



Cabinet

Minute of Decision

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COVID-19: Auckland Community Cases: Review of Alert Levels

Portfolio **COVID-19 Response**

On 27 February 2021, Cabinet:

- 1 **noted** that on 27 February a community case of COVID-19 was identified in Auckland, with the source of the infection unknown at this stage;
- 2 **noted** the update from the Director-General of Health on the current situation and his view that there is a need to move Auckland to Alert 3 as soon as possible, and for the rest of New Zealand to move to Alert Level 2, in order to contain the current outbreak;
- 3 **agreed** to move the Auckland region (as set out in the Order) to Alert Level 3 from 6.00 am on Sunday, 28 February 2021, for a period of 7 days;
- 4 **agreed** to move the rest of New Zealand to Alert Level 2 for the same period;
- 5 **agreed** that the Alert Level settings be reviewed on a regular basis as new information becomes available.
- 6 **agreed** that Cabinet's decision today be communicated by the Prime Minister.

Michael Webster
Secretary of the Cabinet

Office of the Minister for COVID-19 Response

Cabinet

COVID-19 RESURGENCE: SECOND REVIEW OF ALERT LEVELS IN RESPONSE TO FEBRUARY AUCKLAND COMMUNITY CASES

Proposal

- 1 This paper reviews the Alert Level settings introduced in response to the community COVID-19 cases in Auckland following the move up Alert Levels on 14 February, and the subsequent move down Alert Levels on 17 February. The paper seeks agreement to one of the following two options to respond to the risks of the outbreak or spread of COVID-19:
 - 1.1 Option A (recommended): Move Auckland to Alert Level 1 and keep the rest of country at Alert Level 1 from 11:59pm Monday 22 February 2021; or
 - 1.2 Option B (status quo): Maintain current settings of Alert Level 2 in Auckland until 11:59pm 1 March 2021 and keep the rest of the country at Level 1.

Summary

- 2 On 17 February Auckland moved to Alert Level 2 and the rest of New Zealand to Level 1. Since then there has been only one further case (a close contact of the index case who tested positive on 13 February).
- 3 Based on the available evidence as at midday on 21 February 2021, the Director-General of Health's advice is that Auckland should move to Alert Level 1 and that there be no requirement for face coverings on public transport in Auckland or elsewhere in New Zealand.
- 4 Consideration has also been given to whether there should be a requirement for mandatory QR scanning by individuals with the NZ COVID Tracer App (COVID App) or other record keeping for contact tracing. Such a requirement raises equity, privacy, implementation and enforcement issues.
- 5 On the whole, the response to the latest community cases in Auckland has gone well. While there were some implementation issues with the Alert Level boundary, officials are working to ensure these are not repeated in the future if we have to move back up Alert Levels in Auckland.
- 6 Indicative short-term impacts of maintaining the current settings of Alert Level 2 in Auckland are \$120 million in reduced economic activity per week (2% of weekly national GDP). The Resurgence Support Payment will be available as is economic support for people required to have a COVID-19 test or to self-isolate.

Situation report

- 7 Since Cabinet last considered the situation, one further positive case (linked to Case G) has been found of a close contact. Genome sequencing and interviews with this case are underway. The cases are all in Jet Park now.
- 8 All close contacts in the school have been instructed to self-isolate and must return two negative tests before isolation can end. All those in the rest of the school must have a negative test result before returning. The school will remain closed until Monday 22 February 2021. A deep clean has been undertaken. A pop-up testing site was active at the school over the weekend and on-site testing will be continue to be available in the week of 22 February.
- 9 The genomes of Cases A and B are identical, and are the B1.1.7 variant first identified in the United Kingdom. Source investigation is continuing with genome sequencing results supporting targeted investigations. However, no scenarios have yet been ruled out regarding source, with the possibility that a definitive source may not be found.
- 10 Based on the evidence available thus far, the Ministry of Health considers that while the risk of transmission from cases was initially considered high, the high number of negative tests across Auckland has provided reassurance that no community transmission has occurred.

Response

- 11 National testing guidance has been updated for the current cases and is clear that all people presenting with relevant symptoms should be tested, regardless of region. In Auckland, at-risk communities (including Māori, Pacific communities, older people and those with pre-existing conditions) should be offered a test when presenting to primary or secondary care services, even if asymptomatic.
- 12 Over 71,000 people have been tested across New Zealand between 15 February and 21 February.
- 13 Daily wastewater testing has been undertaken for passive surveillance at sites across the Auckland region since July 2020. No positive results have been found through wastewater testing to date to indicate community transmission. This includes the wastewater testing undertaken near Papatoetoe High School.
- 14 On Wednesday 17 February Cabinet decided:
 - 14.1 Auckland Region move to Alert Level 2 but with additional measures applied to the wider Papatoetoe School community until there was more certainty about any further spread;
 - 14.2 Papatoetoe school students, teachers, volunteers and households to be asked by Auckland Regional Public Health to remain at home and get tested over the weekend of 20-21 February; and

- 14.3 the rest of the country move down to Alert Level 1, with an additional requirement for face coverings to be worn on public transport.
- 15 Cabinet agreed it would review these measures on 22 February, which is the purpose of this paper [CAB-21-MIN-0025 refers].

How we make Alert Level decisions

- 16 Cabinet has previously agreed to use eight factors to guide decisions on the appropriate Alert Level settings for New Zealand:
 - 16.1 the Director-General of Health's satisfaction on four health matters:
 - 16.1.1 trends in the transmission of the virus, including his confidence in the data and having regard to the risk assessment levels agreed by Cabinet;
 - 16.1.2 the capacity and capability of our testing and contact tracing systems;
 - 16.1.3 the effectiveness of our self-isolation, quarantine and border measures; and
 - 16.1.4 the capacity in the health system more generally to move to the new Alert Level;
 - 16.2 evidence of the effects of the measures on the economy and society more broadly;
 - 16.3 evidence of the impacts of the measures for at risk populations in particular;
 - 16.4 public attitudes towards the measures and the extent to which people and businesses understand, accept, and abide by them; and
 - 16.5 our ability to operationalise the restrictions, including satisfactory implementation planning regions [CAB-20-MIN-0199; CAB-20-MIN-0387 refer].
- 17 Consistent with our National Resurgence Response Plan, in determining what measures and controls should be in place after the immediate response phase, we are particularly interested in:
 - 17.1 the connection of cases to a known source at the border.
 - 17.2 the number of cases and close contacts; and
 - 17.3 the geographic spread of cases, including across.

Interim view of the Director-General

- 18 Having reviewed the Cabinet-agreed public health factors to be considered in relation to Alert Level decisions, and based on evidence as at midday Sunday 21 February, the Director-General's current assessment is outlined as follows.

- 19 Based on the evidence available thus far, while the risk of transmission from cases was initially considered high, the high number of tests across Auckland has provided a strong sense of reassurance that no extensive community transmission has occurred.
- 20 When recommending moving Alert Levels, the Director-General has taken account of:
- 20.1 any evidence of onward spread transmission outside beyond known cases;
 - 20.2 any concerning information arising from case interviews; and/or
 - 20.3 any positive cases outside Auckland.
- 21 If the available information on these key considerations show that the resurgence is contained within the known cases, I recommend that:
- 21.1 the Auckland Region moves to Alert Level 1
 - 21.2 the rest of the country remains at Alert Level 1.
- 22 He also recommends the requirement for people to wear face coverings on public transport at Alert Level 1 should end for Auckland and the rest of New Zealand upon Auckland returning to Alert Level 1.
- 23 This view will be updated at Cabinet in light of any further information that has come to light.

Effect of the measures on the economy

- 24 The Treasury updated its view of the economic costs to reflect the HYEPU, revising down some of the estimated impact since PREPU. These are the short-term costs and need to be weighed against the risk of not stamping this resurgence out quickly. This risk is likely to require longer periods at higher alert levels, with significantly higher economic, fiscal and social costs. Indicative short-term impacts of maintaining the current settings of Alert Level 2 in Auckland until 11:59pm 1 March 2021 while keeping the rest of the country at Level 1 are \$120 million in reduced economic activity per week (2% of weekly national GDP).
- 25 A short period of heightened Alert Levels would likely mean that a proportion of the lost activity could be made up over the remainder of the quarter. Note the estimated economic costs of different Alert Levels are based on historical data, and do not reflect how firms and households may adapt behaviour.

Economic support measures

- 26 On 14 December 2020, Cabinet agreed in principle to economic support measures which would be introduced alongside sustained escalations in Alert Levels [CAB-20-MIN-0531 refers]. As Auckland has been at Alert Level 2 or above for more than seven consecutive days the criteria to activate the Resurgence Support Payment has been met and Cabinet will be asked to agree

to this activation today. Eligibility for this payment will be based on an incurred 30% revenue drop over a 7-day period.

- 27 Other support for individuals includes the Short-Term Absence Payment for eligible workers awaiting a COVID-19 test result, and the Leave Support Scheme for workers instructed to self-isolate in relation to the COVID-19 response. These support measures are available at all Alert Levels.

At risk populations

- 28 Although the full extent of impacts is not yet easily identifiable, it appears at risk populations have not been significantly affected by the relatively short period at Alert Level 3 and subsequent move to Level 2. We do know through community intel, that demand for food-related support from community providers increased. This has been responded to through existing systems.
- 29 The Northern Regional Health Coordination Centre (NRHCC), Ministry of Social Development (MSD) and welfare agencies in Auckland are working together to provide support to the Papatoetoe High School community.
- 30 There has been some concern, by those in the community, that their employers may not apply for leave subsidies leaving them without income next week. In response, MSD have shared communications with local businesses around financial support available to employers and have advised employees of supports available from MSD should their income be impacted.
- 31 Financial factsheets have been created and translated into languages used by the Papatoetoe High School community.

Public attitudes and compliance

- 32 Analysis of social media channels show masks and face coverings are a popular topic presently. Sentiment is broadly neutral or negative, although positive sentiment is increasing. Areas of questioning and concern are around exemptions for the face covering requirement, such as passengers using small passenger vehicles and school buses.
- 33 Use of the COVID App, including scans and manual entries, showed a significant increase from 14 February before decreasing from 19 February. App registrations have also increased.
- 34 New Zealand Police has reported that the number of complaints received in respect of compliance with measures dropped off significantly when Auckland moved from Alert Level 3 to Alert Level 2. Generally, most complaints related to people not wearing face coverings on public transport or the failure of businesses and services to display QR codes. Police continue to use the Engage, Encourage, Educate, Enforce model, with the emphasis being on Education.

Options

- 35 I have identified two options for Cabinet to consider, depending on the situation as reported at the time Cabinet meet:

- 35.1 Option A: Move Auckland to Alert Level 1 and keep the rest of the country at Alert Level 1 from 11:59pm Monday 22 February 2021 (recommended); or
- 35.2 Option B: Maintain current settings of Alert Level 2 in Auckland until 11:59pm 1 March 2021 and keep the rest of the country at Level 1 (status quo).

Option A

- 36 This option allows Auckland to move down one step in the Alert Level framework to join the rest of the country at Alert Level 1. I consider this a proportionate response to the risk following the measures taken to date because:
 - 36.1 as at 3pm on 21 February 2021, there is no evidence of community transmission of COVID-19;
 - 36.2 all remaining (minus any new expected cases) Papatoetoe High School students, volunteers and staff have tested negative – close contacts at the school must return two negative tests and go through 14 days isolation before they can return to school;
 - 36.3 all casual and casual plus contacts have returned negative test results; and
 - 36.4 we are confident we have identified the perimeter of the outbreak and that the cluster is contained.
- 37 For the rest of New Zealand, remaining at Alert Level 1 reflects our confidence that there are likely to be no cases in the community outside of Auckland.

Option B

- 38 This option would maintain the status quo with Auckland staying at Alert Level 2, and the rest of the country staying at Alert Level 1 but is not recommended given the assessment of the current situation.

Face coverings on public transport at Alert Level 1

- 39 The mandatory use of face coverings on public transport in Auckland at Alert Level 1 was an additional temporary measure that was agreed to by Cabinet on 16 November 2020, in response to the November Quarantine case, while case investigation was underway [CAB-20-MIN-0477]. This required the mandatory use of face coverings on public transport and drivers of small passenger vehicles on all Auckland routes, and on all domestic flights.
- 40 On 17 February 2021 Cabinet agreed that the use of face coverings should be mandatory on all public transportation services across New Zealand and for Cabinet to review this measure on 22 February [CAB-21-MIN-0025].
- 41 Although there was no evidence of community transmission outside of Auckland, the use of face coverings on public transport at Alert Level 1 across

New Zealand was enacted as a temporary, and precautionary measure only, while Auckland remained at Alert Level 2.

Director-General's advice on face coverings

- 42 The Director-General has reviewed the temporary measure under Alert Level 1 to require face coverings on all public transport and his advice is that this requirement should now be revoked, and the standard measures under the Alert Level Framework for Alert Level 1 are put back in place.
- 43 The Director-General considers that the mandatory requirement for using face coverings on public transport is a justified and proportionate measure where there is evidence of COVID-19 community transmission. As there is no current community transmission, and the current outbreak is well contained his advice is that on balance, the additional precautionary measure of face coverings on public transport is not required as part of the ongoing response to the current Auckland outbreak due to the lack of firm evidence of wider community spread throughout Auckland and other regions, following widespread testing.
- 44 However, the Director-General has advised that there may be other reasons for maintaining the use of face coverings on public transport in Alert Level 1 at this time. For example, the use of face coverings is a constant 'reminder' to people of the ongoing threat posed by the COVID-19 pandemic and may prompt other 'desired' behaviours including physical distancing, scanning with the NZ COVID Trace App and appropriate hand hygiene. Thus, there may be wider benefits from continued use of face coverings on public transport that support the overall response to the pandemic.
- 45 It is important that all mandatory measures imposed can be well justified on public health grounds and are proportionate to the current public health risk. This helps to retain social licence and ensure public adherence to the measures.
- 46 Health advice will continue to encourage people to wear face coverings where they are unable to physically distance, keep up other measures such as hand hygiene, coughing and sneezing etiquette, staying home when sick, scan using the COVID-App, and preparing for possible resurgences.

Feedback from the transport sector

- 47 Waka Kotahi advises there is general support from regional councils for mandatory face coverings on council-contracted bus services at Alert Level 1. There are however wider impacts as set out below:
- 47.1 The requirement will impact on the ongoing viability of some long-haul services. For example, KiwiRail says the viability of its long-distance Scenic trains is already compromised by New Zealand's borders being closed and the requirement to wear face masks represents a further significant blow.
- 47.2 Legally, food and drink can be consumed under the current Order despite the face covering requirement. However, the Ministry of Health

advises that it is good practice to not serve food or drink to passengers when face coverings are being worn. Complying with the Ministry of Health guidance will have economic impacts for services where the food and drink service is a business revenue stream (e.g. small passenger ferries in Auckland and Wellington, or the Capital Connection train service in Wellington), and potential health and safety impacts for staff and passengers.

- 47.3 Operators have also raised concerns about the welfare impacts for staff from regularly wearing masks for long periods of time.

Comment

- 48 In light of the above, if the requirement is retained at Alert Level 1, I recommend retaining the existing face covering exemptions (as provided in the current Order) for staff and passengers, food and drink, and the provision specifying that operators should support through education but are not required to enforce the requirement in the meantime while further advice is sought. Officials will also review the services that fall within the definition of public transport for the purposes of face covering requirements irrespective of whether it is retained now or not.
- 49 In my view, there are two approaches to the use of face coverings on public transport. This measure can be implemented in response to increased risk of community transmission of COVID-19, or it can be implemented as a precautionary measure to limit the risk of COVID-19 spreading undetected in the community. The argument between the two cases is a finely balanced one. The Ministry of Health tends to lean towards the former, while I tend to lean towards the latter.
- 50 Public transport services such as buses and trains have the potential to be places of significant transmission of the virus, and have a higher concentration of at-risk populations using them regularly. Should contact tracing reveal that a positive case of COVID-19 has used public transport, our recent experience suggests that tracking and testing each individual who used that service can be slow and difficult. A routine requirement to wear face coverings has the potential to significantly reduce risk in these situations.
- 51 I believe the challenge of face coverings on long distance public transport can be overcome if an exemption is provided for journeys over 3 hours long, where seats are allocated to individual ticket holders, and where the transport operator keeps contact details for each passenger. This would allow for rapid contact tracing where necessary. A similar requirement on public transport journeys of shorter duration, for example urban buses, would be impractical to implement, hence my view that the mandatory wearing of face coverings is a more practical alternative.

Mandatory record keeping and scanning of QR codes

- 52 During periods where we have no active cases and the perceived risk of transmission is low, we have seen low usage of the NZ COVID Tracer app (the COVID App). This can make engaging casual contacts with testing efforts more

difficult and can limit the precision of any estimates about the potential spread of infection. Effective contact tracing is central to our elimination strategy, particularly the “prepare for it” and “stamp it out” pillars. Our ability to conduct rapid and effective contact tracing is essential to identify and isolate cases quickly and contain outbreaks.

- 53 The COVID App is one way for people to keep a record of where they have been and when, and who they have been with. However, at present there are many ways people are keeping records of their movements, including other electronic means or hard copy record keeping.¹
- 54 The COVID App has more utility for contact tracing given its ability to identify close and casual contacts in the same location.
- 55 Data on the use of the COVID App shows that scanning levels are low when risk is perceived to be low, but that scanning increases when perceived risk increases (such as during the August 2020 and current outbreaks). Officials have no way of knowing how many people are recording their movements using hard copy or other electronic means, but this is likely to mirror usage of the COVID App.
- 56 People are also able to check on their movements through other means such as general recall, receipts, or electronic banking records, and then self-identify themselves as contacts by calling Healthline, as advised when an alert is issued by the Ministry of Health in the media and on its Locations of Interest web page.
- 57 For contact tracing to be effective at containing an outbreak, record keeping practice needs to be widespread and consistent before an outbreak occurs, not just when there is an event. Officials have considered three options for increasing record keeping for contact tracing purposes:
- 57.1 enhanced status quo;
 - 57.2 requirement for people to scan using the COVID App or create another form of record when entering a business/organisation with the requirement being on:
 - 57.2.1 the individual; or
 - 57.2.2 the businesses/organisations; or
 - 57.3 requirement for people to scan using the COVID App or create another form of record when entering some high-risk situations.
- 58 The latter two options would require additional time for consultation with the business community and legal and drafting work.

¹ This paper does not consider Bluetooth technology (such as wearables). Advice on these technologies will be provided in early March 2021 in the Ministry of Health’s report-back to Cabinet on the Bluetooth-enabled contact tracing card trial.

Option A: Enhanced status quo (recommended by officials)

- 59 At present, New Zealanders are encouraged to download and use the COVID App or to use other means to record movements. The only mandatory requirement at Alert Level 1 is for businesses and workplaces to display QR codes. People are encouraged to scan QR codes through public communications and prompts by the placement of the QR codes at the entrance of premises but scanning rates continue to be low.
- 60 Enhancements to the status quo to increase scanning behaviour could include:
- 60.1 stronger messaging and changes to the COVID App to help embed scanning practice and form a habit, including targeted messaging to specific population groups and communities;
 - 60.2 reminding businesses of their ability to encourage customers to scan upon entry or exit of the premises, and increasing the range of collateral and creative messaging for businesses to use to encourage their customers to scan;
 - 60.3 reminding the public that effective contact tracing supports the timely containment of outbreaks which reduces the need for blanket alert level restrictions; and
 - 60.4 encourage people to opt in and share contact details on the COVID App to enhance the contact tracing process.
- 61 Businesses could also be required to display more QR codes – e.g. one for every 10m² and at each table.

Option B: Requiring record keeping (in any form, including scanning the COVID app) for contact tracing purposes

- 62 Currently, at all Alert Levels, workplaces and public transport are legally required to display QR codes that COVID App users are able to scan. From Alert Level 2, workplaces are also required to have other record-keeping systems and processes in place to enable a contact record to be kept of all persons entering. Exempt from that requirement are transport stations, supermarkets and petrol stations.
- 63 Compulsory keeping of a contact tracing record could be required with a section 11 order under the COVID-19 Public Health Response Act 2020 by:
- 63.1 requiring businesses and services to have systems and processes to ensure that so far as reasonably practicable a contact tracing record is created; and/or
 - 63.2 requiring individuals to keep a contact tracing record so far as reasonably practicable.
- 64 Requiring a QR code to be scanned amounts to a requirement on individuals to have to download the COVID App onto their smartphone. A requirement to download and use a specific app contravenes Apple and Google's terms of

service and could result in the app being removed from both platforms. This would not be the case if there was a broader record keeping requirement, where using the COVID App is one of several record keeping options.

65 It would also require individuals to possess a smartphone, have internet access and be able to use the technology. To ensure options for accessibility and equity are fully taken into account, officials recommend the requirement should be broader to include alternative methods of record keeping.

66 There are risks associated with a mandatory approach, as set out below.

66.1 s9(2)(h)



66.2 It would be impractical to enforce mandatory record keeping requirements on individuals as it is not outwardly evident whether an individual has complied (unlike with face coverings). Should the requirement be placed on business and services to enforce:

66.2.1 retail and hospitality staff, in particular, are likely to receive abuse from some customers;

66.2.2 enforcement assistance may be sought to manage resulting public behaviour, likely requiring additional security staff, and demands on Police resources; and

66.2.3 it would be difficult for Police to establish failure to comply with the record keeping requirement as enforcement officers would require access to an individual's COVID App, or in the vast majority of cases, the individual would no longer be present or identifiable by the time Police responded to a report of non-compliance.

66.3 There is a potential risk that requiring scanning or record keeping upon entering a business/service could create more queues and congregating at entrances, exposing people to greater risk of transmission. Currently, many businesses have multiple points displaying codes within the premises providing other opportunities for people to scan.

66.4 Mandatory record keeping may also impose additional privacy risks, particularly for people who are not able or willing to use the COVID App. Manual registers (e.g. log books) are frequently used by businesses as an alternative to the COVID App. These are not privacy protective as prior entries are visible to other users. Unsecured personal information exposes people to unwelcome contact, fraud or even identity theft.

66.5 Mandatory record keeping could risk undermining the current high level of social licence for the restrictive measures that are currently in place the broader COVID-19 response. A mandated approach could therefore pose a risk to the government's elimination strategy over the medium term (e.g. future compliance with higher Alert Levels). This risk to social licence would be aggravated if Police could not fully meet public expectations of response and enforcement. There could be a similar impact on the public's wider trust and confidence in Police.

66.6 There could be unintended consequences, for example future positive cases that have not kept records may not want to not tell contact tracers where they have been or who they have been with out of fear of being in breach of the mandatory record-keeping requirement. People also may be less willing to scan if they are required to do so.

67 Any decision to mandate requires further consideration and advice in relation to implementation and enforcement issues.

Option C: Requiring record keeping (in any form, including scanning the COVID App) for contact tracing purposes in some higher-risk situations

68 Another approach could be to limit the requirement for mandatory record keeping to locations where strangers mix and where the risk of transmission would be high, based on current circumstances and known environmental and behavioural risk factors for a higher rate of transmission, such as where there:

68.1 are high numbers of people in close proximity to one another;

68.2 area enclosed spaces and poor ventilation;

68.3 is shouting, singing or heavy breathing;

68.4 area extended durations of contact;

68.5 area a lack of face coverings and attention to personal hygiene; and

68.6 is an influence of alcohol or other drugs on personal distancing and hygiene.

69 Limiting the number of places where record keeping is mandatory might improve the proportionality of the measure, particularly if this requirement is only applied at times of heightened risk on the advice of the Director-General of Health. For example, if there has been evidence of recent community transmission or if a region or the country is moved to an Alert Level above Level 1.

70 If a mandatory approach is preferred, lead time for consultation with partners and key stakeholders, who are most likely to be affected by any new requirements, such as businesses (particularly retail and hospitality), industry and iwi/Māori is recommended. This is critical to gaining buy in and solving any implementation challenges to maintain high levels of social licence for public health measures.

- 71 Any new requirement, which is not contained in the template orders or has not been in a previous COVID Act order, will require additional time to consider the associated policy and legal matters which are necessary to inform drafting.

WorkSafe's role in supporting compliance

- 72 I have discussed with the Office of the Minister for Workplace Relations and Safety the scope for WorkSafe to support compliance in relation to the Government's COVID-19 public health goals.
- 73 I understand that his officials have advised him that it is unlikely that the scope of the Health and Safety at Work Act 2015 extends to requiring the scanning of COVID-19 QR codes. Similarly, it does not require the regular testing of border workers for COVID-19 – this is done via an order under the COVID-19 Public Health Response Act. This is the same mechanism used to require businesses to display a COVID-19 tracer QR code.
- 74 While WorkSafe inspectors are authorised as enforcement officers by the Director-General of Health under the COVID-19 Public Health Response Act 2020, the Minister for Workplace Relations and Safety will review this function over the coming month to ensure that the ongoing use of WorkSafe's funding and personnel for a public health purpose is appropriate. This is to ensure that the approach balances the need for WorkSafe to focus on high-harm areas with supporting the government's COVID-19 response.

Director-General of Health's advice

- 75 The Director-General of Health recommends against mandatory QR scanning by individuals with the COVID App. Consistent with the analysis above, he considers such a requirement would create a number of equity, privacy, implementation and enforcement issues and is likely – based on behaviour science insights – to lead to negative outcomes in use of the app and undermine social licence for future public health measures.

Comment

- 76 Given we have had months to increase uptake and use of the COVID App to little effect, we need to do something completely different. One option I am interested in exploring is the use of "COVID Marshalls" like they have tried in some Australian states and territories. Another idea is to consider an incentive scheme that rewarded people for use of the app (but not frivolous scanning) to increase uptake of the app. I also wish to explore whether push notifications could be used more.

Lessons from this response

Alert Level boundary

- 77 Drawing on lessons from the August 2020 resurgence where the Alert Level boundary cut off large numbers of people from critical services and workplaces, the boundary in the current response was much more appropriate and there was much less friction as a result. This was also because Cabinet agreed broader classes of businesses and services were permitted to travel across the

boundary [CBC-20-MIN-0122 refers]. Positive feedback has been received for the MBIE-hosted service and far fewer applications for exemptions were received by the Ministry of Health for the Director-General's consideration.

- 78 However, there were still some minor problems with the boundary, the initial placement of checkpoints and a discrepancy between the technical description of the boundary and the published maps. Officials have been working on addressing these issues if a regional boundary is needed to manage a future resurgence.

National Resurgence Response Plan

- 79 As part of an ongoing process, officials are reviewing the National Resurgence Response Plan to check it remains up-to-date and if it needs amending in light of any lessons learnt in this response.

Carrying over exemptions for businesses or services to travel across Alert Level boundaries

- 80 Officials are undertaking work on whether it is desirable and/or legally possible to carry over all exemptions granted by the Director-General of Health for businesses and services to travel across the Alert Level boundary so that they automatically apply if the Auckland region returns to Alert Level 3 in the future. Advice on this will be provided to relevant Ministers before the end of March.
- 81 I note that because the Order permitted a relatively large number of classes of businesses to travel across the boundary (relative to the August 2020 resurgence), the demand for exemptions was relatively low. In addition, feedback from business has indicated that the process for applying was straightforward.
- 82 There has also been very positive feedback from businesses about the Business Travel Document service established by MBIE that generates QR codes that businesses and service can use as evidence they are permitted to travel across Alert Level boundaries.
- 83 MBIE is undertaking an audit of the QR codes it granted through its online system to ensure they align with Cabinet's decisions around permitted travel.

Financial Implications

- 84 Imposing Alert Level controls reduces economic activity as discussed above and this will impact on tax revenues.

Legislative Implications

- 85 I will make or amend an Order under section 11 of the COVID-19 Public Health Response Act 2020 informed by Cabinet's decision.
- 86 Before making a replacement Order or amending an Order, I must have regard to any advice from the Director-General about the risks of the outbreak or spread of COVID-19, and the nature and extent of any measures that are appropriate to address those risks. I may also have regard to Cabinet's decision

on the level of public health measures appropriate to respond to those risks and avoid, mitigate, or remedy the effects of the outbreak or spread of COVID-19.

- 87 Additionally, Ministerial consultation requirements will be satisfied through previous consultation on template Orders for Alert Level requirements and the proposals outlined in this paper.
- 88 The Act requires that there be 48 hours between publishing the Order and its coming into force. This requirement does not apply if I am satisfied that the Order should come into force urgently “to prevent or contain the outbreak or spread of COVID-19”, nor must it apply when an Order only removes or reduces requirements. Decisions to add requirements beyond the current template orders will take more time.

Impact Analysis

- 89 The Treasury has determined that the regulatory proposals in this paper are exempt from the requirement to provide a Regulatory Impact Statement (RIS) because they are intended to alleviate the short-term impacts of a declared emergency event of COVID-19 outbreak. These proposals are required urgently to be effective, making a complete, robust and timely impact analysis unfeasible.

Human Rights

- 90 The human rights implications of the controls in place to slow the spread of COVID-19 are significant and have been set out in detail in previous papers on Alert Level decisions [CAB-20-MIN-0161, CAB-20-MIN-0176].
- 91 Relevant departments and the Solicitor-General will continue to keep any remaining restrictive measures under review to ensure that they remain necessary and are implemented in a way that is consistent with the New Zealand Bill of Rights Act.

Consultation

- 92 This paper was prepared by the COVID-19 Group in the Department of the Prime Minister and Cabinet.
- 93 The Ministry of Health has provided specific input and text, including advice on the course of the outbreak, the public health response, and the views and recommendations of the Director-General of Health.
- 94 The Treasury has provided input into relevant economic aspects. The Ministry of Business Innovation and Employment has provided relevant input into the role of WorkSafe on compliance and audit of the register. The Ministry of Social Development provided input on the impacts on at risk populations and actions taken. The NZ Police, Ministries of Business Innovation and Employment, Justice, Transport, and Primary Industries, Crown Law, Parliamentary Counsel Office, and the Office of the Privacy Commissioner were consulted on mandatory record keeping and scanning of QR codes.
- 95 Further agency consultation has not been possible in the timeframe.

Communications

96 Subject to Cabinet agreement, the Prime Minister will communicate the decisions set out in this paper after Cabinet agreement. Communications will be co-ordinated with the Government's broader communications around its COVID-19 response. This will include Chinese language communications.

Proactive Release

97 I intend to proactively release this Cabinet paper following Cabinet consideration.

Recommendations

The Minister for COVID-19 Response recommends that Cabinet:

- 1 note that one further community case (of a close contact) has been identified since 17 February;
- 2 note on 21 February 7,392 tests were undertaken in the previous 24 hours, bringing the weekly total of tests to more than 71,000;
- 3 note that source investigation is continuing, however, no scenarios have yet been ruled out regarding source, with the possibility that a definitive source may not be found;
- 4 note the Director-General will provide updated advice at Cabinet;

Options

5 Agree to:

EITHER

5.1 Option A: move Auckland to Alert Level 1 and keep the rest of country to Alert Level 1 from 11:59pm Monday 22 February 2021 (recommended);

OR

5.2 Option B: maintain current settings of Alert Level 2 in Auckland until 11:59pm 1 March 2021 and keep the rest of the country at Level 1 (Option B).

6 agree that if Cabinet agrees to recommendation 5.2, Cabinet will review settings on Monday 1 March 2021;

Measures at Alert Level 1

- 7 note the Director-General's advice that the requirement to use face coverings on public transport at Alert Level 1 end once Auckland returns to Alert Level 1;
- 8 agree that if Option A is agreed, it would be an appropriate measure in response to the level of public health risk for the requirement for face coverings on public transport at Alert Level 1 to:

EITHER

8.1 be continued with a requirement in place both in Auckland and the rest of New Zealand (status quo);

OR

8.2 be revoked with a temporary measure in place in Auckland until the case investigation is complete in Auckland;

9 agree that if recommendation 8.1 or 8.2 is agreed to, once the case investigation is complete, it would be an appropriate measure in response to the level of public health risk for the Minister for COVID-19 Response to review the additional temporary measure and:

EITHER

9.1 revoke it in accordance with powers under section 11 of the COVID-19 Public Health Response Act 2020;

OR

9.2 come back to Cabinet with further options;

10 agree that it would be an appropriate measure in response to the level of public health risk to retain the existing face covering exemptions (as provided in the current Order) for staff and passengers, food and drink, and that operators should support through education but are not required to enforce the requirement;

11 note that officials will review the definition of public transport and the services that fall within this definition for the purposes of Alert Level Orders;

12 note the advice on making record keeping for contact tracing purposes mandatory at Alert Level 1;

12.1 officials do not recommend making mandatory the use of the NZ COVID app by individuals;

12.2 it will likely be difficult to increase record-keeping behaviour for contact tracing purposes during times of perceived low risk, whatever approach is taken;

12.3 there are a number of risks and implementation and enforcement issues associated with making record keeping mandatory for individuals and/or businesses;

12.4 consultation with business (particularly retail and hospitality) and industry partners should be undertaken before any mandatory requirement comes into effect;

- 13** agree that it would be an appropriate measure in response to the level of public health risk to:

EITHER

- 13.1 continue with the approach to date around record keeping and the NZ COVID Tracer App, with a focus on enhanced communications and further work on how to encourage or require businesses to more prominently display the QR code posters (recommended);

OR

- 13.2 if a mandatory approach to record keeping for contact tracing is preferred, invite the Minister for the COVID-19 Response to report back to Cabinet on implementation and enforcement issues, and consultation with business (particularly retail and hospitality) and industry partners;

Other matters

- 14** invite the Minister for Workplace Relations and Safety to report back to Cabinet on how the Workplace Relations Safety portfolio can support public health compliance activities, including on the use of the Health and Safety at Work Act 2015 and an appropriate role for WorkSafe;
- 15** agree that Cabinet's decision today will be communicated by the Prime Minister.

Hon Chris Hipkins
Minister for COVID-19 Response