



# Briefing: PROTECTION FRAMEWORK AMENDMENT ORDER FOR SIGNING – COVID- 19 PUBLIC HEALTH RESPONSE (PROTECTION FRAMEWORK) AMENDMENT ORDER (NO 5) 2022

Date:	25 March 2020	Report No:	DPMC-2021/22-1775
		Security Level:	<del>[IN CONFIDENCE]</del>
		Priority level	[URGENT]

	Action sought	Deadline
Minister for COVID-19 Response (Hon Chris Hipkins)	agree/disagree to recs	25/03/22

Name	Position	
Kay Baxter	Manager, Strategy and Policy, COVID-19 Group, DPMC	s9(2)(a)
Beth Hampton	Senior Policy Analyst, Strategy and Policy, COVID-19 Group, DPMC	s9(2)(a)

## Minister's Office

**Status:**

Signed

Withdrawn

**Comment for agency**

Attachments: **Yes**

# Briefing

## PROTECTION FRAMEWORK AMENDMENT ORDER FOR SIGNING – COVID-19 PUBLIC HEALTH RESPONSE (PROTECTION FRAMEWORK) AMENDMENT ORDER (NO 5) 2022

To: Minister for COVID-19 Response (Hon Chris Hipkins)			
Date	25/03/2022	Security Level	<del>[IN CONFIDENCE]</del>

### Purpose

1. Attached to this briefing is the proposed COVID-19 Public Health Response (Protection Framework) Amendment Order (No 5) 2022, which we recommend that you sign. This order brings into effect the first stage of 'post-peak' changes to the COVID-19 Protection Framework Order, including changes to increase Red capacity limits for COVID-19 Vaccine Certificate (CVC) compliant settings, removal of Red outdoor capacity limits (except for non-CVC outdoor gatherings), and removal of all record-keeping and QR code display requirements.
2. This briefing summarises the effect of the amendments and confirms that the necessary procedural requirements for the making of COVID-19 Orders have been complied with.

### Recommendations

We recommend you:


1. **note** that this brief provides a summary of the key provisions of the proposed order
2. **note** that the requirements for the making of COVID-19 Orders have been complied with, in particular the consideration of:
  - 2.1 purpose of the amendment
  - 2.2 public health advice
  - 2.3 New Zealand Bill of Rights Act 1990
  - 2.4 Ministerial consultation
  - 2.5 The 48-hour notification period


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3. **sign** the COVID-19 Public Health Response (Protection Framework) Amendment Order (No 5) 2022 (Attachment A)

**YES** / NO

  
Kay Baxter  
**Policy Manager**  
**COVID-19 Group, DPMC**  
...24../...3.../2022

  
Hon Chris Hipkins  
**Minister for COVID-9 Response**  
...25../...3.../2022

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## Summary of the Amendments

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### Stage One of Post peak changes to the setting of the COVID-19 Protection Framework

1. This Amendment Order introduces stage one changes to the settings of the COVID-19 Protection Framework (the Framework), in line with decisions made by Cabinet on Monday 21 April [CAB-22-MIN-0086 refers]. These changes are informed by the Cabinet directed reviews of the Framework and My Vaccine Pass, which were undertaken in early 2022 [CAB-21-MIN-0438 and 0497 refer]. The changes take into account the differing characteristics of Omicron compared to Delta, New Zealand's high vaccination rates, and the principle that restrictions should be removed unless they are justified and proportionate.

2. The Amendment Order:

#### *QR Codes and Record Keeping*

- a) Removes the requirement for workplaces and public transport to display a QR code;
- b) Removes the requirement for workplaces and events to have alternative contact record systems and processes in place;
- c) Removes the requirement for in-home services to have systems and processes to keep contact records of workers; and
- d) Removes the legal requirement for business and services, events and gatherings to have systems and processes in place to ensure people entering workplace or premises scan QR code or provide contact record.

#### *Face Coverings*

- e) Removes all outdoor face mask requirements.

#### *Capacity limits*

- f) Increases Red indoor capacity limits for CVC compliant food and drink businesses, gyms, events, gatherings from up to 100 people based on 1 metre physical distancing to up to 200 people based on 1 metre physical distancing (except for gatherings held indoors at private residences, which increase from up to 100 people to up to 200 people, without a 'based on 1 metre physical distancing' requirement);
  - g) Removes capacity limits for CVC compliant outdoors food and drink businesses, gyms, events or gatherings, and tertiary education; and
  - h) Removes capacity limits outdoors for public facilities, and retail businesses or services.
3. In addition, the Amendment Order removes the 'seated and separated' food and drink rule for outdoor settings. This aligns consumption of food and drink requirements with the intent of removing outdoor capacity limits.
4. Finally, the Amendment will revoke the Orange and Green Schedules. These will be amended as part of the Stage 2 changes to the Order, which are intended to come into



effect 4 April 2022, the primary purpose of which will be to remove My Vaccine Pass requirements more broadly and revise the Orange and Green settings in line with Cabinet's decisions.

## Requirements for a COVID-19 Order

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5. This proposed Order amends a COVID-19 Order, which you can do pursuant to sections 11 and 15 of the COVID-19 Public Health Response Act 2020 (the Act). COVID-19 Orders may only be made for one or more of the purposes provided in the Act and must be consistent with the purposes of the Act itself, which is:
- “to support a public health response to COVID-19 that—
- (a) prevents, and limits the risk of, the outbreak or spread of COVID-19 (taking into account the infectious nature and potential for asymptomatic transmission of COVID-19); and
  - (b) avoids, mitigates, or remedies the actual or potential adverse effects of the COVID-19 outbreak (whether direct or indirect); and
  - (c) is co-ordinated, orderly, and proportionate; and
  - (ca) allows social, economic, and other factors to be taken into account where it is relevant to do so; and
  - (cb) is economically sustainable and allows for the recovery of MIQF costs; and
  - (d) has enforceable measures, in addition to the relevant voluntary measures and public health and other guidance that also support that response.”
6. In addition, 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.

### Purpose of the amendment

- 7. The Act provides that you may make a COVID-19 order for one or more of the purposes set out in section 11 of the Act, which are appended to this briefing.
- 8. The amendments represent a reduction of restrictions or clarification of those already in place and therefore comes within the purpose of the Act. The measures which remain, being capacity limits and requirements to wear masks, are designed to prevent and limit the risk of the spread of COVID-19.

### Public Health Advice

- 9. 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.

- 10. Public health advice was provided when decisions were sought regarding the proposed Amendments on 21 March 2022 [CAB-22-MIN-0086 refers]. That advice supported the changes to the restrictions in the Order.

**New Zealand Bill of Rights Act 1990**

- 11. 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).
- 12. Legally privileged: s9(2)(h)

**Ministerial Consultation**

- 13. 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.
- 14. Officials understand that Ministerial Consultation regarding this Amendment Order has been conducted by your office, in addition to the consultation that took place as part of the Cabinet deliberations.

**48 Hour Notification Period**

- 15. The Act requires that a COVID-19 Order must be published and gazetted at least 48 hours before it comes into force. However, this notice period is not required to be observed where you are satisfied that the Order should come into force urgently to prevent or contain the outbreak or spread of COVID-19 or where the effect of the Order is only to remove or reduce requirements imposed by a COVID-19 Order.
- 16. As the effect of the Amendment is only to remove or reduce requirements imposed by a COVID-19 Order, the 48 hour notification period is not required. Should you sign the Order it will come into effect at 11.59pm 25 March 2022.

<b>Attachments:</b>	
<b>Attachment A:</b>	Orders that can be made under the COVID-19 Public Health Response Act
<b>Attachment B:</b>	COVID-19 Public Health Response (Protection Framework) Amendment Order (No 5) 2022 (Signature Copy)

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## Attachment A: Orders that can be made under the COVID-19 Public Health Response Act

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Section 11 of the COVID-19 Public Health Response Act states that the following Orders can be made under the Act.

(1) The Minister or the Director-General may, in accordance with section 9 or 10 (as the case may be), make an order under this section for 1 or more of the following purposes:

(a) to require persons to refrain from taking any specified actions or to take any specified actions, or comply with any specified measures, so as to contribute or be likely to contribute to either or both of the following:

(i) preventing, containing, reducing, controlling, managing, eliminating, or limiting the risk of the outbreak or spread of COVID-19:

(ii) avoiding, mitigating, or remedying the actual or potential adverse public health effects of the outbreak of COVID-19 (whether direct or indirect):

(b) by way of example under paragraph (a), requiring persons to do any of the following:

(i) stay in any specified area, place, or premises or refrain from going to any specified area, place, or premises (including in specified circumstances or unless in compliance with specified measures):

(ia) permit entry to any specified areas, places, or premises only in specified circumstances or in compliance with specified measures:

(ii) refrain from associating with specified persons:

(iii) stay physically distant from any persons in any specified way:

(iv) refrain from travelling to or from any specified area or place, or refrain from travelling to or from any specified area or place in specified circumstances or unless in compliance with specified measures (for example, refrain from leaving an area unless the person has a COVID-19 vaccination certificate):

(v) refrain from carrying out specified activities (for example, business activities involving close personal contact) or carry out specified activities only in any specified way or in compliance with specified measures:

(vi) be isolated or quarantined in any specified place or in any specified way:

(vii) refrain from participating in gatherings of any specified kind, in any specified place, or in specified circumstances:

(viii) report for and undergo a medical examination or testing of any kind, and at any place or time, specified and in any specified way or specified circumstances:

(ix) provide, in specified circumstances or in any specified way, any information necessary for the purpose of contact tracing:



- (x) satisfy any specified criteria before entering New Zealand from a place outside New Zealand, which may include being registered to enter an MIQF on arrival in New Zealand:
- (c) in relation to an MIQF, other place of isolation or quarantine, or a place of self-isolation or quarantine, to require specified actions to be taken, or require compliance with any specified measures, for the purpose of managing the movement of people to, from, and within the MIQF, other place of isolation or quarantine, or place of self-isolation or quarantine, including (without limitation) any of the following:
- (i) giving directions that relate to the movement of people to, from, and within the MIQF, other place of isolation or quarantine, or place of self-isolation or quarantine:
  - (ii) imposing restrictions and conditions that relate to the movement of people to, from, and within the MIQF, other place of isolation or quarantine, or place of self-isolation or quarantine:
  - (iii) permitting people to leave their rooms in the MIQF, other place of isolation or quarantine, or place of self-isolation or quarantine in accordance with any requirements or conditions specified in the order:
- (d) in relation to any places, premises, craft, vehicles, or other things, to require specified actions to be taken, require compliance with any specified measures, or impose specified prohibitions, so as to contribute or be likely to contribute to either or both of the following:
- (i) preventing, containing, reducing, controlling, managing, eliminating, or limiting the risk of the outbreak or spread of COVID-19:
  - (ii) avoiding, mitigating, or remedying the actual or potential adverse public health effects of the outbreak of COVID-19 (whether direct or indirect):
- (e) by way of example under paragraph (d), doing any of the following:
- (i) requiring any places, premises, craft, vehicles, or other things to be closed or only open if specified measures are complied with:
  - (ii) prohibiting any craft, vehicles, or other things from entering any port or place, or permitting the entry of any craft, vehicles, or other things into any port or place only if specified measures are complied with:
  - (iii) prohibiting gatherings of any specified kind in any specified places or premises, or in any specified circumstances:
  - (iv) requiring any places, premises, craft, vehicles, or other things to be isolated, quarantined, or disinfected in any specified way or specified circumstances:
  - (v) requiring the testing of any places, premises, craft, vehicles, or other things in any specified way or specified circumstances:
- (f) in relation to laboratories that undertake COVID-19 testing, by—
- (i) setting quality control measures and minimum standards:



(ii) requiring COVID-19 test results to be reported to the Director-General's public health national testing repository:

(iii) managing the supply of testing consumables (such as reagents and swabs) used by the laboratories:

(iv) providing differently for different classes of testing laboratories (for example, different provisions for laboratories depending on whether they are funded publicly or privately):

(g) requiring the owner or any person in charge of a specified laboratory that undertakes COVID-19 testing to—

(i) deliver or use, in accordance with directions given under the order, specified quantities of COVID-19 testing consumables that the Minister considers necessary for the purposes of the public health response to COVID-19:

(ii) undertake COVID-19 testing solely for the purposes of the public health response to COVID-19 while subject to the order, whether or not the laboratory is contracted by the Crown for that purpose:

(h) requiring persons to permit individuals to enter a place or receive a service whether or not those individuals are vaccinated, have a COVID-19 vaccination certificate, or are otherwise able to produce evidence of their vaccination status:

(i) specifying the evidence that may be required to be produced, and the person to whom the evidence may be required to be produced to, to demonstrate compliance with a specified measure (for example, specifying that a COVID-19 vaccination certificate is required to be produced to enter certain premises) and providing for any prohibitions or duties that apply in respect of the use or production of that evidence:

(j) specifying, for the purposes of a COVID-19 vaccination, the required doses for each COVID-19 vaccine or combination of COVID-19 vaccines:

(k) in relation to COVID-19 vaccination certificates,—

(i) specifying who is eligible to be issued with a COVID-19 vaccination certificate:

(ii) specifying how an application for a COVID-19 vaccination certificate must be made, and the information required to accompany that application:

(iii) providing for the issue, renewal, and extension of COVID-19 vaccination certificates by the Director-General or by the use of automated electronic systems (which certificates are to be treated as if they were issued, renewed, or extended by the Director-General):

(iv) providing for the form and content of COVID-19 vaccination certificates to be determined by the Director-General:

(v) specifying the period for which COVID-19 vaccination certificates are valid, or the conditions under which COVID-19 vaccination certificates may expire.

(2) An order made by the Minister may specify which breaches of an order made by the Minister or the Director-General are infringement offences for the purposes of section 26(3), and may

specify that a breach of an order is a particular class of infringement offence (with the corresponding penalties) for the purposes of regulations made under section 33(1)(b).

- (3) For the purposes of this section and section 12, things includes animals, goods, businesses, records, equipment, and supplies.
- (4) All goods prohibited from import under a COVID-19 order are deemed to be included among goods prohibited from import under section 96 of the Customs and Excise Act 2018, and the provisions of that Act apply to those goods accordingly.

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**Attachment A: COVID-19 Public Health Response (Protection Framework)  
Amendment Order (No 5) 2022 (Signature Copy)**

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