

Reprint
as at 12 March 2021



COVID-19 Public Health Response (Alert Level Requirements) Order (No 5) 2021

(LI 2021/37)

COVID-19 Public Health Response (Alert Level Requirements) Order (No 5) 2021: revoked, at 11.59 am on 12 March 2021, by clause 16 of the COVID-19 Public Health Response (Alert Level Requirements) Order (No 6) 2021 (LI 2021/40).

This order is made by the Minister for COVID-19 Response under sections 11 and 15(1) of the COVID-19 Public Health Response Act 2020 in accordance with section 9 of that Act.

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This order is administered by the Ministry of Health.

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Order

1 Title

This order is the COVID-19 Public Health Response (Alert Level Requirements) Order (No 5) 2021.

2 Commencement

This order comes into force at 6 am on 7 March 2021.

Part 1

Preliminary provisions

3 Purpose

The purpose of this order is to prevent, and limit the risk of, the outbreak or spread of COVID-19 and to otherwise support the purposes of the Act.

4 Interpretation

(1) In this order, unless the context otherwise requires,—

1-metre physical distancing rule means the rule described in clause 15(1)

2-metre physical distancing rule means the rule described in clause 15(2)

accommodation service—

(a) means accommodation provided by a business or service in which multiple groups of 1 or more residents share facilities (such as a kitchen, bathroom, or laundry) or common areas (such as a lounge or recreation space), for example,—

(i) a hotel:

- (ii) tertiary student accommodation;
 - (iii) a boarding house;
 - (iv) a backpacker hostel;
 - (v) seasonal worker accommodation; but
- (b) excludes a school hostel

accommodation service bubble arrangement means an arrangement—

- (a) between not more than 10 residents of the same accommodation service; and
- (b) in which the residents who are aged 18 years or over have agreed—
 - (i) to comply with this order as if they were 1 home or place of residence for the length of their stay at the accommodation service; and
 - (ii) to not be part of any other arrangement of the kind described in paragraphs (a) and (b)(i)

Act means the COVID-19 Public Health Response Act 2020

alert level 2 area has the meaning given by clause 6

alert level 2 requirements, in relation to a business or service, means the requirements that apply to that business or service in Part 2 and clauses 17 and 19 to 25

businesses and services includes—

- (a) voluntary and not-for-profit services; and
- (b) both public sector and private sector businesses and services; and
- (c) businesses and services that provide space for other businesses and services to operate within (for example, shopping malls and marketplaces); and
- (d) businesses and services that provide facilities or venues for events or activities if people pay to attend an event or participate in an activity or pay to hire a facility or venue; and
- (e) the playing of sports professionally or semi-professionally

category A business or service means a business or service listed in Schedule 2

category A social service means a service of a kind described in item 3 of Schedule 2

contact tracing record means a record of a person entering a workplace or attending a gathering that contains—

- (a) the name of the person; and
- (b) the date on which and time at which the person entered the workplace or attended the gathering; and

(c) a telephone number that may be used to easily contact the person
customers and clients—

- (a) includes any non-paying customer or client; but
- (b) in relation to an education entity, excludes students attending the education entity

defined space—

- (a) means any single indoor space or outdoor space (*see* subclause (2)); and
- (b) if there is more than 1 space in any premises, means a space described in paragraph (a) for which there are systems and processes in operation that ensure, so far as is reasonably practicable, that persons using the space (other than workers) do not intermingle at a distance closer than 2 metres with other persons using, entering, or leaving the premises

education entity has the same meaning as in section 10(8) of the Education and Training Act 2020

extended bubble arrangement means an agreement by all of the residents (other than a person under the age of 18 years) of 2 or more homes or places of residence to comply with this order as if they were 1 home or place of residence for the purpose of keeping connections with family or whānau, enabling caregiving, or supporting persons living alone or otherwise isolated

face covering means a covering of any type that covers the nose and mouth of a person

fellow resident, in relation to any person (**person A**),—

- (a) means—
 - (i) a person who resides at the same home or place of residence (other than an accommodation service) as person A; or
 - (ii) a person who resides at another home or place of residence in relation to which person A has an extended bubble arrangement; or
 - (iii) a person who resides at another home or place of residence if person A has a shared caregiving arrangement or shared custody arrangement with, or in respect of, that other person; or
 - (iv) if person A is residing at an accommodation service,—
 - (A) a person who is in the same accommodation service bubble arrangement as person A; or
 - (B) a person who resides at the accommodation service with person A and with whom person A has the same principal home or place of residence; or

- (C) a person under the age of 18 years who resides with person A at the accommodation service and for whom person A is providing a category A social service; but
- (b) excludes another person who resides at a school hostel with person A

gathering—

- (a) means people who are intermingling in a group; but
- (b) excludes people who remain at least 2 metres away from each other so far as is reasonably practicable

gathering of friends and whānau means a group of customers, clients, or other persons—

- (a) who confirm that they are, or who it is otherwise reasonable to believe are, a group of persons who all know each other and can identify each other for the purpose of contact tracing; but
- (b) of no more than the maximum number limit (if any) for social gatherings in the area where the gathering takes place

health service has the same meaning as in section 5(1) of the Health Practitioners Competence Assurance Act 2003

home or place of residence—

- (a) includes a campervan, caravan, or other vehicle or temporary structure (for example, a tent) that is a place of residence; and
- (b) in the case of a building (other than an accommodation service or a school hostel), includes the land that is part of the property on which the building is situated (other than any common areas); and
- (c) includes any prison, hospital, or other facility or place in which a person is detained or compulsorily placed under any enactment; and
- (d) in the case of a block of flats or other building (other than an accommodation service) that has more than 1 home or place of residence, excludes the other homes or places of residence; and
- (e) in the case of an accommodation service or a school hostel, includes all of the homes or places of residence, shared facilities (such as a kitchen, bathroom, or laundry), common areas (such as a lounge or recreation space), and land that is part of the property on which the building is situated

Isolation and Quarantine Order means the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020

managers of a private school has the same meaning as in section 10(1) of the Education and Training Act 2020

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

people responsible, in relation to a social gathering, means—

- (a) the organiser of the social gathering; and
- (b) the person in control of the defined space or premises in which the social gathering is held

person in control,—

- (a) in relation to a defined space or premises (other than a vehicle in use as part of a public transport service),—
 - (i) means a person who manages or controls the defined space or premises; and
 - (ii) includes—
 - (A) any occupier of the defined space or premises; and
 - (B) if a facility or venue of a business or service is hired for an event or activity, that business or service; and
- (b) in relation to a public transport service,—
 - (i) means a person who carries on the business of operating the public transport service; but
 - (ii) excludes a person who drives or operates a vehicle in use as part of that service (unless the driver or operator is also a person described in subparagraph (i))

premises includes any commercial premises, private premises, or vehicle

public transport service—

- (a) means a service for the carriage of passengers for hire or reward that is available to the public generally; but
- (b) excludes a service for the carriage of passengers for hire or reward that is hired for the purposes of—
 - (i) a business or service; or
 - (ii) a social gathering; and
- (c) always includes a service of the kind described in paragraph (a) that is provided by means of a small passenger service vehicle

QR code means a unique identifying code issued by the New Zealand Government for the purpose of enabling contact tracing

school board has the same meaning as in section 7(1)(d) of the Crown Entities Act 2004

school hostel has the same meaning as **hostel** in section 10(1) of the Education and Training Act 2020

school transport service means the carriage of passengers for hire or reward that is contracted or funded by the Ministry of Education, local authorities,

school boards, managers of a private school, or Auckland Transport for the sole or primary purpose of transporting children to and from school

small passenger service vehicle has the same meaning as in section 2(1) of the Land Transport Act 1998

social gathering—

- (a) means people who are intermingling in a group; but
- (b) excludes—
 - (i) people who remain at least 2 metres away from each other so far as is reasonably practicable; or
 - (ii) an activity undertaken at a business or service in compliance with the requirements in clauses 17 and 19 to 25; but
- (c) despite paragraph (b)(ii), includes a gathering held at a facility or venue of a business or service that has been hired for the gathering if the gathering is not for the purpose of a business or service

transport station has the same meaning as in section 591(6) of the Local Government Act 1974

vehicle includes a vessel, train, tram, ship, or aircraft

worker means, in relation to a business or service, any person who carries out work in any capacity for that business or service (whether paid or unpaid)

workplace—

- (a) means premises where work is being carried out, or is customarily carried out, for a business or service; and
 - (b) includes premises where a worker goes, or is likely to be, while at work.
- (2) For the purpose of the definition of defined space in subclause (1),—
- (a) an indoor space or outdoor space is a **single space** if there are walls (whether permanent or temporary) that substantially divide that space from other spaces:
 - (b) an outdoor space is also a **single space** if there is at least 2 metres that separates all people in that space from other people who are outside that space.

5 How requirements apply to businesses and services

- (1) A reference in this order to a requirement applying to a business or service applies that requirement to the person who carries on that business or service.
- (2) A requirement that applies in relation to a particular activity is a requirement that applies to a business or service to the extent that the activity is carried out by the business or service.
- (3) If more than 1 business or service operates in the same, or shared, premises (for example, a shopping mall, a marketplace, or a cafe that operates in an office

building), each of those businesses and services must comply with all of the requirements in this order to the extent that they apply to that business or service or its activities.

6 Alert level 2 area: description and map

- (1) The area described in Schedule 3 is the alert level 2 area.
- (2) An indicative map of the alert level 2 area is set out in Schedule 4.
- (3) If there is any inconsistency between the description under subclause (1) and the map, the description prevails.

7 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

8 Application of order to different alert level areas

- (1) Part 3 applies—
 - (a) to the alert level 2 area; and
 - (b) to any property if a part of it is in the alert level 2 area; and
 - (c) to any other place if necessary for the purpose of enforcing the requirements in a place referred to in paragraph (a) or (b).
- (2) The rest of this order applies to the whole of New Zealand.

Part 2

**Alert level requirements to prevent outbreak or spread of COVID-19
that apply to all areas**

QR codes

9 Display of QR codes in workplaces

- (1) A person in control of a workplace must ensure that a copy of a QR code for the workplace is displayed in a prominent place at or near the main entrance of the workplace.
- (2) However, subclause (1)—
 - (a) does not apply if the workplace is a vehicle; and
 - (b) applies to the workplace of a business or service that is in a dwelling house only if—
 - (i) customers or clients of the business or service customarily enter the dwelling house; or
 - (ii) workers of the business or service customarily enter the dwelling house (and those workers are not residents of the dwelling house or providing a category A social service).

- (3) A breach of subclause (1) is an infringement offence for the purposes of section 26(3) of the Act.

10 Display of QR codes on public transport services

- (1) A person in control of a public transport service must ensure that a copy of a QR code is displayed in a prominent place on or inside any vehicle that is in use as part of that service.
- (2) However, subclause (1) does not apply in relation to a public transport service if all persons using the service are required to supply their contact details in order to use the service.
- (3) In subclause (1), **public transport service** excludes a school transport service.
- (4) In subclause (2), **contact details** means—
- (a) the name of the person; and
 - (b) a telephone number that may be used to easily contact the person.
- (5) A breach of subclause (1) is an infringement offence for the purposes of section 26(3) of the Act.

Face covering requirements on public transport services

11 Face covering requirements on public transport services

- (1) Every person must wear a face covering while on board a vehicle that is in use as part of a public transport service.
- (2) However, subclause (1) does not apply—
- (a) to a person who is a passenger on a small passenger service vehicle; or
 - (b) to a ferry service carrying passengers between the North Island and the South Island; or
 - (c) to air transport; or
 - (d) to a school transport service; or
 - (e) in the circumstances set out in clause 13.
- (3) A breach of subclause (1) is an infringement offence for the purposes of section 26(3) of the Act.

12 Face covering requirements on domestic air transport services

- (1) Every person must wear a face covering while on board a vehicle that is in use as part of a domestic air transport service.
- (2) However, subclause (1) does not apply in the circumstances set out in clause 13.
- (3) In this clause, **domestic air transport service** means a public transport service that is transporting persons by air transport between places that are both in New Zealand.

- (4) A breach of subclause (1) is an infringement offence for the purposes of section 26(3) of the Act.

13 Exemptions from face covering requirements

Clauses 11(1) and 12(1) do not apply if—

- (a) there is an emergency; or
- (b) wearing a face covering is not safe in all of the circumstances; or
- (c) the person is in a defined space or an enclosed space that is separate from the passenger area; or
- (d) the person is communicating with a person who is deaf or hard of hearing and visibility of the mouth is essential for communication; or
- (e) the person is asked to remove the face covering to ascertain identity; or
- (f) removal of, or not wearing, the face covering is otherwise required or authorised by law; or
- (g) the person is under the age of 12 years; or
- (h) the person has a physical or mental illness or condition or disability that makes wearing a face covering unsuitable; or
- (i) the person needs to remove the face covering to take medicine; or
- (j) the person needs to remove the face covering to eat or drink (if eating or drinking is permitted by the conditions of carriage on the relevant service).

Part 3

Alert level 2 requirements to prevent outbreak or spread of COVID-19

Contact tracing records in workplaces

14 Contact tracing records in workplaces

- (1) In addition to the requirement in clause 9(1), a person in control of a workplace must have other record-keeping systems and processes in place to enable a contact tracing record to be kept of,—
- (a) in the case of a specified workplace, all workers of that workplace entering the workplace;
 - (b) in the case of any other workplace, all persons entering that workplace.
- (2) Subclause (1) does not apply if the workplace is excluded from the application of clause 9(1).
- (3) For the purposes of subclause (1)(a), **specified workplace** means—
- (a) a transport station; or

- (b) a supermarket; or
 - (c) a petrol station, including any business operating out of the petrol station.
- (4) A breach of subclause (1) is an infringement offence for the purposes of section 26(3) of the Act.
- (5) In relation to how the contact tracing record under subclause (1) is collected, kept, and used, *see* the requirements in the Privacy Act 2020 that apply to persons collecting personal information.

Physical distancing requirements in workplaces

15 Meaning of 1-metre and 2-metre physical distancing rules

- (1) In this order, the **1-metre physical distancing rule**—
- (a) requires that a person remain at least 1 metre away from any other person; but
 - (b) applies only if the 1-metre physical distancing rule (rather than the 2-metre physical distancing rule) applies to each person referred to in paragraph (a) (for example, if both persons are workers); and
 - (c) does not apply to—
 - (i) a person in relation to their fellow residents; or
 - (ii) a gathering of friends and whānau in a workplace.
- (2) In this order, the **2-metre physical distancing rule**—
- (a) requires that a person remain at least 2 metres away from any other person; but
 - (b) does not apply to—
 - (i) a person in relation to their fellow residents; or
 - (ii) a gathering of friends and whānau in a workplace.

16 Application of clauses 17 to 25

- (1) Clauses 17 to 25 apply to workplaces of businesses and services, but do not apply to—
- (a) voluntary or not-for-profit sporting, recreational, social, or cultural activities; or
 - (b) community club activities (except activities that occur at the same time and place as services provided under a club licence under section 21 of the Sale and Supply of Alcohol Act 2012); or
 - (c) faith-based gatherings; or
 - (d) households carrying out family activities involving only fellow residents; or

- (e) a gathering held at a facility or venue of a business or service that has been hired for the gathering if the gathering is not for the purpose of the business or service.
- (2) *See* clauses 27 to 31, which contain requirements relating to social gatherings (including those described in subclause (1)(a) to (e)).
- (3) However, nothing in this Part applies to a school transport service.

17 Workplaces to have systems and processes in place for physical distancing

- (1) A business or service must have systems and processes in place to—
 - (a) maintain compliance so far as is reasonably practicable with the 1-metre physical distancing rule (rather than the 2-metre physical distancing rule) for all workers in a workplace of, or while working for, the business or service; and
 - (b) maintain compliance so far as is reasonably practicable with the 2-metre physical distancing rule for any other persons entering a workplace, or using the services, of the business or service; and
 - (c) mitigate so far as is reasonably practicable the risks that arise to the extent that physical distancing is not fully maintained (for example, through regular cleaning of surfaces or the installation of plastic barriers).
- (2) Subclause (1)(a) and (b) applies except to the extent adjusted by clauses 19 to 25.

18 Individuals must comply with physical distancing requirements for workplaces

- (1) All workers of a business or service in the workplace of, or while working for, the business or service must comply with the 1-metre physical distancing rule (rather than the 2-metre physical distancing rule) so far as is reasonably practicable.
- (2) All other persons who enter a workplace of, or use the services of, a business or service must comply with the 2-metre physical distancing rule so far as is reasonably practicable.
- (3) Subclauses (1) and (2) apply except to the extent adjusted by clauses 19 to 25.
- (4) A breach of subclause (1) or (2) is an infringement offence for the purposes of section 26(3) of the Act.

19 Adjusted alert level 2 requirements for category A businesses and services

- (1) This clause adjusts the alert level 2 requirements for category A businesses and services.
- (2) Category A businesses and services must have systems and processes in place to maintain compliance so far as is reasonably practicable with the 1-metre physical distancing rule (rather than the 2-metre physical distancing rule) for

all persons entering the workplace of, using the services of, or working for the business or service.

- (3) All persons who enter the workplace of, use the services of, or work for a category A business or service must comply with the 1-metre physical distancing rule (rather than the 2-metre physical distancing rule) so far as is reasonably practicable.
- (4) A breach of subclause (3) is an infringement offence for the purposes of section 26(3) of the Act.

20 Adjusted alert level 2 requirements for education entities

- (1) This clause adjusts the alert level 2 requirements for education entities.
- (2) Education entities—
 - (a) need not have systems and processes in place to maintain compliance with either the 1-metre physical distancing rule or the 2-metre physical distancing rule for people who are ordinarily at the education entity for the purposes of receiving or providing, or assisting in or supporting the receipt or provision of, education services; but
 - (b) must have systems and processes in place to mitigate so far as is reasonably practicable the risks that arise to the extent that compliance with the physical distancing requirements that would otherwise apply under this Part to the workplace or service is not fully maintained (for example, regular cleaning of surfaces).
- (3) People who are ordinarily at an education entity for the purposes of receiving or providing, or assisting in or supporting the receipt or provision of, education services are not required to comply with the 1-metre physical distancing rule or the 2-metre physical distancing rule.
- (4) The adjustment in subclause (2) and the exemption from physical distancing in subclause (3) do not apply to—
 - (a) inter-school activities; or
 - (b) activities at (or connected with) an education entity that are attended by people who are otherwise not ordinarily at that education entity for the purposes of receiving or providing, or assisting in or supporting the receipt or provision of, education services.

21 Adjusted alert level 2 requirements for public transport services

- (1) This clause adjusts the alert level 2 requirements for public transport services.
- (2) Public transport services need not have systems and processes in place to maintain compliance with either the 1-metre physical distancing rule or the 2-metre physical distancing rule for all persons entering the workplace of, using the services of, or working for the business or service.

- (3) All persons who enter the workplace of, use the services of, or work for a public transport service are not required to comply with either the 1-metre physical distancing rule or the 2-metre physical distancing rule.

22 Adjusted alert level 2 requirements for transport stations

- (1) This clause adjusts the alert level 2 requirements for transport stations.
- (2) Transport stations must have systems and processes in place to maintain compliance so far as is reasonably practicable with the 1-metre physical distancing rule (rather than the 2-metre physical distancing rule) for all persons entering the workplace of, using the services of, or working for the business or service.
- (3) All persons who enter the workplace of, use the services of, or work for a transport station must comply with the 1-metre physical distancing rule (rather than the 2-metre physical distancing rule) so far as is reasonably practicable.
- (4) A breach of subclause (3) is an infringement offence for the purposes of section 26(3) of the Act.

23 Adjusted alert level 2 requirements for controlled-access businesses and services

- (1) This clause adjusts the alert level 2 requirements for controlled-access businesses and services.
- (2) In this clause, **controlled-access businesses and services**—
 - (a) means the following businesses and services:
 - (i) businesses and services to the extent that they largely have a consistent group of workers and usually have a fixed workplace, such as office workplaces and factories; and
 - (ii) businesses and services to the extent that their customers or clients are members of the business or service, such as gyms; and
 - (iii) public facilities that are located within a building or structure, such as swimming pools, libraries, and museums; and
 - (iv) event facilities such as cinemas, theatres, stadiums, concert venues, conference venues, and casinos; but
 - (b) excludes retail businesses, such as shopping malls, supermarkets, marketplaces, takeaway-food stores, and retail stores.
- (3) Controlled-access businesses and services must have systems and processes in place to—
 - (a) maintain compliance so far as is reasonably practicable with the 1-metre physical distancing rule (rather than the 2-metre physical distancing rule) for all persons entering the workplace of, using the services of, or working for the business or service; and

- (b) if they are an event facility, permit no more than 100 customers or clients to be in any 1 defined space in the facility at any 1 time (not including workers).
- (4) All persons who enter the workplace of, use the services of, or work for a controlled-access business or service must comply with the 1-metre physical distancing rule (rather than the 2-metre physical distancing rule) so far as is reasonably practicable.
- (5) A breach of subclause (4) is an infringement offence for the purposes of section 26(3) of the Act.

24 Adjusted alert level 2 requirements for food and drink businesses and services

- (1) This clause adjusts the alert level 2 requirements for businesses or services to the extent that customers or clients enter their workplaces and food or drink is sold or provided for consumption (or offered for consumption) to those customers or clients in the workplace, such as—
 - (a) a restaurant or cafe; or
 - (b) a soup kitchen or other place where food or drink is provided without charge.
- (2) Businesses and services must, in relation to that activity, have systems and processes in place to,—
 - (a) in on-licence premises or club premises, ensure that each customer or client is seated at a table other than when entering, using a toilet or bathroom, paying, or departing;
 - (b) in other premises, ensure that each customer or client is seated at a table other than when—
 - (i) entering, using a toilet or bathroom, paying, or departing; or
 - (ii) ordering or collecting food or drink.
- (3) All persons who are customers or clients in an on-licence premises or club premises must be seated at a table other than when entering, using a toilet or bathroom, paying, or departing.
- (4) All persons who are customers or clients of any other business or service in which food or drink is sold or provided for consumption (or offered for consumption) must be seated at a table other than when—
 - (a) entering, using a toilet or bathroom, paying, or departing; or
 - (b) ordering or collecting food or drink.
- (5) Businesses and services must also, in relation to the activity described in subclause (1), have systems and processes in place to—
 - (a) permit no more than 100 customers or clients to be in any 1 defined space in the workplace at any 1 time; and

- (b) ensure that the number of customers or clients seated at a table together does not exceed the maximum number limit (if any) for social gatherings; and
 - (c) ensure that there is at least a 1-metre separation between adjacent tables where customers or clients are seated; and
 - (d) ensure, so far as is reasonably practicable, that only 1 worker serves at any table; and
 - (e) so far as is reasonably practicable, maintain compliance with the 1-metre physical distancing rule (rather than the 2-metre physical distancing rule) for all customers and clients when they are not seated at a table.
- (6) All persons who are customers or clients at a business or service in which food or drink is sold or provided for consumption (or offered for consumption) must—
- (a) be seated at a table together in a number that does not exceed the maximum number limit (if any) for social gatherings;
 - (b) comply so far as is reasonably practicable with the 1-metre physical distancing rule (rather than the 2-metre physical distancing rule) when they are not seated at a table.
- (7) Nothing in this clause applies to—
- (a) accommodation services selling or providing food or drink for residents (including room service);
 - (b) businesses or services providing food or drink to their workers;
 - (c) vending machines that are located and used within a workplace.
- (8) A breach of subclause (3), (4), or (6) is an infringement offence for the purposes of section 26(3) of the Act.

25 Adjusted alert level 2 requirements for close-proximity businesses and services

- (1) This clause adjusts the physical distancing requirements for close-proximity businesses and services.
- (2) In this clause, **close-proximity businesses and services** means businesses and services to the extent that they carry on activities that they cannot undertake without physical contact, or close proximity, between people (for example, massage and hairdressing services or professional or semi-professional sports).
- (3) Close-proximity businesses and services must, in relation to that activity, have systems and processes in place to maintain compliance so far as is reasonably practicable with the 1-metre physical distancing rule (rather than the 2-metre physical distancing rule) for all persons entering the workplace of, using the services of, or working for the business or service.

- (4) However, subclause (3) does not apply to the extent that workers are required to have physical contact with, or close proximity to, people in order to carry out the activities of that business or service.
- (5) All persons who enter the workplace of, use the services of, or work for a close-proximity business or service must comply with the 1-metre physical distancing rule (rather than the 2-metre physical distancing rule) so far as is reasonably practicable.
- (6) However, neither subclause (5) nor the 2-metre physical distancing rule applies to the extent that physical contact, or close proximity, is required between workers and other people in order to carry out the activities of a close-proximity business or service.
- (7) A breach of subclause (5) is an infringement offence for the purposes of section 26(3) of the Act.

Social gatherings requirements

26 Application of clauses 27 to 31

Clauses 27 to 31 do not apply to a gathering of fellow residents.

27 Number limit for social gathering

- (1) A social gathering must not exceed 100 people in a defined space at any one time.
- (2) This clause does not apply to any premises referred to in section 12(2)(d) of the Act.

28 Workers excluded from number limit

Workers who are providing services in relation to a social gathering are not to be counted as part of the number limit for the gathering in clause 27.

29 Individuals must comply with requirements for social gatherings

- (1) A person must not attend a social gathering that exceeds the number limit for that gathering specified in clause 27.
- (2) If clause 31(2) applies to a social gathering, a person who attends the social gathering must—
 - (a) scan the QR code for the social gathering; or
 - (b) provide details in the contact tracing record referred to in that clause.

30 People responsible for social gatherings must comply with number limit

- (1) A social gathering that exceeds the number limit for the gathering in clause 27 is prohibited.
- (2) The people responsible for a social gathering must ensure that the social gathering does not exceed the number limit.

- (3) A breach of subclause (2) is an infringement offence for the purposes of section 26(3) of the Act.

31 People responsible for social gatherings must comply with contact tracing requirements

- (1) A social gathering in which the requirements in subclause (2) are not met is prohibited.
- (2) The people responsible for a social gathering must ensure that there are systems and processes in place to ensure that, so far as is reasonably practicable, each person who attends the social gathering—
- (a) scans the QR code for the social gathering; or
 - (b) provides details in a contact tracing record that is kept by one of the people responsible for or attending the social gathering.
- (3) Subclause (2) does not apply if every person at the social gathering knows, and can identify for the purposes of contact tracing, every other person who is a participant in the social gathering.
- (4) A breach of subclause (2) is an infringement offence for the purposes of section 26(3) of the Act.
- (5) In relation to how the contact tracing record under subclause (2) is collected, kept, and used, *see* the requirements in the Privacy Act 2020 that apply to persons collecting personal information.

**Part 4
Miscellaneous**

Exemptions

32 Exemption for emergencies

Nothing in this order prevents any person from assisting in, or responding to, an emergency.

33 Other exemptions from this order

Nothing in this order applies—

- (a) to border services (including law enforcement activities related to border services) provided by Immigration New Zealand, the New Zealand Customs Service, Maritime New Zealand, or the Ministry for Primary Industries;
- (b) to the provision of health services;
- (c) to residential centres (including care and protection and youth justice residences), family homes, and group homes (including family group homes and community-based remand centres) that are approved or

recognised for the time being by the chief executive of Oranga Tamariki as a place of care or treatment for the purposes of the Oranga Tamariki Act 1989:

- (d) within a corrections prison as defined in section 3(1) of the Corrections Act 2004 or any premises managed by or on behalf of the Department of Corrections:
- (e) to custodial or detention services managed by the New Zealand Police, the Department of Corrections, or the Ministry of Justice, or within a courthouse:
- (f) to the administration of sentences and orders by the Department of Corrections or on its behalf:
- (g) to people being transported for the purposes of the Department of Corrections and New Zealand Police fulfilling their purposes and performing their functions and duties:
- (h) to the New Zealand Parole Board:
- (i) to the New Zealand Security Intelligence Service:
- (j) to the Government Communications Security Bureau:
- (k) to the New Zealand Defence Force:
- (l) to the New Zealand Police:
- (m) to Fire and Emergency New Zealand:
- (n) to civil defence emergency management services provided by the National Emergency Management Agency and Civil Defence Emergency Management Groups:
- (o) to managed isolation or quarantine services for COVID-19 or to people while they are required to be in isolation or quarantine in accordance with either of the following:
 - (i) the Isolation and Quarantine Order:
 - (ii) the Maritime Border Order:
- (p) to workers carrying out any business or service referred to in any of paragraphs (a) to (o):
- (q) to people who are enforcement officers carrying out their functions and exercising their powers under the Act.

34 Power for Director-General to grant exemptions from this order

- (1) The Director-General may exempt any class of persons, businesses, services, or goods (or any person, business, service, or goods) from the application of any provision of this order or from the requirement to comply with any provision of this order in accordance with this clause.
- (2) The Director-General may grant an exemption if satisfied that—

- (a) the exemption is necessary or desirable in order to promote the purposes of the Act or the purposes of this order; and
 - (b) the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.
- (3) The Director-General may impose conditions on the exemption as the Director-General considers necessary.
- (4) An exemption for any specified person, business, service, or goods must be notified in writing to—
- (a) the applicant; and
 - (b) in the case of an exemption for any specified person, business, or service, the exempt person or business.
- (5) An exemption for any class of persons, businesses, services, or goods must—
- (a) be published on a publicly accessible Internet site maintained by or on behalf of the New Zealand Government; and
 - (b) be notified in the *Gazette*.

Revocation

35 Revocation of COVID-19 Public Health Response (Alert Level Requirements) Order (No 4) 2021

The COVID-19 Public Health Response (Alert Level Requirements) Order (No 4) 2021 (LI 2021/31) is revoked.

Schedule 1 Transitional, savings, and related provisions

cl 7

Part 1 Provisions relating to this order as made

1 Interpretation

In this Part, **commencement** means the date on and time at which this order commences.

2 Application of physical distancing requirements in accommodation services where space is limited on commencement

- (1) This clause applies if, on commencement,—
- (a) people who are not fellow residents of each other are residing in the same room of an accommodation service; and

- (b) the number of those people is more than 10 (which is the maximum number of people who may form an accommodation service bubble arrangement); and
 - (c) the room is not large enough to enable compliance with the physical distancing requirements while those people are in the room.
- (2) The physical distancing requirements do not apply to the extent needed to allow those people to continue residing in that room of the accommodation service.
- (3) In this clause, **physical distancing requirements** means the requirements that are described in clauses 17 and 18 and apply to those people while they are in the accommodation service.

3 Existing exemptions made under COVID-19 Public Health Response (Alert Level Requirements) Order (No 4) 2021

An exemption granted by the Director-General under clause 46 of the COVID-19 Public Health Response (Alert Level Requirements) Order (No 4) 2021 that is in force immediately before commencement continues in force on and after commencement as if it had been granted under clause 34 of this order, and is subject to the same conditions (if any) as applied before commencement.

Schedule 2 Businesses and services

cl 4(1)

Category A businesses or services

Number	Business or service
1	Rental car services and car share services
2	Veterinary services and animal health and welfare services
3	Services provided under the Oranga Tamariki Act 1989, and other social services provided to support persons to maintain critical well-being and as crisis support for people who are unsafe or homeless
4	Courts and tribunals

Schedule 3 Description of alert level 2 area

cl 6(1)

Alert level 2 area means—

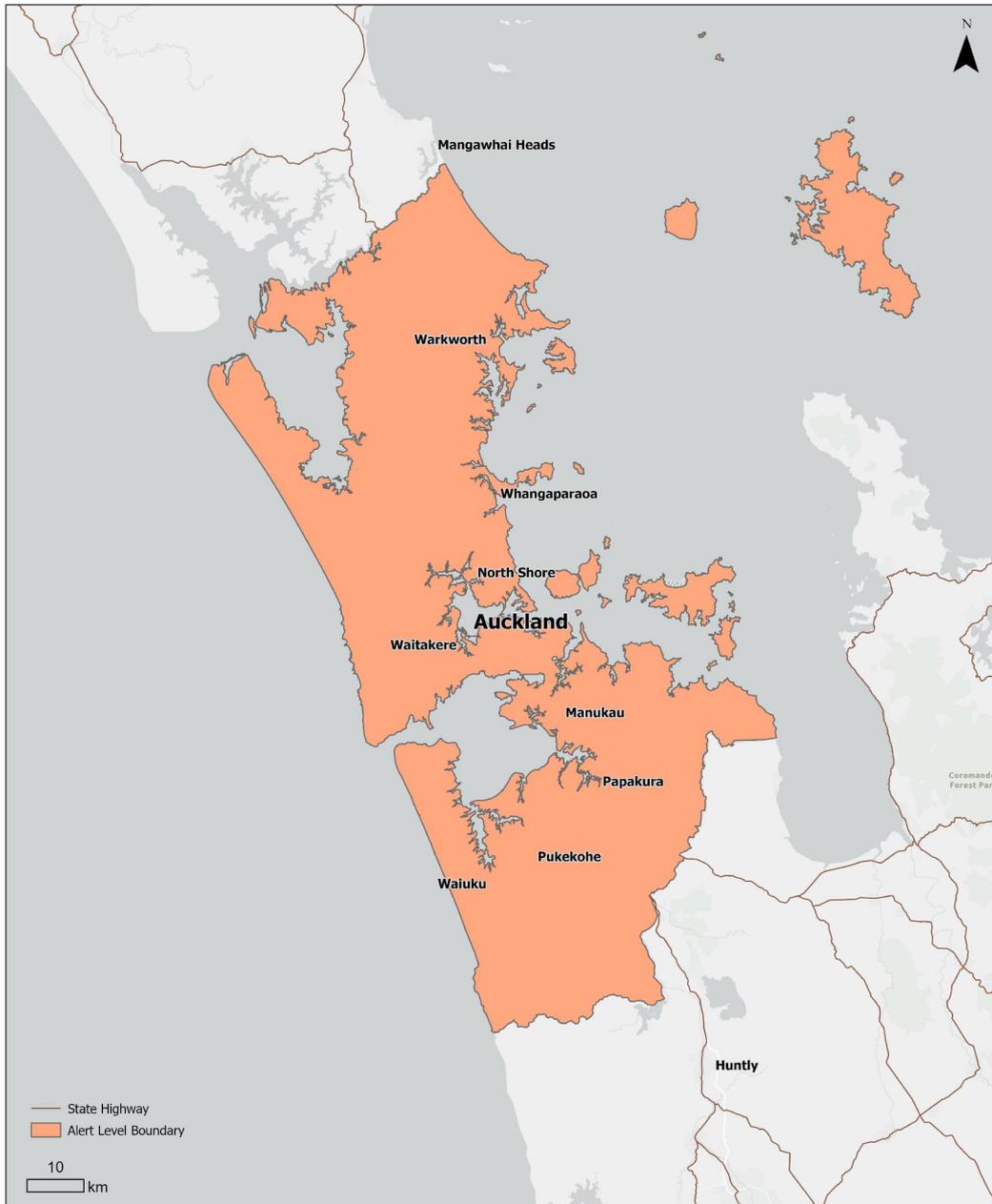
- (a) the area within the boundaries of Auckland as determined by the Local Government (Auckland Boundaries) Determination 2010 (*Gazette* 2010, p 858); and
- (b) the area (bounded by the middle of the roads listed below)—

- (i) commencing on the mean high-water mark of the west coast of the North Island at the southernmost point of the south-west corner of the area described in paragraph (a) (the boundaries of Auckland); then
- (ii) proceeding in a generally south-easterly direction along the mean high-water mark (and across the mouth of the Waikato River) to the Kaawa Stream; then
- (iii) proceeding in a generally north-easterly direction along the north bank of the Kaawa Stream to the intersection with Port Waikato-Waikaretu Road; then
- (iv) proceeding south along Port Waikato-Waikaretu Road to the intersection with Baker Road; then
- (v) proceeding east along Baker Road to the intersection with Wairamarama-Onewhero Road; then
- (vi) proceeding south along Wairamarama-Onewhero Road to the intersection with Bothwell Loop Road; then
- (vii) proceeding east along Bothwell Loop Road to the intersection with Waikaretu Valley Road; then
- (viii) proceeding east along Waikaretu Valley Road to the intersection with State Highway 22; then
- (ix) proceeding north-east along State Highway 22 to the intersection with Glen Murray Road; then
- (x) proceeding south-east along Glen Murray Road to the intersection with Churchill Road; then
- (xi) proceeding north along Churchill Road until it crosses Opuatia Stream; then
- (xii) proceeding in a generally north-easterly direction along the north bank of the Opuatia Stream to the Waikato River; then
- (xiii) proceeding in a generally northerly direction along the west bank of the Waikato River to the intersection with Mercer Ferry Road; then
- (xiv) proceeding north-east along Mercer Ferry Road to the intersection with Koheroa Road; then
- (xv) proceeding north-east along Koheroa Road to the intersection with Mangatawhiri Road; then
- (xvi) proceeding north-west along Mangatawhiri Road to the intersection with Lyons Road; then
- (xvii) proceeding north-east along Lyons Road to the intersection with Paparimu Road; then
- (xviii) proceeding north-west along Paparimu Road to the intersection with the area described in paragraph (a) (the boundaries of Auckland); then

- (xix) proceeding in a generally westerly direction along the southern boundary of the boundaries of Auckland to the point of commencement described in subparagraph (i).

Schedule 4 Map of alert level 2 area

cl 6(2)



Dated at Wellington this 5th day of March 2021.

Hon Chris Hipkins,
Minister for COVID-19 Response.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order replaces the COVID-19 Public Health Response (Alert Level Requirements) Order (No 4) 2021. It moves Auckland from alert level 3 to alert level 2, and the rest of the country from alert level 2 to alert level 1. The requirement to wear face coverings on public transport services and domestic air transport services continues to apply throughout the country.

This order comes into force at 6 am on 7 March 2021.

Detailed explanation

Part 1 of this order sets out the purpose of this order (*see clause 3*) and definitions used in the order (*see clause 4*).

The purpose of this order is to prevent, and limit the risk of, the outbreak or spread of COVID-19.

Clause 5 provides for how the requirements in this order apply to businesses and services.

Clause 6 provides for the description of the alert level 2 area in *Schedule 3*.

Clause 7 refers to the transitional, savings, and related provisions set out in *Schedule 1*.

Clause 8 sets out where parts of this order apply, as follows:

- *Part 3* applies in the alert level 2 area, to any property if a part of it is in the alert level 2 area, and to any other place if necessary for the purposes of enforcing the measures in those 2 places. The alert level 2 area means the area described in *Schedule 3*;
- the rest of this order applies to the whole of New Zealand.

Alert level requirements to prevent outbreak or spread of COVID-19 that apply to all areas

Clauses 9 and 10 set out requirements for unique identifying codes for the purpose of enabling contact tracing (QR codes).

Clauses 11 to 13 set out face covering requirements on public transport services and domestic air transport services, and exemptions from those requirements.

Alert level 2 requirements to prevent outbreak or spread of COVID-19

Clause 14 sets out requirements for contact tracing in workplaces.

Clause 15 describes the 1-metre and 2-metre physical distancing rules.

Clause 16 is an application clause. *Clauses 17 to 25* apply to workplaces of businesses and services, except those described in *clause 16(1)(a) to (e)*. *Clauses 27 to 31* apply to social gatherings including, but not limited to, gatherings described in *clause 16(1)(a) to (e)*.

Clause 17 requires a workplace to have systems and processes in place to—

- maintain compliance with the 1-metre physical distancing rule (so far as is reasonably practicable) for workers; and
- maintain compliance with the 2-metre physical distancing rule (so far as is reasonably practicable) for other persons entering the workplace of, or using the services, of the business or service; and
- mitigate risks that arise to the extent that physical distancing is not fully maintained (such as through regular cleaning of surfaces or installing plastic barriers).

Clause 18 requires a person to comply, so far as is reasonably practicable, with either the 1-metre physical distancing rule or the 2-metre physical distancing rule, if that rule applies to the person.

The requirements in *clauses 17 and 18* that relate to the 1-metre physical distancing rule and the 2-metre physical distancing rule apply except to the extent adjusted by *clauses 19 to 25*.

Clause 19 sets out adjusted requirements for category A businesses and services.

Clause 20 sets out adjusted requirements for education entities.

Clause 21 sets out adjusted requirements for public transport services.

Clause 22 sets out adjusted requirements for transport stations.

Clause 23 sets out adjusted requirements for controlled-access businesses and services, defined as—

- businesses or services that have a largely consistent group of workers and that usually have a fixed workplace (such as office workplaces and factories);
- businesses or services with customers or clients that are members of the business or service (such as gyms);
- public facilities located within a building or structure (such as swimming pools, libraries, and museums);
- event facilities such as cinemas, theatres, stadiums, concert venues, conference venues, and casinos.

However, retail businesses, such as shopping malls, supermarkets, marketplaces, take-away-food stores, and retail stores, are excluded from *clause 23*.

Clause 24 sets out adjusted requirements for businesses or services with workplaces that customers may enter and where food or drink is sold or provided to be consumed there (such as restaurants, cafes, and soup kitchens).

Clause 25 sets out adjusted requirements for businesses or services that cannot operate without physical contact or close proximity between people (such as massage and hairdressing services and professional sports).

Clauses 26 to 31 relate to social gatherings. (Social gathering is defined in *clause 4*.)

Clause 26 states that the requirements for social gatherings do not apply to gatherings of fellow residents.

Clause 27 sets out the number limit for a social gathering.

Clause 28 provides that the number limit for a social gathering does not include workers providing services in relation to the gathering.

Clause 29(1) provides that people must not attend a social gathering that exceeds the number limit (not including workers who are providing services in relation to the gathering). *Clause 29(2)* also provides that people must, if attending a social gathering, comply with requirements to enable contact tracing records to be kept.

Clause 30 requires the people responsible for a social gathering to ensure that the social gathering does not exceed the number limit.

Clause 31 requires the people responsible for a social gathering to ensure that contact tracing processes are in place. This does not apply if every person at the social gathering knows, and can identify for the purpose of contact tracing, every other person at the social gathering.

Exemptions

Clause 32 exempts people assisting in or responding to an emergency from the application of the order.

Clause 33 sets out other exemptions for specified activities and services.

Clause 34 empowers the Director-General of Health to grant exemptions from any provision of this order, subject to the Director-General being satisfied that certain criteria are met.

Revocation

Clause 35 revokes the COVID-19 Public Health Response (Alert Level Requirements) Order (No 4) 2021.

Schedules

Schedule 1 is for transitional, savings, and related provisions.

Schedule 2 describes the category A businesses or services.

Schedule 3 is a description of the alert level 2 area.

Schedule 4 contains a map of the alert level 2 area.

Approval by resolution required

This order must be approved by a resolution of the House of Representatives before the expiry of the period described in section 16(2) of the COVID-19 Public Health Response Act 2020. If this does not happen, the order is revoked on the expiry of that period.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 5 March 2021.

Reprints notes

1 *General*

This is a reprint of the COVID-19 Public Health Response (Alert Level Requirements) Order (No 5) 2021 that incorporates all the amendments to that order as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

COVID-19 Public Health Response (Alert Level Requirements) Order (No 6) 2021 (LI 2021/40): clause 16