



Briefing

OPTIONS TO MANDATE FACE COVERINGS AT ALERT LEVEL 4

To: Rt Hon Jacinda Ardern
Prime Minister
Hon Grant Robertson
Deputy Prime Minister
Hon Chris Hipkins
Minister for COVID-19 Response
Hon Dr Ayesha Verrall
Associate Minister of Health
CC: Hon Kris Fafoi
Minister of Justice
CC; Hon Andrew Little
Minister of Health

Date	18/08/2021	Priority	High
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Purpose

This briefing provides you with options to mandate the use of face coverings while New Zealand is at Alert Level 4. This follows the decision of Ministers with Power to Act to move all of New Zealand to Alert Level 4 from 11.59pm on 17 August 2021.

Recommendations

1. **Note** face coverings can add an additional layer of protection against the transmission of COVID-19, especially where physical distancing is more challenging and other public health measures are limited.
2. **Note** face coverings are only mandated on public transport at Alert Level 4. People are encouraged to wear a face covering when they leave the house, but this is not a legal requirement.

- 3. **Note** Cabinet agreed to expand the settings in which face coverings are mandated on 16 August 2021, including at the following settings at Alert Level 4:
 - a) on public transport and at departure points e.g. train stations and bus stops;
 - b) on flights;
 - c) in taxi or ride-share vehicles (drivers and passengers);
 - d) visitors to healthcare facilities; and
 - e) inside any retail business that are still open, including supermarkets, pharmacies and petrol stations [CAB-21-MIN-0315].

4. **Note** the face covering requirement changes agreed to by Cabinet on 16 August, and outlined in recommendation 3, have not been announced and will not take effect until October 2021.

5. **Agree** to further expand mandatory face covering requirements at Alert Level 4 so a face covering must be worn

EITHER:

a) Option 1: by all people at all businesses and services operating at Alert Level 4 that involve customer contact; **YES / NO**

OR

b) Option 2: by all people at indoor businesses and services operating at Alert Level 4; **YES / NO**

OR

c) Option 3: by all people at all times when outside their home. **YES / NO**

6. **Note** that all options in recommendation 4 exclude health care and aged care facilities because they have existing practices for PPE however we consider visitors to health care facilities should still be required to wear face coverings.

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Ruth Fairhall Head of Strategy & Policy, COVID-19 Group	Rt Hon Jacinda Ardern Prime Minister
...../...../2021/...../2021
Hon Grant Robertson Deputy Prime Minister	Hon Chris Hipkins Minister for COVID-19 Response
...../...../2021/...../2021
Hon Dr Ayesha Verrall Associate Minister of Health	
...../...../2021	

Contact for telephone discussion if required:

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

Minister's office comments:

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

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OPTIONS TO MANDATE FACE COVERINGS AT ALERT LEVEL 4

Background

1. There are two key reference points for considering mandated use of face coverings at Alert Level 4 – the current Alert Level 4 settings and the expanded settings agreed to by Cabinet on Monday, 16 August 2021.
2. Currently, face coverings are only mandated on public transport at Alert Level 4. People are encouraged to wear a face covering when they leave the house, but this is not a legal requirement.
3. Under the settings agreed to by Cabinet on 16 August (which are yet to be announced, but will come into effect in October 2021), face coverings would be mandated in the following settings at Alert Level 4:

- b) on public transport and at departure points e.g. train stations and bus stops;
 - c) on flights;
 - d) in taxi or ride-share vehicles (drivers and passengers);
 - e) visitors to healthcare facilities; and
 - f) inside any retail business that are able to operate, including supermarkets, pharmacies and petrol stations.
4. The use of face coverings in specific settings can provide an additional layer of protection against the transmission of COVID-19. Their use is particularly important where physical distancing is more challenging and where other public health measures (e.g. record keeping requirements) are limited. Any mandatory use of face coverings at Alert Level 4 should consider these principles and practicality considerations.

Options to mandate face coverings at Alert Level 4

- 5. Three options are set out below. Attachment 1 lists the business and services that can operate at Alert Level 4, including whether the business or service involves customer contact, and whether face coverings would be required under Option 1 (where there are customers on site), Option 2 (all staff and customers). All would be captured by Option 3 that requires everyone to wear a face covering when outside of their home.
- 6. Under Options 1 and 2, use of face coverings will continue to be strongly encouraged (but not legally required) whenever a person leaves their home during Alert Level 4. Under Option 3, use of face coverings will be legally required whenever a person leaves their home during Alert Level 4. The existing enforcement options for non-compliance with face covering requirements would apply. This includes an infringement notice and \$300 fee being able to be issued for non-compliance.
- 7. Health services are exempt from the Order and instead follow guidance provided by the Ministry of Health to the sector, which includes existing practices for PPE.
- 8. The definition of a face covering as anything that covers the nose and mouth (not limited to masks) will continue to apply. The list of exemptions from face covering requirements in the COVID-19 Public Health Response (Alert Level Requirements) Order (No 8) 2021 would also continue to apply.¹

Option 1: Face coverings are mandatory at all businesses and services where customers can be on to the premises

- 9. This option would require the wearing of face coverings by all people in the following businesses or services when indoors:

¹ Clause 12 provides that face covering requirements do not apply if there is an emergency, where it is unsafe to wear the covering, if a person is in a defined or enclosed space separate from the passenger area, where a person is communicating with a person who is deaf or hard of hearing, where removal is requested to ascertain identity or otherwise required or authorised by law, where removal is needed to take medicine or to eat and drink, the person is under the age of 12 years or has a physical or mental illness that makes mask wearing unsuitable.

- a) Supermarkets, pharmacies, liquor stores in licensing trust areas, dairies, foodbanks, self-service laundries, petrol stations (including stores operating as part of a petrol station);
 - b) Accommodation services (e.g. retirement villages, campgrounds, backpackers);
 - c) Courts, tribunals and the justice system;
 - d) Entities required to provide distance or online learning for primary and secondary education (where two or more people are present);
 - e) Social and community-based services provided to support persons to maintain critical well-being or as crisis support for people who are unsafe or homeless;
 - f) Hardware and do it yourself stores for the purposes of sale to trade customers; and
 - g) Transport (passenger services (including public transport) by road, rail, air or sea, includes small passenger vehicles).
10. This option would see an additional layer of protection added to settings where there is greater risk of people being unable to physically distance, and where record keeping of all people on the premises is less certain. All of the settings Cabinet agreed to mandate face coverings in on 16 August (including taxis and rideshare services) would be covered under this option.
11. This option would not mandate face coverings for workplaces where only employees are present, or where people are outdoors. This is the option preferred by officials.

Option 2: Face coverings are mandatory for all people at indoor businesses and services operating at Alert Level 4

12. This option goes further than the previous option by requiring all people in an indoor setting to wear a face covering. It therefore provides a greater level of protection than Option 1. Compared to Option 3, this option is more proportionate. Face coverings would not be required when people are at home, or while they are outside of their homes. For example, while undertaking daily exercise or when working in outdoor businesses or services (e.g. construction or farming).
13. This option could be limited so that it only applied if two or more people were present.

Option 3: Face coverings are mandatory for all people at all times when outside their homes

14. This option is a very risk-averse approach to mitigating transmission. The risk of transmission in outdoor settings is significantly lower than indoor settings. s9(2)(g)(i)
15. This option is arguably disproportionate. Requiring people to wear face coverings while exercising is less necessary as they can maintain their bubbles or keep 2 metre distance from other people. Further, people working outdoors may be working by themselves or at large distances so it would be unnecessary for them to wear a face covering.

Bill of Rights Act considerations

s9(2)(h)



Next Steps

22. Pending your decisions on this briefing, drafting instructions will be issued to the Parliamentary Counsel Office to draft the requirements.
23. The new requirements will be prepared as a new section 11 Order for Minister Hipkins to sign into force. Consultation with relevant Ministers is taking place on the basis of this paper.
24. Officials recommend the Order comes into force with immediate effect once it is signed, not after 48 hours pursuant to section 14(3) of the COVID-19 Public Health Response Act 2020. This is because the requirements in the order are intended to prevent or contain the outbreak or spread of COVID-19.

Communications

- 25. Any Alert Level 4 face covering requirements agreed to could be communicated as part of the mandatory record keeping and face covering announcements. These announcements are planned for Wednesday, 18 August 2021.
- 26. Clear public messaging will be communicated to the public and key stakeholders via official Unite Against COVID-19 channels.

Consultation

- 27. The Ministry of Health, Ministry of Business, Innovation and Employment and Crown Law were consulted on this paper.

Attachments:	
Attachment A:	Alert Level 4 Business and Services

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ATTACHMENT A

Alert Level 4 Businesses and Services where face coverings would be required under Options 1 and 2

Businesses and services	Workers	Contact with customers	Face coverings required
Supermarkets, pharmacies, liquor stores in licensing trust areas, dairies, foodbanks, self-service laundries, petrol stations (including stores operating as part of a petrol station)	✓	✓	1, 2
Hardware and do it yourself stores for the purposes of sale to trade customers	✓	✓	1, 2
Accommodation services (e.g. retirement villages, campgrounds, backpackers)	✓	✓	1, 2
Building and construction on nationally important infrastructure, including those in the supply and support chain, and work required to address immediate risks to health and safety, or to prevent serious environmental harm and relevant essential supply chain elements. Any entity with statutory responsibilities that is involved in building and resource consenting necessary for the above processes. [Definition of nationally important infrastructure from AL3 schedule]	✓	✗	
Courts, tribunals and the justice system	✓	✓	1, 2
Freight services (road, rail, air, sea) – includes postal operators and courier services.	✓	✗	
Financial services (e.g. banks, consumer and business financial services, funds management, a stock exchange, associated support services)	✗	✗	Operating to be enabled by an exemption that could require face covering as a condition
Primary industries (food and beverage production for both domestic consumption or export, plus the relevant support services) and veterinary and animal health and welfare services	✓	✗	1 (if indoors)

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Businesses and services	Workers	Contact with customers	Face coverings required
Scientific services [AL3 schedule definition]	✓	✗	2
Entities required to provide distance or online learning for primary and secondary education	✓	✗	2
Social and community-based services provided to support persons to maintain critical well-being or as crisis support for people who are unsafe or homeless	✓	✓	1, 2
Transport and logistics (passenger services (including public transport) by road, rail, air or sea, includes small passenger vehicles), support and maintenance services (including at an aerodrome)	✓	✓	1, 2
Key utilities and communications (e.g. electricity, gas, three waters, waste, fuel, telecommunications, firewood, news, internet) [AL3 schedule definition]	✓	✗	2
Government services, including services provided by state services and local authorities but only if: <ul style="list-style-type: none">- The service is a regulatory or social service or the COVID-19 response or relates to infrastructure- Provision of the service cannot reasonably be delayed (for example because a delay would breach an enactment, risk harm to people or communities or risk damage to the environment)	✓	✗	2
Foreign Government (maintaining critical operations at foreign missions based in New Zealand)	✓	✗	
Security services (including locksmiths)	✓	✗	2
Pest management services	✓	✗	2
Essential elements of pulp and paper plants	✓	✗	2
Emergency services	Exempt	Exempt	
Supply chains for the alert level 4 services	✓	✗	2

Businesses and services	Workers	Contact with customers	Face coverings required
Health services (plus any entities involved with the deceased or producing health sector materials)	Exempt from Order	Exempt from Order	Could require visitors
Parliament including members of Parliament, Parliamentary staff and any officer of parliament	Exempt from Order	Exempt from Order	

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