

4 July 2022

§ 9(2)(a)

By email: § 9(2)(a)  
Ref: H202205732

Tēnā koe § 9(2)(a)

### Response to your request for official information

Thank you for your request under the Official Information Act 1982 (the Act) to the Ministry of Health (the Ministry) on 27 April 2022 for information relating to the exemption from the requirement to wear face masks. You specifically requested:

*"We would like some further information on this new process. Can you please provide a copy of the new Health Order asap.*

*Furthermore, since the decision has been announced I will ask again for copies of all advice sent to Ministers on this decision, and the previous decision – as already requested multiple times. This should include all advice sent to Ministers on Mask Exemptions, summary of stakeholder views and any advice provided in any of the processes that Retail NZ has been a part of."*

Regarding your request for a copy of the new Health Order, the COVID-19 Public Health Response (Protection Framework) Amendment Order (No 9) 2022 has been gazetted and come into effect. You can access this through the link below:

<https://www.legislation.govt.nz/regulation/public/2022/0165/latest/contents.html>

The Ministry has searched for any information relating to your request and identified five documents within the scope of your request. All documents are itemised in Appendix 1 and outline our decision on the release of information. These documents relate to stakeholder engagement of face mask exemptions and provides an overview of the business community input by the Ministry.

Under section 28(3) of the Act, you have the right to ask the Ombudsman to review any decisions made under this request. The Ombudsman may be contacted by email at: [info@ombudsman.parliament.nz](mailto:info@ombudsman.parliament.nz) or by calling 0800 802 602.

Please note that this response, with your personal details removed, may be published on the Ministry website at: [www.health.govt.nz/about-ministry/information-releases/responses-official-information-act-requests](http://www.health.govt.nz/about-ministry/information-releases/responses-official-information-act-requests).

Nāku noa, nā



Maree Roberts  
Deputy Director-General  
System Strategy and Policy

## Appendix 1: Documents for release

| # | Date            | Title   | Decision on release  |
|---|-----------------|---|--|
| 1 | 7 March 2022    | <b>Briefing H20220204:</b><br><i>Face mask exemptions: policy decisions for an improved exemption process</i>   | Released with some information withheld under the following: <ul style="list-style-type: none"> <li>• section 9(2)(a) to protect the privacy of natural persons; and</li> <li>• section 9(2)(b)(ii) where its release would likely unreasonably prejudice the commercial position of the person who supplied the information; and</li> <li>• section 9(2)(h) to maintain legal professional privilege; and</li> <li>• section 9(2)(f)(iv) to maintain the constitutional conventions that protect the confidentiality of advice tendered by Ministers and officials; and</li> <li>• section 9(2)(g)(i) to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers and officers and employees of any public service agency.</li> </ul> |
| 2 | 31 March 2022   | <b>Briefing H20220581:</b><br><i>Face mask exemptions: final agreed policy decisions for an improved exemption process</i>  | Released with some information withheld under section 9(2)(a).   |
| 3 | 8 February 2022 | <b>Briefing H20220102:</b><br><i>Face mask exemptions: options to improve the exemption process</i>   | Released with some information withheld under: <ul style="list-style-type: none"> <li>• section 9(2)(a); and</li> <li>• section 9(2)(b)(ii).</li> </ul>  |
| 4 | 26 April 2022   | <b>Briefing H20220664:</b><br><i>New process for face mask exemptions – implementation plan</i>   | Released with some information withheld under: <ul style="list-style-type: none"> <li>• section 9(2)(a); and</li> <li>• section 9(2)(g)(i); and</li> <li>• section 9(2)(h).</li> </ul>   |
| 5 | 4 May 2022      | <b>Briefing H20220739:</b><br><i>New process for face mask exemptions – proposed changes to the COVID-19 Public Health Response (Protection Framework) Order 2021</i> | Released with some information withheld under section 9(2)(a) and section 9(2)(h).   |

# Briefing

## Face mask exemptions: policy decisions for an improved exemption process

|                        |  |                              |          |
|------------------------|--|------------------------------|----------|
| <b>Date due to MO:</b> | 7 March 2022   | <b>Action required by:</b>   | N/A      |
| <b>Security level:</b> | IN CONFIDENCE  | <b>Health Report number:</b> | 20220204 |
| <b>To:</b>             | Hon Chris Hipkins, Minister for COVID-19 Response  |                              |          |
| <b>Copy to:</b>        | Hon Carmel Sepuloni, Minister for Disability Issues<br>Hon Andrew Little, Minister of Health<br>Hon Michael Wood, Minister for Workplace Relations and Safety and Minister of Transport<br>Hon David Clark, Minister of Commerce and Consumer Affairs<br>Hon Poto Williams, Minister of Police |                              |          |

### Contact for telephone discussion

| Name                 | Position  | Telephone |
|----------------------|---|-----------|
| <b>Robyn Shearer</b> | Acting Director-General of Health                   | s 9(2)(a) |
| <b>Maree Roberts</b> | Deputy Director-General, System Strategy and Policy | s 9(2)(a) |

### Minister's office to complete:

- |   |                                    |  |
|---|------------------------------------|--|
| <input type="checkbox"/> Approved             | <input type="checkbox"/> Decline   | <input type="checkbox"/> Noted               |
| <input type="checkbox"/> Needs change         | <input type="checkbox"/> Seen      | <input type="checkbox"/> Overtaken by events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |  |

Comment:

# Face mask exemptions: policy decisions for an improved exemption process

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**Security level:** IN CONFIDENCE      **Date:** 7 March 2022

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**To:** Hon Chris Hipkins, Minister for COVID-19 Response

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## Purpose of report

1. This briefing sets out policy options to improve the current approach to face mask exemptions, for your decision. It includes regulatory and non-regulatory options, and a combination as requested by your office.

## Summary

### Stakeholders are experiencing issues with the current approach to face mask exemptions

2. The Covid-19 Public Health Response (Protection Framework) Order 2021 (the Order) requires people to wear a face mask in a range of settings as a key public health measure to slow the spread of COVID-19.
3. Clause 11 of the Order acknowledges there are some people who cannot wear a face mask, and exempts anyone who “has a physical or mental illness or condition or disability that makes wearing a face covering unsuitable”. While there is no requirement for exempt people to provide evidence, it is recognised that some people are misusing this provision.
4. In attempting to verify whether people are genuinely exempt, workers (especially in retail settings such as supermarkets) are experiencing escalating and unsafe behaviour from some customers. Exempt people also report experiencing distress and discrimination, and are being asked for sensitive personal information, often in public settings.
5. Stakeholder groups including retail, hospitality, transport and education sectors and affected communities<sup>1</sup> have expressed concern with the current approach to face mask exemptions.
6. These stakeholder groups seek a rapid solution.

### Regulatory and non-regulatory solutions have been considered

7. Ministry of Health officials provided advice on 8 February 2022 [HR 20220102 refers] setting out policy options as follows:

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<sup>1</sup> People unable to wear face coverings include people with physical, intellectual or mental disabilities or conditions or personal experiences (such as some victims of crime), or people with sensory, communication or decision-making impairments for whom wearing a face covering is unsuitable. They are referred to in this briefing as affected communities.

*Solutions not requiring mandatory verification of exemptions*

- a. Option 1 – providing legal protection for people who are exempt to better ensure they can access essential businesses and services
- b. Option 2 – taking an educative approach with businesses and the public to clarify what obligations are for businesses and who is exempt from wearing a face mask

*Solutions that introduce a mandatory verification process*

- c. Option 3 – requiring those eligible for an exemption to verify this by obtaining a medical certificate
- d. Option 4 – a centralised application process requiring evidence and keeping a central register of people who are exempt
- e. Option 5 – requiring those eligible for an exemption to self-declare their status in order to be issued with a personalised exemption card.

8. In this advice, Ministry of Health officials identified that Options 1 and 2 would best meet the following evaluative criteria:
  - a. enabling the Crown to meet its responsibilities under Te Tiriti O Waitangi and equity
  - b. protecting public health and minimising potential for misuse (i.e. increase legitimacy)
  - c. upholding human rights and removing barriers (including costs) to accessing an exemption
  - d. maintaining public safety by generating a higher level of trust in the system and reducing confrontation
  - e. being able to be implemented in a timely way with proportionate administration costs
  - f. being sustainable over time.
9. Your office consulted with the offices of Hon Carmel Sepuloni (Minister for Disability Issues), Hon Andrew Little (Minister of Health), Hon Michael Wood (Minister for Workplace Relations and Safety) and Hon David Clark (Minister of Commerce and Consumer Affairs).
10. Feedback via this consultation identified that:
  - a. a solution was sought balancing the needs of affected communities and the business sector
  - b. it is important to ensure barriers to access for affected communities are not exacerbated by an exemption process
  - c. greater rigour is required to ensure legitimacy in the process to issue exemption passes, and therefore greater trust when presented to businesses
  - d. an enforcement mechanism is a key component of an exemption process.
11. Your office subsequently requested Ministry of Health officials to develop a refined proposal for mandatory verification combining Options 1, 2 and 5, along with additional detail about implementation and enforcement, and to engage with key stakeholder groups for feedback.

### Issues identified with a mandatory verification approach

12. Ministry of Health officials have scoped a refined solution comprising Options 1, 2 and 5 and tested this with key stakeholder groups spanning transport, primary care, retail and hospitality, education and affected communities. We have also undertaken further work to determine next steps to implement the refined proposal.

13. In considering the implementation of the refined proposal, three key concerns have come to light. These are:

s 9(2)(h)

s 9(2)(f)(iv)

s 9(2)(g)(i)

14. s 9(2)(h)

15. Engagement to date indicates that none of the mandatory verification options or the refined package of Options 1,2 and 5 would fully meet the expectations of all stakeholder groups. In particular, a number of retail stakeholders including the Retail Association of New Zealand and Countdown supermarkets have made it clear that option 5 will not meet their expectations for rigour or enforceability.

16. The refined package also falls short of meeting one of the key evaluative criteria, being the need to implement a solution in a timely way with proportionate administration costs.

### Do we need a solution? Public health advice about the continued use of face masks

17. The use of face coverings as a public health intervention is a proven approach to prevent the spread of COVID-19 in indoor locations and so will always be encouraged.

18. However, an exemption process will only be required for as long as face masks are mandated. As we move through the Covid Protection Framework, from Red settings to

s 9(2)(f)(iv)

s 9(2)(g)(i)

Orange and Green settings it is likely the mandatory nature of these requirements will be reviewed, and settings may shift from mandatory to highly recommended.

### A non-regulatory solution can support immediate improvements

19. Option 2 (an educative approach) is critical to changing public perceptions and behaviour and managing discrimination and escalating aggression fuelled by misunderstanding. This option could be commenced very quickly via a social awareness campaign.
20. A social awareness campaign can be met from existing Unite Against COVID-19 marketing budget and would seek to communicate clearly to businesses and the public messages such as:
  - a. the reasons for being exempt vary and are not always visible,
  - b. the role of businesses in enabling exempt people to access goods and services,
  - c. alternative ways to access businesses and services to mitigate the risk of not being able to wear a mask,
  - d. it is permitted within the face mask rules to remove your mask when communicating with a person who is deaf or hard of hearing, and
  - e. it is important to wear a mask where possible to prevent the spread of COVID-19.
21. While Option 2 will not fully meet the needs or expectations of all stakeholder groups (e.g., retail), it has garnered support across the sectors.

### Recommendations

We recommend you:

- a) **Note** that officials previously provided advice [HR20220102 refers] containing policy options and recommending that mandatory verification approaches would not best meet the evaluative criteria. **Noted**
- b) **Note** that your office instructed officials to prepare a refined proposal comprising Options 1, 2 and 5 and that the mandatory verification component of that package raises issues to do with the cost and timing of implementation. s 9(2)(h) **Noted**
- c) **Note** that it is likely to take a minimum of thirteen weeks following policy decisions to implement the refined package and cost around \$5 million, subject to securing Cabinet approval to access funding via the COVID-19 Response and Recovery Fund and a budget bid process if costs are ongoing into the 2022/23 financial year. **Noted**
- d) **Note** that delivery of the new process is likely to occur after the forecast peak of the current Omicron outbreak, and that an exemption process is only required so long as face mask mandates are in place. **Noted**

- e) s 9(2)(h) [REDACTED] **Noted**
- f) **Note** that as we move through the Covid Protection Framework, from Red settings to Orange and Green settings it is likely the mandatory nature of face covering requirements will be reviewed, and settings may shift from mandatory to highly recommended. **Noted**
- g) **Note** that all sector groups favoured an approach that includes increased public awareness of the issues around the use of face coverings and the grounds for being exempt from these requirements. **Noted**
- h) **Direct** officials to start implementing option 2 (developing a social awareness campaign to educate businesses and the public about legal requirements on all parties, and clarifying who is exempt under current law). **Yes/No**
- i) **Note** that the issues identified in the above recommendations b) to e) inclusive will present serious challenges to our ability to progress the mandatory verification component of the proposal to combine and deliver options 1, 2 and 5. **Noted**
- j) **Direct** officials to start detailed design and costing of the full proposal (combining options 1, 2 and 5) and report back to you by 29 March 2022 with a Cabinet paper seeking approval for the release of funds from the COVID-19 Response and Recovery Fund. **Yes/ No**
- k) **Agree** to consult on the proposals in this paper and Appendix Two with the Prime Minister, the Minister of Justice, the Minister of Health, the Minister for Disability Issues, the Minister for Workplace Relations and Safety and any other Minister you think fit, should you agree to progress the full proposal combining Options 1, 2 and 5. **Yes/No**
- l) **Agree** to the release of this Health Report, with required redactions in line with the provisions of the Official Information Act, to stakeholders who were involved in the development of this advice once the above decisions have been made and announced. **Yes/No**



Robyn Shearer  
**Acting Director-General of Health**  
 Date: 7 March 2022



Hon Chris Hipkins  
**Minister for COVID-19 Response**  
 Date: 12/3/2022

s 9(2)(g)(i) [REDACTED]

# Face mask exemptions: policy decisions for an improved exemption process

## Background

22. Face masks are an important part of managing the public health risk of COVID-19. Under the COVID-19 Public Health Response (Protection Framework) Order 2021 (the Order) people are required to wear face masks in a range of settings.
23. It is not always practicable or appropriate to wear a face mask, and clause 11 of the Order exempts anyone who “has a physical or mental illness or condition or disability that makes wearing a face covering unsuitable”. While there is no requirement for exempt people to provide evidence, it is recognised that some people are misusing this provision.
24. The current face mask exemption approach is designed to be high trust. It reflects the policy intent that communities who are already marginalised should not have to contend with additional barriers through the Government’s response to the COVID-19 pandemic because of their disabilities.
25. Businesses are currently neither required to enforce face mask requirements, nor empowered to inspect face mask exemption cards under the law. However, we note that businesses may enquire as to whether a person has an exemption from face mask requirements as a condition of entry onto private property. WorkSafe New Zealand confirm that they do not investigate complaints about customers who do not use face coverings.
26. In attempting to verify whether people are genuinely exempt, workers (especially in retail settings such as supermarkets) are experiencing escalating and unsafe behaviour from some customers. Exempt people report experiencing distress and discrimination, and are being asked for sensitive personal information, often in public settings.
27. The Ministry of Health developed a template exemption card in mid-2021 to assist exempt people and reduce the likelihood of being challenged or denied access to goods and services. The template exemption cards have since been distributed to individuals on behalf of the Ministry of Health by the Disabled Persons Assembly (DPA), the Association of Blind Citizens NZ, Deaf Aotearoa and Alzheimers and dementia organisations. Each organisation has made applicants aware of the legislative grounds for an exemption. It is believed there are around 100,000 exemption cards in circulation.
28. These cards are not recognised by many businesses and services, as those organisations do not consider that the cards are backed by a sufficiently robust verification process to establish the validity of the exemption.

## Options to improve the approach to face mask exemptions

29. Ministry of Health Officials developed five options, with two maintaining the current policy intent, and three shifting the policy intent to require mandatory verification of face mask exemptions:

| Option  | Description   |
|---|---|
| Options that maintain the current policy intent |   |
| Option 1: Legal protection                      | <p>Amending the COVID-19 Public Health Response (Protection Framework) Order 2021 to ensure that people who are exempt from wearing a face mask cannot be denied access to essential businesses or services where face mask mandates apply, because they are not wearing a mask. This ensures that legitimately exempt people can enter the business or service, and access the goods or services provided there. A similar provision exists for unvaccinated people.</p> <p>Businesses have expressed concerns about this inclusion without a mandatory verification process (Options 3, 4 and 5).</p> |
| Option 2: Educative approach                    | <p>Working with relevant agencies and the business community to enhance their understanding of their legal obligations relating to COVID-19 requirements.</p> <p>This would also comprise a social awareness campaign to promote greater understanding of care, rights and obligations regarding face mask use and exemptions.</p>  |
| Options to introduce mandatory verification     |   |
| Option 3: Medical certificate                   | <p>Requiring exempt people to obtain a certificate in an approved template from a medical practitioner, nurse practitioner or psychologist as proof of their exemption.</p> <p>This would impose costs on exempt people, and additional pressure on the primary care health workforce.</p>  |
| Option 4: Application process                   | <p>Requiring exempt people to apply to the Ministry of Health and provide supporting documents as evidence of meeting the grounds for exemption.</p> <p>Although this would not be a clinical assessment, requiring evidence would incur costs for applicants to visit their health professional and place additional pressure on the health workforce.</p> <p>This option would also require significant resource commitment from the Ministry of Health to implement and maintain.</p>  |
| Option 5: Self-declaration                      | <p>Requiring exempt people to complete a self-declaration that they meet the grounds for exemption before being issued a personalised exemption card for use with My Vaccine Pass, or as a hard copy where digital access is an issue.</p>  |

30. The analysis of each individual option against the evaluative criteria in paragraph 7 are set out in **Appendix One**. Officials recommended that Options 1 and 2 be progressed [HR 20220102] refers.

**Refined proposal comprising Options 1, 2 and 5**

31. Upon being requested to do so by your office, officials also developed and consulted on a detailed proposal comprising options 1, 2 and 5. The details of this, including agency and stakeholder feedback on the proposal are attached at **Appendix Two**. More detailed stakeholder feedback is attached at **Appendix Three**.

32. The requested package is estimated to take a minimum of thirteen weeks to implement following your policy decision due to the inclusion of Option 5. This comprises:

s 9(2)(f)(iv)

- b. building a new IT platform (six weeks)
- c. supporting people with existing exemptions to transition into a new system (concurrent with the IT platform build and another four weeks once the system is live)
- d. contemporaneously, developing the social awareness campaign, amending the Order and ensuring adequate resourcing is stood up and trained to support the ongoing running of the system (including additional contact centre and exemptions staff).

- 33.

s 9(2)(f)(iv)

*Challenge of securing budget*

- 34.

s 9(2)(f)(iv)

- 35.

s 9(2)(h)

s 9(2)(f)(iv)

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<sup>4</sup> This number includes replacing the estimated 100,000 cards already in circulation, as well as issuing new cards to people who may not have requested them to date but who will do so once they become a legal requirement.

*New Zealand Bill of Rights Act 1990 (NZBORA) concerns*

36. Ministry of Health officials sought advice from Crown Law Office on the refined proposal comprising Options 1, 2 and 5 with respect to NZBORA.

s 9(2)(h)

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s 9(2)(h)

*Timing in the context of the Omicron response*

39. s 9(2)(g)(i)

40. The use of face masks as a public health intervention is a proven approach to prevent the spread of COVID-9 in indoor locations and so will always be encouraged. However, an exemption process will only be required for as long as face masks are mandated. As we move through the Covid Protection Framework, from Red settings to Orange and Green settings it is likely the mandatory nature of these requirements will be reviewed, and settings may shift from mandatory to highly recommended.

**Options 1, 3 and 4 are not recommended**

41. The cost, timing and NZBORA implications would also be relevant for the alternative mandatory verification approaches set out in options 3 and 4. On this basis, officials' advice remains that mandatory verification options are not recommended.
42. As a consequence of further sector engagement over the past week and Crown Law advice, officials are no longer recommending that we proceed with option 1 (providing a legal right of access to essential goods and services for exempt people) in the absence of mandatory verification. That is because it would be too difficult for businesses to ascertain the veracity of someone's claimed exemption status in the absence of formal

identification. Note that if you decide to proceed with mandatory verification then a legal right of entry becomes an important component of the overall package.

### Social awareness campaign to enable immediate improvements and balance stakeholder needs

43. It is proposed that an educative approach via a social awareness campaign (Option 2) is the best option to enable immediate improvements. The social awareness campaign will be critical to changing public perceptions and behaviour, managing discrimination and mitigating escalating aggression fuelled by misunderstanding.
44. Initial discussions with the Department of Prime Minister and Cabinet suggest that this could utilise Unite Against COVID-19 channels. Affected communities and other sector representatives have indicated a willingness to be involved in shaping this messaging.
45. It is possible that an unintended consequence of the public campaign is that it raises visibility of the exemption process and generates increased traffic, including by people without genuine exemption. An increase in the number of people not wearing masks and fraudulently claiming to be exempt would likely increase the overall public health risk in indoors settings. Ministry of Health officials propose to monitor this via key stakeholder groups.

### Regulatory solutions require additional steps

46. Should you wish to pursue a regulatory solution, you are required to undertake additional steps. These are set out in this section for your consideration and action if required.
47. You may make or amend a COVID-19 Order for one or more of the purposes under section 11 of the COVID-19 Public Health Response Act 2020 (the Act). To amend a COVID-19 Order, section 9 of the Act requires that you, as Minister for COVID-19 Response, must:
  - a. have received advice from the Director-General of Health, about:
    - i. the risks of the outbreak or spread of COVID-19, and
    - ii. the nature and extent of measures that are appropriate to address those risks
  - b. be satisfied that the proposed order does not limit or is a justified limit on the rights and freedoms as specified in the New Zealand Bill of Rights Act 1990 (NZBORA)
  - c. consult with the Prime Minister, the Minister of Justice, Minister of Health, and any other Ministers you think necessary, and
  - d. be satisfied that the order is appropriate to achieve the purposes of the Act.
48. The proposal set out in **Appendix Two** corresponds with the purpose of limiting the spread of COVID-19 and mitigating potential adverse public health effects by way of permitting entry to specified premises in compliance with specified measures.
49. Paragraphs 17-18 set out public health advice relating to the purpose of face masks limiting the spread of COVID-19 and the impact of exemptions on this.
50. Paragraph 37 sets out the NZBORA considerations of the proposal contained at **Appendix Two**. Your office consulted on the individual policy options with the offices of Hon Carmel Sepuloni (Minister for Disability Issues), Hon Andrew Little (Minister of

Health), Hon Michael Wood (Minister for Workplace Relations and Safety) and Hon David Clark (Minister of Commerce and Consumer Affairs).

51. Should you wish to pursue a regulatory solution that requires amending the Order, you are required to undertake further consultation with these Ministers, the Prime Minister, Minister of Justice and any other Ministers you think necessary.

### **Next steps**

52. If you decide to proceed with Option 2 as recommended, officials will work with DPMC to design and implement the social awareness campaign using Unite Against COVID-19 channels.
53. If you decide to proceed with a regulatory solution that requires amending the Order, you are required to consult your Ministerial colleagues. Following that, Ministry of Health Officials will progress detailed design to secure budget, and initiate key implementation activities outlined in Appendix Two including seeking your further agreement of proposed legislative changes to the Order.
54. We will work with your office to develop collateral to support the announcement of your decisions.

**ENDS.**

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## Appendix Two: Details for a refined package comprising Options 1, 2 and 5

### Proposal at a glance

1. The requested new exemption system comprises three key components:
  - a. an online legal declaration requiring an exempt person to declare that they meet the grounds for exemption. This will result in an individualised exemption pass being issued
  - b. legal protection in the COVID-19 Public Health Response (Protection Framework) Order 2021 (the Order) to ensure legitimately exempt people are not excluded from businesses and services on the basis of wearing a face mask
  - c. a social awareness campaign to promote greater understanding of care, rights and obligations regarding face mask use and exemptions.
2. The resulting exemption passes may be displayed in the same way as vaccination passes, via an addition to My Vaccine Pass, or as a separate download or printed version where unvaccinated, or digital access is an issue.
3. The legal protection component would mean that businesses and services (where face masks are mandated) would not be able to deny entry to individuals on the basis of not wearing a face mask if an exemption pass is presented. Someone could only be barred entry or required to leave premises (and if necessary, the person referred to the Police) if the person presenting the exemption pass cannot provide identification demonstrating that the exemption belongs to them.
4. The legal protections set out above only pertain to situations where a person might be excluded from premises on the basis of not wearing a face mask. The legal protection would not, for example, prevent a person being issued a trespass notice by a business or service for abusive or violent behaviour or stealing.
5. The proposed exemption pass process seeks to balance the concerns raised by affected communities and the retail sector and the request by both parties for more clarity and certainty that people entering premises are legitimately exempt from face mask requirements. The aim is to improve confidence in the exemptions process and the validity of exemptions for businesses through a more robust process, while also providing assurance of access for affected communities.

### Detailed proposal

#### *Application pathways*

6. To apply for an exemption, the person or their representative would access a self-declaration form on the My Health Account/My Covid Record website, with links from web pages containing information for people unable to wear a face mask. This applies the same identification checks as the process for issuing vaccine passes.
7. An assistance channel will also be provided to support people who cannot access the online form or complete it for themselves. The Ministry of Health's call centre has

indicated its availability to provide this service via Whakarongorau and to grow capacity if required.

*Contents of a legal declaration form*

8. It is proposed that the legal declaration contain statements on:
- a. personal details of the exempt person including name, phone number, address, email, date of birth, NHI number<sup>1</sup>
  - b. whether the person applying is doing so on behalf of somebody else (e.g. child or somebody needing support to obtain an exemption)
  - c. meeting one or more of the grounds for exemption set out in the Order, and selection of the primary reason in a drop-down box, e.g.:
    - i. I/they cannot fit, use or remove a mask without assistance
    - ii. I/they have a physical illness, condition or disability that makes wearing a face covering unsuitable
    - iii. I/they have a mental illness or condition that makes wearing a face covering unsuitable
    - iv. I/they have been the victim of a crime or trauma that makes wearing a face covering unsuitable.
  - d. understanding the legal implications of fraudulently accessing an exemption (i.e. not meeting the grounds), e.g.:
    - i. I/they understand that misusing the exemption mask provision is an infringement offence liable for a \$1,000 fee or a \$4,000 court-imposed fine for individuals
    - ii. I/they understand that the exemption pass cannot be transferred to anyone else (i.e. cannot be used by anyone else).
  - e. agreement for contact details to be kept on a register.

*Process to verify an application*

9. It is proposed that if the following details are completed in the online declaration, the application would be automatically verified:
- a. all contact details
  - b. declaration confirming grounds for exemption are met
  - c. reason identified
  - d. declaration confirming understanding of implications for misuse

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<sup>1</sup> Subject to privacy advice from the Office of the Privacy Commissioner.

- e. permission for details to be kept on the register.
10. If the NHI number is identified as being used for a second application, then the application would be investigated to prevent misuse of the system.

#### *Issuing of exemption pass*

11. Once the declaration is verified, an exemption pass would be issued to the recipient. It is proposed that the exemption pass include the exempt person's name and date of birth.
12. The exemption pass will be able to be displayed as an addition to My Vaccine Pass, or as a hard copy version where digital access is an issue or the exempt person is unvaccinated.

#### *Record of exemption passes*

13. It is proposed that the Ministry of Health maintain a register of exemptions using key personal information including NHI numbers, in line with privacy requirements. It is intended that this register be accessible to authorised enforcement agencies to support enforcement activities, subject to required information sharing requirements.

#### *Operationalising the system*

14. It is proposed to amend the COVID-19 Public Health Response (Protection Framework) Order 2021 to ensure that people who are exempt from wearing a face mask (and carrying the exemption pass) cannot be denied access to businesses or services where face mask mandates apply, because they are not wearing a mask. This ensures that legitimately exempt people can enter the business or service, and access the goods or services provided there.
15. Introducing this provision supports consistency in acceptance of exemption passes and equity of affected communities with the rights given to unvaccinated people.
16. It is proposed that characteristics of accessing a business or service would comprise:
- a. the business having the option to request to see a face mask exemption pass if a person presents not wearing a face mask
  - b. the affected person being required to present their exemption pass if asked
  - c. the business checking the exemption pass, which may also involve checking the person's identification against credentials on the pass to ensure it belongs to the person present
  - d. if the above steps are satisfied, the business must permit access (unless entry is restricted for another matter, such as being the subject of a trespass notice for aggressive behaviour).

#### *Enforcement and penalties*

17. It is not proposed to make it mandatory for businesses where face masks are required to inspect face mask exemptions. This remains a discretionary decision around conditions of entry to private premises, which acknowledges that individuals are responsible for

complying with mask mandates, and that businesses are not liable if customers choose to disregard the mandates.

18. WorkSafe New Zealand has confirmed its position that, while businesses and services must have systems and processes in place for ensuring workers comply with face coverings, it does not take enforcement action against businesses or services relating to how they deal with situations where customers are not wearing face coverings. WorkSafe also confirmed that its decisions about enforcement are informed by relevant government policies and objectives.
19. Capacity is a significant challenge for all enforcement agencies. It is proposed that enforcement therefore takes a similar approach as for misuse of vaccination certificates. Police have advised they will only respond to organised, systemic or serious misuse of exemption passes, and non-masked people where there is public disorder, threats and aggressive behaviour. This is consistent with their current approach to vaccination certificates and face mask use.
20. As such, some potential scenarios and appropriate escalation pathways are set out below:

| Scenario  | Enforcement pathway   | Potential penalty   |
|---|---|---|
| No face mask and no face mask exemption.  | Entry may be refused depending on the store's conditions of entry.  | The Order sets out the following medium risk infringement offence penalties for an individual breaching the face mask requirement in the Order: <ul style="list-style-type: none"> <li>• \$1,000 infringement fee</li> <li>• up to \$4,000 court-imposed fine.</li> </ul>   |
| Use of fraudulent mask exemption identified, triggered by the exemption pass not matching a person's ID, i.e., belonging to someone else or duplicated. | Report via <a href="https://covid19.govt.nz/news-and-data/report-a-breach/">https://covid19.govt.nz/news-and-data/report-a-breach/</a> or NZ Police | Under section 26 of the COVID-19 Public Health Response Act, a person commits an offence if they intentionally fail to comply with a COVID-19 order. Upon conviction, an individual committing this offence can be sentenced to up to 6 months imprisonment or a fine of up to \$12,000 for an individual or \$15,000 for a business. |
| If behaviour escalates and become unruly or aggressive  | Per current escalation pathway in respective business policy  | Under the Summary Offences Act 1981: <ul style="list-style-type: none"> <li>• A fine of \$1,000 for disorderly behaviour in public</li> <li>• A fine of up to \$4,000 or up to 6 months imprisonment for assault.</li> </ul>  |
| Business not allowing a person with an exemption pass (that matches their ID) to enter.   | Report via <a href="https://covid19.govt.nz/news-and-data/report-a-breach/">https://covid19.govt.nz/news-and-data/report-a-breach/</a> or WorkSafe  | Under section 26 of the COVID-19 Public Health Response Act, a person commits an offence if they intentionally fail to comply with a COVID-19 order. Upon   |

|  |  |   |
|--|--|---|
|  |  | conviction, an individual committing this offence can be sentenced to up to 6 months imprisonment or a fine of up to \$12,000 for an individual or \$15,000 for a business. |
|--|--|---|

### Agency feedback on this option

21. The Office for Disability Issues, Ministry of Transport, Ministry of Business, Innovation and Employment (MBIE), and Ministry of Justice were generally supportive of introducing an exemption system with a formal exemption pass, clarified acceptance of passes and a supporting social awareness campaign.
22. General feedback raised concerns with the implementation time frame, noting that the issue is pronounced across various sectors at present. The Ministry of Justice identified that the implementation timeframe may result in restrictions no longer being justified at the time of implementation.
23. WorkSafe New Zealand and MBIE indicated that the proposal does not meet the level of robustness sought from the retail and hospitality sectors. WorkSafe identified that there is a risk of businesses withdrawing people checking exemptions at the door to avoid conflict. Ministry of Health officials note that there is no requirement to enforce face mask requirements for customers upon entry.
24. MBIE identified that the proposal may impact the ability of employers and exempt workers to find alternative ways to mitigate risk to exempt employees to meet their health and safety duties, potentially affecting the tenability of continued employment.
25. The Ministry of Transport also identified that although the proposed solution does not address compliance specifically, the issue of non-compliance is ongoing, for example airline passengers wearing a mask to board the plane and then removing this once airborne.
26. The Office of the Privacy Commissioner considers that ensuring acceptance of an exemption pass to prevent businesses asking individuals for further evidence of exemption is a privacy benefit as it will mitigate the risk of individuals feeling they must provide sensitive health or other personal information in a non-clinical setting. They recommend completing a Privacy Impact Assessment to inform use of the register and in particular the personal information it holds.

### Stakeholder feedback on this option

27. The proposal (combining options 1, 2 and 5 above) has been socialised with key stakeholders from the transport, primary care, education and retail and hospitality sectors along with affected communities.
28. The stakeholder groups generally agreed that the proposal would improve the status quo. However, some stakeholders within sectors (particularly the retail sector) also noted that it would not fully meet their expectations. Key tensions arose around the extent of verification required for issuing exemption passes, the proposed legal right of non-exclusion from premises on the basis of not wearing a face mask for people carrying evidence of a face mask exemption, and the extent of enforcement measures.

29. While stakeholder groups always represent a spectrum of views within them, generally feedback from retail and hospitality representatives involved requesting greater rigour in checking someone really should have an exemption prior to being given an exemption pass. By contrast, generally affected communities sought a solution that did not create additional barriers or costs, nor allow their right to an exemption to be challenged, particularly where this could re-traumatise vulnerable people.
30. Key suggestions from stakeholder groups were also considered as part of the consultation process. This included exploring the option of health providers verifying exemption status information as an additional layer of verification. It also involved exploring introducing an audit system, or enabling businesses to request cancellations of exemption passes where repeated poor behaviour has occurred.
31. The proposal does not reflect these suggestions as analysis indicates each would add significant uncertainty and barriers to the system for affected communities and impose resourcing pressures for the ongoing viability of the system.
32. A summary of feedback from non-government stakeholders is set out below and more detail is provided in **Appendix Two**.

| Sector               | Key feedback  |
|----------------------|---|
| Transport            | General support for the proposal, noting that in different transport settings, particularly public transport, issues of non-compliance will still prevail where tensions escalate because of being asked to show an exemption pass or not having one. Here, it is unlikely that face mask requirements will be enforced to ensure driver and aircrew safety, therefore making the social awareness campaign particularly important.   |
| Primary care         | The current approach is not resulting in significant challenges in this sector. The sector uses, where possible, alternative risk mitigations if face masks are not suitable, e.g. separate waiting areas. Their approach centres around care for exempt people.  |
| Education            | The extent of the challenge is variable between education providers depending on the extent of voluntary compliance. Some describe the proposal as a significant improvement on the status quo, with others feeling it wouldn't make a real difference. There is variance in views between a centralised approach or leaving decisions to respective Principals. Preferred settings for education are continuing to be worked through.  |
| Affected communities | <p>The general consensus is that the proposal is better than the status quo, although not ideal. Key concerns relate to the proposed process being too punitive and the emphasis on compliance and enforcement being intimidating. Representatives of affected communities requested this be modified.</p> <p>A sufficient transition period will be critical for ensuring affected communities have effective support to access the new process.</p> <p>There was support for a social awareness campaign to raise community awareness of the issue in a more constructive and empathetic way.</p> |

|                        |   |
|------------------------|---|
| Retail and hospitality | <p>Businesses feel an obligation to protect their staff and customers, and this drives their decision to enforce a requirement that they are not obliged to do so by law.</p> <p>Face mask requirements drive a great deal of conflict – not just between businesses and customers, but between customers as well.</p> <p>As such, businesses felt that the proposal did not go far enough, suggesting increased scrutiny at the front end during the verification process prior to issuing an exemption and more rigor in terms of prosecution and follow up for people they considered to be being fraudulent. Businesses seek implementation of a solution urgently.</p> |
|------------------------|---|

### Implementation needs

33. The following table provides an overview of key implementation needs and timing. It also provides some early indicative costs. Although full, detailed costs have not been determined, we note that the mandatory verification system would have a start-up cost that would need to be met out of the current budget allocation, and may have ongoing costs into the 2022/ 2023 financial year which would require a separate budget bid.

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| Implementation task   | Time frame  | Cost   |
|---|---|--|
| Building the IT platform  | <p>6 weeks, contingent on:</p> <ul style="list-style-type: none"> <li>other priorities related to the Omicron outbreak which may cause this time frame to slip</li> <li>securing funding.</li> </ul> <p>Note that this is a new build and there is no funding available in the current financial year or in 2022/23. New money will need to be sought through the Cabinet using the COVID-19 Response and Recovery Fund (CRRF), which is currently scheduled to end in June 2022.</p>   | <p>The ongoing cost will depend on the number of exemption claimants and whether they need assistance.</p> <p>s 9(2)(g)(i)</p>   |
| Working with stakeholder groups to support people with existing exemptions into a new system, and to ensure business operations are prepared for the new exemption passes | <p>10 weeks in total.</p> <p>6 weeks contemporaneous with development of the IT system above during which time we will work with representatives of affected communities and businesses to ensure that people are aware of the upcoming changes and that processes and systems are in place to manage the transition once the new system goes "live".</p> <p>4 weeks once the IT system is in play to manage the transition. This will enable:</p> <ul style="list-style-type: none"> <li>providers to support affected people through the new system where required;</li> <li>Ministry of Health to manage the influx of calls through the contact centre and the influx of exemption requests through the centralised Ministry of Health team established to manage this process.</li> </ul> <p>Based on advice provided by the Disabled Peoples Assembly (who have been our primary provider in this</p> | <p>Costs for existing service providers supporting exempt people include:</p> <ul style="list-style-type: none"> <li>people time</li> <li>printing and postage</li> <li>phone systems</li> <li>EAP services.</li> </ul> <p>s 9(2)(b)(ii)</p> <p>Around \$250,000 is anticipated for transition based on a pro rata of DPA's costs for a 10-week transition period and anticipated costs of other service providers. Note that this estimate is dependent on the level of support required by applicants and the availability of service providers.</p> |

|   |   |  |
|---|---|--|
|   | space so far), with an estimated 100,000 cards needing to be replaced 4 weeks is a bare minimum to ensure this is managed smoothly.   |  |
| Developing and delivering the social marketing campaign   | Concurrent to the development, launch and transition of the system and ongoing once implemented.  | DPMC have indicated that a social awareness campaign using Unite Against COVID-19 channels can be met through existing budget.   |
| Amending the Order  | Contemporaneous with the IT build, to come into effect after 6 weeks once the IT system is ready to go live.  | Nil – will use current resources; but delivery in 6 weeks will be subject to competing priorities  |
| Establishing resourcing arrangements to run the system once implemented. Includes additional call centre staff at start-up; and ongoing exemptions team | Contemporaneous with the IT build, to come into effect after 6 weeks once the IT system is ready to go live, assuming we can redeploy existing staff or are able to recruit and train new staff within 6 weeks. | <p>The cost to run the system depends on the number of additional staff we will need to resource the contact centre and the exemptions team/process (for start-up and ongoing). This will be influenced by:</p> <ul style="list-style-type: none"> <li>• the number of inquiries</li> <li>• whether the social media increases inquiries due to increased visibility of the system</li> <li>• whether support is run on business days or 24/7</li> <li>• how long the system is required to run for (e.g. how long mask mandates are in place)</li> <li>• whether specialist skills are required for the assistance channel</li> <li>• the extent of support required for assistance staff (e.g. counselling. Note this has been provided to exemptions teams managing the Auckland border, amongst others, and is a necessary part of the wrap-around support required for staff given that some of these issues will be difficult to manage).</li> </ul> <p>Precise costs cannot be determined until detailed implementation design is complete, however based on advice from both our existing Exemptions team and Finance these are anticipated to be at least the same amount as the IT requirements.</p> |

*Budget*

34. In order to develop and implement this solution, firm costings would need to be developed with detailed design, along with securing the required budget through Cabinet using the COVID-19 Response and Recovery Fund (CRRF). At present, there is no allocated budget for this solution, and the CRRF is currently scheduled to end in June 2022.
35. Ongoing costs into the 2022/23 financial year will be dependent on the number of applications, and the longevity of face mask mandates. Should this exemption system be needed longer term, a budget bid process would be required to secure ongoing funding into the new financial year.

*Transition*

36. Under the current system, everyone who meets the criteria in clause 11(a)(ii) of the Order is automatically exempt from wearing a face mask without having to provide evidence. Under the proposed new system, access to a business or service may be dependent on displaying a face mask exemption. As such, a suitable transition period must be provided to enable time to obtain an exemption pass once the new system is available.
37. A reasonable transition period needs to balance being fair to affected communities and avoiding undue delay. Officials are working closely with affected community representatives to plan for this and estimate that a minimum of four weeks would be required following the new system being live to manage transition of around 100,000 existing exemptions.
38. The transition period will need to be supported by a good communications strategy so that affected communities have advance notice of what will be required of them. A high-level communications plan is set out later in this paper.

*Legal changes*

39. To give effect to the proposals in this paper, the following legal amendments will be required:
  - a. A provision that an exemption on the ground set out in clause 11((1)(a)(ii) is only valid if the person has obtained and carries a face mask exemption identification from the Ministry of Health.
  - b. Introduction of legislative authority for the Ministry of Health to issue face mask exemptions. The operative provisions would need to include eligibility to apply, the application process, the issuing of a face mask exemption identification, the form and content of a face mask exemption identification, and misuse of a face mask exemption identification.
  - c. A provision to empower enforcement officers, businesses covered by face mask mandates, and staff of such businesses, to ask whether people seeking entry have a face mask exemption and, if the answer is yes, to inspect the exemption identification and ask the customer to produce an identity document to check that the exemption identification belongs to that person.

- d. A new provision stating that a person who produces a valid exemption identification must not be denied access to premises where face masks are mandatory, or to the goods and services provided at those premises, on the ground that they are not wearing a face mask.

## Equity

40. The current face mask exemption approach is designed to be high trust, and enable people, particularly in the disabled community, to self-determine their ability to wear a mask. Barriers to access emphasise inequities amongst priority populations, including Māori, Pacific peoples and disabled people.
41. Affected communities identified that introducing mandatory verification, requiring them to demonstrate proof of their exemption status, would create additional barriers for them given the difficulties some of their members (including those with physical and intellectual disabilities or mental health conditions) have in navigating processes.
42. The lack of trust in the current exemption approach is exacerbating barriers for these affected communities. The current lack of legal protection for people who are exempt from wearing face coverings is inconsistent with the rights of access to essential services that have been provided for people who are not vaccinated. It is important that everyone is able to access essential services.
43. The resulting proposal has balanced this need with the introduction of legal protection for affected people holding exemption passes to mitigate existing barriers to accessing businesses or services where face mask requirements are enforced.

## Te Tiriti o Waitangi

44. A centralised process that targets population groups known to experience existing barriers has the potential to exacerbate these, particularly for Māori and Māori with disabilities. This proposal considers the Te Tiriti o Waitangi principles of tino rangatiratanga, options, active protection, partnership and equity:

| Principle   | Application   |
|---|---|
| Providing for <b>tino rangatiratanga</b> means that Māori, including iwi Māori, have a role in key decision-making in the design, delivery, prioritisation, and monitoring of the response to COVID-19. | The Minister for COVID-19 Response is the decision-maker in this instance, however the proposal reflects views expressed through engagement with Kapo Māori Aotearoa and Te Kahui Tumuaki <sup>2</sup> . The proposal maintains the ability for affected people to self-identify as exempt. |
| <b>Options</b> requires kaupapa Māori response pathways and activities to be enabled, included, and   | Engagement with Kapo Māori Aotearoa and Te Kahui Tumuaki to refine the proposal for a face mask exemption process.  |

<sup>2</sup> Kapo Māori Aotearoa are an organisation providing support for blind and visually impaired Māori. They are governed by Te Kahui Tumuaki (National Executive Board), which is accountable to Tangata members for providing Strategic Leadership of the organisation.

|  |  |
|--|--|
| <p>properly resourced. It also means non-Māori services need to be supported to develop capability to provide culturally safe and inclusive care.</p>  | <p>To continue working with this provider to inform implementation and in particular, transition needs and contract support appropriately.</p>   |
| <p><b>Active protection</b> requires the prioritisation of Māori in COVID-19 planning, decision making, resource distribution, research, and monitoring. Decisions and resources should actively protect the health of the Māori population and equip whānau, hapū, iwi and Māori communities to undertake and respond to public health measures to prevent and/or manage the spread and transmission of disease among their people.</p> | <p>This proposal is tailored to reflect Kapo Māori Aotearoa's input, whereby a new system must be accessible (in terms of assisted application processes and non-electronic forms of exemption) and create more clarity than the current system (e.g having a form of exemption pass).</p> |
| <p><b>Partnership</b> requires that the Crown and its agencies recognise the authority of Māori as set out in the principle of Tino Rangatira, and therefore, work alongside Māori leaders to enable a coordinated and united response to COVID-19.</p>  | <p>To continue working with this provider to inform implementation and in particular, transition needs and contract support appropriately.</p>   |
| <p><b>Equity</b> requires a focus on differentiated access, treatment, and resources to achieve equitable health outcomes for Māori in terms of COVID-19 and in the health and disability system more broadly.</p>   | <p>See paragraph 72 to 75 and note the requirement to include non-electronic access to the proposed exemption system, including the pass.</p>  |

## Communications plan

### Key stakeholders

| Stakeholder group                               | Team or organisation  |
|---|---|
| MoH internal                                    | Public Health<br>Communications<br>Media team<br>Disability<br>Mental health<br>Operations<br>Legal<br>IT/Emerging Health Technologies<br>Māori Directorate<br>Privacy  |
| External impacted Government agencies or groups | Department of Prime Minister and Cabinet<br>Ministry of Business, Innovation and Employment<br>Ministry of Education<br>Office for Disability Issues<br>Ministry of Transport<br>WorkSafe New Zealand<br>New Zealand Police<br>Office of the Privacy Commissioner<br>Ministry of Justice<br>Parliamentary Counsel Office<br>Crown Law |
| External other Government agencies              | Ministry for Pacific Peoples<br>Ministry for Women<br>Ministry for Ethnic Communities<br>Te Puni Kōkiri<br>Te Arawhiti<br>Ministry of Foreign Affairs and Trade<br>Ministry for Primary Industries<br>Ombudsman<br>Auditor General  |
| External – education                            | Principals Group via Ministry of Education  |
| External - transport                            | Qantas<br>Air New Zealand<br>Bus and Coach Association NZ<br>KiwiRail<br>NZ Airline Pilots' Association<br>Air Chathams<br>Interislander<br>Strait NZ<br>E tū (union)   |
| External – business sector                      | Retail NZ<br>Business NZ<br>Countdown Supermarkets<br>Foodstuffs New Zealand<br>Hospitality New Zealand<br>Restaurant Association of New Zealand  |
| External – primary care                         | Royal New Zealand College of General Practitioners  |

|                                 |  |
|---------------------------------|--|
| External – affected communities | Disabled Persons Assembly NZ<br>Alzheimers New Zealand<br>Association of Blind Citizens NZ<br>New Zealand Dementia Foundation<br>Deaf Aotearoa<br>Balance NZ<br>People First<br>Dementia New Zealand<br>New Zealand Dementia Foundation<br>Mental Health Foundation<br>Kāpō Māori Aotearoa<br>Human Rights Commission<br>Mental Health and Wellbeing Commission<br>Health and Disability Commission<br>Office of the Children’s Commissioner |
| General public                  | N/A  |

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### Ways of engaging

The table below sets out different levels of engagement and an indication of the key communications activities at each level.

| Types of engagement |  |   |   |   |   |
|---------------------|--|---|---|---|---|
|                     | <b>Inform</b><br>To inform or educate stakeholders in one-way communication, there is no invitation to respond.  | <b>Consult</b><br>To gain information and feedback from stakeholders to inform decisions made internally. Limited two-way communication – ask questions, stakeholder provides answers.        | <b>Involve</b><br>To work directly with stakeholders through the process to ensure that issues and concerns are understood and considered. Two-way or multi-way communication where learning takes place on both sides.                               | <b>Collaborate</b><br>To partner with stakeholder/groups for the development of mutually agreed solutions and joint plan of action. Two-way, multi-way communication with learning, negotiation and decision-making on both sides. Stakeholders work together to take action. | <b>Empower</b><br>To delegate decision-making into the hands of the stakeholders on an issue. Stakeholders are enabled/equipped to actively contribute to the achievement of outcomes.  |
| <b>Actions</b>      | <ul style="list-style-type: none"> <li>• Ministerial announcements</li> <li>• Fact sheets on MoH/COVID-19 websites</li> <li>• Direct communications with key stakeholders</li> <li>• Media releases</li> </ul> | <ul style="list-style-type: none"> <li>• One-on-one meetings with key stakeholders</li> <li>• Where possible/appropriate, feedback from stakeholders will inform proposed solution</li> </ul> | <ul style="list-style-type: none"> <li>• One-on-one meetings with key stakeholders</li> <li>• Involving key stakeholders in working groups</li> <li>• Where possible/appropriate, feedback from stakeholders will inform proposed solution</li> </ul> | <ul style="list-style-type: none"> <li>• Involving stakeholders as owning key activities</li> <li>• Contracted services to deliver solution.</li> <li>• Maintain regular meetings and reporting.</li> </ul>   | <ul style="list-style-type: none"> <li>• Devolving key activities to stakeholders to deliver solution.</li> <li>• Provide guidance to support operational use of a solution.</li> </ul> |

*Proposed engagement approach throughout design and implementation of a new solution*

The table below identifies which level of engagement (and therefore associated activities) is suitable for each stakeholder group at key phases of design and implementation of a new face mask exemption process.

| Stakeholder type                      | Design and implementation phases |                            |                         |                       |                   |                |
|---------------------------------------|----------------------------------|----------------------------|-------------------------|-----------------------|-------------------|----------------|
|                                       | Refine proposal                  | Decision, pre-announcement | Announcement of changes | Implementation design | Transition period | System go live |
| MoH internal                          | Collaborate                      | Collaborate                | Collaborate             | Empower               | Collaborate       | Empower        |
| External impacted Government agencies | Collaborate                      | Involve                    | Involve                 | Collaborate           | Collaborate       | Collaborate    |
| External other Government agencies    | Consult                          | Inform                     | Inform                  | Inform                | Inform            | Inform         |
| External – education                  | Consult                          | Inform                     | Inform                  | Consult               | Collaborate       | Empower        |
| External – business sector            | Consult                          | Inform                     | Inform                  | Consult               | Collaborate       | Empower        |
| External - transport                  | Consult                          | Inform                     | Inform                  | Consult               | Collaborate       | Empower        |
| External – primary care               | Consult                          | Inform                     | Inform                  | Consult               | Collaborate       | Empower        |
| External – affected communities       | Consult                          | Inform                     | Inform                  | Consult               | Collaborate       | Empower        |
| General public                        | N/A                              | N/A                        | Inform                  | Inform                | Inform            | Inform         |

## Appendix Three: Stakeholder feedback

### Summary of feedback

#### Face covering exemption proposal– summary of input from the Transport Sector

22 February 2022

##### *Experience of the transport sector*

- Ongoing issues with non-compliance. This has increased significantly with protesters coming to Wellington.
- Aggression and hostile behaviour towards staff continues to be a concern and seems to be increasing. Some providers have had to increase security to protect staff (Interislander). Some staff no longer want to work on certain routes because of the abuse they receive and fears for their safety (Jetstar).
- Passengers are increasingly getting upset at non-compliance and expect staff to remove those passengers who are not wearing face coverings. However, as these people say they are exempt there is little that staff can lawfully do (Jetstar/Air New Zealand).
- A lack of clarity on who is exempt can result in people being asked to wear a face covering multiple times on a single journey.
- Staff who themselves have exemptions are subject to abuse from passengers.
- Compliance will continue to be an issue in relation to those who refuse to wear a face covering but are not exempt, regardless of the process established.

##### *Main issues identified*

- There is no action that can be taken if someone refuses to wear a face covering and claims they are exempt.
- Staff need to be supported by police and other enforcement agencies to ensure safety.
- There is a real concern of the risk of COVID-19 to staff and other passengers where some people do not comply with the face covering mandate.

##### *Feedback on proposed new exemption process*

- Overall agreement that the proposal is better than the status quo.
- Agreement that process should focus on those affected people and not those flouting the system.
- General support for issuing cards with identifying details.
- Proposal needs additional compliance checks to avoid confrontation with the public. Police can not deal with every instance of non-compliance.
- Education and awareness raising are key.
- Digital option is preferred. However, staff will still need to ask people to wear a face covering regardless of change.
- People who are flouting the rules should not be protected.

#### Face covering exemption proposal – summary of input from the Education sector

23 February 2022

##### *Experience of the education sector*

- The experience schools are having with the face mask mandate vary significantly, some describing it as a non-issue, and others saying that it was a major point of tension within their school communities.
- Some schools are having difficulties enforcing face covering mandates and experiencing high numbers of non-compliance and aggression from students and parents.
- Teachers are concerned about the risk of COVID-19 to themselves and other students.

- Some schools are receiving feedback from parents that their children are becoming increasingly distressed about wearing a face covering. Acknowledging this, some schools are not enforcing the face covering mandate.
- The movement against the mandate appears to be growing amongst students and teachers.
- For some schools, compliance increased once a positive case was detected.
- Despite the difficulties in enforcement some school communities are calling for younger students to be required to wear face coverings.
- Some schools have the resources to employ a COVID-19 liaison in their school, it works nicely as they would have the expertise to have these conversations with students and parents, meaning that these conversations don't have to happen with the school or in classrooms. All schools would like to be funded for a liaison officer for COVID-19. They can act as the coordinator and repository of sensitive information about bona fide cases for exemptions - to protect all people, including the vulnerable.

#### *Main issues identified*

- Schools that are having less conflict have much higher levels of voluntary compliance coupled with a no-questions-asked approach to students who say they are exempt.
- Some schools are experiencing increasing non-compliance as a political form of protest (from the parents or students).
- Due to the number of students refusing to wear a face mask at some school's teachers are feeling unsafe and don't want the stress of policing face mask compliance.
- Principals want the power and authority to question face mask compliance and exemptions. It should be a school led discussion due to their responsibility of providing a safe environment to the staff and other students.
- The sector believes the solution should be school based and are happy to work with the Ministry of Health to design a bespoke solution.

#### *Feedback on proposed new exemption process*

- Some felt the proposed process may make matters worse because the students/teachers will be still able to self-declare but now they will have an official Ministry of Health exemption card, that provides them legal protection and stops schools from being able to ask the person questions.
- Taking the power away from schools will make it more difficult to deal with non-compliant students through measures such as asking them to learn online.
- Schools need to lead the discussion of face mask exemptions, not the Ministry of Health.
- Some thought that people would quickly learn how to fraud the system.
- Other stakeholders feel like this proposal is light years ahead of the current process even with the issues listed above.
- The timeframe is too long, especially for those in Auckland, it will miss the peak of the omicron wave.
- Questions were raised about who is going to enforce compliance?
- More children specific information on how to wear masks is required.

### **Face covering exemption proposal - summary of input from the Primary Care sector**

**23 February 2022**

#### *Experience of the Primary Care sector*

- GPs are seeing an increased number of people who do not want to wear masks. Managers are spending much of their day dealing with aggravated individuals.
- A few clinics have trespassed people who refuse to wear face coverings.
- Many of the people that are not wearing face coverings are also unvaccinated and in the high-risk category.
- Unmasked patients are often being triaged outside the clinic. During their visit contact is minimised and GPs wear full PPE.

- Some GPs are seeing people who are seeking an exemption for themselves or their children. These people that are asking for exemptions often do not have any medical reasons and therefore are refused a medical letter.

### *Main issues identified*

- Clinics are managing the risk well by having an alternative tirage and red waiting zones for unmasked people to protect the staff, other patients, and the unmasked person.
- The biggest issue is people not wearing face coverings properly.
- Communication is essential, especially what it means in the primary care context. It should be communicated that the core benefit of wearing a mask is to others around you, and then to protect yourself, not the other way around.
- Clinics need very clear messaging and posters we can put up in waiting rooms and front entries (and for clinics websites). The Nudge Team (behavioural insights team) can help with wording from a primary care perspective.
- Face mask messaging needs to be made available in different languages. ·

### *Feedback on proposed new exemption process*

- Support a legitimate process to protect patients. The process should be easy to use for those who need it, and gently dissuades some people who don't need it, and tries to robustly refuse people who should not get an exemption.
- It is essential that any new approach does not increase access barriers for affected communities as that would cause them additional distress and discrimination.
- Some felt that the newly proposed process does not raise the bar high enough and is likely to significantly increase the number of people not wearing masks and increase the exposure and transmission.
- The process must ensure that people with an exemption can still be managed differently because of the risk they pose to others, 'we don't want these people to be able to share the same waiting rooms with other patients. · It would be good if the new exemption process had a clearer definition on who is exempt.
- The new process needs to provide information sharing across agencies. The Ministry of Health needs to provide support for DHBs with implementation, guidance and advice.
- The change in process will come in too late.

## **Face covering exemption proposal - summary of input from affected communities**

**24 February 2022**

### *Experience of affected communities*

- DPA will no longer provide the face mask exemption service from 31 March. It is unsustainable right now because of the social context.
- Continued uncertainty resulting in abuse of affected communities.
- Affected people should not be further stigmatised or disadvantaged for not being able to wear a face mask. Wearing a face mask can be distressing for both individuals and, where relevant, their careers, parents, and those they may be with.
- This is occurring in many situations and is resulting in refusal of entry to essential businesses and services, such as supermarkets, medical centres, and pharmacies, along with facilities such as playgrounds, sporting grounds, schools, gyms and swimming pools.
- Affected people want to be trusted to use their own judgement. They feel they shouldn't need to keep justifying themselves and being questioned about private matters in a public place when accessing essential services and other facilities.

- For people who are genuinely exempt, the current system lets them down (lack of central register and based too much on trust).

### *Main issues identified*

- Communities require support for ensuring access to all businesses and services not only essential businesses and services.
- Important to represent disabled people and why they can't wear a mask, along with human rights issues in comms/education.
- Mask use when communicating with deaf people is a barrier.
- There needs to be a transition period.
- PR/marketing campaign needed with a focus on business and their interaction with affected communities.
- The policy requires people to behave in a certain way, which to date has fuelled fires that have been unhelpful. The solution must be simple and straightforward. Enforcement is concerning.
- Education campaign is key and will drive some of the time frames; allow time for an education process to take effect and work in the context of the overall plan (i.e. reducing mandates). This still has value longer term. Remove judgement calls on behalf of businesses, e.g., use pass verifier for exemptions also. The deaf community also needs further protection, i.e. use of shields instead. Education to emphasise care not rights to manage anti- community.

### *Feedback on proposed new exemption process*

- Overall, the proposed process is better than the status quo.
- It does leave affected communities with some reservations about enforcement in particular – preference to ensure the enforcement approach does not leave room for businesses to be making judgement calls.
- Details to work out around implementation, including education and transition.
- List of grounds for exemption in proposal do not line up with the Order. List needs to be more extensive to include mental health and trauma related.
- People who have experienced trauma would currently come under the 'other' category in the proposal. It could be re-traumatising for people to explain what has happened to them. How much evidence do they feel they have to provide? Preference to have a trauma/victim of crime included alongside mental health. Clarified no intention to make people relive trauma.
- Questions were raised about attaching exemption to vaccine pass – some people who are exempt will be unvaccinated.

## **Face covering exemption proposal - summary of input from the Retail/Hospitality sector**

**23 February 2022**

### *Experience of the Retail/Hospitality sector*

- Staff continue to face abuse from those who are not wearing a face covering. They can also be confronted by others who take offence to being in a premises where people are allowed to not wear a face covering.
- Staff leaving because of being scared and feeling unsafe. It is becoming increasingly hard to find workers.
- Staff retention and sickness are a real issue. Staff are having mental health problems due to dealing with the issue.

### *Main issues identified*

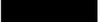
- A lot of people abusing the process. Need to strengthen enforcement and be able to protect staff.

- If staff did not police face covering requirements, other customers could become angry and react adversely.
- Without government intervention and direction, the sector will struggle to know what to do. Clear messaging is key.
- Don't want people to be able to self-declare.
- People who are not wearing a face covering are also unvaccinated and putting everyone at risk.
- Need extra support with de-escalation techniques.

#### *Feedback on proposed new exemption process*

- Support a legitimate process to protect staff and the public.
- There needs to be a right for staff to ask to see an exemption pass with identifying details.
- Process needs to be robust to deter fraud.
- It is important to make changes as quickly as possible.

### **Additional information provided directly by stakeholders**

| Organisation/person   | Comment  |
|---|--|
| <b>Taikura Trust<br/>(Affected people)</b>  | <ul style="list-style-type: none"> <li>• Many of us have taken a while to get the exemption printed and pocket size in order to show it. Someone I know who is in her seventies and has severe emphysema, she doesn't use a computer and only just got her exemption last week. Up to this point she has faced abuse and fearing for her safety due to not having the card.</li> <li>• Any change would need to make sure people could get hold of new cards easily.</li> <li>• The community isn't really keen on change. It could disadvantage the vulnerable even more.</li> <li>• People with hidden disabilities such as severe asthma or emphysema have really struggled with abuse.</li> <li>• Even where people have a card they feel uncomfortable using it due to the abuse they receive.</li> </ul> |
| <b>s 9(2)(a)</b><br> | <ul style="list-style-type: none"> <li>• Need more help understanding the exemption process. It's very wordy and not easy read. Written English is not 'deaf speak' so many cannot read it.</li> <li>• Accessing health services and shopping etc is difficult for deaf community who may not be able to see the lip movements of others wearing masks (lip reading).</li> </ul>   |
| <b>Worksafe</b>   | <ul style="list-style-type: none"> <li>• WorkSafe shouldn't be following up face covering complaints about individuals. WorkSafe's role focuses on PCBU's (businesses or undertakings) failing to comply with their duties – not individuals.</li> <li>• Worksafe has recently stood up a new team to help process, triage and allocate incoming COVID complaints. This new team helps focus enforcement personnel on those cases where some sort of WorkSafe intervention is required.</li> </ul>   |
| <b>Foodstuffs</b>   | <p><b>Key concerns</b></p> <ul style="list-style-type: none"> <li>• The 6-8 week implementation timeline is challenging given the rising Covid crisis, but we appreciate the requirement to consult widely and complete a technical build. Any means of expediting this timeline is critical for all involved but particularly our vulnerable who's risk of contracting Covid is escalated by those who <u>choose</u> not to wear masks.</li> <li>• Although Foodstuffs acknowledge that the working group has heard the retail industry's concerns, we still have significant concerns about the</li> </ul>   |

robustness of its proposed new exemption process. This process should ensure that the majority of individuals who can wear masks are doing so, again in order to protect those who can't wear masks.

- Aside from the disabled groups and those exhibiting antisocial behaviour, there seem to be a growing number of people who can no longer be bothered with mask wearing. We recommend that the PR campaign should focus on resetting their mindset too.
- Based on our experience at store entry points, we believe that many individuals will make the legal declaration even though they are not genuinely exempt – without any regard for the legal consequences of making a false declaration. Further, we believe that NZ Police & MOH resources are too stretched with the Covid crisis to adequately audit or follow through with consequences at this time. Foodstuffs believe that people will assume their declaration will never be investigated.
- Without a proof of exemption as a condition of entry, we expect Foodstuffs and other businesses will continue to have a high number of mask-related incidents that require police assistance, straining their resources. This has consumed significant and unnecessary resource for Foodstuffs' head office and stores which could be focused on other priorities.
- We are concerned that the rules regarding trespassing are too broad and would like the intent and wording strengthened. All businesses should be able to trespass aggressive people and at the moment that aggression centres around the issue of mask wearing. It is critical that we are able to trespass individuals when aggressive behaviour is displayed, to protect our team members, our customers and supply partners. We understand that the NZ Police are also concerned about this.

#### **Requests for consideration**

- Foodstuffs strongly believe that proof of exemption as a condition of entry if individuals are unmasked is required under this new process. We believe this should be an immediate action, ahead of implementing this new method. Immediate action would support the operational processes for businesses and help to limit transmission during Omicron's peak.
  - We acknowledge that individuals are entitled to privacy, however by not wearing a mask they are publicly declaring themselves to be different. Foodstuffs believe the general public would prefer a more rigorous process. This would likely result in less aggression issues with customers, less complaints about businesses and more tolerance towards the vulnerable.
  - It would be ideal if this exemption could be attached to My Vaccine Pass or the Covid Tracing App.
  - If a formal proof of exemption is not required, please consider whether the proposed legal declaration must be supported by e.g. a Dr's reference or a photograph ID. This would help act as a deterrent and aid any audit that may be required. If this is not possible because of the burden on primary health then a request for more personal details such as their Dr's name and medical consent to contact their Dr should an issue arise may be a good deterrent to those who have false intent.
- An audit / escalation / complaint process would be valuable, particularly regarding false legal declarations from individuals.

|           |  |
|-----------|--|
|           | <ul style="list-style-type: none"> <li>• We would like to see the ability for police and businesses to alert MOH to potential false exemption users for review of their exemption card (e.g. footage from our internal systems, names we have and an outline of the incidents that have led to the complaint). We strongly commend MOH to resource to allow for this.</li> <li>• Foodstuffs strongly supports the PR / Media campaigns and agree that this should come from Government rather than NZ businesses. Within this, recognition of the mask challenges that businesses and customers are experiencing on entry would help to generate positive community support.</li> <li>• Foodstuffs believe that the penalty for fake or non-genuine copies of the new exemption card should be raised. \$1-4,000 is too light and prosecution should be available if aggression / trespassing has been necessary, particularly when the negative behaviour has been repetitive.</li> <li>• Foodstuffs have supported customers and community with alternative shopping methods such as online shopping, an 0800 shopping line and in partnership with the Student Arm. We have supported our vulnerable for the last two years and moving forward we could include those who cannot wear masks also. Shopping a store is not the sole method of accessing food and supplies.</li> </ul> <p><b>Other questions</b></p> <ul style="list-style-type: none"> <li>• What are the retailer's rights when someone does not have an exemption card? We currently find this unclear, although note that we cannot deny entry on the basis of no mask which is a concern.</li> <li>• How does the Government propose to verify or investigate customer declarations to ensure they are valid? Without implementing the recommendations above, Foodstuffs believe this would be very challenging and customers would assume no investigation occurs.</li> <li>• Could an exemption card be cancelled if multiple customer incidents / trespasses have been issued?</li> <li>• What resources or support could Foodstuffs provide to expedite the 6–8-week implementation timeline, or enable a smooth launch of the process?</li> </ul> |
| Retail NZ | <p>The vast majority of retailers agree that mask exemptions should be available for a proportion of the community, whether this is their customers or staff. This current proposal requires strengthening and further elements to ensure that this system does not fall into the cracks of the current system and has the ability to protect those who require protection from COVID-19. A summary of the points in response is below:</p> <ul style="list-style-type: none"> <li>• Overall supportive of this current proposal but with adjustments to make this a system businesses and customers can trust. This can be achieved through the following changes: <ol style="list-style-type: none"> <li>1. <b>An audit process built into the application and verification process.</b> This could be through phone calls to follow up applications that before "form applications" (just like me know communities of who have taken advantage of the current system currently practice)</li> </ol> </li> </ul>   |

2. **Criteria for primary reason to be narrowed.** Align to the current criteria as to not create confusion within impacts persons. Remove the "Wearing a mask would be painful" criteria.
3. **Opportunity to provide evidence.** Provide the pathway to provide evidence for the reason, this could be in many different ways e.g. GP, mental health practitioner etc
4. **Strengthen the declaration.** By stating that all applications will be reviewed with fraudulent applications passed to Police for investigation. Now if you do is a matter for your resources, but even reviewing a sample set can pick up fraudulent behaviour.
5. **Increase penalty.** Make the starting penalty for fraud a \$4,000 infringement fee and the court fine to be higher. This is to stamp out the incentive to defraud the system. This sends a clear message to those who use the current system fraudulently.

- Areas the sector cannot support in this policy:
  1. **Cannot support guaranteed right to access a business for an exempt person.** Given the high levels of abuse and violence that retailers experience for multiple reasons, and the Governments support to combat violence, aggression and theft in retail stores we cannot support the ability to trespass individuals being taken away from a store. There will be circumstances that individuals who make have an exemption have been trespassed from a store on a previous occasion. It is not okay to revictimize retail workers in this way. The sector has a zero-tolerance approach that needs to be supported, and not overridden by this policy. This change will create further tensions, re-harm retail workers if they need to deal with an individual who has already been trespassed. Most retailers provide alternative shopping methods for those that can't wear a mask or choose not to come into store (online, telephone, contactless delivery).
- Timeframe concerns:
  1. **The timeframe of 4-6 weeks is not quick enough.** This needs to be changed quickly and at speed. We have engaged in good faith on this process since August 2021 asking for change. The retail sector is mentally exhausted by those undertaking fraud in the system and abuse towards them. Staff, customers need protection now from the Omicron outbreak, and we note with interest yesterday an official stating that those who don't use masks don't cause spread of COVID-19. This view into policy needs to be tested against the requirement to wear masks at all levels. We need to see a faster timeframe and how everyone can work together to achieve this e.g. how to resource disability groups with great comms, staff fund etc to respond.
  2. The timeframe concern is also around the fact we were informed in the last stakeholder system that this process is the fastest to set up and easy to intergrade to what is already happening in the Ministry of Health systems.
- Other ideas to consider:
  1. Resourcing disability groups with staff and funding to respond to the change in system.
  2. Providing mental health support and funding for any individual who feels re-harmed by having to apply for this exemption.

|                            |   |
|----------------------------|---|
|                            | <p>Surely this is an opportunity to create a safety net of support for these people.</p> <p>3. Focus public awareness comms on disability sector and general public. Industry groups can quickly communicate directly with businesses very easily.</p>  |
| <p><b>Qantas Group</b></p> | <p><b>Application/Verification Process</b></p> <ul style="list-style-type: none"> <li>• A robust application process for an exemption will be critical to ensure those who are genuine will be able to continue to access the exemption.</li> <li>• The form needs to be supported by a robust evaluation process and assurance activity that demonstrates to the New Zealand public that action is being taken if it is being misused. <ul style="list-style-type: none"> <li>○ Whilst we understand the importance of ensuring accessing an exemption has a limited number of barriers (including cost) it is also important that the application process deters those who wish to access an exemption for other reasons, including political protest.</li> <li>○ The proposed legal declaration form assists in being able to better distinguish between legitimate and non-legitimate applications.</li> </ul> </li> </ul> <p><b>Issuing of Exemption Pass/Record on a Register</b></p> <ul style="list-style-type: none"> <li>• We are supportive of a government managed exemption pass/exemption register'</li> <li>• We propose that the pass has a unique QR code which assists in mitigating the risk of fraudulent activity, that it can be 'read' like the vaccination pass on an APP and can be cross checked with the passenger travelling as applicable.</li> <li>• We propose the checking process is done prior to exemption passengers reaching the boarding gates as the responsibility of verifying the legitimacy of person's exemption should not fall on ground staff or crew.</li> <li>• Consideration will need to be made to determine the who is best placed to undertake the checks given the Police are currently the only enforcement agency.</li> <li>• We are supportive of the proposal that a register is maintained to enable the MoH to determine if previously declined exemptions applications are subsequently reapplied for under different circumstances.</li> <li>• Consideration should also be given to any other New Zealand government databases this register needs to interface with to ensure the legitimacy of the application. <ul style="list-style-type: none"> <li>○ It is anticipated the proposed exemption pass unique to each individual person will facilitate crew having confidence in the application and verification pass.</li> <li>○ It will be critically important that the communication strategy supporting the new exemption process provides reassurance and confidence to those compliant mask wearing passengers that the process is robust.</li> </ul> </li> </ul> <p><b>Compliance</b></p> <ul style="list-style-type: none"> <li>• We support the recommendation that the new exemption card process should be able to be used for all exempted persons from wearing a face mask and that they should not be denied access to businesses or services.</li> <li>• For this to become 'accepted' practice by the New Zealand public it is critical the communication strategy addresses the "why" as to exemptions being needed.</li> </ul> |

- Most inappropriate behavioural issues are with passengers who are not exempt but are failing to wear masks correctly or at all.
- Airlines have established standard operating procedures (SOPs) and will report such incidents through their respective safety/security reporting processes.
- If events escalate into unruly/at risk behaviour (noting that at this time there is a very fine line dividing the two), it will be important that the enforcement agency (e.g., New Zealand Police) are available at airport locations to assist as required with removal of such customer(s) from flights.
- Airlines (like the QFG) have in place unruly passenger processes which can include implementing bans on future travel on such passengers (as applicable) however they need to be supported by government initiatives such as this review and enforcement agencies.

**Other**

- The mandatory mask requirement for the GREEN setting under the COVID 19 Protection Framework needs to be reviewed to ensure consistency of application across the transport sector. Current requirements are inconsistent between air travel and other forms of public transport.
- A robust communication strategy is required to complement the new mask exemption framework.
  - Current mask wearing messaging needs to be complemented by an active communication strategy which highlights the need for exemptions and demonstrates that New Zealand can trust the process of how exemptions have been determined and managed and if misused occurs punitive action can and will be taken.
  - Consideration of the escalating and unsafe behaviour of mask compliance can be made been seen within the broader emerging behavioural trends of; aggressive and sometimes violent behaviour in response to new rules, mandates and changes to societal 'norms' as a result of the impact of COVID 19 (the Wellington Protest).
  - In response to these emerging trend, the Airlines for Australia, and New Zealand (A4ANZ) launched a Customer Behaviour Initiative – 'No More Carry On' in Australia. An Industry Code of Practice was developed, alongside an integrated marketing campaign, including billboards at airports and a social media campaign. There is discussion in A4ANZ that this campaign could be extended to the New Zealand context with support of all key players including; the government, airlines, the regulator (CAANZ) and the New Zealand Police.
  - QFG can facilitate a briefing with MoH on this campaign to gain learnings and insights which may assist in a New Zealand context.
  - To support the new exemption framework and communication strategy key government ministers, the Police Commissioner, airline spokesperson etc will need to be proactive with messages that demonstrate support for those at the frontline managing the implementation of the revised mask exemption proposal. This will help build awareness and momentum of the mask exemption campaign if done effectively.

|   |   |
|---|---|
| <b>Air NZ</b>                                 | <ul style="list-style-type: none"> <li>• If a passenger is not wearing a mask aircrew will, on most occasions, ask passengers to wear a mask/covering.</li> <li>• On some occasions to prevent confrontation with some individuals they may ask them to wear the mask, and to prevent aggression and ensure safety in the cabin /aircraft they may not pursue to gain compliance.</li> <li>• The way the current exemption is written requires aircrew to accept a statement of exemption even when it is likely to be an abuse of process.</li> <li>• Unless a person becomes unruly there is very little recourse.</li> </ul> |
| <b>Mental Health Foundation</b>               | <ul style="list-style-type: none"> <li>• Concern over the use of information, including NHI numbers, gathered in the proposed online mask exemption process.</li> <li>• Many mentally distressed individuals are concerned about "surveillance" and having someone watching over them or following their moves. This can be very upsetting and distressing for them. Mentally distressed individuals can struggle with this level of paranoia and anxiety constantly.</li> </ul>  |
| <b>Mental Health and Wellbeing Commission</b> | <ul style="list-style-type: none"> <li>• It's important to support businesses to deescalate conflict when people are being denied access under the mandates. We don't want to worsen inequities and the alienation of people who are already marginalised.</li> </ul>   |

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# Briefing

## Face mask exemptions: final agreed policy decisions for an improved exemption process

|                        |  |                              |          |
|------------------------|--|------------------------------|----------|
| <b>Date due to MO:</b> | 31 March 2022  | <b>Action required by:</b>   | N/A      |
| <b>Security level:</b> | IN CONFIDENCE  | <b>Health Report number:</b> | 20220581 |
| <b>To:</b>             | Hon Chris Hipkins, Minister for COVID-19 Response  |                              |          |
| <b>Copy to:</b>        | Hon Carmel Sepuloni, Minister for Disability Issues<br>Hon Andrew Little, Minister of Health<br>Hon Michael Wood, Minister for Workplace Relations and Safety and Minister of Transport<br>Hon David Clark, Minister of Commerce and Consumer Affairs<br>Hon Poto Williams, Minister of Police |                              |          |

### Contact for telephone discussion

| Name                        | Position  | Telephone |
|-----------------------------|---|-----------|
| <b>Dr Ashley Bloomfield</b> | Director-General of Health                          | s 9(2)(a) |
| <b>Maree Roberts</b>        | Deputy Director-General, System Strategy and Policy | s 9(2)(a) |

### Minister's office to complete:

- |   |                                    |  |
|---|------------------------------------|--|
| <input type="checkbox"/> Approved             | <input type="checkbox"/> Decline   | <input type="checkbox"/> Noted               |
| <input type="checkbox"/> Needs change         | <input type="checkbox"/> Seen      | <input type="checkbox"/> Overtaken by events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |  |

Comment:

# Face mask exemptions: final agreed policy decisions for an improved exemption process

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**Security level:** IN CONFIDENCE      **Date:** 31 March 2022

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**To:** Hon Chris Hipkins, Minister for COVID-19 Response

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## Purpose of report

1. Following ministerial consultation, this briefing sets out final policy proposals to improve the current approach to face mask exemptions, for your decision:
  - a. confirming ministerial agreement to option 2 (educative approach and social awareness campaign) and option 5 (self-declaration of exempt status); and
  - b. seeking agreement to option 1 (legal protection) as specified in this paper.<sup>1</sup>
2. This is effectively agreeing to option J in the earlier Health Report [HR20220204 refers] on this subject.

## Summary

### Stakeholders are experiencing issues with the current approach to face mask exemptions

3. The Covid-19 Public Health Response (Protection Framework) Order 2021 (the Order) requires people to wear a face mask in a range of settings as a key public health measure to slow the spread of COVID-19.
4. Clause 11 of the Order acknowledges there are some people who cannot wear a face mask, and exempts anyone who "has a physical or mental illness or condition or disability that makes wearing a face covering unsuitable". While there is no requirement for exempt people to provide evidence, it is recognised that some people are misusing this provision.
5. In attempting to verify whether people are genuinely exempt, workers (especially in retail settings such as supermarkets) are experiencing escalating and unsafe behaviour from some customers. Exempt people also report experiencing distress and discrimination, and are being asked for sensitive personal information, often in public settings.

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<sup>1</sup> Option numbers here refer to the previous Health Report 'Face mask exemptions: policy decisions for an improved exemption process' (HR20220204, 7 March 2022) – see Appendix A for summary.

6. Stakeholder groups including retail, hospitality, transport and education sectors and affected communities<sup>2</sup> have expressed concern with the current approach to face mask exemptions. These stakeholder groups seek a rapid solution.

### Proposed approach

7. A Health Report delivered to your office on 7 March 2022 [HR20220204 refers] provided you with 5 options to introduce new face mask exemption arrangements to resolve the various issues highlighted by stakeholders with the current trust-based model. Responding to that report, you indicated your agreement to option 2 (developing a social awareness campaign to educate businesses and the public about legal requirements on all parties, and clarifying who is exempt under the current law).
8. Option J in that earlier briefing asked you to direct officials to start detailed design and costing of the full proposal (combining options 1, 2 and 5 as set out in **Appendix A** of this report). In responding, you requested that the briefing be forwarded to the Ministers of Justice, Health, Disability Issues and Workplace Relations and Safety. Following that ministerial consultation, we understand that you have now indicated that you would like to pursue:
- a. **Option 2 - Adopt an educative approach** - working with relevant agencies and the business community to enhance their understanding of their legal obligations relating to COVID-19 requirements, and
  - b. **Option 5 - Introduce self-declaration based face mask exemption process** - people would be required to complete a self-declaration that they meet the grounds for exemption before being issued a personalised exemption card, digitally and/or in hard copy format.
9. This report seeks your written confirmation of agreement to Option 5 above and also recommends that you agree to Option 1 also. **Option 1** involves government providing a legal protection for those who are exempt from face mask requirements. Under this option, where a face mask requirement applies, a person may be asked to show their exemption card and, if they do so, cannot be denied entry to premises on the ground that they are not wearing a face mask. This ensures that legitimately exempt people can enter the business or service, and access the goods or services provided there.

### Do we need to change face mask exemption regulations?

10. The use of face masks as a public health intervention is a proven approach to prevent the spread of COVID-19 in indoor locations (while dependent on factors such as the quality of mask, and correct use), and so will always be encouraged.
11. However, an exemption process will only be required for as long as face masks are mandated. As we move through the Covid Protection Framework (CPF), from Red settings to Orange and Green settings it is likely the mandatory nature of these requirements will be reviewed, and settings may shift from mandatory to highly

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<sup>2</sup> The term 'affected communities' is used to refer to people who are unable to wear a face mask for a variety of legitimate reasons. These include, for example, people who are unable to fit or use a face mask without assistance; people with sensory, communication or decision-making impairments that make wearing a face mask unsuitable; and people whose personal experiences, such as being a victim of violent crime, mean that wearing a face mask is traumatising.

recommended. At present though, face masks are still required at both Red and Orange settings of the CPF.

We recommend you:

- a) **Note** that officials previously provided advice on improving face mask exemption arrangements [HR20220102 and HR20220204 refer] containing policy options and recommendations **Noted**
- b) **Note** that you have previously directed officials to begin work on Option 2 - an educative approach working with relevant agencies and the business community to enhance their understanding of their legal obligations relating to COVID-19 requirements **Noted**
- c) **Direct** officials to begin work on a formal exemption process that gives effect to Option 5 as set out in Health Report HR29220581, whereby people will be required to complete a self-declaration that they meet the grounds for exemption before being issued a personalised exemption card, either digitally or in hard copy format. **Yes/No**
- d) **Agree** to Option 1: amending the COVID-19 Public Health Response (Protection Framework) Order 2021 to ensure that people who are exempt from wearing a face mask cannot be denied access to any business or service on the basis they are not wearing a mask (where face mask mandates apply) **Yes/No**
- e) **Agree**, in order to give effect to Option 1, to amend the COVID-19 Public Health Response (Protection Framework) Order 2021, such that any party who presents an exemption card in any business or service cannot be prevented from entering and accessing goods and services provided they show their exemption card on request. **Yes/No**
- f) **Note** that providing the legal protection set out in recommendation (e) above will not stop exemption card holders being excluded from businesses or services on the basis of reasons unrelated to their status as exempt from face mask requirements **Noted**

- g) **Agree** to the release of this Health Report, with required redactions in line with the provisions of the Official Information Act, to stakeholders who were involved in the development of this advice once the above decisions have been made and announced.

Yes /  No



Dr Ashley Bloomfield  
**Director-General of Health**

Date: 31 March 2022



Hon Chris Hipkins  
**Minister for COVID-19 Response**

Date: 4/4/2022

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# Face mask exemptions: final agreed policy decisions for an improved exemption process

## Background

12. Face masks are an important part of managing the public health risk of COVID-19. Under the COVID-19 Public Health Response (Protection Framework) Order 2021 (the Order) people are required to wear face masks in a range of settings.
13. It is not always practicable or appropriate to wear a face mask, and clause 11 of the Order exempts anyone who “has a physical or mental illness or condition or disability that makes wearing a face covering unsuitable”. While there is no requirement for exempt people to provide evidence, it is recognised that some people are misusing this provision.
14. The current face mask exemption approach is designed to be high trust. It reflects the policy intent that communities who are already marginalised should not have to contend with additional barriers through the Government’s response to the COVID-19 pandemic because of their disabilities.
15. Businesses are currently neither required to enforce face mask requirements, nor empowered to inspect face mask exemption cards under the law. However, we note that businesses may enquire as to whether a person has an exemption from face mask requirements as a condition of entry onto private property. WorkSafe New Zealand confirm that they do not investigate complaints about customers who do not use face coverings.
16. In attempting to verify whether people are genuinely exempt, workers (especially in retail settings such as supermarkets) are experiencing escalating and unsafe behaviour from some customers. Exempt people report experiencing distress and discrimination, and are being asked for sensitive personal information, often in public settings.
17. The Ministry of Health developed a template exemption card in mid-2021 to assist exempt people and reduce the likelihood of being challenged or denied access to goods and services. The template exemption cards have since been distributed to individuals on behalf of the Ministry of Health by the Disabled Persons Assembly (DPA), the Association of Blind Citizens NZ, Deaf Aotearoa and Alzheimers and dementia organisations. Each organisation has made applicants aware of the legislative grounds for an exemption. It is believed there are around 100,000 exemption cards in circulation.
18. These cards are not recognised by many businesses and services, as those organisations do not consider that the cards are backed by a sufficiently robust verification process to establish the validity of the exemption.

### *Timing in the context of the Omicron response*

19. The current outbreak peaked during the month of March in most but not all regions. At the beginning of May, cases are expected to have fallen significantly. Whether and when

cases reduce back to the levels seen in late February is very uncertain. Australian experience and updated modelling suggest that cases will not fall back completely to pre-outbreak levels. There are likely to be localised but limited outbreaks in many places over the coming months. Contingency planning should also consider the effect of waning immunity, any extensions to the vaccination programme, and the possibility of a new Variant of Concern reaching New Zealand.

20. The use of face masks as a public health intervention is a proven approach to prevent the spread of COVID-9 in indoor locations and so will always be encouraged. However, an exemption process will only be required for as long as face masks are mandated. As we move through the Covid Protection Framework, from Red settings to Orange and Green settings it is likely the mandatory nature of these requirements will be reviewed, and settings may shift from mandatory to highly recommended. At present though, face masks are still required at both Red and Orange settings of the CPF.

#### *Stakeholder consultation*

21. At an early stage, the Ministry of Health engaged with the Disability Rights Commissioner, the Disabled Persons Assembly and other disability organisations, and representatives of retail business.
22. Subsequently, an approach broadly similar to what is currently proposed was tested with a wider group of external stakeholders, including the education, transport and health sectors. There was widespread support for a formal exemption process.
23. However, there was a divergence of views on how stringent that process should be. Businesses generally preferred a stringent verification process, that would involve applicants having to obtain a medical certificate as evidence of their exemption status.
24. Affected communities, on the other hand, expressed concerns that such processes would be inaccessible to a number of people with legitimate reasons for exemption, and would simply create further barriers for an already marginalised community.

### **Agreed proposed approach**

25. Following ministerial consultation, you have indicated that you would like to:
- a. **Option 2 - Adopt an educative approach** - working with relevant agencies and the business community to enhance their understanding of their legal obligations relating to COVID-19 requirements, and
  - b. **Option 5 - Introduce self-declaration based face mask exemption process** - people would be required to complete a self-declaration that they meet the grounds for exemption before being issued a personalised exemption card, digitally and/or in hard copy format.
26. This report seeks your written confirmation of agreement to Option 5 above and also recommends that you agree to Option 1 also. **Option 1** involves government providing a legal protection for those who are exempt from face mask requirements. Under this option, where a face mask requirement applies, a person may be asked to show their exemption card and, if they do so, cannot be denied entry to premises on the ground that they are not wearing a face mask. This ensures that legitimately exempt people can enter the business or service, and access the goods or services provided there.

## Proposed requirement to show exemption card on request, with entry guaranteed (option 1)

### *Proposed approach*

27. We recommend providing that, where a mask mandate applies, a person may be asked to show their exemption card and, if they do so, cannot be denied entry to premises on the ground that they are not wearing a face mask. This ensures that legitimately exempt people can enter the business or service, and access the goods or services provided there.

### *Rationale: a rights-enhancing approach*

28. To confirm their legally exemption from face mask requirements going forward, people who are exempt under current provisions will be required to take the additional step of obtaining an exemption card, via a self-declaration process. Although it is not proposed to make it mandatory to carry a card to avoid legal liability, failure to produce the card could result in a person being unable to gain access to business premises.
29. In return for these impositions on exempt people, it is reasonable that people who obtain an exemption card have their rights enhanced in terms of access to goods and services. Specifically, it is appropriate to provide legal protection from being denied entry to business premises, or access to the goods or services provided at those premises, due to not wearing a mask.
30. Thus, on balance, we consider that the proposal (introducing a combination of options 1, 2 and 5 as set out in **Appendix 1**) does not infringe the rights of affected people, but rather enables them to access legal rights. Instead, the requirement is ultimately rights-enhancing, rather than rights-limiting for exempt people, because the burden of requiring an exemption card is counterbalanced by a guarantee they cannot be excluded on the basis of not wearing a mask.
31. It is important to note that the proposal does not provide a complete guarantee of service or access for those exempt from face mask requirements. Exempt people will still be able to be excluded for other reasons – such as theft or other reasonable causes, as provided by current legislation.
32. The proposed approach to enforcement was set out in Appendix 2 of HR20220204.
33. To give effect to the proposals above, you would need to amend the COVID-19 Public Health Response (Protection Framework) Order 2021. Enforcement

## Stakeholder feedback

### *Concerns regarding use of a self-declaration process*

34. Organisations representing retail business have expressed concerns about a self-declaration process. In their view, a high proportion of the people who do not wear face simply refuse to do so for reasons of personal convenience or to express their objection to mandates. They believe that the proposed self-declaration process will not sufficiently deter such people from obtaining and using exemption cards. However, we note that many government policies already in existence rely on people making legal self-declaration and it is possible to hold people to account under the law if a false declaration is established.

*Concerns regarding risks to employees when approaching people with face mask exemptions*

35. MBIE and Worksafe have also indicated that employers may be concerned about the safety of their workers if and when they come in contact with people with face mask exemptions. WorkSafe is also concerned about businesses creating new risks for staff by trying to enforce entry conditions by exposing their staff to aggression and hostility from people refusing to wear face coverings.
36. Advice from the Office of the Director of Public Health is that people with exemptions represent very small risk of exposure to COVID-19 to most members of the public and staff in businesses. For example, many more people are infected with COVID-19 through household contacts or via a contact who has attended an institution such as a school. Consequently, we propose that addressing this comment would involve simply providing clear communications on this point, which includes noting that face masks are only one of a wider suite of public health measures individuals and businesses can take to protect themselves and their staff respectively.
37. Worksafe has noted that businesses considering a face covering condition of entry, as part of a workplace risk assessment, will need to balance workplace health concerns (using the latest public health advice) with the risk of workers being abused or assaulted by people refusing to wear face coverings. If, having completed a risk assessment with its employees, a business decides to enforce such a face covering condition of entry, it will need to ensure any workers responsible for enforcement have the necessary systems, processes, training, and support to safely manage potential conflict (such as de-escalation techniques).
38. Officials from the Ministry of Transport have also noted that the public transport sector supports non-mandatory verification. They have also noted that the approach in this report won't address some of the disruptive behaviour around masks experienced by airlines and others.
39. Ministry of Health officials note that the proposals in this report may not completely eliminate conflict between customers and staff over mask mandates (particularly given businesses are already not required to enforce such mandates). However, we note that the ability for exempted parties to simply show they are exempt with an exemption card (backed by a legal self-declaration of exemption status) should provide significantly more confidence for both parties than the current trust-base system. To the extent that this approach does provide more certainty, an official exemption card should assist to reduce conflict between exempted parties and those who would challenge their exemption status.

*Suggestion to limit legal right of access to essential businesses*

40. MBIE's view is that if option 1 is agreed to, the legal right of access for people with an exemption card should be restricted only to **essential** businesses and services. This is as opposed to businesses and services where a mask mandate applies, which is a broader category and counter-intuitively captures businesses and services where we have determined masks are most necessary.
41. Ministry of Health officials note that, unlike people who have chosen to be unvaccinated, the reasons why people cannot wear a face mask are generally outside their control, such as having a physical or mental disability. Therefore, in our view, it would be inappropriate for people with mask exemptions to be denied access to **any** goods and

services able to be accessed by those who can wear a mask (and do not require an exemption), not just those services deemed 'essential'.

*'Reasonable restrictions' were considered*

42. The possibility of permitting businesses and services to place 'reasonable restrictions' on people with face mask exemptions was considered in the process of developing this advice. However, on balance, the Ministry of Health assessed that this would not constitute a reasonable limit on the rights of people holding exemptions given:
  - a. public health advice is that the risk exempt people pose is negligible; and
  - b. children under the age of 12 are not required to wear a mask.

**Next steps**

43. If and when you agree to the contents of this report, we will work closely with your office to set out a timeline based on further detailed costing, IT design and delivery elements required to give effect to options 1, 2 and 5.
44. To give effect to the proposals in this report, it will be necessary to amend the COVID-19 Public Health Response (Protection Framework) Order 2021. Provided you agree, we will draft an amendment to the Order, to align with the necessary IT design and build timeframes for the exemption card becoming available.

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**Appendix A: Options from earlier Health Report 'Face mask exemptions: policy decisions for an improved exemption process' (HR20220204, 7 March 2022)**

| Option  | Description   |
|---|---|
| Options that maintain the current policy intent |   |
| Option 1: Legal protection                      | <p>Amending the COVID-19 Public Health Response (Protection Framework) Order 2021 to ensure that people who are exempt from wearing a face mask cannot be denied access to essential businesses or services where face mask mandates apply, because they are not wearing a mask. This ensures that legitimately exempt people can enter the business or service, and access the goods or services provided there. A similar provision exists for unvaccinated people.</p> <p>Businesses have expressed concerns about this inclusion without a mandatory verification process (Options 3, 4 and 5).</p> |
| Option 2: Educative approach                    | <p>Working with relevant agencies and the business community to enhance their understanding of their legal obligations relating to COVID-19 requirements.</p> <p>This would also comprise a social awareness campaign to promote greater understanding of care, rights and obligations regarding face mask use and exemptions.</p>  |
| Options to introduce mandatory verification     |   |
| Option 3: Medical certificate                   | <p>Requiring exempt people to obtain a certificate in an approved template from a medical practitioner, nurse practitioner or psychologist as proof of their exemption.</p> <p>This would impose costs on exempt people, and additional pressure on the primary care health workforce.</p>  |
| Option 4: Application process                   | <p>Requiring exempt people to apply to the Ministry of Health and provide supporting documents as evidence of meeting the grounds for exemption.</p> <p>Although this would not be a clinical assessment, requiring evidence would incur costs for applicants to visit their health professional and place additional pressure on the health workforce.</p> <p>This option would also require significant resource commitment from the Ministry of Health to implement and maintain.</p>  |
| Option 5: Self-declaration                      | <p>Requiring exempt people to complete a self-declaration that they meet the grounds for exemption before being issued a personalised exemption card for use with My Vaccine Pass, or as a hard copy where digital access is an issue.</p>  |

ENDS.

# Briefing

## Face mask exemptions: options to improve the exemption process

|                        |   |                              |          |
|------------------------|---|------------------------------|----------|
| <b>Date due to MO:</b> | 4 February 2022   | <b>Action required by:</b>   | N/A      |
| <b>Security level:</b> | IN CONFIDENCE   | <b>Health Report number:</b> | 20220102 |
| <b>To:</b>             | Hon Chris Hipkins, Minister for COVID-19 Response             |                              |          |
| <b>Copy to:</b>        | Hon Carmel Sepuloni, Minister for Disability Issues           |                              |          |
|                        | Hon Andrew Little, Minister for Health                        |                              |          |
|                        | Hon Michael Wood, Minister for Workplace Relations and Safety |                              |          |

## Contact for telephone discussion

| Name                        | Position  | Telephone |
|-----------------------------|---|-----------|
| <b>Dr Ashley Bloomfield</b> | Te Tumu Whakarae mō te Hauora<br>Director-General of Health | § 9(2)(a) |
| <b>Maree Roberts</b>        | Deputy Director-General, System Strategy<br>and Policy      | § 9(2)(a) |

## Minister's office to complete:

- |   |                                    |  |
|---|------------------------------------|--|
| <input type="checkbox"/> Approved             | <input type="checkbox"/> Decline   | <input type="checkbox"/> Noted               |
| <input type="checkbox"/> Needs change         | <input type="checkbox"/> Seen      | <input type="checkbox"/> Overtaken by events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |  |

Comment:

# Face mask exemptions: options to improve the exemptions process

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**Security level:** IN CONFIDENCE      **Date:** 4 February 2022

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**To:** Hon Chris Hipkins, Minister for COVID-19 Response

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## Purpose of report

1. This briefing outlines challenges experienced by affected communities<sup>1</sup> and the business sector resulting from the current approach to face mask exemptions and provides policy options for your decision.
2. This briefing also recommends that you:
  - a. consult on the proposals in this paper with the Prime Minister, the Minister of Justice, the Minister of Health, the Minister for Disability Issues, the Minister for Workplace Relations and Safety and any other Ministers you think fit
  - b. agree that the Ministry issue drafting instructions to the Parliamentary Counsel Office (PCO) to draft the required amendments to the COVID-19 Public Health Response (Protection Framework) Order 2021 (the Order) for the proposal to extend legal protection to access essential businesses and services to people who are exempt under clause 11 of the Order.

## Summary

*Face coverings are required in a range of settings, but some people are exempt*

3. The Covid-19 Public Health Response (Protection Framework) Order 2021 (the Order) requires people to wear a face mask in a range of settings as a key public health measure to slow the spread of COVID-19. Clause 11 of the Order acknowledges there are some people who cannot wear a face mask, and exempts anyone who “has a physical or mental illness or condition or disability that makes wearing a face covering unsuitable”. The Order does not require exempt people to provide any verification or proof of that exempt status.

*This reflects a clear policy intent to protect affected communities during the COVID-19 pandemic*

4. The current face mask exemption approach is designed to be high trust. The Order reflects the policy intent that communities who are already marginalised should not have to contend with additional barriers through the Government’s response to the COVID-19 pandemic because of their disabilities. Although it was recognised at the time that some

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<sup>1</sup> People unable to wear face coverings include people with physical, intellectual or mental disabilities or conditions or personal experiences (such as some victims of crime) for whom wearing a face covering is unsuitable. They are referred to in this briefing as affected communities.

people may try to “game the system”, a high trust model that respected the bona fides of people within affected communities was the preferred approach.

5. Barriers to access emphasise inequities amongst priority populations, including Māori, Pacific peoples and disabled people. Based on the experiences relayed to us by representatives of affected communities, it is important that we retain that original policy intent.

*Businesses have taken on an enforcement function that the law does not require of them*

6. Although businesses are not legally tasked with enforcing the use of face masks amongst customers, many are implementing the face mask requirement as a condition of entry to uphold public health measures and protect their staff. In doing so, retail workers and members of the public cannot distinguish between people who are legitimately exempt, and people who refuse to wear a face covering for a variety of other reasons, including as a point of political protest.

*Conversations between customers and staff are volatile and can become dangerous*

7. In attempting to verify whether people are genuinely exempt, workers (especially in retail settings such as supermarkets) are experiencing escalating and unsafe behaviour from some customers.
8. Exempt people also report experiencing distress and discrimination, and are being asked for sensitive personal information, often in quite public settings.

*Everyone wants clarity and a speedy resolution*

9. Both the business sector and affected communities seek a rapid solution, particularly in the context of face covering requirements being extended with the Omicron variant [CAB-22-MIN-0001 refers]. Stakeholders are looking for clarity in the law to enable them to move away from these confrontational and unsafe conversations.

*But there are differences as to what that should look like*

10. Stakeholder engagement on this issue has identified that the business sector seeks a robust verification process to ensure that exemption cards (or some other similar form of verification) are genuine to minimise fraudulent use.
11. Affected communities have expressed a need for an accessible solution that does not impose further barriers or costs on their communities to demonstrate their right to a face mask exemption and reduces the marginalisation and humiliation they have already experienced.

*Officials have explored a range of possible options to address this problem*

12. Through engagement with representatives from the business sector and affected communities, we tested the following range of possible options to address the challenges outlined above:
  - a. Medical certificate – requiring those eligible for an exemption to verify this by obtaining a medical certificate from a medical practice.
  - b. Application process – applying for an exemption and keeping a central register of people who are exempt.

- c. Self-declaration - requiring those eligible for an exemption to self-declare their status in order to be issued with a personalised exemption card, noting that a false declaration is an offence under the Crimes Act 1961 with associated penalties.
13. During our engagement it became clear that none of the options identified above would be considered suitable by both business interests and affected communities. In particular, both the medical certificate and application process would impose significant costs on affected communities, while some business interests expressed concern that the self-declaration option would not provide them with sufficient assurance that all exemptions presented were legitimate.
  14. Furthermore, our analysis revealed that due to widespread misunderstanding of the Order, some people who are legally exempt from the need to wear face masks in certain settings are nonetheless being excluded by shop owners from entering certain establishments, including accessing some essential services.

*A new approach to clarify the law and better deliver to the policy intent*

15. To find a solution that will meet the interests of business and affected communities, we are proposing a new approach. In particular, we are proposing an amendment to the law to ensure that it is clear that nobody that is exempt from wearing a face mask is excluded from accessing essential businesses and services.
16. To give this legal effect, officials propose that the Order be amended to better ensure exempt people can access essential businesses and services. This would be equivalent to the legal right of entry that the Order provides for unvaccinated people and would mean that providers of essential services would no longer be able to enforce mask wearing as a condition of entry, which in turn would remove the perception that many businesses have that this is required of them.
17. We propose to combine this with an educative approach to support the business community to better understand their legal obligations under both the Health and Safety at Work Act 2015 and the Human Rights Act 1993. In this context, we also note the role of the New Zealand Police in assisting communities to manage dangerous situations.
18. At the same time, we propose undertaking a social marketing campaign explaining why some people may be unable to wear a face covering and promoting kindness and respect for others in all retail and hospitality settings, with a particular focus on the need for respect towards both staff and customers.

*We evaluated the options against a range of criteria*

19. We tested each of the options above against several criteria, including whether they:
  - a. enable the Crown to meet its responsibilities under Te Tiriti O Waitangi and equity
  - b. protect public health and minimised potential for misuse
  - c. uphold human rights and remove barriers to (or costs of) accessing an exemption
  - d. maintain public safety by generating a higher level of trust in the system and reduce confrontation
  - e. are able to be implemented in a timely way with proportionate administration costs
  - f. are sustainable over time.

20. Our analysis showed that clarifying the law to ensure that exempt people have a right to access essential services, and combining this with an educative approach, best fits with the criteria outlined above. The table in Appendix One provides further detail.

## Recommendations

We recommend you:

- a) **Note** that it is not always safe or suitable for people to wear face masks, and the COVID-19 Public Health Response (Protection Framework) Order 2021 exempts these people from the requirement to wear a face mask. **Noted**
- b) **Note** that there is no legal requirement for people who are exempt from wearing a face mask to have or to carry any proof of their exempt status. **Noted**
- c) **Note** that the exemption provisions in the COVID-19 Public Health Response (Protection Framework) Order 2021 reflect the deliberate policy intent that communities who are already marginalised should not have to contend with additional barriers to their ability to access services through the Government's response to the COVID-19 pandemic because of their disabilities. **Noted**
- d) **Note** that barriers to access emphasise inequities amongst priority populations, including Māori, Pacific peoples and disabled people. **Noted**
- e) **Note** that some businesses are imposing face masks as a condition of entry for all customers. This is preventing members of affected communities from accessing some essential services. **Noted**
- f) **Note** that in attempting to verify whether people are genuinely exempt, retail workers are experiencing escalating and unsafe behaviour from some customers; and exempt people also report experiencing distress and discrimination, and are being asked for sensitive personal information, often in quite public settings. **Noted**
- g) **Agree** to provide clarity in the law by extending the legal protection that is currently available to unvaccinated people to access essential businesses and services in the COVID-19 Public Health Response (Protection Framework) Order 2021 to include people exempt from wearing face masks. **Yes**
- h) **Agree** that officials will take an educative approach with businesses and the public by supporting businesses to better understand their legal obligations under both the Health and Safety at Work Act 2015 and the Human Rights Act 1993; and by launching a social marketing campaign encouraging people to treat one another with kindness and respect. **Yes**
- i) **Note** that promoting kindness and respect may increase instances of non-compliance and that Ministry of Health officials will continue to monitor this and the impact on public health risk via key stakeholder groups. **Noted**
- j) **Note** that if you wish to change the policy intent of the COVID-19 Public Health Response (Protection Framework) Order 2021 to require affected communities to provide some form of mandatory verification to access goods and services, officials will come back to you with an **Yes**

implementation plan to support transition from the current system to a new system.

- k) **Agree** to consult on the proposals in this paper with the Prime Minister, the Minister of Justice, the Minister of Health, the Minister for Disability Issues, the Minister for Workplace Relations and Safety and any other Minister you think fit. **Yes**
- l) **Agree** that the Ministry issue drafting instructions to the Parliamentary Counsel Office to draft the required amendments to the COVID-19 Public Health Response (Protection Framework) Order 2021. **Yes**
- m) **Agree** to the release of this Health Report, with required redactions in line with the provisions of the Official Information Act, to stakeholders who were involved in the development of this advice once the above decisions have been made and announced. **Yes**



Dr Ashley Bloomfield  
**Te Tumu Whakarae mō te Hauora**  
 Director-General of Health  
 Date: 4/02/2022

Hon Chris Hipkins  
**Minister for COVID-19 Response**  
 Date:

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# Face mask exemptions: options to improve the exemptions process

## Background

21. Face masks are an important part of managing the public health risk of COVID-19. Under the COVID-19 Public Health Response (Protection Framework) Order 2021 (the Order) people are required to wear face masks in a range of settings, including air travel, public transport, retail premises, and certain indoor public areas. These requirements have been extended in light of the Omicron variant, including for students in Years 4 and up while on public transport and school transport [CAB-22-MIN-0001 refers].
22. It is not always practicable or appropriate to wear a face mask, and clause 11 of the Order sets out grounds for exemption. People do not have to wear a mask:
  - when undertaking certain activities, such as eating or drinking,
  - if they are communicating with a person who is deaf or hard of hearing,
  - if they "have a physical or mental illness or condition or disability that makes wearing a face covering unsuitable," or
  - if they are under 12 outside of school or transport.
23. Some of the reasons for exemption from face mask requirements are invisible and highly personal. For example, wearing a face mask can trigger trauma and distress in some people who have been victims of crime.

### *Current exemption approach*

24. The current exemption framework is a high trust model. The Order does not require exempt people to obtain or present proof of their exemption to anyone, including businesses or Police. A person is exempt simply by meeting the criteria set out in the Order. The current exemption approach applies to children in education settings also.
25. Most other jurisdictions internationally require face coverings as a public health measure to mitigate the spread of COVID-19. We have reviewed the rules relating to exemptions from wearing face coverings in several countries (attached as Appendix Three) and note that the majority maintain a high-trust model similar to the current New Zealand approach.
26. The Ministry of Health developed a template exemption card in mid-2021 to assist exempt people and reduce the likelihood of being challenged or denied access to goods and services.
27. The template exemption cards have since been distributed to individuals on behalf of the Ministry of Health by the Disabled Persons Assembly (DPA), the Association of Blind Citizens NZ, Deaf Aotearoa and Alzheimers and dementia organisations. Each organisation has made applicants aware of the legislative grounds for an exemption. The DPA has distributed some 30,000 exemption cards and believe a large number have also been downloaded from its website.

28. These cards are not recognised by many businesses and services, as those organisations do not consider that the cards are backed by a sufficiently robust verification process to establish the validity of the exemption.

## Issues with the current exemption approach

29. Clause 24 of the Order requires that businesses have systems and processes to ensure their workers wear face masks, but there is no expectation that they will enforce the face mask mandates with respect to their customers. As noted above, it was always the policy intention to minimise barriers to access for affected communities.
30. Business representatives have cited their understanding of obligations under the Health and Safety at Work Act 2015 to ensure the safety of their staff and customers, as grounds to deny entry to customers who are not wearing masks. We note that where customers are legitimately exempt, this practice may be at odds with the obligations under the Human Rights Act not to discriminate on the grounds of disability.
31. The high trust exemption model coupled with enforcement of face masks as a condition of entry by a number of businesses (including essential services such as supermarkets) is causing difficulties for businesses and exempt people.
32. The table below summarises the different needs and experiences of both groups within the current settings:

| Stakeholder group  | Need  | Experience   |
|--|---|--|
| Businesses, particularly the retail sector and specifically supermarkets | To ensure staff and customer safety from public health risks and escalating behaviour | <p>Because it is not always apparent why someone may be exempt from wearing a face covering, staff cannot distinguish between genuinely exempt people and people who choose not to comply with mask wearing requirements (possibly as a point of political protest, among other reasons).</p> <p>Questioning people not wearing masks can escalate and conversations can become volatile. Staff can have genuine fears for their safety and feel threatened and intimidated.</p> <p>Example:</p> <p>Countdown Supermarkets reported that they have around 1500 incidents of customer aggression per month with the primary cause being COVID-19 protocols, mostly relating to masks. RetailNZ reports that incidents of abuse and assaults by customers have increased since the COVID-19 Protection Framework was introduced.</p> |
| Exempt people  | To be able to access businesses and services without discrimination                   | Many exempt people belong to already marginalised communities and face existing barriers to access. They are experiencing further marginalisation, widespread reports of public humiliation, and trauma when questioned by retail staff and other businesses – often in quite public settings.   |

|  |                            |  |
|--|----------------------------|--|
|  | or further marginalisation | <p>Example:</p> <p>The Human Rights Commission have received over 350 allegations of unlawful discrimination relating to face mask requirements, including:</p> <ul style="list-style-type: none"> <li>• Refusal of access to essential stores despite mask exemption e.g. dairy, supermarket, pharmacy</li> <li>• Refusal of access to non-essential stores despite mask exemption e.g. mall, liquor store, florist, café, fishing store, hardware</li> <li>• Refusal of entry to healthcare despite mask exemption e.g. doctor surgery, hospital, A &amp; E, healthcare centre</li> <li>• Refusal of access to court services without a mask e.g. entry to court/tribunal, file or submit form</li> <li>• Refusal to allow mask exempt person to work without wearing mask</li> <li>• Segregation in personal care services e.g. hair salon</li> <li>• Refusal of entry to visit loved ones despite mask exemption e.g. rest home, hospital</li> <li>• Refusal to allow mask exempt person to attend in person for education e.g. school, university.</li> </ul> |
|--|----------------------------|--|

*How this plays out in the retail sector*

33. Countdown Supermarkets have indicated that, based on a sample survey of their stores, the proportion of their customers not wearing masks is 5%-10%. **s 9(2)(g)(i)**
34. As noted above, some members of the business community, including those who provide some essential services, are enforcing requirements around the use of face coverings by denying entry to un-masked customers. We understand this is to uphold public health measures responsibly and to protect staff.

*Public health position on face mask compliance*

35. We have sought public health advice as to the risks presented by a small number of people who do not wear masks in store. Public Health advice is that, as with vaccination, it is important that most people comply with the requirement to wear face masks however, achieving 100% compliance is not essential. The additional cumulative risk posed by a small percentage of people not wearing masks is low.

*WorkSafe New Zealand position on obligations under the Health and Safety at Work Act 2015*

36. We have also sought advice from WorkSafe New Zealand as to the requirements of the Health and Safety at Work Act 2015 and the obligation on employers to protect staff and customers from the health risks associated with people who do not wear masks. WorkSafe NZ confirmed that their advice to businesses is not to enforce mask wearing requirements for customers.

*Enforcement action taken by Police*

37. Breaching the requirements around wearing a face covering in the absence of a legitimate exemption is an infringement offence with a fee of \$1,000. The New Zealand Police have recorded 237 events where they received a call for service due to a customer not complying with face covering regulations. Since the introduction of mandates on 21 September 2021, a total of 75 infringement notices have been issued.

**Policy options for strengthening the exemption process***Evaluative criteria*

38. In evaluating options to resolve the difficulties outlined above, we identified the following criteria. A well-functioning exemption system will:
- a. consider implications of Te Tiriti O Waitangi and equity
  - b. protect public health and minimise potential for misuse
  - c. uphold human rights and remove barriers and costs for affected individuals to access exemptions
  - d. maintain public safety by generating a higher level of trust in the system and reduce confrontation
  - e. be able to be implemented in a timely way with proportionate administration costs
  - f. be sustainable in the longer term from both operational and public perception perspectives.

*Introduce legal protection for exempt people to access goods and services*

39. Clauses 31 to 33 of the Order provide unvaccinated people assurance of accessing essential businesses and services regardless of their vaccination status. There is no comparable provision for people exempt from wearing face masks.
40. While businesses are within their rights to determine conditions of entry, public health advice suggests that the impact of a small number of people not participating on the overall public health risk is minimal.
41. Further, WorkSafe New Zealand have advised that inspectors focus on staff compliance with face mask requirements rather than customers, and the additional measures that can be taken to protect those not able to wear masks, such as contact tracing practices.
42. It is proposed to amend the Order to extend the protection of access to essential businesses and services to people who are exempt from wearing a face mask, provided they meet the exemption criteria specified in section 11 of the Order.
43. Extending this provision is important to ensure that all people have access to essential businesses and services and that marginalised groups are not required to meet a higher bar for access. In clarifying legal expectations in this respect, we will also ensure that businesses understand they are not expected to undertake a de facto enforcement function.
44. The proposed amendment to the Order would have the effect that intentionally preventing a person who is exempt from wearing a face mask, from accessing essential goods and services, or premises where such goods and services are provided, would be an offence.

45. Section 26 of the COVID-19 Public Health Response Act 2020 is a general offence provision applying to anyone who intentionally fails to comply with a COVID-19 Order. This offence is punishable by up to 6 months imprisonment, or a fine of up to \$12,000 for an individual or \$15,000 for a business. This is equivalent to the same provisions enabling unvaccinated people to access essential goods and services.

*Taking an educative approach with businesses and the public*

46. In conjunction with this we propose to work with relevant agencies and the business community to enhance their understanding of their legal obligations under both the Health and Safety at Work Act 2015 and the Human Rights Act; and to support businesses to develop appropriate processes for managing difficult conversations with customers that ensure all parties are treated with respect.
47. We also propose undertaking a social marketing campaign explaining why some people may be unable to wear a face covering and promoting kindness and respect for others in all retail and hospitality settings, with a particular focus on the need for respect towards both staff and customers.
48. Although the number of people not complying with face mask requirements without genuine reason is small, a public campaign to promote kindness and respect may be enabling for this group. An increase in the number of people not wearing masks and fraudulently claiming to be exempt would likely impact the public health risk posed. Ministry of Health officials propose to monitor this via key stakeholder groups.

*Additional options for mandatory verification*

49. There is an expectation on the part of the business community that imposing a regulatory requirement for affected communities to carry some form of personalised and verified exemption would be appropriate. Officials note that would be a significant change to the current policy intent of the Order.
50. If you wish to consider this, the table below sets out how the different regulatory options would work:

|                     |   |
|---------------------|---|
| Medical certificate | <p>Requiring exempt people to obtain a certificate in an approved template from a medical practitioner, nurse practitioner or psychologist as proof of their exemption.</p> <p>This would impose costs on exempt people, and additional pressure on the primary care health workforce.</p>  |
| Application process | <p>Requiring exempt people to apply to the Ministry of Health and provide supporting documents as evidence of meeting the grounds for exemption.</p> <p>Although this wouldn't be a clinical assessment, requiring evidence would incur costs for applicants to visit their health professional and place additional pressure on the health workforce as for Option 1.</p> <p>This option would also require significant resource commitment from the Ministry of Health to implement and maintain.</p> |
| Self-declaration    | <p>Requiring exempt people to complete a self-declaration that they meet the grounds for exemption before downloading a personalised exemption card. The exemption would be individualised so could not</p>   |

|  |   |
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|  | <p>be downloaded and used by others. Equivalent non digital solutions would also be developed.</p> <p>This option provides an individualised proof of exemption that does not require third party verification of eligibility. It would not add costs for exempt people, nor impact health sector resource. Affected communities advise that any additional process is likely to be a further barrier for them and transitioning to the new system could be complex.</p> <p>Of all of the options involving mandatory verification, this would be the least intrusive and the least costly.</p> |
|--|---|

51. Officials do not support any of the options for mandatory verification because:
- a. The business community has made it clear that they are likely to remain sceptical about any regulatory solution that stops short of imposing significant additional cost and barriers on affected communities by requiring compliance with a rigorous verification process.
  - b. Imposing an obligation on affected people to provide a medical certificate or to satisfy a third-party verifier of the basis for their exemption will drive affected people to primary care providers, who will already be feeling the additional burden of managing Omicron in the community. Noting that there are presently more than 30,000 exemption cards in circulation, the scale of that impact on primary care providers is likely to be significant.
  - c. All of the options will further alienate already marginalised communities by creating additional barriers to their ability access services.
  - d. Transition to a new system would be complex and costly and may not achieve the benefits required for the reasons set out above. A new IT platform would need to be built, alongside non-digital solutions for those without access to online technology; there are already in excess of 30,000 exemption cards currently in circulation and these would all need to be replaced; and affected people would need to be supported to ensure that they could transition to the new system successfully.
52. If you choose one of the additional regulatory requirements for mandatory verification of exempt status, officials will provide you with an implementation plan that includes:
- a. delivery of required amendments to the Order;
  - b. development of an IT platform for delivery of the verification process and new exemption cards plus non-digital alternatives for those who do not have access to online technologies
  - c. a plan to provide additional support to affected people with intellectual, physical or mental health conditions that make it difficult for them to navigate processes
  - d. an estimate of costs likely to be generated by the need to secure third-party verification from a primary health provider and a plan for managing these costs
  - e. timelines for transition to the new system, including revocation of the current cards in circulation so that these can be replaced
  - f. any additional costs or impacts that are likely to arise.

## Stakeholder feedback on options

53. We have tested the options for mandatory verification with representatives from New Zealand's business communities and representatives of affected peoples. We have not tested the options for providing legal protection to exempt people or taking an educative approach because we identified these after our workshops with external stakeholders. These options were identified in part because there was no consensus on the best way forward in terms of mandatory verification.
54. Businesses preferred a stringent verification process and resulting exemption card like that for vaccination, supporting the use of medical certificates as the primary tool for verification. They expressed concerns that without third party verification, they could not be confident that an exemption card would be trustworthy or safe from misuse.
55. Affected communities expressed concerns that more stringent processes would be inaccessible for a number of affected people, and that the regulatory options described above would simply create further barriers to an already marginalised community. They preferred a high-trust model built around an assumption that everyone is trying to do the right thing, and that affected people should be better supported.
56. Many of the organisations that we engaged with were anxious to ensure that we reflected to you their unfiltered experiences of the issue. Appendix Two provides a summary of submissions, to give you visibility of the input provided to us.

## Equity

57. The current face mask exemption approach is designed to be high trust, and enable people, particularly in the disabled community, to self-determine their ability to wear a mask. Barriers to access emphasise inequities amongst priority populations, including Māori, Pacific peoples and disabled people.
58. Affected communities identified that any of the options for mandatory verification, requiring them to demonstrate proof of their exemption status, would create additional barriers for them given the difficulties some of their members (including those with physical and intellectual disabilities or mental health conditions) have in navigating processes.
59. The lack of trust in the current exemption approach is exacerbating barriers for these affected communities. The current lack of legal protection for people who are exempt from wearing face coverings is inconsistent with the rights of access to essential services that have been provided for people who are not vaccinated. It is important that everyone is able to access essential services.

## Next steps

60. It is recommended that you consult on the options in this paper with the Prime Minister, the Minister of Justice, the Minister of Health, the Minister for Disability Issues and the Minister for Workplace Relations and Safety and any other Ministers you think fit.
61. Subject to Ministerial consultation, and your approval of an amendment to the Order providing legal protection for exempt people to access essential goods and services on an equivalent basis as unvaccinated people, Ministry of Health Officials will issue drafting instructions to the Parliamentary Counsel Office and progress implementation.

62. If you choose one of the additional regulatory requirements for mandatory verification of exempt status, officials will provide you with a fully costed implementation plan for delivery of this option.
63. We will work with your office to develop collateral to support the announcement of your decisions.

ENDS.

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## Appendix One: Options – further detail and analysis against evaluative criteria

| TABLE OF OPTIONS: SUMMARY   |  |   |   |   |   |
|---|--|---|---|---|---|
| <b>Key:</b><br>Better than status quo ✓<br>Much better than status quo ✓✓<br>Worse than status quo ✗<br>Much worse than status quo ✗✗<br><b>Notes:</b><br>Options 1 and 2 can co-exist with all of the regulatory options. Options 3 to 5 are mutually exclusive. |  |   |   |   |   |
|   | Options for requiring mandatory verification of exemption status |   |   |   |   |
|   | 1. Taking an educative approach with businesses and the public   | 2. Provide legal protection for people who are exempt | 3. Require affected people to carry a medical certificate | 4. Require affected people to go through a third-party verification process | 5. Require affected people to self-declare their exempt status to access an individualised exemption card |
| Equity  | ✓✓   | ✓✓  | ✗✗  | ✗✗  | ✗   |
| Minimises potential for misuse  | ✗  | ✗   | ✓✓  | ✓✓  | ✓   |
| Removes barriers to access  | ✓  | ✓✓  | ✗✗  | ✗✗  | ✗   |
| Maintains public safety   | ✓  | ✓   | ✓   | ✓   | ✓   |
| Timely implementation, manageable costs   | ✓✓   | ✓✓  | ✗   | ✗✗  | ✗   |
| Sustainable   | ✓✓   | ✓   | ✗✗  | ✗✗  | ✗   |
| Overall assessment  | +7   | +7  | -4  | -5  | -1  |

## Further detail

| Option   | Description   | Implementation needs  | Fit with principles  |
|--|---|---|--|
| <p><b>Option1:</b><br/>Taking an educative approach with businesses and the public</p> | <ul style="list-style-type: none"> <li>• Work with key agencies and the business community to enhance understanding of:               <ul style="list-style-type: none"> <li>○ Businesses' legal obligations</li> <li>○ Reasons for not wearing a mask</li> <li>○ Impact on public health</li> <li>○ Mask exemptions in education settings</li> <li>○ Other mitigations to protect those unable to wear a mask, e.g. contact tracing</li> </ul> </li> </ul> | <p>A key focus would be on ensuring businesses are informed of their obligations under the law, including the Order, workplace health and safety legislation, and the Human Rights Act.</p> <p>There would also be a broad communications strategy across agencies, including the Ministry of Education, and key stakeholders in the nosiness and disability sectors. .</p> | <p><b>Equity</b><br/>May reduce adverse treatment of people from marginalised groups, particularly the disabled.</p> <p><b>Minimise potential for misuse</b><br/>Solution focused on acceptance of people claiming exemption. The potential for misuse would not be mitigated.</p> <p><b>Removes barriers to access</b><br/>Does not create a process that exempt people have to engage in or impose costs associated with obtaining an exemption.</p> <p><b>Maintains public safety</b><br/>Increasing understanding about businesses' legal responsibilities, reasons for exemptions and the impact on public health may increase acceptance of exempt people, reducing confrontations.</p> <p><b>Able to be implemented soon, with manageable costs</b><br/>The administrative costs of this option are low, comprising resource to produce key messaging, ad some outreach to key sectors.</p> <p><b>Sustainable</b><br/>This option does not impose on health workforce resource.</p> |

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| <p><b>Option 2:</b><br/>Provide legal protection for people who are exempt</p> | <ul style="list-style-type: none"> <li>Provides that people who are exempt from mask wearing must be granted access to premises where essential goods and services are delivered.</li> <li>Denying access would constitute an offence.</li> </ul> | <p>Amendment to the Order would be required. It would be similar to the current clauses 31-33, which ensure the unvaccinated have access to “designated premises” and essential goods and services</p> | <p><b>Equity</b><br/>Assists a marginalised group, the disabled, to have equitable access to essential goods and services.</p> <p><b>Minimise potential for misuse</b><br/>Solution focused on fair treatment of exempt people. n. The potential for misuse would not be mitigated.</p> <p><b>Removes barriers to access</b><br/>Does not create a process that exempt people have to engage in or impose costs associated with obtaining an exemption.</p> <p><b>Maintains public safety</b><br/>Should reduce confrontations between people claiming exemptions and staff of essential services, such as supermarkets, although there could still be disputes about the genuineness of exemption claims.</p> <p><b>Able to be implemented soon, with manageable costs</b><br/>The administrative costs of this option are low, and would include costs of informing businesses and the public regarding the new provision, and enforcement costs.</p> <p><b>Sustainable</b><br/>This option does not impose on health workforce resource</p> |

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| <p><b>Option 3:</b><br/>Medical certificate</p> | <ul style="list-style-type: none"> <li>Existing exemption cards would no longer be recognised.</li> <li>A person would verify their exemption by obtaining a certificate from a medical practitioner, nurse practitioner or psychologist, in the required template.</li> <li>The template would set out the grounds for exemption and seek the provision of a standard set of information, including name and contact details of the practitioner, and date of issue.</li> <li>It would not include specific medical information about the exempt person.</li> <li>Display of the exemption either electronically or in print (allowing for Telehealth).</li> <li>Overseas medical notes recognised, as long as they contain key information that is specified on the template.</li> </ul> | <p>Amendment to the Order would be required to reference a medical certificate being required, and to specify the required template.</p> <p>Communications to ensure people who need an exemption know how to obtain one, so they are not unduly penalised for not having the necessary documentation.</p> <p>Transition period to enable people time to obtain an exemption/ replace their current exemption card with the new one.</p> | <p><b>Equity</b></p> <p>There may be inequitable access to the verification process which could affect at risk applicants including Māori and those living in remote areas.</p> <p><b>Minimises potential for misuse</b></p> <p>An advantage of this option is that it provides independent, expert verification that the claimant should be exempt from the face covering requirement.</p> <p><b>Removes barriers to access</b></p> <p>It imposes on applicants the cost and inconvenience of obtaining a medical certificate. Where a request is refused, this could adversely affect the relationship between the practitioner and the patient, and there is a risk that some claimants would “shop around”.</p> <p><b>Maintains public safety</b></p> <p>The output would be a standard document able to be identified by retailers, if the template was used.</p> <p><b>Able to be implemented soon, with manageable costs</b></p> <p>As this is a de-centralised verification system, costs to Government would be low. Some cost would be incurred providing information and advice to the public, businesses and practitioners, and on monitoring the verification system.</p> <p><b>Sustainable</b></p> <p>Although this could be implemented in a timely way, a key disadvantage of this option is that it expends health system resources on the verification process. There could be tens of thousands of applications, with a high proportion likely to be made around the time the new system is introduced.</p> |
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|   |  |  | This could be unhelpful, particularly with the health system under pressure from the Omicron variant.   |
| <p><b>Option 4:</b><br/>Application process</p> | <ul style="list-style-type: none"> <li>• Existing exemption cards would no longer be recognised.</li> <li>• Consisting of an application to the Ministry of Health via an online form (or phone), and: <ul style="list-style-type: none"> <li>○ For medical grounds, supporting evidence e.g. a medical certificate;</li> <li>○ For other grounds; a signed statement.</li> </ul> </li> <li>• Ministry of Health staff assess the application (not clinical assessment) and supporting evidence to determine whether the person meets the grounds for an exemption.</li> <li>• Display of the exemption either electronically or in print, including the person's name.</li> </ul> | <p>Amendment to the Order required to reference Statutory declaration and set the template.</p> <p>Develop an online form.</p> <p>Amendments to My Covid Record so that, if the applicant has a vaccine pass, their face covering exemption could be displayed on the pass.</p> <p>Resources and training for call centre staff.</p> <p>Communications to ensure people who need an exemption know how to obtain one, so they are not unduly penalised for not having the necessary documentation.</p> <p>Transition period to enable people time to obtain an exemption.</p> <p>The Ministry would need to establish a new unit, or task an existing unit, with determining applications and provide guidelines for staff to ensure quality and consistency in decision-making.</p> | <p><b>Equity</b></p> <p>There may be inequitable access to the verification process which could affect at risk applicants including Māori and those living in remote areas</p> <p><b>Minimises potential for misuse</b></p> <p>An advantage of this option is that, like option 1, it provides independent verification of claims for exemption.</p> <p><b>Removes barriers to access</b></p> <p>It imposes on applicants the inconvenience of submitting an application setting out their reasons for obtaining an exemption and, if a medical certificate is required, the time and cost involved in obtaining the certificate or necessary documentation.</p> <p><b>Maintains public safety</b></p> <p>The output would be a standard document able to be identified by retailers.</p> <p><b>Able to be implemented soon, with manageable costs</b></p> <p>The administrative costs of this option are likely to be considerable because the Ministry of Health would need to commit significant staff resources to operating the verification process.</p> <p><b>Sustainable</b></p> <p>To the extent that this system requires applicants to produce medical evidence, it expends health system resources on the verification process.</p> <p>Also, if there are a large number of applications within a short period of time, it would place a lot of pressure on the</p> |

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|                                      |   |   | Ministry of Health's verification system. This could lead to unacceptably long delays in granting exemptions, and/or poor decision-making.   |
| <b>Option 5:</b><br>Self-declaration | <ul style="list-style-type: none"> <li>Existing exemption cards would no longer be recognised.</li> <li>Anyone who believes they are exempt could obtain a card or document from the Ministry of Health, by downloading from the website or via the call centre.</li> <li>The card would be individualised to the holder of the exemption</li> <li>The person applying would be shown the grounds for exemption, as set out in the Order, and required to state that they had read them, and that they (or the person on whose behalf they are applying) are eligible.</li> <li>Display of the exemption either electronically or in print, including the person's name.</li> </ul> | <p>Amendment to the Order required to reference the self-declaration and set the template.</p> <p>Develop an online self-declaration form.</p> <p>Amendments to My Covid Record so that, if the applicant has a vaccine pass, their face covering exemption could be displayed on the pass.</p> <p>Resources and training for call centre staff.</p> <p>Communications to ensure people who need an exemption know how to obtain one, so they are not unduly penalised for not having the necessary documentation.</p> <p>Transition period to enable people time to obtain an exemption.</p> | <p><b>Equity</b></p> <p>There may be inequitable access to the verification process which could affect at risk applicants including Māori and those living in remote areas.</p> <p><b>Minimises potential for misuse</b></p> <p>This option may discourage fraud because the claimant would be traceable. However, it is heavily reliant on the subjective judgement of the claimant, albeit that this is informed by reading the eligibility criteria.</p> <p><b>Removes barriers to access</b></p> <p>For those who already have exemption cards, there is the inconvenience of having to obtain a new one. The process should be easy to use and does not involve having to disclose personal health information.</p> <p>This option does not impose significant costs on claimants.</p> <p><b>Maintains public safety</b></p> <p>The output would be a standard document able to be identified by retailers, however there remains the potential for social discord with this not requiring a verification process for issue.</p> <p><b>Able to be implemented soon, with manageable costs</b></p> <p>The administrative costs of this option would be relatively low. Use of the full automated channel would cost under \$1 per inquiry, whereas phone support would be around \$30 per inquiry. The Ministry of Health would have to provide the necessary IT support but could leverage existing</p> |

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|  |  |  | <p>platforms. This would take around four to six weeks to implement.</p> <p><b>Sustainable</b></p> <p>Utilises existing IT platforms and does not impose on health workforce resource.</p> |
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## Appendix Two: Stakeholder feedback

### Summary of submissions

#### Face covering exemptions working group – summary of input from business representatives

26 January 2022

#### *Experience of the business sector regarding face mask exemptions*

- Representatives from the business are seeing significantly high levels of the general public not wearing masks. This is resulting in high levels of abuse from these individuals when asked to wear a mask.
- As a whole the Retail sector has seen incidents of abuse instore increase by over 108 per cent since restrictions were put in place. These incidents continue to rise.
- At the Red Level setting masks are mandatory is the vast majority of businesses, the current policy settings for mask exemptions allows the public to self-identify as exempt from wearing a mask despite having no disability, medical or mental health condition to validate this.
- Businesses have obligations under the Health and Safety at Work Act 2015 to protect staff, and others on their premises, from the infection risk posed by customers not wearing masks, especially with the Omicron variant. Businesses also have the right to set conditions of entry for a premises, and some retailers are already making mask wearing a requirement. It should be expected that more businesses will implement conditions of entry of the policy is not changed.
- The current policy settings has created an environment where staff are having to deal with significantly high levels of undue abuse and threats as a result of the current policy. For retailers this ranges from an incident of abuse every 15 minutes, to at least 1-2 incidents a day depending on size, location and scale of the business.
- Retail staff are leaving the sector due to levels of abuse, requiring greater mental health and wellbeing support from employers as a result.
- Essential services feel they are already putting staff at risk because they are required to serve unvaccinated people.
- The supermarket sector has advised that staff are experiencing increased violence and death threats from people who they ask to wear a mask and/ or who they question about the validity of their claimed exemption. Anecdotally, Countdown noted that staff had received 5 death threats on a single day on this issue.
- This has resulted in staff being traumatised and afraid to come to work because they do not feel safe.
- Business representatives acknowledge that the violence is not coming from affected persons. They believe that the violence can be attributed to people who do not have a legitimate reason for not wearing a mask. They believe the current system makes it too easy for people to make a fraudulent claim.
- Business representatives are in agreement with the group of disabilities and affective persons involved in the working group that the system must change, and do so at speed.
- For the hospitality sector, staff have faced less abuse and threats since the introduction of vaccine passes – but this is still a problem.

#### *Desired Outcomes*

Businesses are seeking:

- An exemption document/card that they can trust is authentic and available to protect those who genuinely require a mask exemption.

- an exemption document/card that contains identifying details so that it can be verified against the persons identification
- assurance that the exemption document/card is only issued following a robust process that they can trust as legitimate.
- a quick solution. The impact on the sector is significant and been raised as area of concern for more than six months
- Enforcement for false exemptions with clear penalties communicated to the general public. This are already available within the Health Order and need to be strengthen with a robust process.

#### *Feedback on options: Exemption Process*

- The medical certificate option is preferred, because it provides expert third party verification of the application and can be established without delay.
- The application process option was not considered as a medical certificate would provide sufficient trust.
- The self-declaration process is not sufficiently rigorous and will not solve the issue of trust or misuse. Businesses state that if there is no rigour in the exemption process, they cannot trust the exemption documents that are issued.
- It was suggested that the self-declaration option should include some form of follow-up after an exemption is issued, to provide assurance that it was obtained in good faith.

### **Face covering exemptions working group - summary of input from representatives of affected communities**

**26 January 2022**

#### *Experience of people who are exempt from wearing a face mask*

- There are many reasons why people cannot wear a face mask.
- The requirement to wear face masks has resulted in pronounced instances of discrimination towards affected people, public shame, harassment, and bullying.
- Affected people should not be further stigmatised or disadvantaged for not being able to wear a face mask. Wearing a face mask can be distressing for both individuals and, where relevant, their carers, parents, and those they may be with.
- This is occurring in many situations and is resulting in refusal of entry to essential businesses and services, such as supermarkets, medical centres and pharmacies, along with facilities such as playgrounds, sporting grounds, schools, gyms and swimming pools.
- Affected people want to be trusted to use their own judgement. They feel they shouldn't need to keep justifying themselves and being questioned about private matters in a public place when accessing essential services and other facilities.
- For people who are genuinely exempt, the current system lets them down (lack of central register, and based too much on trust).

#### *Desired Outcomes*

Representatives of affected communities at the workshop seek:

- Affected people to be trusted when they say they are exempt and not questioned further or required to divulge personal information to justify themselves
- to be treated with dignity by the public and businesses
- a free and easy to use process that is trusted by the public and businesses
- protection from discrimination and refusal of entry

- an inclusive solution that does not further marginalise the communities and individuals it is supposed to be protecting
- quick but meaningful resolution.

*Feedback on options: Exemption Process*

- Preferred the self-declaration process option because it minimises the additional burdens on applicants, many of whom already face major barriers related to their personal circumstances/ disabilities.
- Concerns about the medical certificate and application process options because of access concerns, primarily:
  - the cost to the affected person
  - reliance on a medical practitioner assessment (and access to a general practitioner)
  - that the process is more difficult to navigate and will put additional pressure on affected people to justify their exemption reasons.

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## Additional information provided directly by stakeholders

### Disability organisations feedback

| Organisation/person                 | Comment   |
|-------------------------------------|---|
| New Zealand Human Rights Commission | <p>To date (as at 16/01/22) we have received over 580 approaches that we have summarised using these key words. Over 350 of these were deemed complaints of alleged unlawful discrimination as defined by the Human Rights Act.</p> <p>Some of the themes which emerged in the data are noted below. I can also confirm that we have seen many cases of refusal of entry, verbal abuse, aggressive questioning and some instances where employment has been affected.</p> <ul style="list-style-type: none"> <li>- Refusal of access to essential stores despite mask exemption e.g. dairy, supermarket, pharmacy</li> <li>- Refusal of access to non-essential stores despite mask exemption e.g. mall, liquor store, florist, café, fishing store, hardware</li> <li>- Refusal of entry to healthcare despite mask exemption e.g. doctor surgery, hospital, A &amp; E, healthcare centre</li> <li>- Refusal of access to court services without a mask e.g. entry to court/tribunal, file or submit form</li> <li>- Refusal to allow mask exempt person to work without wearing mask</li> <li>- Segregation in personal care services e.g. hair salon</li> <li>- Refusal of entry to visit loved ones despite mask exemption e.g. rest home, hospital</li> <li>- Refusal to allow mask exempt person to attend in person for education e.g. school, university</li> </ul> |
| Deaf Aotearoa<br>s 9(2)(a)          | <p>Additional comments in response to options:</p> <ul style="list-style-type: none"> <li>• I am confident that upwards of 95% of those we have provided exemptions to would be genuine, but we know from experience that people are not being believed.</li> <li>• The problem with the idea that "Everyone should just believe a person that says they are exempt." is that many people who genuinely do need an exemption are being questioned and not believed.</li> <li>• On Xmas eve a Deaf woman who had been given an exemption by Deaf Aotearoa was frog-marched out of Auckland Airport by the police who didn't believe that she was genuinely in need of an exemption. There are many more examples.</li> <li>• Overall, the self-declaration appears to be the most appropriate</li> <li>• Maybe tick at the end so they have a responsibility to read the eligibility and how/when to use the card</li> <li>• 'Statutory Declaration' system seems to be the best option out of others, as it would add more pressure on the health system and</li> <li>• It is not well understood that the 'exemption' that everyone has when communicating with deaf or hard of hearing people' this is an exemption that does not need a card or verification.</li> </ul>   |

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|  | <ul style="list-style-type: none"> <li>• Around 70% of exemption requests received by Deaf Aotearoa are from people concerned that the mask straps will cause their hearing aids or cochlear implants to be pulled off and damaged.</li> <li>• In the past 24 hours we have received around 80 mask exemption requests, with around 75 of these being from teachers or parents of students.</li> <li>• We have concerns about the options that would rely on the health system verifying eligibility - need to avoid putting extra work on the health system, it would take far too long to process.</li> </ul>  |
| <p>People First New Zealand Inc</p> <p>s 9(2)(a)</p> | <p><b>Background</b></p> <p>People First NZ has been involved in discussion about the face covering and the issuing of exemption cards as a tool for communication for the past 18 months. We decided not to advertise our organisation publicly in the last 5 months as we have a small team and do not have the capacity to respond to an influx of requests. Rather we have chosen to respond to the people who contact us by 0800 or email or by contacting a staff member and to our members. To date we have distributed an estimated 1000 cards by giving them to People First members (people with learning (intellectual disability) who have asked for them , by courier at a cost to ourselves and emailing digital versions that people can print off.</p> <p><b>Discrimination against people who are exempt from wearing a face covering under the public health order</b></p> <p>From day one of face coverings being first mandated we have dealt with emails and phone calls of people experiencing negative treatment. I recall getting a representative of the Police at national headquarters involved for a person who was refused entry to a supermarket on day one. Over the past 6 months we have had members and others report negative experience including discrimination and public humiliation. A couple of examples are</p> <p>Some months ago in Dunedin 2 members attending a community theatre were told they couldn't without a mask in a very public way. They were supplied a mask and forced to wear it. Both members wore the masks supplied but struggled with breathing throughout the event. My understanding is after the event they were assisted to raise this issue with the theater manager.</p> <p>Another member went to s to purchase a new phone and got refused entry even after showing his exemption card. He was with his assistant who also tried to explain in the end they went to another shop.</p> <p>I am sure there are many more experiences that we are not aware of as we have not been having our usual monthly face to face group meetings in 40 locations across the country since last August due to our health and safety policies in relation to COVID.</p> <p><b>Effect on people who are exempt from wearing a face covering under the public health order</b></p> <p>People with learning disability are highly vulnerable to COVID-19 due to underlying health conditions and /or being immune compromised. I am aware that, along with People First NZ, families and service providers are encouraging people with learning disability to try to wear a mask even for short periods of time to protect themselves however many still find it too difficult.</p> |

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|   | <p>The effect on people who have been challenged about not wearing a mask is deeply wounding and includes:</p> <ul style="list-style-type: none"> <li>• people feeling not valued.</li> <li>• people having to find alternative places to shop</li> <li>• people experiencing anxiety</li> <li>• people being traumatized or retraumatized;</li> <li>• people feeling like they are unable to leave their homes and becoming isolated</li> <li>• people feeling that these experiences are having a profoundly negative effect on their mental wellbeing.</li> </ul> <p><b>Summary</b></p> <p>People First NZ appreciates the opportunity to be part of the discussions about the misunderstanding of the public health order. Had we anticipated some 18 months ago where things are today we would have advocated more strongly for the government to have a lead agency and not participated in any system of issue a communication tool.</p>   |
| <p>Blind Citizens NZ</p> <p>s 9(2)(a)</p> | <p>Additional comments in response to Options:</p> <p><b>Experience of people who are exempt from wearing a face mask</b></p> <p>Refers to point 3 (additional comment in blue) - Affected people should not be further stigmatised or disadvantaged for not being able to wear a face mask. Wearing a face mask can be distressing for both individuals and, where relevant, their carers, parents, and those they may be with.</p> <ul style="list-style-type: none"> <li>• Additional point - For people who are genuinely exempt, the current system lets them down (lack of central register and based too much on trust).</li> </ul> <p><b>Desired Outcomes</b></p> <p>Representatives of affected communities at the workshop want / need:</p> <ul style="list-style-type: none"> <li>• Refer to point 6 - Affected people to be trusted when they say they are exempt and not questioned further or required to divulge personal information to justify themselves (I believe this statement and all others in this section are relevant only when a valid MoH exemption card or whatever is in place is provided – if so, suggest a statement along these lines could preface this set of bullet points)?</li> <li>• Refer to point 10 - an inclusive solution that does not further marginalise the communities and individuals it is supposed to be protecting (the exemption is not only about “communities”)</li> </ul> |
| <p>Ministry of Social Development</p>     | <p>I think missing from the “problem definition” is that there is low trust in the current exemption process with it being common knowledge that there are many people claiming exemptions and carrying cards who probably don’t meet the criteria for an exemption, loose as they may be.</p>   |

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| <p>s 9(2)(a) [REDACTED]<br/>[REDACTED]<br/>[REDACTED]</p>                                |   |
| <p>Mental Health and Wellbeing Commission</p> <p>s 9(2)(a) [REDACTED]<br/>[REDACTED]</p> | <p>Additional comments in response to appendix one:</p> <p><b>Proposal One: Grounds for a face covering exemption</b></p> <p>We support option 3 (provide additional guidance) initially, followed by option 2 (adopt Alberta criteria for eligibility) with the following requirements:</p> <ul style="list-style-type: none"> <li>• a no-barrier approach to obtaining medical assessment. i.e. <ul style="list-style-type: none"> <li>○ to ensure equity of access applicants should not have to pay for the process or bear the costs of attending assessment</li> <li>○ the process is accessible</li> </ul> </li> <li>• Amendments to My Covid Record so that, if the applicant has a vaccine pass, their face covering exemption could be displayed on the pass.</li> </ul> <p><b>Proposal Two: Process for obtaining an exemption</b></p> <p>To expedite the process and minimise clinical resource input MOH could provide the form online, with a freephone option to enable access for people unable to complete the online form themselves and allowing proxy applications for people with literacy or communication support needs that present a barrier.</p> <p>The applicant-facing version of the form could specify the medical practitioner, nurse practitioner, or psychologist who will confirm eligibility.</p> <p>MOH could then send the authoriser a link to an authoriser-facing version of the request form online, using contact details from the form, or if not supplied, accessed through existing MOH databases.</p> <p>Authorisers who are unable to confirm eligibility without seeing the applicant could arrange a funded appointment. There would need to be a process and budget to enable these appointments.</p> <p>MOH could still monitor for and investigate e.g., a particular practitioner providing a large number of certificates, or other grounds for suspecting that practitioners are not acting in good faith.</p> <p><b>Minimises potential for misuse</b></p> <p>As stated in the MOH document under "Medical certificate".</p> <p><b>Removes barriers to access</b></p> |

This option does not impose on applicants the cost and inconvenience of obtaining a medical certificate, which is important to ensure equity of access for people on low incomes but does place that cost on MOH. However, by using IT capabilities and authorisers' knowledge of their patients as described, the resource needed can be minimised.

The risk remains that where a request is refused, this could adversely affect the relationship between the practitioner and the patient, and there is a risk that some claimants would "shop around". However, there is a potential benefit in establishing new relationships where people are not engaged with health services currently, which could benefit marginalised people.

#### **Maintains public safety**

As stated in the MOH document under "Medical certificate".

#### **Able to be implemented soon, with manageable costs**

The costs of authorisers' time to complete requests, providing funded appointments and establishing the IT infrastructure would fall to MOH, but these costs would be less under this proposal than under the "Application process" option described in the Ministry's brief.

#### **Sustainable**

Initially adopting the proposal to develop additional guidance (option 3) will help to avoid the disadvantage of the "Medical certificate" option, that the use of health system resources on the verification process could be unhelpful particularly if the health system was under pressure from an outbreak of the Omicron variant. Given that an Omicron outbreak is already scaling up, relying on additional guidance would seem the only viable option in the short term, and will improve the situation while allowing time for the processing of applications to happen alongside the progress of the outbreak, to create a better long-term solution.

#### **Proposal Three: Form of face covering exemption**

The current card has no identifying information. The new version would include name, date of issue, Ministry of Health logo, and, in the case of combining with the vaccine pass, the information contained therein.

Combining with the vaccine pass could be as simple as including a mask exemption symbol and/or the words "mask exemption".

#### **Proposal Four: Legal protection for people with exemptions**

We support the proposal that the Order protect people with face covering exemptions from being denied access to "designated premises" or the goods and services provided at those premises.

## Business sector feedback

| Organisation/person                             | Comment   |
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| Retail NZ<br>s 9(2)(a) [REDACTED]<br>[REDACTED] | <p>I can however summarise what the sector has dealt with over the Christmas/holiday period as I was on call supporting the sector through this time and there wasn't a signal day that issues on this topic weren't raised with us.</p> <ul style="list-style-type: none"> <li>• Increasing incidents of customers refusing to wear masks, in particular around holiday hot spots and in the major chains;</li> <li>• Situations now with staff fatigue mean they are taking advantage of the clear loop hole in the mask exemption system and now refusing to wear masks. Despite having previously worn a mask. This is creating significant employment issues for retailers;</li> <li>• Growing numbers of retailers are implementing masks as an entry requirement and will not serve those who will not wear a mask. This is due to the lack of faith in the exemption system and H&amp;S requirement to protect customers and other staff;</li> <li>• Businesses are providing alternative service e.g. online and phone orders, delivery, and click &amp; collect. For a segment of those who refuse to wear masks they won't accept any of these alternatives. Instead suggestions for alternative service offering is met with abuse;</li> </ul> <p>To summarise we need this policy changed urgently – within the few weeks. The vast majority of New Zealanders should be able to wear a mask and must wear a mask to protect themselves, others around them and minimise spread. Mask wearing is the main tool of protection for the community across every stage of the protection framework and it must be backed up with a robust policy that does not allow people to abuse the process.</p> <p>Urgency to the change in this policy must happen, especially with omicron at the border already.</p> <p>Put simply, Retail NZ is requesting an urgent reset of the mask exemption process that requires the following:</p> <ul style="list-style-type: none"> <li>• All currently issued exemptions or those who have self-exempted to be voided;</li> <li>• New centralised process set up;</li> <li>• Clear definition and advice on individuals who can't wear a mask, this should be extremely limited circumstances and a clinical health reason;</li> <li>• Application to the Ministry of Health and the support of the individuals GP;</li> <li>• Ministry of Health to review process of application and authenticity of request;</li> <li>• Digital/issued exemption linked into the official QR code scanner;</li> <li>• Clear communication of fines for not wearing masks and noncompliance;</li> </ul> |

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|                                   | <p>We understand and sympathise the argument of groups who claim that some people can be retraumatised by having to apply again for a mask exemption. But with clear communications that is about protecting them and not gaining advantage to those that abuse the system it is possible to manage this. If individuals who have had incidents that mean mask wearing triggers anxiety (or something else in their past) then we must provide alternative wrap around mental health and wellbeing offering to support those people.</p>   |
| <p>Retail NZ</p> <p>s 9(2)(a)</p> | <p>The mask exemption situation has escalated significantly in recent weeks.</p> <p>A few extra factors now at play across the sector to add to the impacts I outlined below:</p> <ol style="list-style-type: none"> <li>1. Staff leaving their roles in retail due to abuse from non-mask wearing members of the public, put simply they are over the daily abuse;</li> <li>2. The major chains estimate they have incidents of non- mask wearing and abuse every 15 minutes or so;</li> <li>3. Staff refusing frontline roles and asking for redeployment to back office roles due to the non-mask wearing public, and fear of catching COVID-19 – in particular Omicron. This is creating further employment issues;</li> </ol>   |
| <p>Countdown</p> <p>s 9(2)(a)</p> | <p>It was pleasing that there seemed to be a strong consensus that the current position is unworkable, not fit for purpose and needs to be changed.</p> <p>We just wanted to place on the record two points:</p> <p>During the workshop you suggested that that Countdown's only concern with the current position is that team members have no way of verifying the existence of an exemption and that, if there were some way to do this, the legitimacy of any exception should not concern us. With respect, this is not our position and not what we discussed with you last week. Our concern is:</p> <ul style="list-style-type: none"> <li>• We are seeing escalating incidents of customer aggression in our stores. This aggression is often the result of disagreements about the wearing of masks. It can be the result of a masked customer confronting a customer who is unmasked or the result of an unmasked customer taking offence at the fact our team member has asked them to wear a mask. Many of these unmasked customers are refusing to wear masks to make a political or philosophical point about vaccination or mask wearing.</li> <li>• A lot of the concert that leads to these confrontation is based on the widespread view that the provisions around mask exemptions are unworkable and widely abused. Put simply, people have no way of knowing whether someone not wearing a mask has a genuine reason for not doing so. This leads people to assume that anyone not wearing a mask does not meet the exemption criteria.</li> <li>• Simply replacing the current system with another flawed system will not resolve this. A statutory declaration system would be as ineffective as the current one.</li> <li>• So our view is that any resolution require more rigor around the exemption process. This included both the criteria and the documentation to evidence.</li> </ul> |

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|  | <p>We are extremely concerned around the lack of urgency being shown in terms of getting this issue addressed. From our perspective is is extremely urgent. We are concerned that the verbal aggression is now escalating to physical aggression and that someone will get seriously hurt. We have been raising this issue for months now, and there has been little on no acknowledgement of our concerns, let alone meaningful action. The spread of Omicron will only exacerbate this problem.</p>   |
| <p>Countdown<br/> s 9(2)(a)<br/> </p>              | <p>We've had another tough day today with masks (non use). Our team are incredibly distressed about it. You'll understand their distress is further heightened by today's announcement that omicron is now in the community.</p> <p>Mask use will be critical in keeping supermarkets safe, and open.</p> <p>Is tere any way we can move quicker? Our team (and customers) are being put in an incredibly difficult and unsafe position due to a policy setting/process that we know isn't fit for purpose. It's been tough enough dealing with months and months of violence, but in an omicron environment, it feels unethical ( indeed immoral) to keep putting my team/other front line retail workers at risk.</p>   |
| <p>Countdown Supermarkets<br/> s 9(2)(a)<br/> </p> | <p>This issue is now so prevalent that our store teams do not separately report it.</p> <p>A couple of points:</p> <ul style="list-style-type: none"> <li>• We have around 1,500 customer aggression events (physical and verbal) in our stores per month. These are those that are reported through our systems. We believe this is understated, as our team members have become so used to it, that some may not bother to report verbal abuse.</li> <li>• The main cause of these currently is issues around our COVID-19 protocols (this is mostly masks).</li> <li>• We have asked a sample of our stores for feedback and they report between 5% to 10% or customers do not wear masks. Based on the fact that we have approximately 3.7m customer visits each week, this means that we have between 185,000 and 370,000 visits by non-mask wearing customers per week.</li> <li>• All stores report that they are familiar with their customers who genuinely qualify for an exemption (as those customers are generally very keen to ensure that our store team members are aware they have a genuine reason). They estimate this is approximately less than 1% of non-mask wearing customers.</li> </ul> <p>This does not include customer on customer conflict, as this is generally only formally reported when one of our team members becomes aware of it.</p> <p>When we contacted our stores they all reported that our team members find the presence of non-mask wearing customers who likely do not qualify for a genuine exemption to be extremely distressing.</p> <p>This does not include Kiri's personal knowledge gained from the fact that, as Director of Health, Safety and Wellbeing, team members are contacting her every day to express their concerns about this.</p> |

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| <p>Restaurants NZ</p> <p>s 9(2)(a)</p> | <ul style="list-style-type: none"> <li>• Consideration should be given to exemptions for situations where health and safety issues may be at play. For instance, a person may be fit and healthy enough to be required to wear a mask, however they work in a role (like a small, hot kitchen in the middle of summer) where it could warrant an exemption being applied for, assessed, and granted.</li> <li>• The medical certificate option is our preference as feedback from members is that the process to gain exemption is not robust enough and this calls into question the validity of all exemptions – we have even tested the system and anyone can get an exemption. We want a system that protects those that do need exemptions. Something that can be trusted. Having a medical professional view, confirming the requirement that the person should be entitled to receive the exemption is not an onerous additional step and will help to achieve this trust in the system. In addition, the ability for an operator to request identification of the person (as you can do with Vaccine Passes) should be allowed, (or photo identification be included on the exemption).</li> <li>• We think having a more robust exemption process is a better outcome for those that <u>do</u> need to be exempt – unfortunately, at the moment, the validity of their exemption is being called into question and this is obviously not the desired outcome for those organisations protecting the interests of these people.</li> </ul> |
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*Police incident and offence data*

| Organisation/person                        | Comment  |
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| <p>New Zealand Police</p> <p>s 9(2)(a)</p> | <p><b>Face covering incident and offence data</b></p> <p>The information below is based on different sources, specifically:</p> <ul style="list-style-type: none"> <li>• a search of Police incidents recorded in the CARD Police dispatch system between 3 December 2021 (since the COVID Protection Framework came into force) and 12 January 2022 that featured the terms “mask”, “face”, “cover”, “exempt”, or “COVID” in the headline. An important caveat is that as this dataset relies on searching for keywords, it is not intended to be used as official reporting for statistical purposes. Events featuring these headline terms were then filtered into the following categories to help respond to your specific query: <ul style="list-style-type: none"> <li>○ Staff of retailers or other public-facing businesses alleging abuse, assaults or trespass by people refusing to wear face coverings / claiming to have face covering exemptions <p>There were 237 recorded events where a call for service was made to Police due to a customer not complying with face covering regulations.</p> <p>In four of these recorded events, the customer was unable to present a face covering exemption.</p> </li> <li>○ People unable to wear face coverings alleging abuse or assaults by members of the public <p>There were no recorded Police events identified where people who were unable to wear face coverings alleged abuse or an assault had occurred.</p> </li> </ul> </li> </ul> |

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|  | <ul style="list-style-type: none"> <li>○ People unable to wear face coverings alleging abuse, assaults or refusal of service by staff of retailers or other public-facing businesses. <ul style="list-style-type: none"> <li>There were 12 recorded events where a call for service was made to Police due to a retailer/business not accepting a customer's face covering exemption.</li> </ul> </li> <li>● Frequency of use of face-covering infringement offence codes (so where an infringement notice was issued) since mandatory face covering requirements came into effect under relevant Health Orders <ul style="list-style-type: none"> <li>○ under previous Alert Level Framework (between 21 September and 2 December) <ul style="list-style-type: none"> <li>▪ Failure to wear face covering – Alert Level 2 Area = 33</li> <li>▪ Worker failed to wear face covering – Alert Level 2 Area = 1</li> <li>▪ Failure to wear face covering – Alert Level 3 Area = 26</li> <li>▪ Failure to wear face covering on public transport service = 2</li> <li>▪ Failure to wear face covering on domestic air service = 1</li> </ul> </li> <li>○ under current COVID Protection Framework (from 2 December) <ul style="list-style-type: none"> <li>▪ Failed to comply with face covering rule = 12</li> </ul> </li> </ul> </li> </ul> |
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### WorkSafe New Zealand input

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| <p>Meeting with WorkSafe (28 January 2022)</p> | <ul style="list-style-type: none"> <li>● Because there is no current legal protection for exempt people to access essential services, they don't see businesses as playing an enforcement role, but rather setting conditions of entry – they felt this language was important in how we present the problem.</li> <li>● When considering the obligation of PCBUs to look after their staff, WorkSafe inspectors focus on whether the staff are wearing masks, not customers (as that is the responsibility of the individual). Where staff are exempt (whether legitimately or claiming to be), they do not ask for evidence of this but rather look at what other mitigations are in place to protect those people not wearing masks, e.g. contact tracing.</li> <li>● WorkSafe's advice to businesses has been to accept exemptions at face value, not to engage in questioning (refer back to conditions of entry point above).</li> <li>● Generally, they felt that having an exemption card that could be trusted would be helpful, but also acknowledge that perhaps the lesser version of legal protection (to get around the conditions of entry issue) and a focus on mitigating the risk to the person not wearing a mask by scanning in would be an improvement.</li> <li>● They also perceive communications and education a key need but caution making it too wide so as to not invite non-compliance.</li> <li>● They see the problem as being bigger than what we have necessarily gauged it as, i.e. more widespread outside of essential services. Their anecdotal feeling is that legitimate exemptions are around 1:100 (100 being misuse).</li> </ul> |
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## Disabled Persons Assembly NZ

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| <p>Disabled Persons Assembly NZ</p> | <p><b>Feedback on the experiences of people who are exempt from wearing a face covering under the public health order</b></p> <p><b>Background</b></p> <p>The existence of, and constant referral to face covering exemption cards, is detrimental to the understanding and acceptance that the exemption exists within the Public Health Order.</p> <p>To date, Disabled Persons Assembly NZ (DPA) has distributed approximately 30,000 physical face covering exemption cards via post on behalf of the Ministry of Health, however the number of cards distributed is substantially higher due to the fact that many received a digital version only and until August 2021 the PDF was available on our, and others' websites, so people did not have to contact us to obtain one and people were directed from the various official sites to download one from our site.</p> <p>To date, DPA has received approximately 70,000 emails regarding face covering exemption cards, with 6,000 of these being in the week after the announcement of an extension to the mask mandate in schools.</p> <p>A large number of emails have been from businesses and organisations seeking guidance around face covering exemptions. Many of these have come from .govt.nz addresses, illustrating the widespread misunderstanding of the fact that face covering exemptions exists in the public health order.</p> <p><b>Discrimination against people who are exempt from wearing a face covering under the public health order</b></p> <p>Two weeks after face coverings were first mandated, a 23-page document of feedback relating to supermarket experiences was submitted to the Office for Disability Issues (attached). Since then, feedback about negative experiences has been continuous. This feedback ranges from people who are exempt being discriminated against while accessing essential services and other businesses, as well as their workplaces.</p> <p>This includes:</p> <ul style="list-style-type: none"> <li>• people being told by public and retail workers that they hoped they die from Covid;</li> <li>• people being denied entry to essential services (e.g. medical appointments, supermarkets, pharmacies, etc.) and public spaces (e.g. courts, transport, etc.);</li> <li>• people being questioned about their personal health details in public;</li> </ul> |
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- people being trespassed from their local food source;
- people having the police called on them, sometimes including physical force; and
- workers being told they risk termination (or have even had their employment terminated) if they do not wear a mask while working.

People have had retail workers refuse to social distance and come right up to them to confront the issue. When other public health measures are not taken into consideration to keep them safe, people who can't wear face coverings have felt vulnerable.

### **Effect on people who are exempt from wearing a face covering under the public health order**

People who are unable to wear face coverings due to their disability or health condition are often most susceptible to the effects of contracting Covid-19. Therefore, it can be incredibly traumatic when challenged on their exemption by people who are not following public health measures themselves.

The effect the above listed experiences have had on people who are exempt from wearing a face covering under the public health order is profound.

This includes:

- people feeling like their lives are not valued;
- people having to buy more expensive items after being denied access to more affordable businesses;
- people with PTSD who have experienced trauma being retraumatised;
- people feeling like they are unable to leave their homes and becoming alienated from their community;
- people feeling that these experiences are having a profoundly negative effect on their mental wellbeing; and
- people losing their source of income.

The continued focus on the few who are misrepresenting themselves as being exempt has a massive effect on those who are legitimately exempt.

For example, with more space given in the media and other communications to people who are misrepresenting themselves as being exempt, this becomes the first thing people think about when they see someone without a face covering.

The lack of focus on the fact that exemptions exist in the public health order has increased the negative experiences of people who are exempt.

### **Summary**

The Face Covering Exemption Card, which was developed by the Ministry of Health in 2020 for those people who are exempt from wearing a face covering under the Health Order simply as a tool to aid them to communicate exemption, has since been

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|  | <p>increasingly referred to, or demanded to be seen, as 'proof' of exemption. The card was never designed to be used in this way, and the existence of the card appears now to be adding to the widespread misunderstanding of the fact that face covering exemptions exist in the public health order and no proof is required. This misunderstanding has led to discrimination and has been detrimental to the wellbeing of those who are legitimately exempt.</p> |
| <p>Disabled Persons<br/>Assembly NZ<br/>s 9(2)(a)<br/>[REDACTED]</p> | <p>We have posted out approximately 30,000 physical cards, however the number of cards distributed would be far more as some people have only been emailed an electronic version, and prior to August 2021, the pdf was available on our (and others) websites, so people did not have to contact us to obtain one and people were directed for the various official sites to download one from our site.</p>  |
| <p>Disabled Persons<br/>Assembly NZ<br/>s 9(2)(a)<br/>[REDACTED]</p> | <p>With school students now required to wear face masks, the move to red, and the announcement about masks yesterday afternoon, in the last 48 hours hours, DPA has received over 2,500 emails regarding face coverings. The vast majority of these are from parents of school aged children, this is a matter that needs to be dealt with by the appropriate government agency (not by DPA) with urgency.</p>   |
| <p>Disabled Persons<br/>Assembly NZ<br/>s 9(2)(a)<br/>[REDACTED]</p> | <p>A 23 page summary of the feedback that DPA has received from disabled people on their experience at supermarkets and other location was submitted to Brian Coffey, MSD, Office of Disability Issues on 3 September 2021 – a copy of the paper is attached as Appendix Three.</p>  |

### Appendix Three: Exemption regimes in other jurisdictions

| Jurisdiction     | Who issues exemption cards?   | Process to obtain card   | Proof of exemption required?   | Comment   |
|------------------|---|--|--|---|
| England          | Government  | Templates for exemption cards and badges can be downloaded. No application or declaration process.       | No   | Source: UK Government website. Advice updated 10 December 2021.<br><a href="https://www.gov.uk/government/publications/face-coverings-when-to-wear-one-and-how-to-make-your-own/face-coverings-when-to-wear-one-and-how-to-make-your-own">https://www.gov.uk/government/publications/face-coverings-when-to-wear-one-and-how-to-make-your-own/face-coverings-when-to-wear-one-and-how-to-make-your-own</a>  |
| Wales            | Government  | Template for exemption card can be downloaded. No application or declaration process.                    | No   | Source: Wales Government website.<br><a href="https://gov.wales/sites/default/files/publications/2020-09/face-covering-exemption-card_0.pdf">https://gov.wales/sites/default/files/publications/2020-09/face-covering-exemption-card_0.pdf</a>  |
| Northern Ireland | Could use the exemption card and badge templates produced by UK Government (See "England" above), but Northern Ireland Government does not appear to produce its own. | N/A  | Yes. "Since 27 December 2021, an individual who is exempt from the requirement to wear a face covering must be able to prove this to a relevant person, such as a police or enforcement officer." No guidance on nature of proof required. | Source: Northern Ireland Government website.<br><a href="https://www.nidirect.gov.uk/articles/coronavirus-covid-19-face-coverings#toc-5">https://www.nidirect.gov.uk/articles/coronavirus-covid-19-face-coverings#toc-5</a> . The requirement to produce proof of exemption recently announced by Northern Ireland Government, but I have yet to locate a legal instrument authorising this.  |
| Scotland         | Disability Equality Scotland (similar to our DPA) distributes cards on behalf of Government.  | Can download card but must tick that you've read the legal exemption criteria and that you are eligible. | No   | Source: Disability Equality Scotland website.<br><a href="https://exempt.scot/download-a-card/">https://exempt.scot/download-a-card/</a><br><br>Note: The Scottish Government website provides comprehensive advice on mask wearing requirements and exemptions.<br><a href="https://www.gov.scot/publications/coronavirus-covid-19-public-use-of-face-coverings/">https://www.gov.scot/publications/coronavirus-covid-19-public-use-of-face-coverings/</a> |
| Australia        |   |  |  | Mask mandates are imposed at State level, therefore each State has its own exemption regime. Some of these are set out below.   |

|                   |   |                      |  |  |
|-------------------|---|----------------------|--|--|
| NSW               | No exemption card.  | N/A                  | Yes. Must carry a medical certificate or letter, or a statutory declaration and produce to Police on demand.   | Source: NSW Government website.<br><a href="https://www.nsw.gov.au/covid-19/stay-safe/rules/face-mask-rules#:~:text=You%20are%20not%20required%20to,not%20always%20visible%20or%20obvious.">https://www.nsw.gov.au/covid-19/stay-safe/rules/face-mask-rules#:~:text=You%20are%20not%20required%20to,not%20always%20visible%20or%20obvious.</a>   |
| Vic               | Unclear if cards "official". No reference to cards in Government advice, but located a downloadable card on DHHS website. | No official process. | No. States that you do not need a medical certificate or to apply for an exemption or permit.  | Source: Victoria Government DHHS website.<br><a href="https://www.coronavirus.vic.gov.au/face-masks-when-wear-face-mask#exceptions-for-not-wearing-a-face-mask">https://www.coronavirus.vic.gov.au/face-masks-when-wear-face-mask#exceptions-for-not-wearing-a-face-mask</a> The Victorian Equal Opportunity and Human Rights Commission provides advice that, among other things, refusal of service to those exempt on health grounds may be unlawful discrimination.<br><a href="https://www.humanrights.vic.gov.au/resources/faqs-face-masks-and-human-rights/">https://www.humanrights.vic.gov.au/resources/faqs-face-masks-and-human-rights/</a> |
| Qld               | Appears to be no official exemption card.   | N/A                  | No. States that no medical certificate required.   | Source: Queensland Government website.<br><a href="https://www.qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19/protect-yourself-others/face-masks#exceptions">https://www.qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19/protect-yourself-others/face-masks#exceptions</a>  |
| Western Australia | Appears to be no official exemption card.   | N/A                  | No requirement stated.   | Source: Western Australia Government website.<br><a href="https://www.wa.gov.au/government/publications/covid-19-coronavirus-public-health-and-social-measures-perth-and-peel-frequently-asked-questions#exemptions-from-mask-requirements">https://www.wa.gov.au/government/publications/covid-19-coronavirus-public-health-and-social-measures-perth-and-peel-frequently-asked-questions#exemptions-from-mask-requirements</a>   |
| Canada            |   |                      |  | Mask mandates are imposed at Provincial level, therefore each Province has its own exemption regime. Some of these are set out below.  |
| Ontario           | Appears to be no official exemption card.   | N/A                  | No. Various exemptions identified, including on medical grounds, and states: "You do not need medical documentation to support any of the exceptions." | Source: Ontario Government website.<br><a href="https://www.ontario.ca/page/face-coverings-and-face-masks#section-1">https://www.ontario.ca/page/face-coverings-and-face-masks#section-1</a>   |

|                  |   |   |  |   |
|------------------|---|---|--|---|
| Quebec           | Appears to be no official exemption card. However, the mask mandate poster for businesses includes reference to exemptions. | N/A   | No requirement stated.   | Source: Quebec Government website.<br><a href="https://www.quebec.ca/en/health/health-issues/a-z/2019-coronavirus/mask-or-face-covering/wearing-a-face-covering-in-public-settings-covid-19">https://www.quebec.ca/en/health/health-issues/a-z/2019-coronavirus/mask-or-face-covering/wearing-a-face-covering-in-public-settings-covid-19</a>   |
| British Columbia | Appears to be no official exemption card  | N/A   | No requirement stated.   | Source: British Columbia Government website.<br><a href="https://www2.gov.bc.ca/gov/content/covid-19/info/restrictions">https://www2.gov.bc.ca/gov/content/covid-19/info/restrictions</a>   |
| Alberta          | Template Medical Note for exemptions on medical grounds.  | Obtain note from nurse practitioner, physician or psychologist. | Some exceptions do not require proof, e.g. inability to use mask without assistance. But an "exception for health condition" can only be claimed if an "authorizing health professional" states in writing that the person has one of the listed physical or mental health conditions that qualify. The Medical Note must not include specific information about the health condition. | Exemptions, and the requirement to verify exemptions on medical grounds, set out in CMOH Order 2021-22, cls 4.2-4.4 and Appendix A.<br><a href="https://open.alberta.ca/dataset/5fdeee70-bd59-440c-81d3-9ecebed1a214/resource/5d8527ae-14ab-42d4-a4eb-425254a74383/download/health-cmoh-record-of-decision-cmoh-order-22-2021.pdf">https://open.alberta.ca/dataset/5fdeee70-bd59-440c-81d3-9ecebed1a214/resource/5d8527ae-14ab-42d4-a4eb-425254a74383/download/health-cmoh-record-of-decision-cmoh-order-22-2021.pdf</a> . There is a template letter for health professionals to verify exemptions.<br><a href="https://www.alberta.ca/assets/documents/covid-19-masking-medical-exception-letter-template.pdf">https://www.alberta.ca/assets/documents/covid-19-masking-medical-exception-letter-template.pdf</a> |
| Sweden           | N/A as appears to be no Government mask mandate in Sweden.  | N/A   | N/A  | Source: Website providing emergency information from Swedish Authorities, updated 28/12/21.<br><a href="https://www.krisinformation.se/en/hazards-and-risks/disasters-and-incidents/2020/official-information-on-the-new-coronavirus/current-rules-and-recommendations">https://www.krisinformation.se/en/hazards-and-risks/disasters-and-incidents/2020/official-information-on-the-new-coronavirus/current-rules-and-recommendations</a> . As no mask mandate, Sweden not a useful example.   |
| Netherlands      | Appears to be no official exemption card.   | N/A   | No requirement stated.   | Source: Netherlands Government website.<br><a href="https://www.government.nl/topics/coronavirus-covid-19/face-masks-mandatory-in-several-places">https://www.government.nl/topics/coronavirus-covid-19/face-masks-mandatory-in-several-places</a>  |

|           |   |     |                        |   |
|-----------|---|-----|------------------------|---|
| Singapore | Appears to be no official exemption card. | N/A | No requirement stated. | Source: Covid-19 (Temporary Measures) (Control Order) Regulations 2020.<br><a href="https://sso.agc.gov.sg/SL/COVID19TMA2020-S254-2020?DocDate=2020041020200410&amp;ProvIds=P11A-">https://sso.agc.gov.sg/SL/COVID19TMA2020-S254-2020?DocDate=2020041020200410&amp;ProvIds=P11A-</a> Appears to be very limited medical exemption under which face shields may be work instead of mask "if wearing a mask over the individual's or child's nose and mouth leads to severe medical conditions for the individual or child and wearing a face shield does not" r 3B(a). |
|-----------|---|-----|------------------------|---|

RELEASED UNDER THE OFFICIAL INFORMATION ACT

# Briefing

## New process for face mask exemptions – implementation plan

|                        |   |                              |          |
|------------------------|---|------------------------------|----------|
| <b>Date due to MO:</b> | 26 April 2022                                       | <b>Action required by:</b>   | N/A      |
| <b>Security level:</b> | IN CONFIDENCE                                       | <b>Health Report number:</b> | 20220664 |
| <b>To:</b>             | Hon Chris Hipkins, Minister for COVID-19 Response   |                              |          |
| <b>Copy to:</b>        | Hon Carmel Sepuloni, Minister for Disability Issues |                              |          |

### Contact for telephone discussion

| Name                    | Position                            | Telephone |
|-------------------------|-------------------------------------|-----------|
| <b>Steve Waldegrave</b> | Group Manager, COVID-19 Policy, SSP | s 9(2)(a) |
| <b>Annie Hindle</b>     | COVID Response Team Manager, SSP    | s 9(2)(a) |

### Minister's office to complete:

- |   |                                    |  |
|---|------------------------------------|--|
| <input type="checkbox"/> Approved             | <input type="checkbox"/> Decline   | <input type="checkbox"/> Noted               |
| <input type="checkbox"/> Needs change         | <input type="checkbox"/> Seen      | <input type="checkbox"/> Overtaken by events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |  |

Comment:

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

# New process for face mask exemptions – implementation plan

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**Security level:** IN CONFIDENCE      **Date:** 26 April 2022

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**To:** Hon Chris Hipkins, Minister for COVID-19 Response

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## Purpose of report

1. This report sets out an implementation plan for the new process for face mask exemptions, working to the new system going live on 31 May 2022.
2. This report discloses all relevant information and implications.

## Summary

3. In a previous Health Report [HR20220581], you agreed to a new process for face mask exemptions that would provide:
  - a. an educative approach via a social awareness campaign;
  - b. a self-declaration based face mask exemption process; and
  - c. legal protection in relation to right of entry to shops or services with mask mandates for people who are exempt from face mask requirements.
4. s 9(2)(h) [REDACTED]
5. s 9(2)(h) [REDACTED] This would involve amending the COVID-19 Public Health Response (Protection Framework) Order 2021 to the effect that a person to whom clause 23(1) applies must be considered to be complying with that rule if they produce a card issued by the Ministry of Health stating that the person meets the grounds in clause 11(3)(a)(ii).
6. If an amendment is framed along these lines, possession of an exemption card would stand as conclusive evidence of the person's exempt status. A business refusing to allow that person entry onto their premises would be likely to trigger the rights and protections set out in the Human Rights Act 1993 (HRA).<sup>1</sup>

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<sup>1</sup> See the anti-discrimination provisions in Part 2 of the HRA (namely s 42, which prohibits discrimination in relation to access by the public to places, vehicles and facilities, and s 44, which prohibits discrimination in the provision of goods and services) and the exceptions to those provisions in s 43(4) ('...nothing in s 42 shall apply where the disability of a person is such that there would be a risk of harm to that person or to others, including the risk of infecting others with an illness, if that person were to have access to or use of any place or vehicle and it is not reasonable to take that risk') and s 52 (which provides an exception to s 44 if the person's disability requires the services to be provided in a special manner and the provider cannot reasonably be expected to do this.)

7. An implication of this alternative legal mechanism is that the current generic face mask exemption cards would remain valid. Affected people would be able to choose whether or not they wish to apply for the new card.
8. This report provides an overview of the approach to implementation of the new process, leading to the new system going live on 31 May 2022. There are four workstreams:
  - a. Workstream 1: Public announcement and prior engagement with sector groups
  - b. Workstream 2: Social awareness campaign
  - c. Workstream 3: Development of personalised exemption card, to be available in digital and hard copy format - IT design and implementation
  - d. Workstream 4: Amendments to COVID-19 Public Health Response (Protection Framework) Order 2021

## Recommendations

We recommend you:

- a) s 9(2)(h) **Noted**
- b) **Note** that s 9(2)(h) **Noted**  
 the COVID-19 Public Health Response (Protection Framework) Order 2021 could be amended to the effect that a person to whom clause 23(1) applies must be considered to be complying with that rule if they produce a card issued by the Ministry of Health stating that the person meets the grounds in clause 11(3)(a)(ii).
- c) **Note** that this would mean that possession of an exemption card would stand as conclusive evidence of the person's exempt status, and a business refusing to allow a person entry onto their premises on the ground that they were not complying with the mask wearing requirements of the COVID-19 Public Health Response (Protection Framework) Order 2021 would be likely to trigger the rights and protections set out in the Human Rights Act 1993. **Noted**
- d) s 9(2)(h) **Noted**
- e) **Note** the draft Implementation Plan. **Noted**



Maree Roberts  
 Deputy Director-General  
**System Strategy and Policy**  
 Date:

Hon Chris Hipkins  
**Minister for COVID-19 Response**  
 Date:

# New process for face mask exemptions – implementation plan

## Background

### Stakeholders are experiencing issues with the current approach to face mask exemptions

9. The COVID-19 Public Health Response (Protection Framework) Order 2021 (the Order) requires people to wear a face mask in a range of settings as a key public health measure to slow the spread of COVID-19.
10. Clause 11 of the Order provides the circumstances in which some people are not required to wear a face mask, and exempts anyone who “has a physical or mental illness or condition or disability that makes wearing a face covering unsuitable”. While there is no requirement for exempt people to provide evidence, it is recognised that some people are misusing this provision.
11. In attempting to verify whether people are genuinely exempt, workers (especially in retail settings such as supermarkets) are experiencing escalating and unsafe behaviour from some customers. Exempt people also report experiencing distress and discrimination, and are being asked for sensitive personal information, often in public settings.
12. Stakeholder groups including retail, hospitality, transport and education sectors and affected communities<sup>2</sup> have expressed concern with the current approach to face mask exemptions. These stakeholder groups seek a rapid solution.

### Why we need to change face mask exemption rules

13. The use of face masks as a public health intervention is a proven approach to prevent the spread of COVID-19 in indoor locations (while dependent on factors such as the quality of mask, and correct use), and so will always be encouraged.
14. However, an exemption process will only be required for as long as face masks are mandated. As we move through the Covid Protection Framework (CPF), it is likely the mandatory nature of these requirements will be reviewed, and settings may shift from mandatory to highly recommended. At present though, face masks are still required in many environments at both the Red and Orange settings of the CPF.
15. The risk profile associated with COVID-19 will likely continue to change, and it may be that face mask requirements shift up and down between being mandatory and being highly recommended throughout the remainder of this year. Therefore, there is still a reasonable rationale for improving and clarifying the exemptions process.

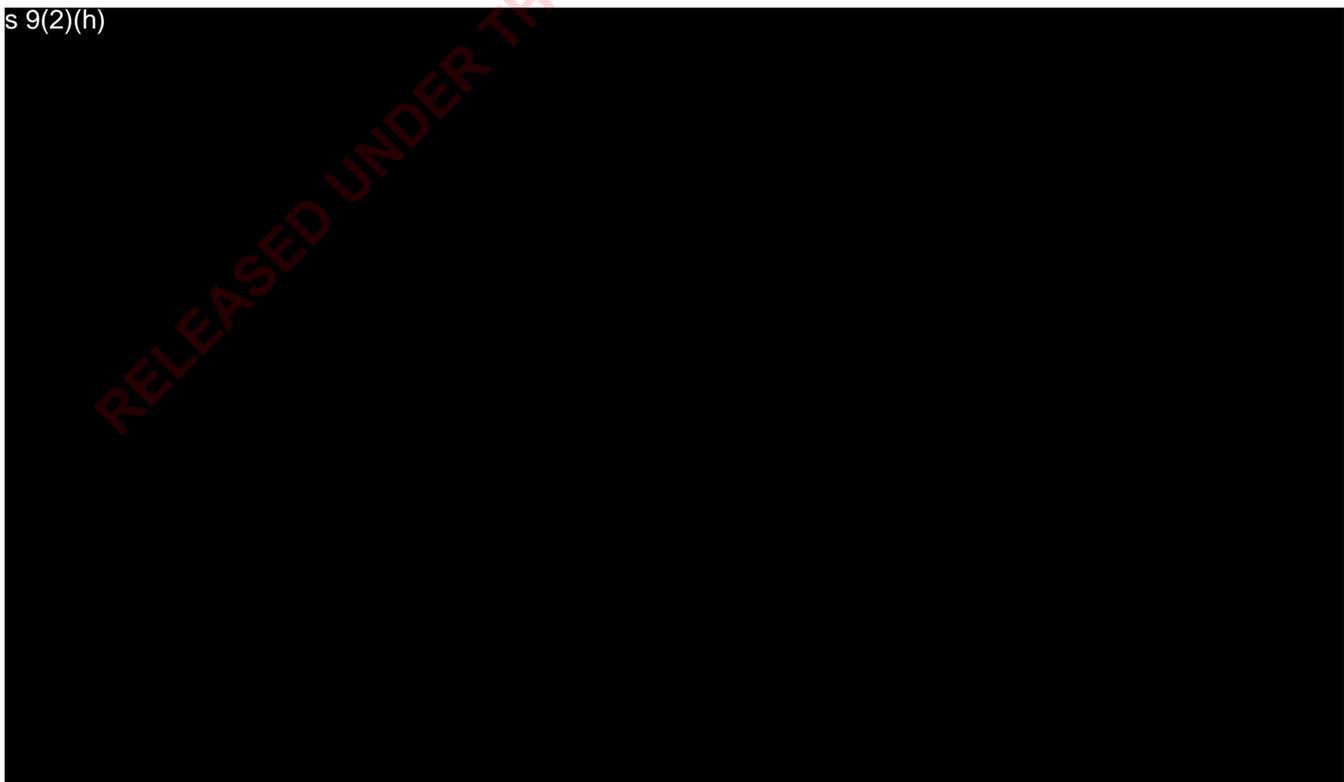
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<sup>2</sup> The term ‘affected communities’ is used to refer to people who are unable to wear a face mask for a variety of legitimate reasons. These include, for example, people who are unable to fit or use a face mask without assistance; people with sensory, communication or decision-making impairments that make wearing a face mask unsuitable; and people whose personal experiences, such as being a victim of violent crime, mean that wearing a face mask is traumatising.

## What you have agreed to

16. In a Health Report in early March [HR20220204], we provided you with five options to introduce new face mask exemption arrangements to resolve the various issues highlighted by stakeholders with the current trust-based model. Responding to that report, you indicated your agreement to option 2 (developing a social awareness campaign to educate businesses and the public about legal requirements on all parties, and clarifying who is exempt under the current law).
17. Option J in the earlier briefing asked you to direct officials to start detailed design and costing of the full proposal (combining options 1, 2 and 5 as set out in Appendix A of that report). In responding, you requested that the briefing be forwarded to the Ministers of Justice, Health, Disability Issues and Workplace Relations and Safety.
18. Following ministerial consultation, in a further Health Report [HR20220581] you agreed to:
  - a. **adopting an educative approach** - working with relevant agencies and the business community to enhance their understanding of their legal obligations relating to COVID-19 requirements; and
  - b. **introducing a self-declaration based face mask exemption process** – people would be required to complete a self-declaration that they meet the grounds for exemption before being issued a personalised exemption card, digitally and/or in hard copy format; and
  - c. **providing legal protection for those who are exempt from face mask requirements** - under this option, where a face mask requirement applies, a person may be asked to show their exemption card and, if they do so, cannot be denied entry to premises on the grounds that they are not wearing a face mask. This ensures that legitimately exempt people can enter the business or service, and access the goods or services provided there.

s 9(2)(h)



22. If an amendment is framed along these lines, possession of an exemption card would stand as conclusive evidence of the person's exempt status. A business refusing to allow that person entry onto their premises would be likely to trigger the rights and protections set out in the Human Rights Act 1993 (HRA).<sup>3</sup> That act qualifies the power of businesses to decide the terms on which they will serve customers.
23. With certain exceptions, the HRA makes it unlawful for a business to refuse to serve a person, or to treat a person less favourably, because they are disabled. Most of the people who qualify for a face-mask exemption will meet the definition of 'disabled' in the HRA. As such, a business which denies people who have shown evidence of an exemption from the Government-imposed face mask requirement access to its services, on the basis of a face mask requirement independently imposed by the business, runs the risk of unlawful discrimination under the HRA.
24. The Human Rights Commission has well-established complaints processes in place to deal with complaints that human rights have been breached. This involves first mediation, then progressing through to the Human Rights Review Tribunal if necessary.
25. The practical implications for the legal status of the card are that:
- a. Businesses ought not to question anyone who presents with a card issued under the new system because this will provide conclusive evidence of that person's exempt status;
  - b. People will not be obliged to use the new cards, but the old cards will continue to have no legal effect;
  - c. Businesses will retain their ability to exclude people from their premises for aggressive conduct or behaviours.

## What will be different?

### *The current process*

26. Under the current model, where face mask mandates apply, a person is exempt if they have "a physical or mental illness or condition or disability that makes wearing a face covering unsuitable". It is not necessary to obtain evidence of exemption. However, to assist in dealings with businesses, a person can request a Communication Card from the Ministry of Health. Communication Cards are not personalised – they do not display the holder's name or any other identifying information.
27. The request is made via an online form located on the Ministry of Health website. The requestor states whether they would like a physical copy in addition to a digital one and

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<sup>3</sup> See the anti-discrimination provisions in Part 2 of the HRA (namely s 42, which prohibits discrimination in relation to access by the public to places, vehicles and facilities, and s 44, which prohibits discrimination in the provision of goods and services) and the exceptions to those provisions in s 43(4) ('...nothing in s 42 shall apply where the disability of a person is such that there would be a risk of harm to that person or to others, including the risk of infecting others with an illness, if that person were to have access to or use of any place or vehicle and it is not reasonable to take that risk') and s 52 (which provides an exception to s 44 if the person's disability requires the services to be provided in a special manner and the provider cannot reasonably be expected to do this.)

indicates that they self-identify as having a physical or mental illness or condition or disability that makes wearing a face covering unsuitable. No further explanation or evidence is required.

### *The new process*

28. The main elements of the new process are:
- a. Application process (indicative as at current point in time):
    - **Application process possible using different channels** – we are exploring request pathways including the My Covid Record app, an online webform and via Whakarongorau/Healthline. The forms will also be able to be completed by a third party with an individual’s consent.
    - **The request is bound to the person’s National Health Index (NHI) number** – this would likely work in a similar way to My Covid Record, or Book My Vaccine – where the person provides basic personal information, and they are then matched to their NHI record. In most cases they are able to be matched automatically, and where this is not possible, a team will match records manually.
    - **Personalised physical or electronic card** – applicants can elect to receive a personalised card either in hard-copy, and/or electronically.
  - b. Legal framework:
    - **Applicants self-declare their eligibility** – applicants self-declare that they meet one of the categories for exemption. They are still not required to provide any evidence of their eligibility.
    - **Enforcement** – while it may be technically possible to set a fine for misuse of a card, there are several challenges in how this would work operationally. These issues will be covered in the Health Report for detailed policy approvals, which you are due to receive on 29 April 2022.
    - **Access should not be denied** – people with exemption cards *should* be treated as complying with the Order, because they meet the ground for an exception, meaning they should not be denied entry or access to goods and services. However, as outlined in paras 14-18, it is not possible to *prohibit* businesses from denying entry to exempt people.
29. Under the new system there will be no change to exemption categories. However, a new exemption card will be available, on application, from the Ministry of Health from 31 May. Eligible people will be able to request a card directly online, or obtain assistance to request a card. They will be asked to provide some basic personal information and contact details, and self-declare they are eligible for an exemption card. Having done that, they will be sent a digital card, or be issued with a physical card, or both.
30. The card will be personalised, so people should not use a card that has been issued to someone else. A business that is subject to a mask mandate may ask a person for evidence of their exemption. If they produce an official exemption card, they should be treated as compliant with the mask mandate. A business that refuses entry or service to a person who has shown their card may be unlawfully discriminating on the ground of disability, and the person could contact the Human Rights Commission and potentially

seek redress under the Human Rights Act 1993. s 9(2)(g)(i)

31. Officials from the Ministry of Health will work with officials from MBIE and Worksafe to develop guidance for the affected business sectors on how the new face mask exemption will apply.

## Implementation Plan

### Key deliverable and dates

32. The key deliverable is to establish a new face mask exemption process, including associated required supports (amending the Covid-19 Public Health Response (Protection Framework) Order 2021, and social awareness campaign) by 31 May 2022.
33. Key dates:
- a. Public announcement by Ministers on Wednesday 27 April at a media event.
  - b. New process to go live by the end of May 2022 – the current system will be turned off at that point however the generic cards issued under the current system will continue to be valid while restrictions under the Protection Framework continue.

### Implementation team structure

34. COVID-19 Policy is responsible for development and coordinating the implementation of the project, through to the new system going live at the end of May. From 1 June, ongoing responsibility for the exemption card process will shift to COVID-19 Operations.
35. The project is structured into four workstreams:
- a. Workstream 1: Public announcement and prior engagement with sector groups (COVID-19 Policy, MoH)
  - b. Workstream 2: Social awareness campaign (Strategic Communications, DPMC)
  - c. Workstream 3: Development of personalised exemption card, to be available in digital and hard copy format - IT design and implementation (Data and Digital; business owner: Rachael Hopkins, Border and Managed Isolation)
  - d. Workstream 4: Amendments to COVID-19 Public Health Response (Protection Framework) Order 2021 (COVID-19 Policy, MoH for detailed policy approvals; DPMC for drafting instructions).

### Sector engagement

36. The draft Communications and Engagement Plan is attached in Appendix 1. It outlines three areas of focus for sector engagement: the retail and hospitality sector, the disability community, and the general public.

### Equity

37. The current face mask exemption approach is designed to be high trust, and enable people, particularly in the disabled community, to self-determine their ability to wear a mask. Barriers to access emphasise inequities amongst priority populations, including Māori, Pacific peoples and disabled people.

38. Affected communities identified that any of the options for mandatory verification, requiring them to demonstrate proof of their exemption status, would create additional barriers for them given the difficulties some of their members (including those with physical and intellectual disabilities or mental health conditions) have in navigating processes.
39. The lack of trust in the current exemption approach is exacerbating barriers for these affected communities. The current lack of legal protection for people who are exempt from wearing face coverings is inconsistent with the rights of access to essential services that have been provided for people who are not vaccinated. It is important that everyone is able to access essential services.

## Next steps

40. Following the planned public announcement of the new process for face mask exemptions on 27 April, key steps in implementing the new process are as follows:
  - a. You will receive a Health Report with requests for policy approvals and permission to provide Parliamentary Counsel Office with drafting instructions, on 29 April 2022.
  - b. Ministerial consultation will occur between 29 April and 3 May 2022.
  - c. Provided you agree to the policy proposals:
    - a. DPMC will provide drafting instructions to PCO on 10 May 2022; and
    - b. PCO will draft the amended Order by 17 May 2022.
  - d. You will be provided with a copy of the amended Order and covering Health Report on 24 May 2022.
  - e. Provided you agree with the amended Order, it will be gazetted on 25 May 2022.
  - f. The authority to issue exemptions cards will come into force, and the new system for exemptions will go live on 31 May 2022.

ENDS.

# Briefing

## New process for face mask exemptions – proposed changes to the COVID-19 Public Health Response (Protection Framework) Order 2021

**Date due to MO:** 4 May 2022

**Action required by:** 6 May 2022

**Security level:** IN CONFIDENCE

**Health Report number:** 20220739

**To:** Hon Chris Hipkins, Minister for COVID-19 Response

**Copy to:** Hon Carmel Sepuloni, Minister for Disability Issues

### Contact for telephone discussion

| Name             | Position                       | Telephone |
|------------------|--------------------------------|-----------|
| Steve Waldegrave | Group Manager, COVID-19 Policy | s 9(2)(a) |
| Annie Hindle     | Manager, COVID-19 Policy       | s 9(2)(a) |

### Minister's office to complete:

- |   |                                    |  |
|---|------------------------------------|--|
| <input type="checkbox"/> Approved             | <input type="checkbox"/> Decline   | <input type="checkbox"/> Noted               |
| <input type="checkbox"/> Needs change         | <input type="checkbox"/> Seen      | <input type="checkbox"/> Overtaken by events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |  |

Comment:

# New process for face mask exemptions – proposed changes to the COVID-19 Public Health Response (Protection Framework) Order 2021

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**Security level:** IN CONFIDENCE                      **Date:** 4 May 2022

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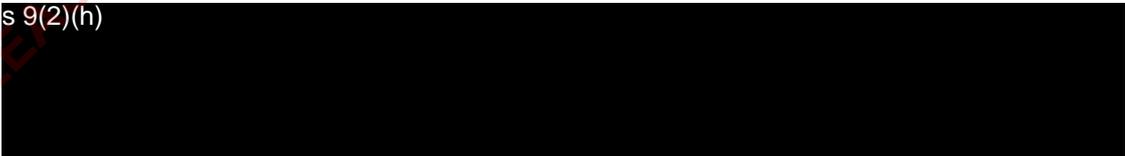
**To:** Hon Chris Hipkins, Minister for COVID-19 Response

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## Purpose of report

1. This briefing seeks approval for changes to the COVID-19 Public Health Response (Protection Framework) Order 2021 (“the Order”) that are required to establish a new face mask exemption process [HR20220581 and HR20220664 refer] for people who are exempted from the face mask rule on the ground that they have a physical or mental illness or condition or disability that makes wearing a face mask unsuitable.

## Previous decisions

2. You have approved a package of measures to establish a new process for face mask exemptions, which includes:
  - a. a social awareness campaign to educate businesses and the public about legal requirements on all parties and who is exempt under current law [HR20220204 and HR 20220581 refer].
  - b. a formal exemption process whereby people will be able to complete a self-declaration that they meet the grounds for exemption before being issued a personalised exemption card [HR20220581 refers].
  - c. s 9(2)(h)  

3. On 22 April 2022, officials provided you with advice setting out implementation details, which proposed four work streams for delivery of the new system by 31 May [HR20220664 refers]:
  - a. Workstream 1: Public announcement and prior engagement with sector groups
  - b. Workstream 2: Social awareness campaign
  - c. Workstream 3: Development of personalised exemption card, to be available in digital and hard copy format - IT design and implementation

- d. Workstream 4: Amendments to the COVID-19 Public Health Response (Protection Framework) Order 2021.
4. This paper provides you with advice to support workstream four. The policy decisions set out in this paper for your consideration, consultation and agreement relate to the second two elements of the package described at paragraph 2b and c.

## Required changes to the COVID-19 Protection Framework Order to implement your prior decisions

5. The following table describes the nature of the amendments to the Order required to enable the new exemption process you have agreed to.

| Previous decision   | Recommended amendment to the Order  | Rationale   |
|---|---|---|
| Introduce a formal exemption process whereby people will be able to complete a self-declaration that they meet the grounds for exemption before being issued a personalised exemption card [HR20220581 refers]. | Introduce a power for the Director-General of Health (the D-G) to issue face mask exemption identifications in the form specified [in the new provision recommended below].   | Introducing a power to issue a face mask exemption card enables the prerequisite conditions for issuing the card to be specified. Making these conditions clear prevents the consideration of other matters in issuing the card, as described when considering other options to ensure a rights-enhancing approach for exempt people [HR20220204 refers]. |
|   | Introduce an operative provision setting out eligibility to apply for a face mask exemption card as meeting the grounds set out in clause 11(3)(ii) of the Order.   | Ensures that the eligibility to apply for an exemption card is clearly linked to the existing provisions in the Order setting out the reasons someone can be exempt and clarifies that the exemption system is not intended for use in other settings where masks are not required.   |
|   | Introduce an operative provision setting out the form of application for a face mask exemption card as being determined by the D-G. The application will include: <ul style="list-style-type: none"> <li>personal details of the exempt person including name, contact details, date of birth and NHI number (if known)</li> <li>a declaration of meeting one or more of the grounds for exemption set out in clause 11(3)(ii) of the Order</li> <li>a declaration of understanding that the exemption pass cannot be transferred to or used by anyone</li> </ul> | Specifying the self-declaration details and the extent of personal details supports setting clear parameters about what self-declaration includes in order to be issued an exemption card, along with ensuring that personal details are limited to identifying details rather than medical details.  |

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|  | <p>other than the exempt person to whom it was issued</p> <ul style="list-style-type: none"> <li>• a declaration of understanding the legal implications of fraudulently accessing an exemption (i.e. not meeting the grounds), e.g.:             <ul style="list-style-type: none"> <li>○ that a breach of the requirement to comply with the face mask rule is a medium risk infringement offence carrying liability to a \$1,000 fee for an individual or a court imposed fine of \$4,000 under clause 23(3) of the Order, and</li> <li>○ that intentional failure to comply with a COVID-19 Order is an offence under section 26 of the COVID-19 Public Health Response Act 2020, liable on conviction for an individual to imprisonment for a term not exceeding 6 months or a fine not exceeding \$12,000, or for any other person, a fine not exceeding \$15,000.</li> </ul> </li> <li>• agreement for contact details to be kept on a register of exemption cards issued</li> <li>• information regarding privacy including storage and use of the applicant's information.</li> </ul> |  |
|  | <p>Introduce an operative provision enabling the D-G to set the form and content of a face mask exemption card. It is intended that the resulting content will include the exempt person's name and will not include reference to the exempt person's health or disability.</p>  | <p>As the new exemption card is designed to support and protect exempt people's rights, establishing clear boundaries about the extent of personal information that can be included in an identification card for use in public settings is important to protect personal medical information.</p> |
|  | <p>Introduce an operative provision prohibiting people from:</p> <ul style="list-style-type: none"> <li>• using an exemption card that relates to another person</li> <li>• producing or using an exemption card that is forged or altered, or</li> </ul>  | <p>Clear provisions about what is required or not required of people are necessary to enable the existing offence of intentionally failing to comply with a COVID-19 Order to apply in this instance. Setting out how an exemption card must not be misused supports this,</p>                     |

|  |  |   |
|--|--|---|
|  | <p>that has been obtained fraudulently</p> <ul style="list-style-type: none"> <li>• facilitating anyone from using a card that has been issued to someone else.</li> </ul>   | equivalent to provisions for misusing COVID-19 Vaccination Certificates.  |
| <p>Ensure that the legislation recognises the new exemption card as conclusive proof of genuine exemption, adjusted from an earlier decision to prevent businesses from restricting access of exempt people holding a legitimate face card exemption, based on Crown Law advice [HR20220664 refers].</p> | <p>Introduce a provision that specifies that the new exemption card (issued by the D-G under the new legal power) is evidence that a person who is subject to the face mask rule meets the ground of exemption in clause 11(3)(a)(ii).</p> | <p>This approach is consistent with the Crown Law advice about the extent to which a rights-enhancing approach can be achieved legally, to ensure that exempt people who go through the process of applying for an exemption card are supported in the subsequent acceptance of their proof of exemption and access to goods and services.</p> <p>Guidance will set out that businesses and services may choose to accept (but not reject) other forms of evidence.</p> |

## Approach to compliance and enforcement

6. In the advice provided to you on 22 April 2022 [HR20220664 refers], Ministry of Health officials noted that further information would be provided regarding enforcement, and in particular the operational challenges associated with potential misuse of exemption cards.
7. Under the new system, there is no proposed verification of the legitimacy of individual exemption applications before an exemption card is issued. Operationally, verification of meeting the grounds for exemption would impose a higher burden on exempt people and require in many cases, a form of medical evidence. Officials have previously set out the burden of this, namely as imposing on the rights of exempt people and as placing additional pressure on our health system [HR20220204 refers]. These same challenges apply when considering investigation and enforcement once exemption cards have been issued.

*Existing offence provisions are sufficient, however have limitations in this context*

8. Potential misuse of the new system could comprise behaviours such as using an exemption card that has been fraudulently obtained, i.e. when the grounds for exemption are not met; or using another person's exemption card. Officials propose that, provided that such actions are expressly prohibited, the existing provisions in the Order and the COVID-19 Public Health Response Act 2020 are sufficient to manage potential misuse of this new system. There are two applicable existing provisions:
  - a. a breach of the requirement to comply with the face mask rule (including, for example, not wearing a face mask when required and not being exempt) is a medium risk infringement offence liable to a \$1,000 fine for an individual or a court imposed fine of \$4,000 under clause 23(3) of the Order, and

- b. intentional failure to comply with a COVID-19 Order is an offence under section 26 of the COVID-19 Public Health Response Act 2020, liable on conviction to:
- for an individual, imprisonment for a term not exceeding 6 months or a fine not exceeding \$12,000
  - for any other person, a fine not exceeding \$15,000.
9. Within these available provisions however, officials understand that there are challenges in investigating and proving non-compliance, particularly with the face mask rule (paragraph 8a above). These challenges are anticipated to extend to the use of face mask exemption cards also as the reasons for being exempt, and therefore the evidence for meeting the test in clause 11(3)(ii) of the Order, are often intensely personal.
10. Additionally, officials note the prior advice from New Zealand Police, who advised they will only respond to organised, systemic or serious misuse of exemption passes, and non-masked people where there is public disorder, threats and aggressive behaviour [Appendix 2 of HR20220204 refers].

*A targeted approach to enforcement is recommended*

11. In consultation with WorkSafe and Police, a targeted approach by Police to enforce the use of face mask exemption cards is recommended for this new system, consistent with the approach for provisions such as the current face mask rule and COVID-19 Vaccination Certificate compliance. This approach relies on:
- a. promoting compliance up front by communicating the possibility of enforcement action and the fines above
  - b. using the available offences to the full extent of the law if and when exemption cards are misused in organised, systemic or serious cases, as a deterrent for others.
12. A targeted approach reflects:
- a. the operating constraints of the enforcement agencies responsible
  - b. generally good levels of compliance with the face mask rule by non-exempt people
  - c. alignment with the education-first approach taken by enforcement agencies for COVID-19 measures generally
  - d. the evidential challenges in determining whether a person has a physical or mental condition that makes mask wearing unsuitable.
13. It is anticipated that consistent with breaches of other COVID-19 requirements, instances of non-compliance relating to the use of face mask exemption cards will be reported via the Unite Against COVID-19 website for referral to enforcement agencies as appropriate.

*Businesses remain not obligated to enforce face mask provisions*

14. Businesses where face masks are required are not obliged to inspect face mask exemptions. This remains a discretionary decision around conditions of entry to private premises, which acknowledges that individuals are responsible for complying with mask mandates. Under the current Order, there is an enforceable duty for businesses and services to have systems and processes in place for ensuring their workers comply with face masks, but there is no similar legal duty on businesses or services to ensure customers wear face masks.

15. Additionally, businesses who choose to inspect face mask exemptions and exclude people carrying a face mask exemption card issued under the new system may be at risk of breaching their obligations under the Human Rights Act 1993.
16. The general social awareness campaign, and business engagement using pre-existing channels, is being developed in Workstream Two. This will support wider understanding of the new mask exemption process by individuals and businesses.

## Meeting the requirements to amend a COVID-19 Order

17. To make or amend a COVID-19 Order, section 9 of the COVID-19 Public Health Response Act 2020 (the COVID-19 Act), sets out that you must:
  - a. have received advice from the Director-General of Health about—
    - i. the risks of the outbreak or spread of COVID-19; and
    - ii. the nature and extent of measures (whether voluntary or enforceable) that are appropriate to address those risks; and
  - b. have regard to any decision by the Government on how to respond to those risks and avoid, mitigate, or remedy the effects of the outbreak or spread of COVID-19 (including considering any social, economic, or other factors)
  - c. be satisfied that the proposed Order does not limit, or is a justified limit, on the rights and freedoms in the New Zealand Bill of Rights Act 1990 (NZBORA)
  - d. have consulted the Prime Minister, the Ministers of Justice and Health and any other Ministers you think necessary, and
  - e. be satisfied that this Order is appropriate to achieve the purpose of the COVID-19 Act.
18. You have received public health advice about the continued use of face masks and the degree of risk associated with a small proportion of exempt people [HR20220581 refers]. You also received advice regarding the NZBORA implications and equity when considering the different options for improving the face mask exemption process [HR 20220204 and HR20220664 refer].

## Ministerial consultation

19. You are required to consult the Prime Minister, the Minister of Justice and the Minister of Health, and may consult any other Minister you think fit, regarding proposals to amend an Order. Completing this consultation by 6 May will enable the new exemption system to come into force on 31 May 2022, subject to significant feedback.

## Next steps

20. Subject to feedback from your consultation and your agreement to the policy decisions set out in this paper, drafting instructions will be provided to Parliamentary Counsel Office by the Department of Prime Minister and Cabinet on 10 May 2022. A draft amendment order will be provided for your consideration and signing on 24 May ahead of publication in the *New Zealand Gazette* on 25 May 2022 and commencement on 31 May 2022.

## Recommendations

We recommend you:

- a) **Note** that you have directed officials to begin work on implementing a formal exemption process whereby people will be required to complete a self-declaration that they meet the grounds for exemption before being issued a personalised exemption card, for commencement on 31 May 2022. **Noted**
- b) **Agree** to amend the COVID-19 Public Health Response (Protection Framework) Order 2021 (the Order) to give effect to the new exemption system as set out in paragraph 5, including to:
- Introduce legislative authority for the Director-General of Health (the D-G) to issue face mask exemption identification cards in the form specified. **Yes/No**
- Introduce an operative provision setting out that a person is eligible to apply for a face mask exemption card if they meet the grounds set out in clause 11(3)(a)(ii) of the Order. **Yes/No**
- Introduce an operative provision setting out the form of application for a face mask exemption as being determined by the D-G. **Yes/No**
- Introduce an operative provision enabling the D-G to set the form and content of a face mask exemption card. **Yes/No**
- Introduce an operative provision prohibiting people from:
- using an exemption card that relates to another person
  - producing or using an exemption card that is forged or altered, or that has been obtained fraudulently
  - facilitating another person's use of a card that has been issued to them.
- Introduce a provision that specifies that the new exemption card (issued by the DG under the new legal power) is evidence that a person who is subject to the face mask rule meets the ground of exemption in clause 11(3)(a)(ii). **Yes/No**
- c) **Note** that a targeted approach to enforcement is applied in other comparable settings, including the use of COVID-19 Vaccine Certificates and this approach was endorsed by New Zealand Police and WorkSafe New Zealand. **Noted**
- d) **Agree** that a targeted approach to enforcement be adopted for the new face mask exemption system using existing offence and infringement offence provisions implemented by New Zealand Police. **Yes/No**
- e) **Agree** to consult the Prime Minister, the Minister of Justice, the Minister of Health, and any other Minister that you think fit, regarding the proposed amendments to the Order by 6 May 2022. **Yes/No**

- f) **Agree** that the Department of Prime Minister and Cabinet (as owner of the Order) issue drafting instructions to the Parliamentary Counsel Office to draft the required amendments to the Order to implement approved amendments under recommendation b).

Yes/No



Dr Ashley Bloomfield  
Director-General of Health  
**Te Tumu Whakaere mō te Hauora**  
Date: 4/05/2022

Hon Chris Hipkins  
**Minister for COVID-19 Response**  
Date: 7/5/2022

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982