 January 2022, Cabinet considered the paper *COVID-19 Protection Framework: Updates to Red Settings*, agreed to several changes to expand face covering requirements at the Red setting of the Framework and authorised Ministers with Power to Act to make any changes to detailed face covering settings that arise through the legal drafting process [CAB-22-MIN-0001 refers];
- Note** this briefing seeks to resolve interpretation and technical issues that have arisen during the drafting process to bring the changes outlined in recommendation 2 into effect;

#### *Scope of “exclusive use” exemption*

- Agree** that all people at a gathering held in a defined space of a premise or workplace that is being used for the exclusive use of that gathering will be exempt from the requirement to wear a face covering, except workers;

YES / NO

5. **Note** workers at gatherings will continue to be required to wear a face covering, regardless of whether the gathering is held at an exclusive-use venue;

6. **Agree** that all gatherings held at private dwellings are exempt from face covering requirements;

YES /  NO

*Workers required to wear medical-grade masks*

7. **Agree** that “all employees in public facing roles in workplaces captured by the legal vaccine mandate” is interpreted to capture workers in both the Vaccinations Order and Specified Work Vaccinations Order;

YES /  NO

*Children required to wear face coverings in some settings*

8. **Agree** that the requirement for “all primary and secondary school students in Year 4 and up” to wear a face covering “on public transport and Ministry of Education funded school transport” is:

8.1. applies to all children aged 8 years and over (not just children at a registered school); and

YES /  NO

8.2. applies anytime these children are on public transport and school transport (not just when the children are travelling to and from school);

YES /  NO

*Application of changes to other COVID-19 Orders*

9. **Note** two other COVID-19 Orders (the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 and COVID-19 Public Health Response (Air Border) Order (No 2) 2020) include face covering definitions and requirements that are out of step with the changes being made to the COVID-19 Public Health Response (Protection Framework) Order 2021;

10. **Agree** to amend the definition of face covering in the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 to require relevant workers to wear medical-grade masks and the general public to wear a face covering that is secured to their head by ear loops or a head loop; and


YES /  NO


11. **Agree** to amend the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 as follows:

11.1. amend the definition of face covering to require relevant workers to wear a medical-grade mask and the general public to wear a face covering that is secured to their head by ear loops or a head loop; and

YES /  NO

- 11.2. amend the age-based exemption from face covering requirements on international flights (a form of public transport) from those under 12 years to those under 8 years; YES / NO
  
- 12. **Direct** officials to provide advice on any proposed amendments to face covering requirements at Orange and Green prior to any part of the country being shifted to the Orange or Green level of the Framework; YES / NO
  
- 13. **Note** that the new face covering requirements will apply to both the indoor and outdoor parts of a premise where face coverings are required (e.g. the indoor and outdoor garden areas of a bar or pub);
  
- 14. **Note** that requiring workers covered by the vaccine mandate to wear medical-grade masks will create a new face covering requirement for staff (but not customers) at gyms;
  
- 15. **Agree** that this briefing is proactively released, with any appropriate redaction where information would have been withheld under the Official Information Act 1982, in March 2022. YES / NO

  
Kay Baxter  
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28.1.2022

  
Hon Chris Hipkins  
Minister for COVID-19 Response  
  
29.1.2022

Contact for telephone discussion if required:

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Minister's office comments:

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

Proactively Released

# FACE COVERINGS: FURTHER ADVICE ON POLICY CHANGES AT RED

## Background

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1. On Sunday 23 January 2022, Ministers with Power to Act agreed to move all New Zealand to the Red COVID-19 Protection Framework setting, following confirmation of a number of positive Omicron cases in the community [DPMC-2021/22-1240 refers].
2. On Tuesday 25 January 2022 Cabinet considered the paper *COVID-19 Protection Framework: Updates to Red Settings*. Cabinet noted there is strong evidence that correct use of masks decreases risk of Omicron transmission, that some types of masks are more effective than others and agreed to several changes to expand face covering requirements at the Red setting of the Framework [CAB-22-MIN-0001].
3. The following changes to face covering requirements were agreed by Cabinet:
  - a) all face coverings must attach to the head via an ear loop or head loop (previously any covering that covered mouth and nose);
  - b) all people must wear a face covering at food and drink business, close proximity business, events and gatherings (previously only a requirement for workers);
  - c) all school students in Year 4 and above must wear a face covering on public and school transport (previously only a requirement for children aged 12 years and over); and
  - d) employees in public facing roles in workplaces captured by the legal vaccine mandate must wear a medical-grade mask (Type IIR/Level 2) or above at all times.<sup>1</sup>
4. Cabinet also authorised Ministers with Power to Act to make any changes to detailed face covering settings that arise through the legal drafting process [CAB-22-MIN-0001 refers]. Officials have subsequently been working through the drafting process to enable these changes to come into effect by Friday 4 February. The drafting process has raised some interpretation and technical issues that need to be resolved before the new requirements come into force.
5. This briefing seeks to clarify the approach to the exemption provided for “gatherings which have exclusive use of a premises”, notes technical advice and seeks decisions to provide clarity about the impact of the policy changes on face covering use at Red.

## Confirming the scope of the “exclusive use” exemption

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6. When Cabinet agreed to change the face covering requirements at Red, it was noted that these changes would not affect gatherings which have exclusive use of a premises [CAB-22-MIN-0001 refers]. In order to draft this exemption in to the COVID-19 Public Health Response (Protection Framework) Order 2021 (the Order), finalise the legal obligation and prepare detailed guidance for these new requirements, clarification on the scope of this exemption is sought from Ministers.

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<sup>1</sup> Existing exemptions, for example teachers at indoor tertiary education premises not being required to wear a face covering when in parts of the premises not open to the public (e.g. their office), will continue.

7. Officials understand Cabinet's intent was for this exemption to be broadly applied to any gathering that takes place in a defined space of a premise or workplace that is being used for the exclusive use of the gathering.
8. In practice, this will mean that guests at many weddings, funerals, faith-based gatherings, gatherings at marae and post-sport match functions would be exempt from the face covering requirements. Workers at these gatherings will continue to be required to wear a face covering even where the "exclusive use" exemption applies.
9. The types of gatherings where face coverings will be required under the new rules are therefore relatively limited, including the abovementioned gatherings that are not held at exclusive-use venues (including some weddings held outdoors); street parades; children's parties at public venues such as Jumperama; community gatherings in parks; and spectators at community sport.
10. Face covering requirements will not extend to gatherings held at private dwellings. Although this is arguably implied by the "exclusive use" exemption, officials preference is that an explicit exemption for gatherings held at private dwellings should be drafted into the Order. This will make it clear to the public that there is no intention to apply face covering rules in people's homes.

### **Clarifying which workers are required to wear medical-grade masks**

11. Cabinet has agreed that at Red, "all employees in public facing roles in workplaces captured by the legal vaccine mandate" will be required to wear a medical-grade mask (Type IIR/level 2) [CAB-22-MIN-0001 refers]. More specificity is needed to draft this requirement into the Order.
12. s9(2)(h) 
13. 
14. Officials propose clarifying the requirement to capture workers in public-facing roles in both the Vaccinations Order and Specified Work Vaccinations Order.<sup>2</sup> This would ensure a consistent approach to face coverings is applied in most workplaces and remain consistent with the original intent of the policy change.

### **Confirming when children will be required to wear face coverings**

15. Cabinet has agreed to require all primary and secondary school students in Year 4 and up to wear a face covering on public transport and Ministry of Education funded school transport (previously this requirement only applied to children 12 years and older).

<sup>2</sup> Note that this change to face covering requirements will not affect controlled-access workplaces (e.g. non-public facing offices) or the current requirements for registered schools Years 1-3 and licensed early childhood education.

16. Officials are seeking your direction on when this requirement applies (only when children are on buses to and from school, or at all times) and which children it applies to (only those at registered schools, or all children above a certain age).
17. The current drafting around face coverings in education settings applies to students at a registered school in Years 4 to 13. When applied to transport, narrowing the requirement to students at a registered school would exclude children in the same age group who are not at school (e.g. home schooled) using public transport. The rationale for limiting the face covering requirement to registered school students in the classroom is clear, but does not hold when applied to children on buses and other forms of public transport.
18. There is also a question about whether this new face covering requirement should only apply to children under the age of 12 years when travelling on buses to and from school, or at all times. For consistency and compliance monitoring reasons, officials propose the new face covering requirements should apply at all times, to all children from a certain age (8 years and above) rather than being linked to the school journey and registered schools. This application aligns with the intent of the policy change, to mitigate transmission at a general population level.

### **Application of these changes to other COVID-19 Orders**

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19. In addition to face covering requirements in the Order, there are also face covering requirements in the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 (the Air Border Order) and COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 (the Quarantine Order).
20. To align the face covering requirements across these Orders where appropriate, Officials propose to:
  - a) amend the definition of "face covering" in the Air Border and Quarantine Order to require relevant staff to wear medical-grade masks and the general public to wear a face covering that is secured to their head by ear loops or a head loop (both Orders); and.
  - b) amend the exemptions from face covering requirements on international flights (which are a form of public transport) from people under the age of 12 years to people under the age of 8 years (Air Border Order only).

### **Other issues for noting**

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*Further decisions on face coverings will be required prior to any shift to Orange or Green*

21. Due to the way the Order is structured, changing the definition of face covering in the Order to reflect decisions made by Cabinet on Tuesday 25 January (that people must wear face coverings with ear/head loops) means that the new definition will apply to all active schedules in the Order.
22. Currently, only the Red schedule is active. However, when other schedules are activated (e.g. if part of the country shifts to Orange) the new definition will automatically apply to that active schedule. Prior to any shift in Framework levels, advice will need to be given about whether public health supports the continued use of this narrower definition of face covering (and use of these specific types of masks) at these levels, or whether the broader face covering definition (anything that covers mouth and nose) could apply.

23. Decisions will also be required about whether any medical-grade mask requirements will apply at lower levels of the Framework (as they do now for vaccine mandate workers at Red). Similarly, whether or not the expanded face requirements (applying to additional people and places at Red) is justified and will continue at lower levels.

*The new face covering requirements will apply to all parts of a premise (indoor and outdoor)*

24. Officials would like to use public guidance to clarify that the new face covering requirements will apply to both the indoor and outdoor parts of a premise where face coverings are required (e.g. the indoor and outdoor garden areas of a bar or pub), not just the indoor parts of any premises. This application aligns with the approach we have taken to face coverings in the past and means that the application of the new requirements for patrons will be straightforward and easy to follow.

*Impacts of the new face covering requirements at gyms*

25. By requiring workers covered by the vaccine mandate to wear medical-grade masks, a new face covering requirement is introduced at gyms. Previously, no face covering rules applied to gyms. However, this change will require workers at gyms to wear medical-grade (Type IIR/Level 2) masks. There is a pre-existing exemption in the Order that will enable instructors to remove their mask when running an exercise class (refer to clause 23(2)).
26. For practicality reasons (physical exertion), the Order will not require customers at a gym to wear a face covering. Some gyms may however choose to introduce a face covering requirement for customers as a condition of entry to their premises.

## Next steps

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27. Following your decisions, officials will finalise outstanding instructions with the Parliamentary Counsel Office to amend the COVID-19 Public Health Response (Protection Framework) Order 2021 (and other orders, as required) and bring these changes into force from 11.59pm Thursday 3 February 2022.
28. As noted above, officials recommend that any changes required to update or amend settings at Orange and Green levels of the framework will be considered and progressed prior to any move, as part of the ongoing Government response to COVID-19.

## Financial implications

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29. There are no further financial implications with the proposals in this paper, beyond what was discussed and considered at Cabinet on Tuesday 25 January 2022.

## Consultation

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30. The following agencies were consulted on this briefing: Crown Law Office, New Zealand Customs Service, Ministry of Education, Ministry for Ethnic Communities, Oranga Tamariki, Department of Corrections, Ministry for Culture and Heritage, Parliamentary Counsel Office, Ministry of Business, Innovation and Employment, Ministry of Foreign Affairs and Trade, Ministry for Primary Industries, Te Arawhiti, Ministry of Transport, The Treasury, New Zealand Police, Ministry of Health, Ministry for Pacific Peoples, Ministry of Social Development, and the Ministry of Justice.



## Communications

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31. Decisions on this briefing will be help finalise public communications and guidance to the public and key stakeholders via official Unite Against COVID-19 channels.

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