

Briefing

Required order changes to support the shift to a new approach for managing COVID-19

Date due to MO:	10am, 8 September 2022	Action required by:	9 September
Security level:	IN CONFIDENCE	Health Report number:	20221395
То:	Hon Dr Ayesha Verrall, Mir	nister for COVID-19 Respor	nse
Copy to:	Rt Hon Jacinda Ardern, Pri	me Minister	
	Hon Andrew Little, Ministe	er of Health	
	Hon Kiritapu Allan, Ministe	er of Justice	
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Contact for to	lenhone discussion		

Contact for telephone discussion

Name	Position	Telephone
Dr Diana Sarfati	Director-General of Healt	h S9(2)(a)
Stephen Glover	Group Manager, COVID- ² Strategy, Policy and Legis	-
Minister's office to a	complete:	
	□ Decline	□ Noted
\Box Needs change	□ Seen	\Box Overtaken by events
\Box See Minister's Notes	□ Withdrawn	
Comment:		

Required order changes to support the shift to a new approach for managing COVID-19

Security level: IN CONFIDENCE Date: 8 September 2022

To:

Hon Dr Ayesha Verrall, Minister for COVID-19 Response

Purpose of report

- 1. This report seeks your agreement to:
 - a. make changes to a suite of COVID-19 orders made under the COVID-19 Public Health Response Act 2020 (the Act) to reflect Cabinet's decisions on a new approach to manage COVID-19 and the current outbreak risk context
 - b. authorise Manatū Hauora to issue drafting instructions to the Parliamentary Counsel Office (PCO) for the required COVID-19 order amendments and revocations to give effect to this report's proposals (subject to Cabinet decisions and consultation with Ministerial colleagues).
- 2. This report discloses all relevant information and implications.

Summary

- 3. On 12 September 2022, Cabinet will take decisions to shift from the COVID-19 Protection Framework (CPF) to a new approach for managing COVID-19. This will rely on baseline measures, with reserve measures kept for use in emergency circumstances.
- 4. At this meeting, Cabinet will also consider easing a suite of public health restrictions and mandates to reflect the current COVID-19 risk. Implementing these decisions will require changes to orders made under section 11 of the Act, specifically to the:
 - a. COVID-19 Public Health Response (Air Border) Order 2021 (ABO) to remove postarrival testing, vaccination requirements, and the requirement not to show
 symptoms or be under a public health direction in another country
 - b. COVID-19 Public Health Response (Self-isolation Requirements and Permitted Work) Order 2022 (SRPW) to remove the household contact self-isolation requirement.

5.

- In addition, if those public health restrictions and mandates are eased the orders below would become redundant, and we recommend these be revoked:
 - a. COVID-19 Public Health Response (Maritime Border) Order (No 2) 2020 (MBO)
 - b. COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 (IQO)
 - c. COVID-19 Public Health Response (Testing for COVID-19) Order 2022
 - d. COVID-19 Public Health Response (Vaccinations) Order 2021.

- 6. The Department of the Prime Minister and Cabinet (DPMC) has separately advised on the revocation of the CPF order and the creation of a new mask order. In total, 5 orders would be revoked, 2 would be amended, 1 would be retained, and a new order would be created. This is summarised at **Appendix One**.
- 7. Pending Cabinet decisions, your agreement, and resolution of the legislative authority matters, Manatū Hauora will issue drafting instructions to PCO to give effect to the decisions in this report. You will be invited to sign the orders from 3pm on 12 September 2022 to bring these changes into effect from 11.59pm on 12 September 2022.

Recommendations

We recommend you:

- a) Note that on 12 September 2022 Cabinet will take decisions on shifting from Noted the COVID-19 Protection Framework to a new approach for managing COVD-19 and changing a suite of COVID-19 mandates and restrictions
- b) **Note** that decisions to retain, amend or make a new order are subject to the availability of the appropriate legislative authority through either the renewal of the Epidemic Notice or a Prime Minister's Authorisation
- c) Note that in parallel with this process you have received my advice on Noted whether there are sufficient grounds for the Epidemic Notice to be renewed before it expires on 16 September 2022
- d) Note that the COVID-19 Public Health Response Act 2020 requires that orders be made by the Minister for COVID-19 response once they have considered the relevant statutory prerequisites, even when Cabinet considers proposals in detail or agrees policy changes
- e) **Agree** to the proposed changes in the tables of this report to amend the:
 - i. COVID-19 Public Health Response (Self-isolation Requirements and Permitted Work) Order 2022
 - ii. COVID-19 Public Health Response (Air Border) Order 2021
- f) **Note** that by agreeing to the changes set out in this report several COVID-19 **Noted** orders will no longer contain active requirements and should be revoked
- g) Agree to revoke the:

i.

COVID-19 Public Health Response (Maritime Border) Order (No 2) 2020 (Yes

- ii. COVID-19 Public Health Response (Isolation and Quarantine) Order 2020
- iii. COVID-19 Public Health Response (Testing for COVID-19 Order) 2022
- iv. COVID-19 Public Health Response (Vaccinations) Order 2021



Yes /

Yes

Yes

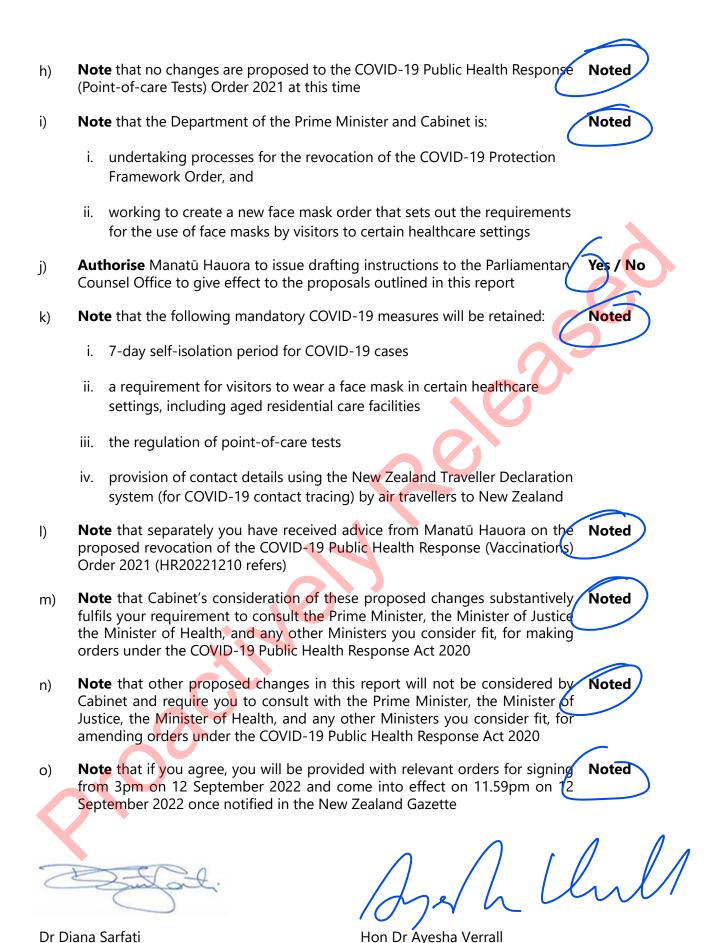
Yes

No

No

/ No

Yes /No



Dr Diana Sarfati Director-General of Health

Date: 7 September 2022

Minister for COVID-19 Response

Date:

Required order changes to support the shift to a new approach for managing COVID-19

Background and context

8. New Zealand appears to be past the peak of the current COVID-19 outbreak, with reducing case numbers, hospitalisations, and deaths. Modelling suggests this should continue, supported by the public health requirements that would remain in force.

COVID-19 Orders

- 9. Eight orders made under section 11 of the Act are currently in place. Manatū Hauora currently administers seven and DPMC administers one (the CPF Order). Section 11 orders can be made for one or more of the following purposes:
 - a. preventing, containing, reducing, controlling, managing, eliminating, or limiting the risk of the outbreak or spread of COVID-19
 - b. avoiding, mitigating, or remedying the actual or potential adverse public health effects of the outbreak of COVID-19 (whether direct or indirect).
- 10. Even when Cabinet considers proposals in detail or agrees policy changes, the Act requires orders to be made by the Minister for COVID-19 response once they have considered the relevant statutory prerequisites. This means that Cabinet cannot directly authorise order changes and your agreement to the changes recommended in this report is therefore required.

Review of COVID-19 measures and strategy

- 11. On 17 August 2022, Manatū Hauora conducted a public health risk assessment (PHRA) to consider whether several mandated COVID-19 response measures were still proportionate to the current outbreak risk.
- 12. The outcome of that PHRA and my advice informed the paper you are taking to Cabinet on 12 September 2022. At that meeting, Cabinet will consider whether to revoke the CPF, shift to a new approach to manage COVID-19 using baseline and reserve measures, and the public health measures that underpin the new approach.

Legislative authority for the COVID-19 response

- 13. Decisions to retain, amend or make orders under section 11 of the Act rely on an appropriate legislative authority being in place. You have also received advice on the renewal of the Epidemic Preparedness (COVID-19) Notice 2020 (the Epidemic Notice) which expires on 16 September 2022 (HR20221306 refers).
- 14. If the Epidemic Notice is not renewed, mandatory public health measures would need to be retained under a different basis or removed in full. There may be a sufficient public health rationale to authorise specific measures/orders directly under section 8(c) of the Act. However, there remains a high threshold that needs to be met.

Proposed changes to existing public health measures

15. The remaining mandatory measures, which you have recommended for Cabinet's consideration on 12 September 2022 are designed to reduce transmission of COVID-19

and to lower cases, hospitalisations, and deaths, as well maintain preparedness in the face of new variants. The public health rationale and assessment for each change is outlined in your *Future of the COVID-19 Protection Framework and moving to the new approach* Cabinet paper.

A) Traveller and air crew vaccination requirements

Current setting	Proposed change	Recommendation	Decision
Air arrivals (including air crew) aged 17 years and over, and travellers who are not New Zealand citizens, residents, or Australians ordinarily resident in New Zealand (and other exempted people), must have evidence of a completed primary course of COVID-19 vaccinations with any vaccine approved by at least one government or approval authority. Passengers on cruise ships and recreational vessels must also meet this requirement (category 2 vessels).	Remove COVID-19 vaccination requirements for all arrivals and crew at the air and maritime border.	Agree to remove COVID-19 vaccination requirements for arrivals and air crew by amending the COVID-19 Public Health Response (Air Border) Order 2021, and for maritime passengers on cruise ships and recreational vessels, by revoking the COVID-19 Public Health Response (Maritime Border) Order (No 2) 2020.	Yes/ No

B) Removing post-arrival testing requirements for all arrivals to New Zealand

Current setting	Proposed change	Recommendation	Decision
All international arrivals by air to New Zealand must complete a day 0/1 and day 5/6 rapid antigen test (RAT). Maritime crew from cargo, fishing and specialist ships must test on arrival if disembarking (category 1 vessels). If an arrival returns a positive RAT, they must get a PCR test that is then whole-genome sequenced.	Remove mandatory testing requirement and replace with guidance that encourages people to test on days 0/1 and 5/6 after arrival. There will no longer be any reporting on international arrivals' test results.	Agree to remove the post- arrival testing requirement by amending the COVID-19 Public Health Response (Air Border) Order 2021. Note that the COVID-19 Public Health Response (Maritime Border) Order (No 2) 2020 and the COVID-19 Public Health Response (Testing for COVID- 19 Order) 2022 will be revoked.	Yes No

C) Remove the requirement for air travellers to New Zealand to not exhibit symptoms of COVID-19 and not be subject to a public health direction in another country

Current setting	Proposed change	Recommendation	Decision
Air travellers to New Zealand must not: exhibit COVID-19 symptoms, and/or be subject to a public health direction in another country.	Remove the requirements for air travellers to New Zealand to not exhibit COVID-19 symptoms and/or not be subject to a public health direction in another country.	Agree to amend the COVID-19 Public Health Response (Air Border) Order 2021 to remove the requirement that travellers to New Zealand not exhibit COVID-19 symptoms, and/or	Yes No

	be subject to a public health direction in another country.	
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D) Remove the requirements for air travellers (including air crew) to wear masks on flights to New Zealand

Current setting	Proposed change	Recommendation	Decision
Travellers and air crew must wear a face mask on direct or connecting flights to New Zealand.	Remove the requirement to wear face masks on flights to New Zealand, as outlined in the ABO.	Agree to remove all references to the requirement to wear face masks from the COVID-19 Public Health Response (Air Border) Order 2021.	Yes No

E) Remove the requirement for household contacts of COVID-19 cases to self-isolate¹

Current setting	Proposed change	Recommendation	Decision
Household contacts of COVID- 19 cases must self-isolate for a standard period defined by the SRPW. This also applied to maritime passengers who share the same cabin as a positive case, and commercial seafarers on board a vessel with a positive case. The self-isolation period is currently 7-days and is specified by Director General Notice and published in the New Zealand Gazette. At present, household contacts are required to take a RAT on day 3 and day 7 of self-isolation.	Remove the requirement for household contacts to self-isolate and replace with guidance to complete daily RAT for 5-days after the first case in the household tests positive. If they test positive during that period, they would be required to follow self- isolation requirements as case. Guidance for testing and isolating in the maritime environment will be updated to reflect any changes.	Agree to remove the requirement for household contacts of COVID-19 cases (household contacts) to self- isolate, and all consequential provisions in the COVID-19 Public Health Response (Self- isolation Requirements and Permitted Work) Order 2022. Note that if this requirement is removed, the Close Contact Exemption, Work Bubble, and Critical Workers for Specified Events Schemes would cease and so the provisions in the order relating to these schemes (part 2 of the Order) will be removed.	Yes No Noted

Additional proposed changes to public health measures and other restrictions

16. Your agreement is also sought to change several other measures. This will ensure remaining measures and restrictions remain proportionate to the current public health risk and form a coherent package. The proposed changes outlined below were not considered by the PHRA on 17 August 2022 or your 12 September 2022 Cabinet paper.

F) Restriction on airports at which international flights may land

Current setting	Proposed change	Recommendation	Decision
Clause 50 of the ABO restricts airports for international arrivals to those specified by Director-	Remove the restriction on both scheduled and unscheduled flights under	Agree to remove the provisions that set out that an aircraft must arrive at a	Yes / No

¹ Technically, household contacts *quarantine* and cases *isolate*. However, this report uses self-isolate/isolation for both to be consistent with terminology in existing orders and the paper to be considered by Cabinet on 12 September 2022.

General notice. On 2 September 2022. I granted an exemption to certain carriers (non-scheduled flights only) from this requirement on the basis that there is no longer a public health justification for it.	clause 50 of the ABO and rely on other existing regulatory controls to manage flight arrivals.	specified airport by revoking clause 50 from the COVID-19 Public Health Response (Air Border) Order 2021.	
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Public health rationale

17. Public health advice is this restriction is no longer proportionate in the current COVID-19 context. Customs, the Ministry for Primary Industries, the New Zealand Defence Force, and the Ministry of Transport also support the proposal. Operators of international flights to New Zealand will still need to seek approval to arrive at an airport that is not both a Customs place for customs purposes and a place of first arrival for biosecurity purposes. Border agencies can use other requirements to control and manage the risks relating to entry of passengers into New Zealand.

Current setting	Proposed change	Recommendation	Decision
Prior to departure for New Zealand all air arrivals must make a declaration through the New Zealand Traveller Declaration (NZTD) system, which includes the provision of contact details while in New Zealand (including emergency contacts), a history of countries visited in the past 14-days, and	Limit the information air travellers must provide using the NZTD to COVID- 19 contact tracing information only (ie, contact details and 14 day travel history). To operationalise this requirement, some changes are needed such as to	Agree to amend the COVID-19 Public Health Response (Air Border) Order 2021 to limit the use of the NZTD to obtain mandatory contact tracing information only (including 14 day travel history) from travellers (information details to be specified by Director- General notice).	Yes / No
evidence of vaccination (where required).	remove the obligation on carriers to ascertain compliance as this is more appropriately undertaken by Customs upon arrival.	Agree that failure to provide such information is not a reason to not board a passenger.	Yes
	For the purposes of drafting instructions, we recommend that the design elements in the next	Agree that carriers are not responsible for checking NZTD declarations or traveller passes prior to departure.	Yes
	column be agreed as outlined.	Agree to maintain the low-risk infringement offence if the required information in paper or digital form is not provided.	Yes No

G) Provision of information for contact tracing for air arrivals

18. If Cabinet agrees to retain the requirement for travellers to New Zealand to provide information using the NZTD for COVID-19 contact tracing purposes, your agreement to some additional policy decisions to operationalise this requirement is needed.

Public health rationale

19. Timely and reliable passenger data (including recent travel history) is critical if health agencies need to rapidly contact trace recent arrivals to New Zealand (eg if a COVID-19 variant of concern is identified overseas). NZTD is an efficient tool to collect and store such contact details. Information is provided to the National Border Solution database (managed by Te Whatu Ora) and can be accessed for contact tracing purposes. The NZTD pathway is preferable to relying on manually sourcing data from airline passenger manifests and paper arrival cards.

H) Remove a provision which enables the Director-General of Health to require a named individual who is a specified close contact to self-isolate

Current setting	Proposed change	Recommendation	Decision
Under Schedule 3 of the SRPW, the Director-General of Health may require a named individual who is a specified close contact to self-isolate by notice.	Remove the provision that enables the Director- General of Health to require a specified close contact to self-isolate as this is already provided for in the Health Act 1956.	Agree that Schedule 3 of the COVID-19 Public Health Response (Self-Isolation Requirements and Permitted Work) Order 2022 be revoked, on the grounds that it is now redundant.	Yes / No

Public health rationale

- 20. Schedule 3 of the SRPW is a backstop provision designed to address situations where targeted legal action may be required to ensure that an individual who is a specified close contact self-isolates but has never been activated. If the SRPW requirement that household contacts self-isolate is revoked, it brings into question whether the backstop function provided by Schedule 3 should be retained.
- 21. Public health advice supports revoking Schedule 3 of the SRPW. In practice, the power it enables has not been needed. Furthermore, authority to require an individual who has been in contact with an infectious person to self-isolate is enabled under section 92J of the Health Act 1956. The procedure and conditions of section 92J differ from those in Schedule 3. However, the overall effect to create legal authority for requiring a specified close contact to self-isolate is common to both. The proposed provision would remain in force while the SRPW continues to mandate case self-isolation.

I) Enable a qualified health professional to determine that a person who has returned a positive RAT or PCR is not required to self-isolate

Current setting	Proposed change	Recommendation	Decision
A person who has returned a positive RAT or PCR is defined as a COVID-19 case under the SRPW and is required to self- isolate for a standard period set by the SRPW.	Amend the SRPW to enable people who have returned a positive RAT or PCR to be defined as "not a COVID-19 case" in terms of the SRPW, where this is supported by advice from a qualified medical practitioner.	Agree that a medical professional can determine that a person who has returned a positive RAT or PCR is not a COVID-19 case where they are determined to be an historical case or no longer infectious or where the original result was a false positive.	Yes No

Public health rationale

- 22. There are situations where a person may receive a positive RAT or PCR, but where selfisolation is not necessary. In such situations, medical professionals may undertake a further assessment to confirm a positive test. This can determine that the initial test was a false positive, or that the person is not infectious or is an historical case.
- 23. Public health advice is that in such situations, the individuals involved are not a public health risk and that it is counter-productive to require self-isolation unnecessarily.

J) Rescind a previous decision to address an issue of employers coercing employees who are cases or household contacts to return to work early

Current setting	Proposed change	Recommendation	Decision
An individual who is required to self-isolate is in breach SWRP, if they break self-isolation. However, it is not a breach if a person is coerced to break self- isolation by an employer or Persons Conducting a Business or Undertaking (PCBU).	Rescind the previous decision to amend the SRPW to address an issue of employers coercing employees who are cases or household contacts to return to work early.	Agree to rescind the 23 May 2022 decision of the then Minister for COVID-19 Response to amend the COVID-19 Public Health Response (Self-Isolation Requirements and Permitted Work) Order 2022 to make it a requirement that a PCBU must not permit a worker who is required to self-isolate to perform work away from their place of self-isolation unless exempted.	Yes / No

Public health rationale

- 24. This amendment is no longer required due to the current and likely future COVID-19 risk. In the absence of reliable statistics on the scale of this coercive activity, there is some evidence that it has been waning in recent months. It is also highly likely that it will significantly drop when household contacts self-isolation requirements are removed.
- 25. There are existing statutory provisions which may make such behaviour illegal. However, these have not been enforced and there may be difficulty achieving a successful prosecution, for example, an affected employee may be reluctant to provide evidence.
- 26. On 23 May 2022, following advice from Manatū Hauora and Ministry of Business, Innovation and Employment (MBIE), the then Minister for COVID-19 Response agreed to amend the SRPW to require PCBUs not to permit a worker who must self-isolate to perform work away from their place of self-isolation, unless permitted to under exemptions in the SPRW as it this was considered the best option.
- 27. There had been evidence of PCBUs coercing workers who are cases or household contacts to return to work before the end of self-isolation. Such employer behaviour is not a breach of the SRPW but has the potential to increase the risk of infection from COVID-19 and represents unsafe work practice which may contravene responsibilities on PCBUs under the Health and Safety at Work Act 2015. Due to legal and practical issues this amendment was not progressed and has been on hold since.

Public health measures that are being retained

28. Pending decisions made by you and Cabinet, and subject to the legal authority from the renewal of Epidemic Notice, the measures below would be retained for now.

Isolation of cases

29. A 7-day self-isolation period for COVID-19 cases will be retained.

Masks

30. The requirement for visitors to wear a mask in certain healthcare settings (including aged residential care facilities) will be retained and will be set out in a new mask order.

Regulation of Point-of-Care Testing

- 31. The regulation of point-of-care tests (POCT) is provided for by the COVID-19 Public Health Response Act (Point-of-Care Tests) Order 2021. You recently considered Manatū Hauora advice on whether this order remains justified and needed (HR20221219 refers).
- 32. You noted that POCT regulation is required to ensure confidence in the specificity and accuracy of these tests, as long as a positive test is linked to mandatory self-isolation. While some minor process and operational changes could be made to tighten the order, these are not urgent and can be made later. Therefore, the POCT order is retained without amendment for now.

Revocation of specific COVID-19 orders

33. Following Cabinet consideration of your paper on 12 September 2022, several COVID-19 orders may no longer contain any active requirements. Given the reduced certainty of the renewal of the Epidemic Notice we recommend that the following redundant orders be revoked:

Maritime Border Order

- 34. With the removal of vaccination and arrival testing requirements for international arrivals, there will be no remaining public health requirements in this order. Customs, Maritime New Zealand, the Ministry for Primary Industries, and the Ministry of Transport have been consulted and did not raise any substantive concerns with revoking this order.
- 35. Quarantine provisions under the Health Act 1956 remain available, subject to COVID-19 remaining scheduled as a quarantinable disease.

Protection Framework Order

36. DPMC is progressing work to revoke this order and the CPF.

Testing for COVID-19 Order

37. This order allows the Director-General of Health to make notices establishing the frequency and form of testing for arrivals to New Zealand. Following Cabinet's agreement to remove this testing requirement this order is now redundant.

Isolation and Quarantine Order

38. This order sets out who is required or authorised to isolate or quarantine in a managed isolation and quarantine facility (MIQF), or to self-isolate in certain circumstances (for example returning from a Group 2 country). This order no longer serves a practical purpose as all MIQF have been decommissioned and self-isolation is only required following a positive test in New Zealand.

Vaccinations Order

39. Manatū Hauora recently provided you advice on whether vaccination mandates for health and disability workers remain justified or should be revoked (HR20221210 refers).

Equity

40. Equity matters raised by the public health measures in proposals A-E are outlined in your *Future of the COVID-19 Protection Framework and moving to the new approach* Cabinet paper. Other proposals outlined in this report (proposals F-J) not considered in that paper or by the PHRA on 17 August 2022 do not give rise to further equity matters.

New Zealand Bill of Rights Act 1990

41. New Zealand Bill of Rights Act 1990 (NZBORA) advice is outlined in your *Future of the COVID-19 Protection Framework and moving to the new approach* Cabinet paper. If agreed to, other proposed changes in this report would reduce existing restrictions and are not anticipated to have any relevant NZBORA implications.

Next steps

- 42. If you agree to the proposed changes these will be included in drafting instructions to PCO to make the necessary amendments to COVID-19 orders.
- 43. You will then be provided with relevant orders for your signature from 3pm on 12 September 2022, when decisions are expected to be publicly announced following Cabinet that day.
- 44. Once signed and notified in the New Zealand Gazette, changes would come into force at 11:59pm on 12 September 2022.

Appendix One – Effect of the proposed changes to remaining COVID-19 Orders

#	Category	Name	Description	Outcome
1.	Border	COVID-19 Public Health Response (Maritime Border) Order (No 2) 2020	Sets requirements for people arriving in New Zealand by sea.	Revoke
2.	Vaccination	COVID-19 Public Health Response (Vaccinations) Order 2021	Requires that certain work may only be carried out by persons who are vaccinated against COVID-19.	Revoke
3.	Isolation and Quarantine	COVID-19 Public Health Response (Isolation and Quarantine) Order 2020	Sets requirements for certain individuals to be isolated or quarantined in a MIQF, or to self-isolate in certain circumstances. Restricts access to MIQF.	Revoke
4.	Testing	COVID-19 Public Health Response (Testing for COVID-19) Order 2022	Provides for the Director-General to specify certain matters relating to COVID-19 tests for individuals who are required to undertake a test under another Order.	Revoke
5.	COVID-19 Protection Framework	COVID-19 Public Health Response (Protection Framework) Order 2021	Sets population level requirements under the COVID-19 Protection Framework, such as face covering requirements, capacity limits on certain venues and physical distancing requirements.	Revoke
6.	Isolation and Quarantine	COVID-19 Public Health Response (Self-isolation Requirements and Permitted Work) Order 2022	Sets self-isolation requirements for COVID-19 cases and household contacts in the community in New Zealand and sets testing requirements for these individuals.	Amendment
7.	Border	COVID-19 Public Health Response (Air Border) Order 2021	Sets requirements for people arriving in New Zealand by air.	Amendment
8.	Testing	COVID-19 Public Health Response (Point-of-care Tests) Order 2021	Restricts the importation, manufacture, sale, supply or use of point-of-care tests for COVID-19 by default and provides for the Director-General to authorise individuals or exempt classes of tests from this ban.	No change at this time
9.	Masks	Name TBC	DPMC is working to create this order to specify that masks must be used in certain healthcare settings.	New