

# MANDATORY RECORD KEEPING FOR CONTACT TRACING PURPOSES AND FACE COVERINGS

## Executive Summary

---

1. The increasing prevalence of the Delta variant around the world, which is understood to be significantly more transmissible than previous variants of COVID-19 has, in part, prompted Ministers to request advice that considers options to mandate record keeping for contact tracing purposes and face coverings in New Zealand.
2. The settings outlined in this briefing provide options to mandate these actions (record keeping and use of face coverings), while seeking to balance transmission risk against infringement on an individual's freedoms, convenience and comfort. In general, we have not recommended mandating either action where individuals can easily maintain their bubbles through distancing (i.e. lower risk locations). However, where it is difficult to maintain separate bubbles it is recommended that face coverings should be mandated, unless their wearing is impractical (e.g. where food and drink is consumed). In such cases other protective measures should be put in place (e.g. being seated at a table), and if a form of record keeping does not already exist, one is required.
3. DPMC considers that requiring face coverings and record keeping for contact tracing purposes in specific settings would bolster the "prepare for it" pillar of the Elimination Strategy by reducing the spread of an outbreak before it is detected, and work alongside other approaches to "keep it out" (e.g. pausing QFT and introducing PDT for all QFT travellers). The proposals would also strengthen the "stamp it out" pillar by reducing the likelihood of a nascent outbreak becoming widespread and resulting shift up Alert Levels. While it is hard to judge the overall level of risk reduction, the negative impacts on individual freedoms would be significantly less than those associated with Alert Level 3 restrictions.
4. s9(2)(g)(i)

### *Record keeping for contact tracing purposes*

5. Good record keeping is essential to support efficient contact tracing in response to a COVID-19 outbreak, but it is only currently required in limited scenarios for businesses (as far as is reasonably practicable) at Alert Level 3 in New Zealand. Partly due to high public complacency, use of the COVID-19 Tracer App (the App) is consistently low which slows down notification of contacts when community transmission appears to be present.
6. Mandating record keeping would work alongside existing non-regulatory approaches to promote and encourage improved record keeping, including current or planned government educational initiatives, communications, engagement, guidance and physical resources. While these non-regulatory approaches have had limited success in driving increased or consistent record keeping, they will continue as one of the ways to influence positive record keeping behaviours.

7. Options are provided about on whom, where, how, and for how long a record keeping requirement would apply. The suite of possible options outlined limit the requirement's application in different ways, with it being recommended that the App is specified as the primary record keeping method across the options (with alternative methods provided, subject to exemptions). For example, whether the requirement applies at all Alert Levels, or only Alert Level 2 or higher; at all locations or only at more risky locations; only to businesses (to have systems and processes to ensure a record is kept) or also on individuals (make a record). The different limits incorporated in the options seek to balance the stated benefits of mandating against interference with rights, privacy and legal risks, as well as maintenance of social licence <sup>s9(2)(h)</sup>

[Redacted]

8. Changing the rules will not necessarily influence all New Zealanders' record keeping behaviour. Research indicates that mandating record keeping behaviours may increase the occurrence of the behaviour overall but reduce the behaviour among some key groups (e.g. due to perceived inequity or unfairness). It is anticipated that some non-compliance will persist.

9. The Ministry of Pacific Peoples, the Privacy Commissioner and the Government Chief Privacy Officer do not support the record keeping proposals as set out in this briefing. The Ministry of Health does not presently support the proposals but will be providing further advice on these matters.

Not relevant to your request

[Redacted]

Released under the Official Information Act 1982



### *Enforcement mechanisms*

17. Monitoring compliance and enforcement of these requirements will be challenging. Further work is required on what mechanisms should be available to enforce non-compliance with any requirement for mandatory scanning (e.g. whether an infringement offence is created and how non-compliance might be monitored, or an obligation imposed in a way that breaches Google and Apple's terms of service).

### **Mandatory record keeping for contact tracing purposes**

18. Our ability to slow or stop the spread of COVID-19 relies heavily on the pace and efficiency of contact tracing. Currently, record keeping for contact tracing purposes (including through the use of the App for QR code scanning) is strongly encouraged in New Zealand but is only required in limited scenarios for businesses (so far as reasonably practicable) at Alert Level 3.<sup>1</sup>
19. Uptake and use of the App is currently low and inconsistent, with the number of QR poster scans typically fluctuating between 400,000 and 1 million scans per day.<sup>2</sup> With the emergence of new, likely more transmissible, variants of COVID-19 there is arguably a more pronounced need for improved record keeping behaviours, especially while the majority of New Zealanders are unvaccinated.
20. Making record keeping for contact tracing purposes compulsory could support faster notification of contacts (e.g. through push notifications in the App) during a community outbreak of COVID-19. This will help to limit any outbreak by ensuring close and casual contacts are aware that they need to isolate and get tested (noting that contacts will still need to act on this information), and may help to prevent shifts to higher Alert Levels.
21. s9(2)(g)(i)

Compulsory record keeping in New Zealand would also increase assurance for QFT-purposes and make it easier for people to understand what is expected of them in both countries, considering use of check-in apps is now mandated in most Australian states and territories.<sup>3</sup>

<sup>1</sup> Clauses 24(1)(f)(ii) and 24(1)(g)(iii) of the (now revoked) COVID-19 Public Health Response (Alert Level Requirements) Order (No 4) 2021 outline the limited scenarios referred to. These provisions are part of our Alert Level 3 Template Order.

<sup>2</sup> DPMC commissioned TRA to undertake research in May 2021 to understand how NZ COVID-19 Tracer app behaviours could be influenced by targeted communications. 60% of TRA's sample (n = 1,921) reported that they were not scanning consistently. Only 38% stated that it was important to use the NZ COVID Tracer app wherever they went.

<sup>3</sup> Western Australia, which has a population of 2.67 million, mandated the use of the contract registration in December 2020. The state government COVID-19 check-in app "SafeWA" registered an approximate 1.9 million daily average scans in May. Following the Sydney Northern Beaches outbreak over the December-January period, NSW, which has a population of 8.2 million,

22. Any strengthened new measures related to the Alert Level framework, which impinge on individual freedoms and rights, need to be proportionate. The mandatory requirement will have a greater impact on people who are not able to use the App, because alternative means of record keeping are generally more inconvenient and less privacy protective. The privacy implications of complying with, and enforcing, mandatory record keeping on individuals are significant regardless of the method of information sharing used (e.g. implications apply for both electronic and paper-based information sharing systems).
23. Options are available in the settings (discussed more below) to ensure proportionality relative to the public health risk and to help to mitigate the risks and concerns that relate to this proposal, as set out in this paper. Notwithstanding the benefits outlined above, we are also aware that any new requirements on businesses create compliance costs and any new requirements on individuals interfere with fundamental rights. The Ministry of Health will provide further advice on the public health risks.

#### *Proposed settings*

24. s9(2)(h) [REDACTED] On balance, DPMC believes that mandating record keeping may be justifiable, by limiting where, how and to whom the settings would apply. The following options differ in the broadness of their application and associated risk profile. If your preference is for a suite of narrow options (e.g. only applying the requirement at Alert Levels 2 and above, only in the narrowest categorisation of locations and only on businesses), the legal risk will be lower. Broader options carry significantly higher risk.
25. In terms of who the requirement applies to, a section 11 order under the COVID-19 Public Health Response Act 2020 could be used to make record keeping for contact tracing purposes compulsory, by requiring:
- specified businesses and services to have systems and processes to ensure that, so far as is reasonably practicable, a contact tracing record is created;<sup>4</sup> AND/OR
  - individuals to make a contact tracing record.
26. If an individual fails to comply with the requirements of any order created by section 11 could be subject to criminal prosecution.<sup>5</sup> A business or service that failed to comply would be subject to possible prosecution. Enforcement is discussed below in paragraphs 57 to 64.
27. Record keeping could be required at all Alert Levels, or only at higher alert levels when community transmission is present or more likely. We propose two options for this setting, which would complement current communications strategies to influence record keeping behaviour:
- Requiring record keeping at all Alert Levels (recommended). Record keeping for contact tracing purposes is something that we want to encourage New Zealanders to do at all times, especially at lower Alert Levels. From a public health perspective, being

---

recorded 66 million Service NSW app check-ins. This dropped to 54.4 million for the month of February. By April there were 48.3 million a month with the data for May showing similar levels of app usage.

<sup>4</sup> Note that a person in control of a workplace (with exceptions) is currently required to display a QR code at all alert levels (section 9 of the COVID-19 Public Health Response (Alert Level Requirements) Order (No 7) 2021 refers). At alert level 2, there is also a requirement to have other record-keeping systems and processes in place (with certain exceptions).

<sup>5</sup> Section 26 of the COVID-19 Public Health Response Act 2020 refers.



able to rapidly contact trace early in an outbreak/positive case of COVID-19 is critical. Good record keeping may mitigate the need to change Alert Levels.

- b) Requiring record keeping at Alert Levels 2, 3 and 4 only, with record keeping for contact tracing purposes still only strongly encouraged at Alert Level 1. Having different requirements at different Alert Levels may be problematic from a compliance perspective, as it may be confusing when individuals do and do not need to make a record of their movements. However, this option may go some way to preserving social licence for scanning and the Alert Level framework more generally while the country is at the lowest Alert Level.

28. The locations where record keeping for contact tracing purposes is mandatory is also flexible. We propose two options:

- a) Adopting a risk-based approach, requiring record keeping for visitors or customers at: visitors to aged care and healthcare facilities, indoor event facilities (cinemas, theatres, concert venues, casinos), retail businesses (supermarkets, shopping malls, indoor marketplaces, takeaway food stores), customers at massage parlours, beauticians, barbers, hairdressers, indoor public facilities (libraries, museums, swimming pools), public facing staff and visitors to courts (but excluding judiciary and legal counsel), tribunals, local and central government agencies, and social service providers with customer service counters, social gatherings (weddings, funerals, faith based services), and customers at hospitality venues (cafes, restaurants, bars/nightclubs). This approach would support prompt notification of contacts following an instance of a positive COVID-19 case attending one of these gatherings, and at other venues where physical distancing is not always practical. However, under this option drafting will be complex and it may be difficult for some individuals to easily identify when and where they should be making a record of their movements.

OR

- b) Requiring record keeping for contact tracing purposes everywhere that a QR code is currently required to be displayed (not recommended as we consider that it has the highest likelihood of undermining social licence).

29. DPMC officials would recommend social gatherings are exempt from this requirement at Alert Level 1, due to the risk of adding complexity where there are currently no other legal requirements on gatherings. Hosts of social gatherings would continue to be encouraged to keep a record for gatherings held at Alert Level 1 but this would not be a legal requirement.

30. DPMC officials recommend that the App is specified as the preferred method of record keeping, acknowledging that businesses will need to be required to provide alternative record keeping methods for those who do not, or cannot, use the App (with some exceptions). For example, enabling businesses to electronically register contact details on a patron's behalf or updating the App to enable a single app user to check in multiple people.

31. Practical limitations mean it will be unfeasible for some businesses and service providers to have alternative systems in place, such as public transport providers and in transport terminals (e.g. airports, and bus stations). Transport operators are currently required to display QR codes for their transport assets. This includes on buses and trains, and throughout terminals and stations. Because of the number of assets and size and number of access points at terminals for example, requiring alternative contact tracing systems to be in place, other than QR codes, will not be practicable. We recommend that public

transport operators (and associated facilities) not be required to provide an alternative record keeping system.

32. Requiring people to download and use a specific app contravenes Apple and Google's terms of service and would likely result in the App being removed from both platforms. This issue can be avoided by making a broader record keeping requirement (as is proposed), where the App is the preferred method of record keeping for contact tracing purposes, but still only one of several record keeping options available to a person. Meeting the requirement would not be dependent on a person downloading and using the App. However, further complications arise over the how compliance with any mandatory record keeping obligation would be monitored and enforced. <sup>s9(2)(g)(i)</sup>

33. Some services are currently exempted from the requirement to display a QR code and, based on the existing rationale for these exemptions, we recommend they continue, including for:
- a) public transport services that require all passengers to provide their name and a contact telephone number (in order to use the service), such as air passenger services and some interregional train and bus services;
  - b) school buses (dedicated school services contracted by the Ministry of Education, local authority, school board or Auckland Transport); and
  - c) car sharing services and carpooling services.
34. Another way to limit this proposal would be to review any mandatory record keeping for contact tracing purposes settings in November 2021 to ensure they remain fit-for-purpose, once more New Zealanders are vaccinated (we are reviewing the Alert Level settings framework in general in the coming months).

*The effectiveness of this option in improving record keeping is not guaranteed*

35. Changing a rule does not always change behaviour; mandating record keeping for contact tracing purposes will not guarantee effective record keeping by all New Zealanders. For example, some individuals may hold their phone up to a QR code without scanning to appear compliant. November 2020 research carried out by PWC indicated that mandating some public health activities (such as scanning using the App) may make some people less willing to carry out that activity, and there is also a high risk that it will diminish social licence and erode adherence with future lockdowns.<sup>6</sup> There is also a risk that people will see their civil liberties being reduced without an end point in sight, resulting in low public acceptance of the requirement.
36. Research indicates that mandating record keeping behaviours may increase the occurrence of the behaviour overall, but reduce the behaviour among some key groups, due to perceived inequity and unfairness. It is anticipated that some non-compliance will persist.<sup>7</sup>
37. There are also possible unintended consequences of mandating record keeping. Someone who visited a location of interest but did not record this movement may be more

<sup>6</sup> *Applying behavioural science techniques to increase NZ COVID Tracer app adoptions*, PWC, November 2020.

<sup>7</sup> *Applying behavioural science techniques to increase NZ COVID Tracer app adoptions*, PWC, November 2020 refers. An example of a possible inequity is an individual who has English as a second language and does not have a smart phone, who may feel uncomfortable (or who may be unable to) write down their details on a paper-based register.



hesitant to get a COVID-19 test for fear of revealing their non-compliance. A person may refuse to share their movement records with contact tracers because they have not complied with the requirement to make a record of their movement, which would frustrate contact tracing efforts.

38. A new Unite Against COVID-19 (UAC) Tracer App campaign in July aims to encourage New Zealanders to download the App, turn on Bluetooth tracing and scan QR codes. The campaign repositions the scanning messaging from scanning being an activity to stop the virus, to scanning being something we need to do to protect the things we love. It also includes engagement with businesses to make it easier to encourage patrons to scan, including developing messaging and resources for them to use.

Not relevant to your request

Released under the Official Information Act 1982

Not relevant to your request

Released under the Official Information Act 1982



Not relevant to your request

Released under the Official Information Act 1982

Not relevant to your request

Released under the Official Information Act 1982



## Compliance and enforcement considerations in relation to record keeping and face coverings

---

66. As noted throughout this paper, there are several outstanding monitoring, compliance and enforcement issues that will need to be worked through prior to any of the requirements proposed could come into effect.

### *Mandatory record keeping for contact tracing purposes*

67. Under current Alert Level settings (at all levels), the onus with regard to record keeping measures falls to businesses and people responsible for social gatherings, rather than to individuals. The approach to enforcement is calibrated accordingly. For example, WorkSafe's inspectors have been utilised to ensure that businesses comply with relevant Alert Level settings. As has been identified by WorkSafe, this comes at the cost of limited resources being applied to other work of such agencies.

68. Placing the onus on businesses with regard to record keeping measures would avoid many of the privacy, compliance and legal risks identified in this paper. <sup>s9(2)(g)(i)</sup>  
<sup>s9(2)(g)(i)</sup>

69. Monitoring in a meaningful way for enforcement purposes will be problematic because it will not be outwardly evident when an individual has complied with the requirement. In particular, the scanning of QR codes is an activity that occurs up to 2.5 million times per day during a response (with fewer than 1 million scans per day more typical when there is no community transmission).

70. If non-compliance were identified, there are limited enforcement options available to address this (e.g. there is currently no infringement offence for failing to make a record for contact tracing purposes). Further work is required on what enforcement mechanisms

should be made available to enforcement officers to address any non-compliance; specifically, whether an infringement office should be created so that infringement notices can be issued to non-compliers.

Not relevant to your request



Released under the Official Information Act 1982

### Legal implications of record keeping and face coverings

s9(2)(h)

s9(2)(h)

77.

a)

s9(2)(h)

b)



78.

s9(2)(h)

79.

80.

a)

s9(2)(h)

b)

c)

s9(2)(h)

81.

s9(2)(h)

82.

83.

s9(2)(h)

84.

s9(2)(h)

85.

Released under the Official Information Act 1982

s9(2)(h)

s9(2)(h)

86. s9(2)(h)

87.

## Next Steps

---

88. We recommend you discuss the options outlined in this briefing with your colleagues at Cabinet on Monday 5 July 2021. The attached table of current and proposed settings and talking points (Attachments A and B) are provided to support this discussion.
89. Following this Cabinet discussion, we propose you advise DPMC of your preferred settings from the options outlined in this briefing. DPMC will work with agencies to prepare a paper for you to take to Cabinet on Monday 12 July 2021 seeking agreement to your preferred options.
90. Officials will undertake the further work required on enforcement mechanisms for both proposals and will report back to you on recommended options by Friday 9 July 2021. This will include consideration of who bears the obligation for record keeping for contact tracing purposes – the individual or businesses and services, and any issues with Google and Apple's terms of service.
91. An update on readiness to implement any adjusted settings agreed to following these conversations will be provided to you at the same that any draft amended template Alert Level Order and/or amended Alert Level Order is provided to you for approval or signature, respectively. Further specificity about QR code location, quality and quantity (e.g. requiring multiple posters to avoid any increased transmission risk from people queuing to scan a QR code poster at a shop entrance) will also be provided as part of this update, and reflected in the amended template Order.
92. Subject to Cabinet decisions, drafting instructions will be issued to the Parliamentary Counsel Office (PCO) to draft the requirements. PCO estimates that, after instructions are provided, it will take up to five days to finalise the drafting for the full suite of changes, due to the likely complexity involved. However, the record keeping requirements could be completed sooner if they needed to be progressed separately.
93. Depending on which Alert Level(s) applies when the drafting is completed, the new requirements will be:

- a) prepared as a new section 11 Order for you to sign into force (following consultation with relevant Ministers); or
  - b) included in the template Alert Level Orders and provided to you for approval (and relevant Ministers for consultation), so that the requirements are ready to use if the Alert Level is increased in future.
94. Officials will engage with the business community on how the proposals are likely to impact them and whether the Government can support them to facilitate record keeping for contact tracing purposes or provide additional guidance to support any new face covering requirements. Officials also intend to consult Apple and Google on these proposals.

## Consultation

---

95. The following agencies were consulted on this briefing: Ministry for Pacific Peoples, Ministry of Social Development, Ministry of Health, Ministry of Justice, Ministry of Transport, Ministry of Education, Oranga Tamariki: Ministry for Children, Ministry of Business, Innovation and Employment, Department of Internal Affairs, Crown Law Office, Parliamentary Counsel Office, Office of the Privacy Commissioner, New Zealand Police and New Zealand Customs Service, Public Service Commission, Ministry for Primary Industries, Ministry for Women, and Te Puni Kōkiri.
96. The following agencies and officers expressly stated they do not support the proposals as set out in this paper:
- a) Ministry of Health (record keeping and face coverings – they will provide further advice)
  - b) Ministry for Pacific Peoples (record keeping and face coverings)
  - c) Privacy Commissioner (record keeping)
  - d) Government Chief Privacy Officer (record keeping).
97. Based on interim public health advice, the Ministry of Health do not support the proposals for the following reasons:
- a) Making record keeping for contact tracing purposes using the App risks the App being removed from Apple and Google platforms, there are enforcement challenges and equity issues. The Ministry of Health also questions the proportionality of this proposal and believe that there is insufficient evidence about the effectiveness of mandatory record keeping for contact tracing purposes to justify the proposal. The Ministry of Health also believe other options to increase scanning should be analysed and presented in this advice. (It should be noted, however, that the proposals relate to record keeping generally, not just scanning.)
  - b) The Ministry of Health are not convinced that extending the mandatory use of face coverings to the proposed settings would be effective, given there are other tools available to mitigate risk of transmission at Alert Level 2 – e.g. banning or limiting the size of gatherings. They have concerns about the proportionality of the proposed approach, and do not agree that mandating face coverings at Alert Level 2 for the places in this proposal is a proportionate response to the presenting risks and may undermine compliance with other measures (e.g. staying at home if you are unwell).



98. We understand you will receive updated public health advice from the Director-General on these proposals.
99. The Ministry for Pacific Peoples do not support mandatory record keeping for contact tracing purposes or use of face coverings, for the same reasons as outlined by the Ministry of Health as well as the BORA analysis provided by Crown Law. In relation to face coverings, Ministry for Pacific Peoples' opposition is mainly due to the possible requirement applying to social gatherings such as places of worship, and the disproportionate impact this requirement would therefore have on cultures who place significant importance on faith and spirituality from a cultural and social perspective. (We note it is not proposed to require face coverings at social gatherings). Ministry for Pacific Peoples is concerned that other options (other than mandatory action) to meet the overarching protection objective have not been explored and analysed in this advice.
100. The Privacy Commissioner does not support compulsory record keeping for contact tracing purposes. Imposing a mandatory requirement on individuals to record their movements would represent a significant intrusion into individual privacy rights. The Privacy Commissioner considers that the privacy implications are significant regardless of whether the individual uses the App, or provides their personal details to the business, as any compliance and enforcement action would necessarily be intrusive. The Commissioner considers there is insufficient evidence to justify this incursion.
101. The Government Chief Privacy Officer (GCPO) agrees with and supports both the Ministry of Health's and the Office of the Privacy Commissioner's opposition to the proposal on mandatory record keeping for the reasons that each party has described in this paper. The GCPO notes that there is significant risk that social licence will be eroded by enforcement actions required for mandatory use and disclosure of personal information and would support further work to look at options to improve record keeping while maintaining social licence and privacy.

102. s9(2)(h)

## Communications

---

103. Pending decisions on this work (this briefing and subsequent papers), clear public messaging on the new record keeping and face coverings requirements, including what is expected of individuals, will be communicated to the public and key stakeholders via official Unite Against COVID-19 channels. Communications will be tailored to specific audiences (e.g. translation of materials into nine core Pacific languages, as is currently done with UAC content) and guidance will also be provided where appropriate.
104. In addition to these general communications, the Public Service Commission will, depending on Ministerial decisions, prepare implementation guidance for public service employers that will be informed by public health guidance. This is due to the significant number of front line and public facing public service roles.

Released under the Official Information Act 1982

Released under the Official Information Act 1982



Table: Proposed settings for mandatory face coverings and record keeping for contact tracing, as at 16 July 2021

Settings	Face covering requirements <u>at Alert Level 2 and above</u>		Mandatory record keeping requirements <u>at all Alert Levels</u>		Notes
	Current settings	PROPOSED SETTINGS	Current settings	PROPOSED SETTINGS	
<b>Category one:</b> situations where face coverings are generally not recommended because other protections exist (e.g. people are more easily able to physically distance and/or there are record keeping measures in place)					
Outdoors	Not relevant to your request		X	X	Physical distancing is considered easier in these settings.
Private residences	Not relevant to your request		X	X	People more likely to belong to same bubble and/or know or have recorded all visitors.
Group tours (boats and buses)	Not relevant to your request		X	X	There are existing mechanisms for recording attendees on tours.
Staff and patients at healthcare and aged care facilities	Not relevant to your request		X	X	There are existing healthcare practices for PPE and record keeping.
<b>Category two:</b> situations where face coverings and/or record keeping is recommended because physical distancing is more difficult					
Public transport	Not relevant to your request		X	X	Mandatory record keeping not recommended due to practicality issues.
Flights	Not relevant to your request		X	X	There are existing mechanisms for recording passengers on flights.
Drivers and passengers in taxi/ride share vehicles	Not relevant to your request		X	X	*At Alert Level 1 only drivers of taxi/ride share vehicles are required to wear masks.  Mandatory record keeping not recommended because there are existing mechanisms to record drivers' clock in/off times and passenger journeys.
Public transport departure points (airports, train stations, bus stops)	Not relevant to your request		X	X	Mandatory record keeping not recommended due to practicality issues.
Staff at massage parlours, beauticians, barbers, hairdressers	Not relevant to your request		X	X	Mandatory record keeping not recommended because there will be existing mechanisms to record staff clock in/off times.
Public facing staff in hospitality venues	Not relevant to your request		X	X	Mandatory record keeping not recommended because there will be existing mechanisms to record staff clock in/off times.
All people in retail businesses (supermarkets, shopping malls, indoor marketplaces, takeaway food stores)	Not relevant to your request		X	X	Mandatory record keeping not recommended due to practicality issues.
Staff and visitors* in public areas within courts and tribunals (although in a courtroom judicial officers could exercise discretion regarding the use of face coverings, given the importance of effective communication in court), local and central Government agencies, and social service providers with customer service counters;	Not relevant to your request		X	✓	*The mandatory record keeping requirement only applies to visitors to courts and tribunals as there will be existing mechanisms to record staff clock in/off times.
All people in indoor public facilities (libraries, museums, swimming pools*)	Not relevant to your request		X	✓	*An exception for face coverings at swimming pools (even for spectators) is recommended due to public health advice on the efficacy of face coverings in moist environments.



Settings	Face covering requirements at Alert Level 2 and above		Mandatory record keeping requirements at all Alert Levels		Notes
	Current settings	PROPOSED SETTINGS	Current settings	PROPOSED SETTINGS	
	Not relevant to your request				The mandatory record keeping requirement only applies to visitors to indoor event facilities as there will be existing mechanisms to record staff clock in/off times.
Visitors to aged care and healthcare facilities			X	✓	High-risk venue due to residents likely being more vulnerable to COVID-19.
<b>Category three: situations where face coverings would be desirable but are impractical (and so record keeping has been considered as an additional measure)</b>					
Schools and education entities	Not relevant to your request		X	X	Other existing mechanisms to record visitors and unlikely to host large events at higher Alert Levels. Face coverings not required for those under 12 years generally and may restrict communication in a learning environment.
Controlled access businesses (exercise facilities*, office workplaces, factories)			X	X	*There is a requirement for exercise facilities as many won't have mechanisms in place to record users/visitors. Noting that if where some facilities (e.g. gyms) have existing sign in systems already (e.g. via membership scans) than that will suffice to meet the requirement.
Customers at massage parlours, beauticians, barbers, hairdressers			X	✓	Mandatory face coverings not recommended due to practicality considerations.
Customers at hospitality venues (cafes, restaurants, bars/nightclubs)			X	✓	Mandatory face coverings not recommended due to practicality considerations.
Indoor event facilities (cinemas, theatres, concert venues, casinos)			X	✓	The mandatory record keeping requirement only applies to visitors to indoor event facilities.
Social gatherings (weddings, funerals, faith based services)			✓	✓	The mandatory record keeping requirement only applies to customers/visitors at social gatherings.  Noting that where a gathering is at a place captured by the record keeping settings (i.e. a bar) the obligation can sit with either the organiser, the owner of the place, or another guest; where the gathering is at a place with no owner (e.g. a wedding at the beach) the obligation sits with the organiser or guest.  Noting also that for gatherings where everyone can identify everyone else, the record keeping requirement will not apply – this is how the existing requirement already operates at higher alert levels.



# Briefing

## MANDATORY RECORD KEEPING: COMPLIANCE AND ENFORCEMENT ISSUES

To: Hon Chris Hipkins  
Minister for COVID-19 Response

Date	2/08/2021	Priority	High
Deadline	3/08/2021	Briefing Number	DPMC-2021/22-47

### Purpose

This paper seeks your direction on the options for an obligation to keep records for the purpose of contact tracing in view of the compliance and enforcement implications, to inform a paper you intend to take to Cabinet Social Wellbeing Committee on 11 August 2021.

### Recommendations

1. **Note** you are proposing that record keeping be mandated at all Alert Levels in the following settings:
  - 1.1. visitors to courts and tribunals, indoor public facilities, indoor event facilities and aged care and health facilities;
  - 1.2. customers at exercise facilities, massage parlours, beauticians, barbers, hairdressers and hospitality venues; and
  - 1.3. attendees of social gatherings (except where held at private residences).
2. **Note** there are several outstanding compliance and enforcement issues related to this work, which officials are seeking your direction on before mandatory record keeping proposals are considered (alongside mandatory face covering proposals) by the Cabinet Social Wellbeing Committee on 11 August 2021.
3. **Note** the Director-General supports introducing a record keeping mandate in a limited set of close-confined business settings (e.g. restaurants and hair salons), where there are benefits to ensuring consistent records are made given the potential risk of undetected transmission in these settings, alongside implementing non-regulatory options.



Who should bear record keeping obligations?

4. **Note** any record keeping obligation borne by a person attending a place or gathering would create significant privacy, compliance monitoring and enforcement issues, and the significant risk of any requirement on individuals to keep records undermining contact tracing efforts in practice.

5. **Note** DPMC officials recommend that any new record keeping obligation should be borne only by the person responsible for the place or gathering that a person attends, requiring them to take reasonable steps to ensure that a record is kept, because of the issues outlined in recommendation 4 above.

6. **Agree** that if Cabinet agrees to mandate record keeping, the legal obligation should be borne by **EITHER**:

6.1. the person responsible for the place or gathering that a person attends, making them responsible for taking steps to ensure that a record is kept and meaning they will need to have systems and processes in place to ensure, so far as is reasonably practicable, that people scan the QR code or provide details in a contact tracing record (DPMC officials' recommended option); **YES / NO**

**OR**

6.2. the person attending the place or gathering, making them responsible for taking reasonable steps to make and keep a record either by using the NZ COVID Tracer App to scan a QR code or by creating an alternative contact tracing record; **YES / NO**

**OR**

6.3. the person responsible for the place or gathering that a person attends and the person attending the place or gathering (a combination of 6.1 and 6.2 above). **YES / NO**

How would compliance with an obligation on individuals be monitored and enforced?

7. **Note** if an individual record keeping obligation were to be enforced, <sup>s9(2)(h)</sup>  
[Redacted]

8. **Note** if you agree to recommendation 6.2 or 6.3, officials will provide further advice <sup>s9(2)(h)</sup>  
[Redacted]



Should an infringement offence be created?

- 9. **Note** DPMC officials advise that an infringement offence would provide a more proportionate response (compared to the existing criminal conviction) to non-compliance with any individual record keeping requirement and would align with existing enforcement options for mandatory face coverings.
- 10. **Note** if you agree to recommendations 6.2 or 6.3, officials will provide you with separate advice about whether an infringement offence of not taking reasonable steps to make a record for contact tracing purposes could be created.

 Ruth Fairhall Head of Strategy and Policy, COVID-19 Group, DPMC 28/1/2021	    Hon Chris Hipkins Minister for COVID-19 Response ...../...../2021
--	---

**Contact for telephone discussion if required:**

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

**Minister's office comments:**

MANDATORY RECORD KEEPING: COMPLIANCE AND ENFORCEMENT ISSUES	DPMC-2021/22-47
---	-----------------


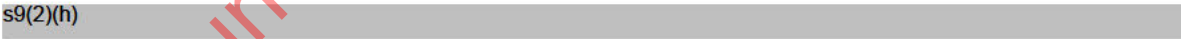
- Noted
- Seen
- Approved
- Needs change
- Withdrawn
- Not seen by Minister
- Overtaken by events
- Referred to

Released under the Official Information Act 1982

# MANDATORY RECORD KEEPING: COMPLIANCE AND ENFORCEMENT ISSUES

## Executive Summary

---

1. Agencies have raised significant issues relating to the monitoring and enforcement of mandatory record keeping for contact tracing purposes. Your direction on these issues is sought before the proposals are considered by the Cabinet Social Wellbeing Committee on 11 August 2021.
2. Specifically, we are seeking direction on whether record keeping obligations are placed on people responsible for a place or gathering, people attending a place or gathering, or both. Officials provided previous advice on this proposal [DPMC-2020/21-1174 refers] in which you indicated your preference for a dual obligation. Work on mandatory record keeping has progressed significantly since you indicated this preference. Accordingly, DPMC officials now recommend obligations are only borne by people responsible for a place or gathering, due to the privacy issues associated with any obligation placed on the individual, and challenging monitoring and enforcement issues.
3. If individuals bear an obligation, officials also seek direction on whether the obligation arises where the individual fails to make a record upon entering or exiting the relevant place, at the time that they are in the relevant place, or within a specified timeframe after visiting that place. If it is decided to place a record keeping obligation on individuals, DPMC officials advise that the record should be made while at a place where record keeping requirements apply (i.e. before the person exits the place). This option may also mitigate the risk of record keeping becoming a perverse incentive, where fear or knowledge of non-compliance may prevent people coming forward for contact tracing purposes.
4. s9(2)(h)  

5. s9(2)(h)  
  
officials would provide further advice on the appropriateness of creating an infringement offence of not making a record. If this requirement is not specified as an infringement offence in the Order, it would instead be a criminal offence to intentionally fail to comply with the requirement. An infringement offence is considered more proportionate to the offending, and aligns with enforcement options available to address non-compliance with face covering requirements.
6. Your direction on these questions is being sought urgently so it can inform the draft Cabinet paper 'Mandatory Face Coverings and Record Keeping for Contact Tracing Purposes'. A draft of this paper will be provided to you by Thursday, 5 August 2021 for Ministerial consultation ahead of consideration at Cabinet Social Wellbeing Committee on 11 August.



## Background

---

7. Officials briefed you on options to mandate face coverings and record keeping in some settings in New Zealand on 2 July 2021 [DPMC-2020/21-1174 refers].
8. In relation to record keeping for contact tracing purposes, we understand you are currently proposing that record keeping be mandated at all Alert Levels in the following settings:
  - a) Visitors to courts and tribunals, indoor public facilities (e.g. libraries, museums and swimming pools), indoor event facilities (e.g. cinemas, theatres, concert venues and casinos) and aged care and health facilities.
  - b) Customers at exercise facilities, massage parlours, beauticians, barbers, hairdressers and hospitality venues (e.g. cafes, restaurants, bars and nightclubs).
  - c) Attendees of social gatherings e.g. weddings, funerals, faith-based services (except where held at private residences).
9. The new mandatory requirement would be created by amending the current section 11 Order under the Act (currently, the COVID-19 Public Health Response (Alert Level Requirements) Order (No 8) 2021).
10. Several outstanding compliance and enforcement issues need to be resolved before it is progressed further. Accordingly, we are seeking your direction on the following questions before you take this proposal back to Cabinet for decision:
  - a) Whether record keeping obligations are placed on the person responsible for the place or gathering that a person attends, the person attending the place or gathering, or both?
  - b) If individuals bear an obligation, whether the obligation arises where the individual fails to make a record when they enter or exit the relevant place, at the time that they are in the relevant premises, or within a specified timeframe of visiting the place?
  - c) s9(2)(h) [REDACTED]
  - d) If individuals bear an obligation, s9(2)(h) [REDACTED] you agree to receive further advice on the creation of an infringement offence of not making a record?
11. The Director-General acknowledges that there are certain benefits to applying a record keeping mandate in some spaces, especially in crowded and closely confined spaces where it is hard to identify people around you. The experiences from other jurisdictions (such as Australia) has indicated that transmission of the Delta variant can occur from fleeting encounters of unknown people, particularly in poorly ventilated indoor settings. Therefore, introducing a record keeping mandate for certain close-confined business settings may bring overall benefits for our contact tracing system while limiting some of the issues and unintended consequences that may result from a mandate.
12. On balance, the Director General supports having the obligation placed on responsible businesses/PCBUs, given that a potential mandate on individuals could create a disincentive for individuals to record keep in non-mandated areas and impact on our ability



to contact trace. s9(2)(h)

13. The Director-General notes that while introducing non-regulatory options would avoid the issues and unintended consequences associated with a mandate, the potential for a limited mandate applying to those close-confined businesses settings, alongside implementing non-regulatory options to remove barriers to record keeping/scanning, could increase record keeping adherence and improve our ability to contact trace. Furthermore, it is important that businesses and customers/individuals have the necessary support and information to enable them to comply and adhere to the requirement.
14. DPMC notes that non-regulatory measures introduced to date have not been particularly successful in encouraging consistent record keeping in recent months, as indicated by low rates of QR code scanning when the perceived risk of community transmission is low. For example, on 26 July 2021, there were 2.9 million registered users of the NZ COVID Tracer App, but only 540,512 QR code poster scans nationwide. This is why DPMC officials consider mandatory record keeping a viable, and arguably necessary, option to improve record keeping behaviours.
15. Any mandatory record keeping requirement would continue to sit alongside, and be complemented by, non-regulatory approaches to encourage and promote record keeping. Examples include the Unite Against COVID-19 campaign and new-look QR poster that went live on 10 July 2021; work to further specify QR code quantity, quality and location; planned updates to the NZ COVID Tracer App (including the ability to receive reminders to backfill your diary and use previous QR code scans to manually backfill a diary, linking manual entries to contact tracing alerts); and collateral that can be ordered from the United Against COVID-19 website (such as free hard copy record keeping booklets, available in 27 languages).

## Who should bear record keeping obligations?

---

16. If a legal obligation were created, the first question that arises is who should bear that obligation. In the context of mandatory record keeping, there are three broad options:
  - a) The person responsible for the place or gathering that a person attends is responsible for taking steps to ensure that a record is made and kept. This is the approach that we adopted for Alert Level 3 for certain businesses and at Alert Level 2 for organisers of social gatherings.
  - b) The obligation is placed on the person attending the place or gathering to take reasonable steps to make a record. This is the approach that we have adopted at Alert Level 2 for attendees of social gatherings.
  - c) A combination of both option (a) and (b), with obligations borne by both the person responsible for the place or gathering and the person attending that place or gathering.
17. Options (b) and (c) would be the most resource intensive from a compliance monitoring and enforcement perspective. Police would be primarily responsible for enforcement of any new record keeping requirement, with other enforcement officers empowered to play a role if needed, particularly if options (b) or (c) were preferred.
18. You have previously agreed in principle to option (c), requiring individuals to make a record for contact tracing purposes and that people responsible for a place or gathering be



required to have systems and processes to ensure, so far as is reasonably practicable, that a contact tracing record is created [DPMC-2020/21-1174 refers]. This briefing updates you on the further work we have completed on mandatory record keeping particularly on who should bear record keeping obligations.

*Obligations on businesses and organisers*

19. Under this option, the person responsible for the place or gathering that a person attends will be responsible for taking steps to ensure that a record is kept. In practice, this will involve having systems and processes in place to ensure, so far as is reasonably practicable, that people scan a NZ Tracer App QR code or provide details in a contact tracing record. This would enable and encourage (but not require) individuals to create a record of their visit to the place or gathering.
20. This new requirement will go beyond current record keeping-related requirements placed on a person in control of an applicable workplace at all Alert Levels, to ensure that a copy of a QR code for the workplace is displayed in a prominent place.<sup>1</sup> The new requirement would essentially reflect what has been required of people responsible for a place or gathering at Alert Level 3, when certain businesses have been required to have systems and processes in place to ensure, so far as is reasonably practicable, that each person who enters the place scans the QR code or provides their details in the alternative contact tracing record.
21. Having systems and processes in place to ensure a record is kept will mean having alternative record keeping options available (e.g. a ballot box to provide paper copies of contact information or a tablet for individuals to complete an online form), and encouraging customers or visitors to make a record where practical (e.g. this could include staff being stationed at the entrance asking customers to scan a QR code). What is reasonably practicable will be different for different places and gatherings, e.g. depending on their size and number of staff working.
22. Under current legislation, if a person responsible for the place or gathering intentionally failed to comply with this new requirement, they would commit an offence and be liable on conviction to a fine not exceeding \$4,000 or term of imprisonment of up to 6 months.<sup>2</sup> Failing to display a QR code as outlined above, and failing to comply social gathering Alert Level 2 record keeping requirements,<sup>3</sup> will continue to be an infringement offence carrying an infringement fee of \$300 or court imposed fine not exceeding \$1,000.<sup>4</sup>
23. Placing the obligation on businesses and organisers avoids some of the problems related to obligations also being placed on individuals, such as what to do if an individual refuses to scan a QR code or provide contact details. This is because there would be no mandatory requirement for individuals to make a record. This approach also has the advantage of

<sup>1</sup> Clauses 8 and 9 of the COVID-19 Public Health Response (Alert Level Requirements) Order (No 8) 2021 refer.

<sup>2</sup> Pursuant to section 26 of the COVID-19 Public Health Response Act 2020.

<sup>3</sup> At Alert Level 2, organisers of social gatherings are required to have systems and processes in place to ensure, so far as is reasonably practicable, that each person who attends the gathering either scans the QR code for the gathering or provides their details in the alternative contact tracing record provided by the organiser.

<sup>4</sup> Note that if passed, the COVID-19 Public Health Response Amendment Bill 2021 will amend the COVID-19 Public Health Response Act 2020 to increase maximum penalties contained in section 26 of the Act. This includes increasing the maximum penalties for an infringement offence to include an infringement fee of \$1,000 (currently \$300) and court imposed fine of \$3,000 (currently \$1,000), with the maximums being \$3,000 and \$9,000 respectively for a body corporate [SWC-21-MIN-0067 refers].



being enforceable without requiring a person to divulge their records (i.e. it is less intrusive for the individual).

24. However, there are risks with placing the record keeping obligation on those responsible for a relevant place or gathering:

a) There would be an additional burden on businesses to maintain systems and processes for ensuring record keeping (e.g. such as having employees stationed at the entrance to ask people to scan a QR code). While it is not practical for Government to fund, or advise on these systems and processes in detail, guidance will be made available on the Unite Against COVID-19 website to support businesses' compliance. This guidance will draw on feedback received from stakeholders and interested agencies, including from the Office for Disability Issues and Ethnic Communities.

b) s9(2)(g)(i)



c) Employees being exposed to abuse from customers. s9(2)(g)(i)



*Obligations on individuals*

25. Under this option, an individual visiting or attending a place or gathering will be required to make a record for contact tracing purposes, which will include using the NZ COVID Tracer App to scan a QR code or by creating an alternative contact tracing record (in the event that they do not have the App or it is not reasonably practicable for them to use it). The current requirements in the COVID-19 Public Health Response (Alert Level Requirements) Order (No 8) 2021 will continue to apply, which will go some way to supporting an individual's compliance with any new mandatory requirement.<sup>6</sup>

26. If a person were identified as intentionally having failed to comply with this new mandatory record keeping requirement, they would commit an offence and be liable on conviction to a fine not exceeding \$4,000 or term of imprisonment of up to 6 months under existing legislation.<sup>7</sup> There is also an outstanding question about whether an infringement offence should be created for failing to make a record for contact tracing purposes, which is discussed in the next section of this paper.

<sup>5</sup> <https://privacy.org.nz/tools/knowledge-base/view/552>.

<sup>6</sup> Clause 8 and 9 of the COVID-19 Public Health Response (Alert Level Requirements) Order (No 8) 2021 refer.

<sup>7</sup> Pursuant to section 26 of the COVID-19 Public Health Response Act 2020.

27. The advantages of this approach are that it reduces the burden for business (they would have limited additional obligations under this option) and employees being less exposed to abuse from customers.

28. However, there are the following outstanding risks and issues with this approach.

How non-compliance is identified

29. Officials consider there are three broad options, including requiring the record to be made upon entry or exit from the place, while at the place, or within a specified time period (e.g. within a week) after visiting the place. The first option is considered problematic from a public health perspective, as it may encourage crowding at the point of entry or exit. The last option is problematic because people may forget to create a record and this option would also potentially require an individual to present their record of movements for an entire week, which is likely to be considered unnecessarily intrusive.

30. For these reasons, DPMC officials recommend that a person be required to either scan or record details before exiting a relevant place. It is acknowledged that with this added flexibility (i.e. not requiring the record to be made at the point of entry or exit), the ability to monitor compliance through observation (e.g. observe an individual making a record) is more difficult, making enforcement more challenging. For example, when an enforcement officer arrives at a place where record keeping obligations apply, a person whose compliance is checked at entry, and who has not made a record of their visit to that place, may simply indicate that they were intending to make a record on their way out of the place.

Equity considerations

31. It will be important to have alternative record keeping methods available that can be used by different population groups/communities (e.g. those without a smartphone) and to accommodate those with disabilities, to ensure these groups are able to comply with the law.

32. As previously noted, collateral can be downloaded from the Unite Against COVID-19 website, including hard copy record keeping booklets available in 27 languages, providing an alternative record keeping method for those without smart phones. The ability to order these booklets is a strong mitigation to this equity concern. However, there would still be privacy concerns related to carrying a written diary on your person. DPMC officials have also engaged with agencies that represent the interests of minority groups who we understand experience high rates of digital exclusion to understand whether there are any alternative record keeping options that are more fit for purpose and should be more strongly encouraged over others. The results of this engagement will be reflected in general guidance produced on the Unite Against COVID-19 website.

Unintended consequences that pose a risk to contact tracing abilities

33. There is a risk that people may be deterred from disclosing their presence at a location out of fear of admitting that they had failed to comply with the obligation to keep a record of their visit and fear of potential punishment. Further, there may be some individuals who will not want to record their activities due to their unlawful migrant status and the fear of being found that they are in New Zealand illegally.

34. A key mitigation for these issues would be that when contact tracers request people's record keeping information for contact tracing purposes, this can legally only be used for



the effective management of infectious diseases.<sup>8</sup> This constraint, and the use of any information required to be provided to enforcement officers, would need to be clearly communicated publicly to allay any fears of being culpable of these other offences.

Complexity

35. When considered in conjunction with the proposed mandatory face covering settings (which will apply in different places), record keeping requirements may make what is expected of an individual difficult to understand. This may result in higher rates of unintentional non-compliance.
36. To mitigate this concern, all public queries received by government agencies will be directed to the Unite Against COVID-19 website (or equivalent helpline) for accurate information about where and when record keeping is required. Any new record keeping requirement will also be supported by Unite Against COVID-19 information campaigns and engagement with affected businesses and locations, including FAQs for employers and staff, and advice about what information gathered for record keeping purposes will be used for. Key information will be distributed through industry and sector networks, with information on the Unite Against COVID-19 website translated into 27 languages.

Enforceability (discussed further in the enforcement powers section of this paper below)

37. It is unlikely that enforcement officers will be able to maintain a constant presence to observe compliance or respond to every report of non-compliance. There will be challenges enforcing the requirement to make a record while at, or before exiting, a place, if this is your preferred option for point of compliance.

s9(2)(g)(i)

38. s9(2)(g)(i)

Bill of Rights Act 1990 considerations

39. s9(2)(h)

*Obligations on both business and individuals*

40. Under this option record keeping obligations will be borne by both business and individuals. Individuals will be required to make a record and businesses will be required to have systems and processes to ensure, so far as is reasonably practicable, that a contact tracing record is created.
41. The considerations outlined above for the business-only and individual-only option would apply to this option as well.

<sup>8</sup> Note that it is an offence not to comply with a direction to provide required information about contacts to contact tracers, pursuant to section 92ZZH of the Health Act 1956.



*Conclusion*

42. On balance, DPMC officials recommend the obligation is borne by business and organisers only. The compliance monitoring and enforcement issues related to any individual record keeping obligation (discussed in more detail in the following section) cannot be sufficiently mitigated to make an individual obligation viable.

43. s9(2)(g)(i)



**How would compliance with an obligation on individuals be monitored and enforced?**


---

44. s9(2)(h)

45.

46.

47.



---

<sup>9</sup> Note that this position was conveyed to DPMC prior to our receipt of the Director-General of Health's latest advice on the record keeping proposals outlined in this briefing. We will provide updated advice from OPC once OPC has had a chance to consider the Director-General's latest advice.

s9(2)(h)

s9(2)(h)

48. s9(2)(h)

49. s9(2)(h)

50. s9(2)(h)

*Measures to mitigate risks of abuse in respect of any enforcement powers*

51. s9(2)(g)(i)

52. s9(2)(h)

53.

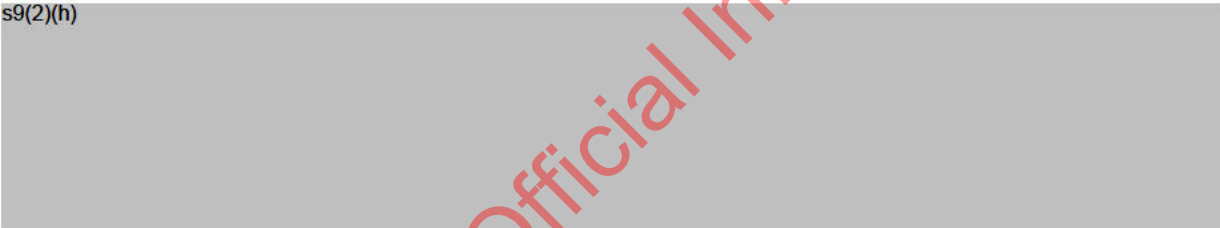
### **Should an infringement offence be created?**

54. If a mandatory record keeping obligation were introduced, and an obligation is borne by individuals, there is a question around the appropriate infringement regime for addressing any identified non-compliance with this new requirement.

55. Any new requirement would be provided for by amending the current section 11 Order under the Act. The infringement regime for non-compliance with COVID-19 Orders is provided for in section 26 of the Act. There are two categories of offence covered by the section, each with corresponding maximum penalties:

- a) **Infringement offence:** a person who fails to comply with a COVID-19 requirement that has been identified as an infringement offence commits an offence and is liable for an infringement fee of \$300 or a court imposed fine not exceeding \$1,000.<sup>11</sup>
- b) **Criminal offence:** a person who intentionally fails to comply with a COVID-19 order is liable *on conviction* for a fine not exceeding \$4,000 or a term of imprisonment not exceeding six months.
56. Once any record keeping requirement comes into effect, enforcement action for non-compliance would be limited to criminal prosecution unless an infringement offence is created. In other words, enforcement action would be limited to addressing intentional failures to comply with the requirement to make a record. This non-compliance would be addressed by an enforcement officer (who will be limited to the New Zealand Police if these are incidents of wilful non-compliance) laying a charging document and the individual who allegedly committed the offence appearing in court. If found guilty by the court, the person could be sentenced to pay a fine of up to \$4,000 or to a term of imprisonment not exceeding six months.
57. An infringement offence would provide a more proportionate response (compared to the criminal conviction) to non-compliance with any individual record keeping requirement, and would also align well with how non-compliance with current face covering requirements are addressed. If you decide that a record keeping obligation should be borne by the person attending a place or gathering, officials will provide you with further advice about whether an infringement offence can be created of not making a record.

58. s9(2)(h)



## Next Steps

---

59. Pending your decisions on this briefing, officials will prepare a draft Cabinet paper seeking agreement to proposals for mandatory face coverings and record keeping for contact tracing purposes. A draft paper will be provided to your office by Thursday 5 August for Ministerial consultation and consideration by the Cabinet Social Wellbeing Committee on 11 August 2021.


## Consultation

---

60. The Ministry of Justice, Ministry of Health, Crown Law Office, Parliamentary Counsel Office, New Zealand Police and the Office of the Privacy Commissioner have been consulted on this briefing.

---

<sup>11</sup> s9(2)(f)(iv)





## Communications

---

61. Any decisions made in response to this briefing will be communicated when Cabinet's decisions on face covering and record keeping requirements are announced, once these have been considered by Cabinet.

Released under the Official Information Act 1982