

8 July 2022

s 9(2)(a)

By email: s 9(2)(a)  
Ref: H202201139

Tēnā koe s 9(2)(a)

### Response to your request for official information

Thank you for your request under the Official Information Act 1982 (the Act) to the Ministry of Health (the Ministry) on 6 February 2022 for information relating to the COVID-19 Public Health Response (Vaccination) Order 2021 (the Order) and the New Zealand Bill of Rights Act. You requested:

*“All of the advice provided by the Ministry of Health (MoH) to the Minister specifically on the consistency of the Order with the NZBORA.*

*All of the advice provided by the MoH to the Minister specifically on the public health benefits and costs of the Order.*

*All of the advice provided by the MoH to the Minister specifically on the proportionateness of the restrictions of rights by the Order to the public health risk addressed by the Order.”*

The time frame for responding to your request was extended until 4 April 2022. I apologise for the delay in providing a response. Twenty-two documents have been found within scope of your request. Information within scope of this request is itemised in Appendix 1 of this letter and copies of the documents are enclosed. Where information is withheld under section 9 of the Act, I have considered the countervailing public interest in release in making this decision and consider that it does not outweigh the need to withhold at this time.

We have provided draft copies of the COVID-19 Public Health Response (Vaccinations) Order 2021. Please note, these drafts have been superseded by the most recent version which is available from [www.legislation.govt.nz/regulation/public/2021/0094/latest/LMS487853.html?search=ts\\_act%40bill%40regulation%40deemedreg\\_covid-19+vaccinations+order\\_resel\\_25\\_a&p=1](http://www.legislation.govt.nz/regulation/public/2021/0094/latest/LMS487853.html?search=ts_act%40bill%40regulation%40deemedreg_covid-19+vaccinations+order_resel_25_a&p=1)

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

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

Nāku noa, nā



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

## Appendix 1: Documents for release

#	Date	Title	Decision on release
1	23 April 2021	Briefing COVID-19 Public Health Response (Vaccinations) Order 2021 for consultation (HR20210934)	<p>Released with some information withheld under the following sections of the Act:</p> <ul style="list-style-type: none"> <li>• Section 9(2)(a) of the Act to protect the privacy of natural persons; and</li> <li>• Section 9(2)(h) of the Act to maintain legal professional privilege.</li> </ul>
2	28 April 2021	Briefing COVID-19 Public Health Response (Vaccinations) Order 2021 for signature (HR20210940)	
3	4 June 2021	Briefing Final policy decisions required to draft the amendments to the COVID-19 Public Health Response (Vaccinations) order (HR20211235)	
4	30 June 2021	Briefing COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 for Ministerial consultation (HR2021133)	
5	11 July 2021	Briefing COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 for signing (HR20211520)	
6	13 October 2021	Briefing COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021: Extending the types of recognised vaccines for affected workers – Ministerial consultation (HR202112177)	
7	22 October 2021	Briefing COVID-19 Public Health Response (Vaccinations) Amendment (No 3) Order 2021: Health Workers, Prison Staff, Educators (HR20212209)	
8	22 October 2021	Briefing COVID-19 Public Health Response (Vaccinations) Amendment (No 3) Order 2021: Health Workers, Prison Staff, Educators (HR20212209) – For signature	
9	25 October 2021	COVID-19 Public Health Response (Vaccinations) Order 2021	Released in full.
10	4 November 2021	Briefing Policy decisions required for further amendments to the COVID-19 Public health Response (Vaccinations) Order 2021 (HR202212418)	Released with some information withheld under section 9(2)(a) of the Act.

#	Date	Title	Decision on release
11	5 November 2021	Briefing COVID-19 Public Health Response (Required Testing and Vaccinations) amendment Order 2021 (HR20212386)	
12		COVID-19 Public Health Response (Required Testing and Vaccinations) Amendment Order 2021	Released in full
13	11 November 2021	Briefing: Policy decisions required for a further amendment to the COVID-19 Public Health Response (Vaccinations) Order 2021 (HR20212479)	Released with some information withheld under section 9(2)(a) of the Act
14	12 November 2021	Briefing: COVID-19 Public Health Response (Vaccination) Amendment Order (No 4) 2021 (HR20212484)	Released with some information withheld under the following sections of the Act: <ul style="list-style-type: none"> <li>• Section 9(2)(a); and</li> <li>• Section 9(2)(h)</li> </ul>
15		COVID-19 Public Health Response (Vaccinations) Order (No. 4) 2021	Released in full
16	22 November 2021	Briefing: Policy decisions required for further amendments to the COVID-19 Public Health Response (Vaccinations) Order (No. 5) 2021 (HR20212495)	Released with some information withheld under the following sections of the Act: <ul style="list-style-type: none"> <li>• Section 9(2)(a); and</li> <li>• Section 9(2)(h)</li> </ul>
17	30 November 2021	Briefing: COVID-19 Public Health Response (Vaccination) Amendment Order (No 6) 2021 (HR20212648) – For signature	
18	22 December 2021	Briefing: Policy Decisions required for further amendments to the COVID-19 Public Health Response (Vaccinations) Order (No.7) 2021 (HR20212779)	Released with some information withheld under the following sections of the Act <ul style="list-style-type: none"> <li>• Section 9(2)(a)</li> <li>• Section 9(2)(h); and</li> <li>• Section 9(2)(g)(i) to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers and officers and employees of any public service agency.</li> </ul>
19	19 January 2022	Briefing Further policy decision required for amendments to the COVID-19 Public Health Response (Vaccinations) Order 2022 (HR20220059)	Released with some information withheld under the following sections of the Act: <ul style="list-style-type: none"> <li>• Section 9(2)(a); and</li> </ul>

#	Date	Title	Decision on release
20	12 February 2022	Briefing: Further extension of date of booster requirement for healthcare workers under the COVID-19 Public Health Response Vaccinations) Order 2021 (HR20220216)	<ul style="list-style-type: none"> <li>Section 9(2)(h)</li> </ul>
21	NA	Letter from Maree Roberts to Chairperson of the Health Select Committee re: Petition 2020/43 of Tobias Tahi and 5163 others	Publicly available at: <a href="http://www.parliament.nz/resource/en-NZ/53SCPET_EVI_108014_PET_967/13a8eb2bcb0f8657ad1d6ed58782005266e4f7fa">www.parliament.nz/resource/en-NZ/53SCPET EVI 108014 PET 967/13a8eb2bcb0f8657ad1d6ed58782005266e4f7fa</a>
22	NA	Cabinet paper: Requiring high risk work in the health and disability sector to be undertaken by vaccinated workers	Publicly available at: <a href="http://www.health.govt.nz/about-ministry/information-releases/release-ministerial-decision-making-documents/requiring-high-risk-work-health-and-disability-sector-be-undertaken-vaccinated-workers">www.health.govt.nz/about-ministry/information-releases/release-ministerial-decision-making-documents/requiring-high-risk-work-health-and-disability-sector-be-undertaken-vaccinated-workers</a>

# Briefing

## COVID-19 Public Health Response (Vaccinations) Order 2021 for consultation

**Date due to MO:** 23 April 2021      **Action required by:** 23 April 2021

**Security level:** IN CONFIDENCE      **Health Report number:** 20210934

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

### Contact for telephone discussion

Name	Position	Telephone
Maree Roberts	Deputy Director-General, System Strategy and Policy	S9(2)(a)
Steve Waldegrave	Group Manager COVID-19 Policy Response	

### Minister's office to complete:

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

Comment:

Released under the Official Information Act 1982

# COVID-19 Public Health Response (Vaccinations) Order 2021 for consultation

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**Security level:** IN CONFIDENCE      **Date:** 23 April 2021

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

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## Purpose of report

1. This report recommends that you consult with the Prime Minister and Ministers of Justice, Health, Workplace Relations and Safety, and any other Ministers you think necessary, on the attached draft COVID-19 Public Health Response (Vaccination) Order 2021.
2. The draft Order requires high-risk work in Managed Isolation and Quarantine Facilities (MIQFs), and at affected airports and ports, be performed only by workers who have been vaccinated. It applies to government officials, defined as a person who is employed or engaged by the public service (defined under section 10 of the Public Service Act 2020) and, in the case of MIQFs, extends to people employed or engaged by a crown entity.

## Summary

3. On 20 April 2021, you agreed to make the COVID-19 Public Health Response (Vaccination) Order requiring high-risk work in Managed Isolation and Quarantine Facilities (MIQFs) and at affected airports and ports, be performed only by workers who have been vaccinated. The Order applies to government officials, defined as a person who is employed or engaged by the public service (as defined under section 10 of the Public Service Act 2020) and, in the case of MIQFs, extends to people employed or engaged by a crown entity [MBIE paper 2021-3276 refers].
4. The recent draft of the COVID-19 Public Health Response (Vaccination) Order 2021 has been provided direct to your Office by Parliamentary Counsel Office for the purposes of ministerial consultation. It would give effect to these changes from 11:59pm 30 April 2021.
5. The Ministry considers that there is a public health rationale for requiring that specified high-risk roles only be undertaken by vaccinated people, in response to the current pandemic. This is due to the risk that these individuals may be exposed to, and infected by, COVID-19 during their work. Vaccines provide another layer of individual protection and, in doing so, may also be effective in preventing transmission in the community.
6. These measures engage rights protected by the New Zealand Bill of Rights Act (NZBORA). Limits on NZBORA rights can be justified if the measure serves an important and significant objective and there is a rational and proportionate connection between that objective and the measure. If a court decided the Order, or actions of an employer under the Order, was not justified, then the Order may be successfully challenged in court and found to be ultra vires.

7. Following Ministerial consultation, officials and the Parliamentary Counsel Office will finalise the Order and provide you with a final version by the morning of Wednesday 28 April 2021 for signing on the same day.
8. The Order will also be gazetted on Wednesday 28 April 2021 and will take effect from 11:59pm Friday 30 April 2021.

## Recommendations

We recommend you:

- a) **Agree** to consult on the draft COVID-19 Public Health Response (Vaccination) Order 2021 provided direct to your Office by Parliamentary Counsel Office, which gives effect to the policy previously agreed in [MBIE 2021-3276]. **Yes/No**
- b) **Agree** that the Order will allow the Ministry to pre-populate data from the Border Worker Testing Register with the COVID-19 Immunisation Register to proactively identify who should be vaccinated. **Yes/ No**
- c) **Note** that the Ministry considers that there is a public health rationale for requiring that specified high-risk roles only be undertaken by vaccinated people, in response to the current pandemic. This is because there is a risk that these individuals may be exposed to, and infected by, COVID-19 during their work. Vaccines provide another layer of individual protection and, in doing so, may also be effective in preventing transmission in the community. **Noted**
- d) **Note** that you must be satisfied that the Order does not limit, or is a justified limit, on the rights and freedoms in the New Zealand Bill of Rights Act 1990, as part of issuing the Order. **Noted**
- e) **Note** that these measures engage rights protected by the New Zealand Bill of Rights Act 1990 (NZBORA). Limits on NZBORA rights can be justified if the measures serve an important and significant objective and there is a rational and proportionate connection between that objective and the measure. If a court decided the Order, or actions of an employer under the Order, was not justified, then the Order may be successfully challenged in court and found to be ultra vires. **Noted**
- f) **Note** that further advice will be provided from the Border Executive Board agencies on the recommended approach to requiring specified high-risk work performed by other workforces operating at the border that can only be done by a vaccinated worker, including any proposed exemptions and other issues for Ministers to consider. **Noted**

Maree Roberts

**Deputy Director-General,**  
System Strategy and Policy

Date: 23/04/21

Hon Chris Hipkins

**Minister for COVID-19 Response**

Date:



# COVID-19 Public Health Response (Vaccinations) Order 2021 for consultation

## Background

9. On 20 April 2021, you agreed to make the COVID-19 Public Health Response (Vaccination) Order 2021 that requires high-risk work in Managed Isolation and Quarantine Facilities (MIQFs) and at affected airports and ports, be performed only by workers who have been vaccinated. The Order applies to government officials, defined as a person who is employed or engaged by the public service (as defined under section 10 of the Public Service Act 2020) and, in the case of MIQFs, extends to people employed or engaged by a crown entity [MBIE paper 2021-3276 refers].
10. The most recent draft of the COVID-19 Public Health Response (Vaccination) Order 2021 has been provided direct to your Office by Parliamentary Counsel Office for the purposes of ministerial consultation. It would give effect to these changes from 11:59pm 30 April 2021.

## Contents of the draft Order

11. The draft Order makes it mandatory for high-risk work at the border to be performed by workers who are vaccinated against COVID-19. It includes provisions on:
  - a. timings for when border workers are required to be fully vaccinated in order to carry out specified work
  - b. duties of PCBUs and employees in relation to vaccinations, including that a breach of any obligations will be an infringement offence
  - c. limited exceptions to the vaccination requirement, including in the case of necessary, unanticipated, time-critical work, and in order to protect a person's life, health or safety in an emergency
  - d. information sharing aimed at supporting effective implementation of the draft Order and the COVID-19 Immunisation Programme, by providing the government and employers/PCBUs a mechanism allowing them to know who has and has not been vaccinated, by:
    - i. requiring the relevant PCBU to request information from the Ministry of Health on the vaccination status of individuals that the PCBU has determined must be vaccinated to perform high risk work at the border
    - ii. requiring the Ministry of Health to provide an individual's relevant COVID-19 vaccination records to PCBUs, as requested
    - iii. requiring individuals that wish to perform work covered by the draft Order to allow the relevant PCBU to access any records that the Ministry of Health has regarding their COVID-19 vaccination status.

## Process for making a section 11 Order

12. Under the COVID-19 Act, an Order may be made if either:
  - a. a state of emergency has been declared (under the Civil Defence Emergency Management Act 2002);
  - b. an Epidemic Notice is in force (under the Epidemic Preparedness Act 2006); or
  - c. it has been authorised by the Prime Minister.
13. There is currently an Epidemic Notice in place, which allows Orders to be made under section 11 of the COVID-19 Act.
14. As the Minister for COVID-19 Response, you may make Orders under section 11 of the COVID-19 Public Health Response Act 2020 (the Act).
15. To make an Order under section 11 you must:
  - a. have received advice from the Director-General about:
    - i. the risks of the outbreak or spread of COVID-19; and
    - ii. the nature and extent of measures that are appropriate to address those risks; and
  - b. be satisfied that the proposed Order does not limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990 (NZBORA); and
  - c. consult with the Prime Minister, the Minister of Justice, Minister of Health, and any other Ministers you think necessary; and
  - d. be satisfied that this Order is appropriate to achieve the purposes of the Act.
16. My advice about the risks of the outbreak or spread of COVID-19 and the nature and extent of measures that are appropriate to manage those risks is set out below.

## Public health rationale

17. You have previously been provided with detailed public health rationale for the proposed draft Order [MBIE paper 2021-3276 refers].
18. The Ministry advises that there is a public health rationale for requiring that specified high-risk roles only be undertaken by vaccinated people, in response to the current pandemic. This is because there is a risk that these individuals may be exposed to, and infected by, COVID-19 during their work.
19. Vaccines offer a high degree of protection for individuals who are vaccinated, alongside a range of other public health measures. A worker who has been vaccinated will have a very high likelihood that they will be protected from serious illness or death, and are more likely to be asymptomatic if infected.
20. Evidence of the efficacy of vaccines in preventing person-to-person transmission is still evolving, however, suggests that the vaccine is also likely to be effective in preventing transmission. Real world evidence suggests that people vaccinated for Pfizer-BioNTech COVID-19 vaccine who develop COVID-19 have a four-fold lower viral load than

unvaccinated people. This observation may indicate reduced transmissibility, as viral load and symptomatic infection has been identified as a key driver of transmission.<sup>1</sup>

21. Therefore, while vaccination does not prevent all possible episodes of transmission, vaccination has a clinically relevant impact on reducing the risk of transmission. The risk of COVID-19 infection in New Zealand is currently highest amongst those in high-risk roles at the border; ensuring that such workers are vaccinated will therefore substantially protect the wider community.

## New Zealand Bill of Rights Act 1990

22. Section 9(ba) of the COVID-19 Public Health Response Act 2020 explicitly requires that orders made under section 11 of the Act be made consistently with the Bill of Rights Act. If an order limits a right or freedom affirmed in that Act, all or part of the order may be invalid unless the limitation can be demonstrably justified in a free and democratic society (section 5).
23. The draft Order raises issues of consistency with the right to refuse medical treatment (s 11 of the Bill of Rights Act) and right to be free from discrimination on the grounds of disability, sex (pregnancy) or religious beliefs (s 19 of the Bill of Rights Act).

### Finely balanced issue

24. To be satisfied that the limits on the rights are justified, there needs to be a robust public health rationale for requiring that high risk work be performed only by workers who have been vaccinated. The public health rationale concerns the efficacy of vaccines in preventing transmission. Although evolving, the evidence suggests vaccines are likely to be effective in preventing wider transmission.
25. Ministers must also be satisfied that this public health benefit cannot be realised without introducing this proposal and introducing the requirement is proportionate to the objective.

S9(2)(h)

S9(2)(h)

<sup>1</sup> <https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/fully-vaccinated-people.html>

S9(2)(h)

## Equity

31. As discussed above, there is potential for the Order to discriminate against workers on the grounds of sex, disability or religion. We are also aware that many of the affected workers are in low paying jobs and are carried out by ethnic minorities and women, who would potentially be more greatly impacted.
32. However, we also know from historical examples that Māori and Pacific peoples are likely to be disproportionately affected by a widespread epidemic. This means that there is an equity imperative to do everything possible, within the requirement that the Minister must be satisfied that there is no limitations on rights or that any limitation on rights is justified, to minimise the potential risk to the community from COVID-19.
33. Given that the vaccination is available to all groups, we do not consider the equity concerns above to be sufficient to prohibit the requirement that specified high-risk roles only be undertaken by vaccinated people.

## Implementation

34. The Border Worker Testing Register (BWTR), which will become mandatory on 27 April 2021, is the most comprehensive database of the border and MIQF workforce. The Order will allow the Ministry to pre-populate data from the BWTR with the COVID-19 Immunisation Register to proactively identify who should be vaccinated.
35. The draft Order will also authorise the sharing of vaccination status of workers (subject to the Order) with their PCUBs/employers. This will provide PCUBs/employers with an accurate record of the vaccination status of their workforce, and assist them to manage their obligations, under the draft Order, in a more efficient way.
36. The Ministry of Business, Innovation and Employment will lead work on the development of the operational guidance to support the Order when it comes into effect. This will include updating guidance on [employment.govt.nz](https://www.employment.govt.nz); and working with the Public Service Commission and the Border Executive Board Chief Executives to ensure that appropriate guidance is provided to public sector employers.

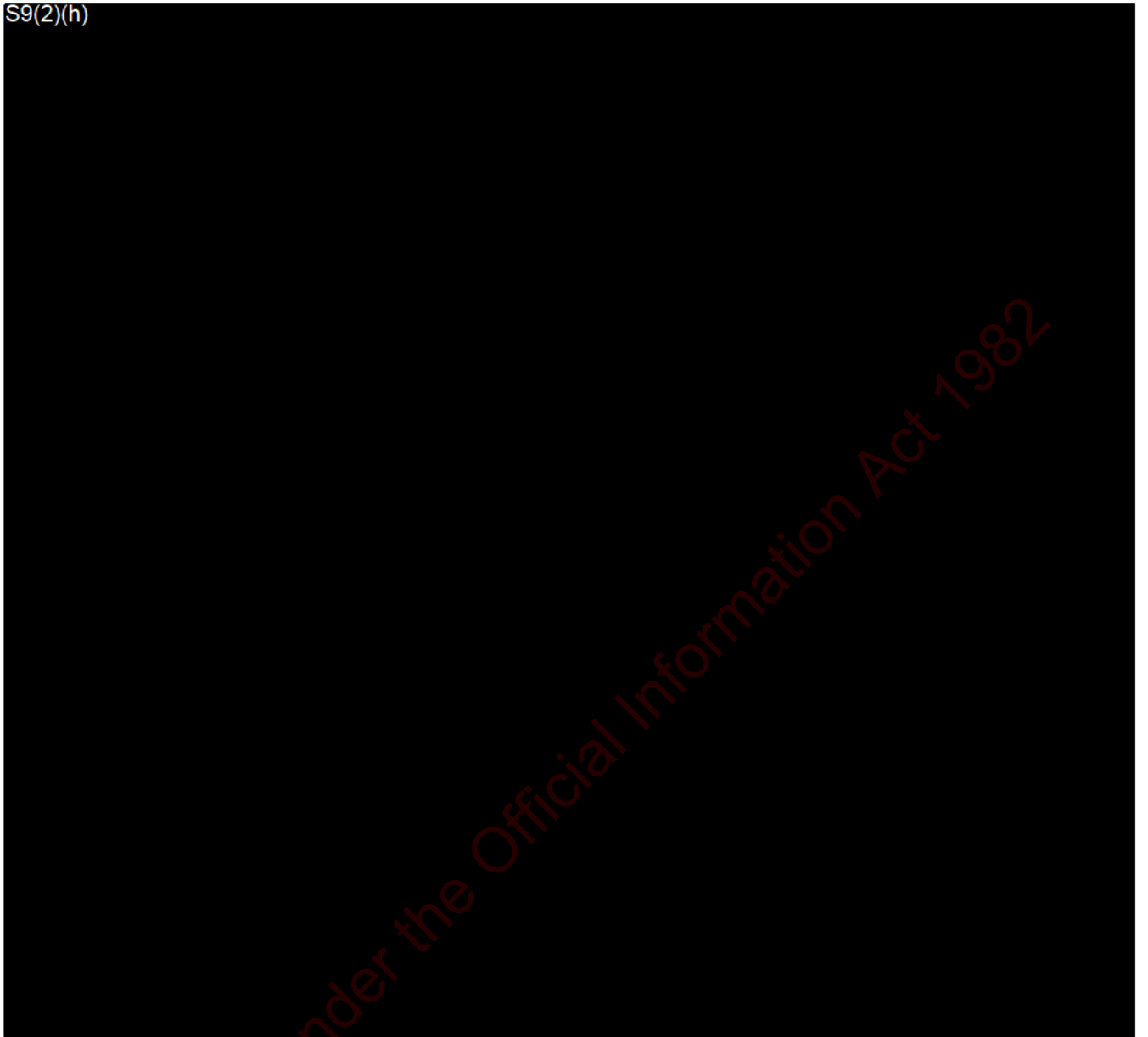
37. We will update operational guidance (including the immunisation sequencing framework) to ensure that relevant provision is made for people required to be vaccinated under the Order.

### **Next steps**

38. Further advice will be provided from the Border Executive Board agencies on the recommended approach to requiring specified high-risk work performed by other workforces operating at the border that can only be done by a vaccinated worker, including any proposed exemptions and other issues for Ministers to consider, such as the scope of work and workers impacted at affected airports and affected ports.
39. Following the further advice, an Amendment to the Order could be made to bring additional groups into the Order.
40. As per the Act, you must consult on the proposed Order with the Prime Minister and the Ministers of Justice and Health. You may also wish to consult with the Minister for Workplace Relations and Safety, and any other Minister you consider appropriate. Comments from this consultation must be provided to officials no later than 5pm on Friday 23 April 2021, to allow for incorporation into the draft Order.
41. Following Ministerial consultation, officials and the Parliamentary Counsel Office will finalise the Order and provide you with a final version by the morning of Wednesday 28 April 2021 for signing on the same day.
42. The Order will also be gazetted on Wednesday 28 April 2021 and will take effect from 11:59pm Friday 30 April 2021.

ENDS.

S9(2)(h)



Released under the Official Information Act 1982

# Briefing

## COVID-19 Public Health Response (Vaccinations) Order 2021 for signature

Date due to MO: 28 April 2021

Action required by: 28 April 2021

Security level: IN CONFIDENCE

Health Report number: 20210940

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

### Contact for telephone discussion

Name	Position	Telephone
Dr Ashley Bloomfield	Director-General of Health	S9(2)(a)
Maree Roberts	Deputy Director-General, System Strategy and Policy	

### Minister's office to complete:

Approved

Decline

Noted

Needs change

Seen

Overtaken by events

See Minister's Notes

Withdrawn

Comment:

Released under the Official Information Act 1982

# COVID-19 Public Health Response (Vaccinations) Order 2021 for signature

**Security level:** IN CONFIDENCE      **Date:** 28 April 2021

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

## Purpose of report

1. This report recommends that you sign the attached COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order). The Order requires that work at certain places be carried out by affected persons who are vaccinated. The Order requires that work undertaken in Managed Isolation and Quarantine Facilities (MIQFs), and by government officials at affected airports and affected ports, be performed only by workers who have been vaccinated.

## Summary

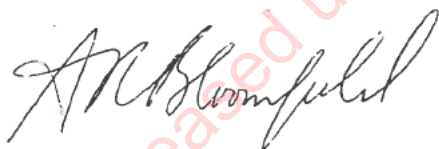
2. On 20 April 2021, you agreed to make the COVID-19 Public Health Response (Vaccination) Order 2021 (the Order) requiring that work at certain places be carried out by affected persons who are vaccinated. The Order requires that work undertaken in Managed Isolation and Quarantine Facilities (MIQFs), and by government officials at affected airports and affected ports, be performed only by workers who have been vaccinated [Ministry of Business, Innovation and Employment (MBIE) paper 2021-3276 refers].
3. You undertook Ministerial consultation, and this was completed on 27 April 2021, with no amendments requested.
4. The Ministry of Health (the Ministry) considers there is a public health rationale for requiring that specified high-risk roles only be undertaken by vaccinated people, in response to the current pandemic. This is due to the risk that these individuals may be exposed to, and infected by, COVID-19 during their work. Vaccines provide another layer of individual protection and, in doing so, may also be effective in preventing transmission in the community.
5. These measures engage rights protected by the New Zealand Bill of Rights Act (NZBORA). Limits on NZBORA rights can be justified if the measure serves an important and significant objective, and there is a rational and proportionate connection between that objective and the measure. S9(2)(h)  
S9(2)(h)
6. We recommend that you sign the attached Order on 28 April 2021 (today) so that it can be gazetted by 5:00pm. This will ensure that the Order enters into force at 11:59pm on 30 April 2021.



## Recommendations

We recommend you:

- a) **Note** that officials advise the COVID-19 Public Health Response (Vaccinations) Order 2021 is in line with the purposes of the COVID-19 Public Health Response Act 2020, to prevent, and limit the risk of, the outbreak or spread of COVID-19. **Noted**
- b) **Note** that the Ministry considers there is a public health rationale for requiring specified high-risk roles be performed by vaccinated individuals only, in response to the current pandemic. This is because there is a risk that these individuals may be exposed to, and infected by, COVID-19 during their work. Vaccines provide another layer of individual protection and, in doing so, may also be effective in preventing transmission in the community. **Noted**
- c) **Note** that you must be satisfied that the Order does not limit, or is a justified limit, on the rights and freedoms in the New Zealand Bill of Rights Act 1990, as part of issuing the Order. **Noted**
- d) **Note** that these measures engage rights protected by the New Zealand Bill of Rights Act 1990 (NZBORA). **Noted**
- f) **Note** that further advice will be provided from the Border Executive Board agencies on the recommended approach to requiring high-risk work performed by other workforces at the border that can only be done by a vaccinated worker, including any proposed exemptions and other issues for Ministers to consider. **Noted**
- g) **Note** that following Ministerial consultation, the COVID-19 Public Health Response (Vaccinations) Order 2021 has been finalised for your approval. **Noted**
- h) **Agree** to sign the attached COVID-19 Public Health Response (Vaccinations) Order 2021 on 28 April 2021. **Yes/No**



Dr Ashley Bloomfield  
**Director-General of Health**  
 Date: 28 April 2021



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

AYESHA VERRILL  
 Assoc MIN OF HEALTH  
 28/4/21

# COVID-19 Public Health Response (Vaccinations) Order 2021 for signature

## Background

1. On 20 April 2021, you agreed to make the COVID-19 Public Health Response (Vaccination) Order 2021 that requires work at certain places to be carried out by affected persons who are vaccinated. The Order requires that work undertaken in Managed Isolation and Quarantine Facilities (MIQFs), and by government officials at affected airports and affected ports, be performed only by workers who have been vaccinated [MBIE paper 2021-3276 refers].

## Contents of the Vaccinations Order

2. The Order makes it mandatory for work at certain places to be carried out by affected persons who are vaccinated. It includes provisions on:
  - a. timings for when border workers are required to be fully vaccinated in order to carry out specified work
  - b. duties of persons conducting a business or undertaking (PCBUs) and employees in relation to vaccinations, including that a breach of any obligations will be an infringement offence
  - c. limited exceptions to the vaccination requirement, including in the case of necessary, unanticipated, time-critical work, and in order to protect a person's life, health or safety in an emergency
  - d. information sharing aimed at supporting effective implementation of the draft Order and the COVID-19 Immunisation Programme, by providing the government and employers/PCBUs a mechanism allowing them to know who has and has not been vaccinated, by:
    - i. requiring the relevant PCBU to request information from the Ministry of Health on the vaccination status of individuals that the PCBU has determined must be vaccinated to perform high risk work at the border
    - ii. requiring the Ministry of Health to provide an individual's relevant COVID-19 vaccination records to PCBUs, as requested
    - iii. requiring individuals who wish to perform work covered by the Order to allow the relevant PCBU to access any records that the Ministry of Health has regarding their COVID-19 vaccination status.

## Changes to the draft Order

3. Since Ministerial consultation, there have been amendments made to the draft Order based on further agency consultation. This includes:
  - a. In relation to Clause 11 "Duties regarding vaccination status", clarifying the roles and responsibilities of different stakeholders, including:

- i. that it is the PCBU, not the Ministry of Health, who determines who needs to be vaccinated in order to perform work at an MIQF, affected port, or affected airport
  - ii. that the Ministry of Health is responsible for checking the vaccination status of the individual, and reporting it back to the requesting PCBU
  - iii. adding a requirement that PCBUs must advise the Ministry of Health if an individual is no longer subject to the Order
4. These amendments do not change the substantive policy intent of the Order previously agreed [MBIE paper 2021-3276 refers].

### Process for making a section 11 Order

5. Under the COVID-19 Act, an Order may be made if either:
  - a. a state of emergency has been declared (under the Civil Defence Emergency Management Act 2002);
  - b. an Epidemic Notice is in force (under the Epidemic Preparedness Act 2006); or
  - c. it has been authorised by the Prime Minister.
6. There is currently an Epidemic Notice in place, which allows Orders to be made under section 11 of the COVID-19 Act.
7. As the Minister for COVID-19 Response, you may make Orders under section 11 of the COVID-19 Public Health Response Act 2020 (the Act).
8. To make an Order under section 11 you must:
  - a. have received advice from the Director-General about:
    - i. the risks of the outbreak or spread of COVID-19; and
    - ii. the nature and extent of measures that are appropriate to address those risks; and
  - b. be satisfied that the proposed Order does not limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990 (NZBORA); and
  - c. consult with the Prime Minister, the Minister of Justice, Minister of Health, and any other Ministers you think necessary; and
  - d. be satisfied that this Order is appropriate to achieve the purposes of the Act.
9. My advice about the risks of the outbreak or spread of COVID-19 and the nature and extent of measures that are appropriate to manage those risks is set out below.

### Public health rationale

10. You have previously been provided with detailed public health rationale for the proposed draft Order [MBIE paper 2021-3276 refers].
11. The Ministry advises that there is a public health rationale for requiring specified high-risk roles only be undertaken by vaccinated individuals, in response to the current pandemic. This is due to the risk that these individuals may be exposed to, and infected by, COVID-19 during their work.

12. Evidence of the efficacy of vaccines in preventing person-to-person transmission is still evolving. However, current evidence suggests that the vaccine is likely to be effective in preventing transmission. Real-world evidence suggests that people vaccinated with the Pfizer-BioNTech COVID-19 vaccine who develop COVID-19 have a four-fold lower viral load than unvaccinated people. This observation may indicate reduced transmissibility, as viral load and symptomatic infection has been identified as a key driver of transmission.<sup>1</sup>
13. Vaccines offer a high degree of protection for individuals who are vaccinated, alongside a range of other public health measures. A worker who has been vaccinated will have a very high likelihood that they will be protected from serious illness or death and are more likely to be asymptomatic if infected.
14. Therefore, while vaccination does not prevent all possible episodes of transmission, vaccination has a clinically relevant impact on reducing the risk of transmission. The risk of COVID-19 infection in New Zealand is currently highest amongst those in high-risk roles at the border. Ensuring that such workers are vaccinated will therefore substantially protect the wider community.

### **New Zealand Bill of Rights Act 1990**

15. Section 9(ba) of the COVID-19 Public Health Response Act 2020 explicitly requires that orders made under section 11 of the Act be made consistently with the New Zealand Bill of Rights Act (NZBORA). If an order limits a right or freedom affirmed in that Act, all or part of the order may be invalid unless the limitation can be demonstrably justified in a free and democratic society (section 5).
16. The Order raises issues of consistency with the right to refuse medical treatment (s11 of the Bill of Rights Act) and right to be free from discrimination on the grounds of disability, sex (pregnancy) or religious beliefs (s19 of NZBORA).

### **Finely balanced issue**

17. To be satisfied that the limits on these rights are justified, there needs to be a robust public health rationale for requiring that high-risk work be performed only by workers who have been vaccinated. The public health rationale concerns the efficacy of vaccines in preventing transmission. Although evolving, the evidence suggests vaccines are likely to be effective in preventing wider transmission.
18. Ministers must also be satisfied that this public health benefit cannot be realised without introducing this proposal and that introducing the requirement is proportionate to the objective.

S9(2)(h)

<sup>1</sup> <https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/fully-vaccinated-people.html>

S9(2)(h)

## Equity

24. As discussed above, there is potential for the Order to discriminate against workers on the grounds of sex, disability or religion. We are also aware that many of the affected workers are in low paying jobs and are carried out by ethnic minorities and women, who would potentially be more greatly impacted.
25. However, we also know from historical examples that Māori and Pacific peoples are likely to be disproportionately affected by a widespread epidemic. Therefore, there is also an equity imperative to do everything possible, within the requirement that that Minister must be satisfied that there is no limitations on rights or that any limitation on rights is justified, to minimise the potential risk to the community from COVID-19.
26. Given that the vaccination is available to all groups, we do not consider the equity concerns above to be sufficient to prohibit taking this action.

## Implementation

27. The Border Worker Testing Register (BWTR), which became mandatory on 27 April 2021, is the most comprehensive database of the border and MIQF workforce. The Order will allow the Ministry to pre-populate data from the BWTR with the COVID-19 Immunisation Register to proactively identify who should be vaccinated.
28. The Order will also authorise the sharing of the vaccination status of workers (subject to the Order) with their PCUBs/employers. This will provide PCUBs/employers with an accurate record of the vaccination status of their workforce and assist them to manage their obligations under the draft Order in a more efficient way.
29. The implementation of the Order is dependent on PCBU's being able to access information on the COVID-19 vaccination status of their employees, as appropriate. The Ministry is developing an IT solution that will support the automated generation of this information,

on request. We anticipate this being operational from 11 May 2021. In the interim, the Ministry will support the implementation of the Order through a manual process. This means that there is likely to be a transition period, during which some PCBUs will not have immediate access to information on the vaccination status of their affected employees. While this may technically be in breach of the Order, there would need to be evidence of a breach for that to be enforced.

30. We will work with PCBUs to try and manage these requests for information so that information flows can work as effectively as possible in the circumstances. The key difficulty during this time is that we are still transitioning some PCBUs onto the BWTR. Until that is complete, it is not possible to automate the information sharing about vaccination status.
31. While consideration was given to making provision for this transition period in the Order, on the advice of the Ministry's legal team, we have determined that it is more effective to work alongside PCBUs to ensure that they operate in a manner consistent with the intent of the Order, and we support and enable PCBUs to meet their obligations under the Order, as soon as possible, to meet the Government's objectives.
32. MBIE will lead work on the development of the operational guidance to support the Order when it comes into effect. This will include updating guidance on employment.govt.nz; and working with the Public Service Commission and the Border Executive Board Chief Executives to ensure that appropriate guidance is provided to public sector employers.
33. We will update operational guidance (including the immunisation sequencing framework) to ensure that relevant provision is made for people required to be vaccinated under the Order.

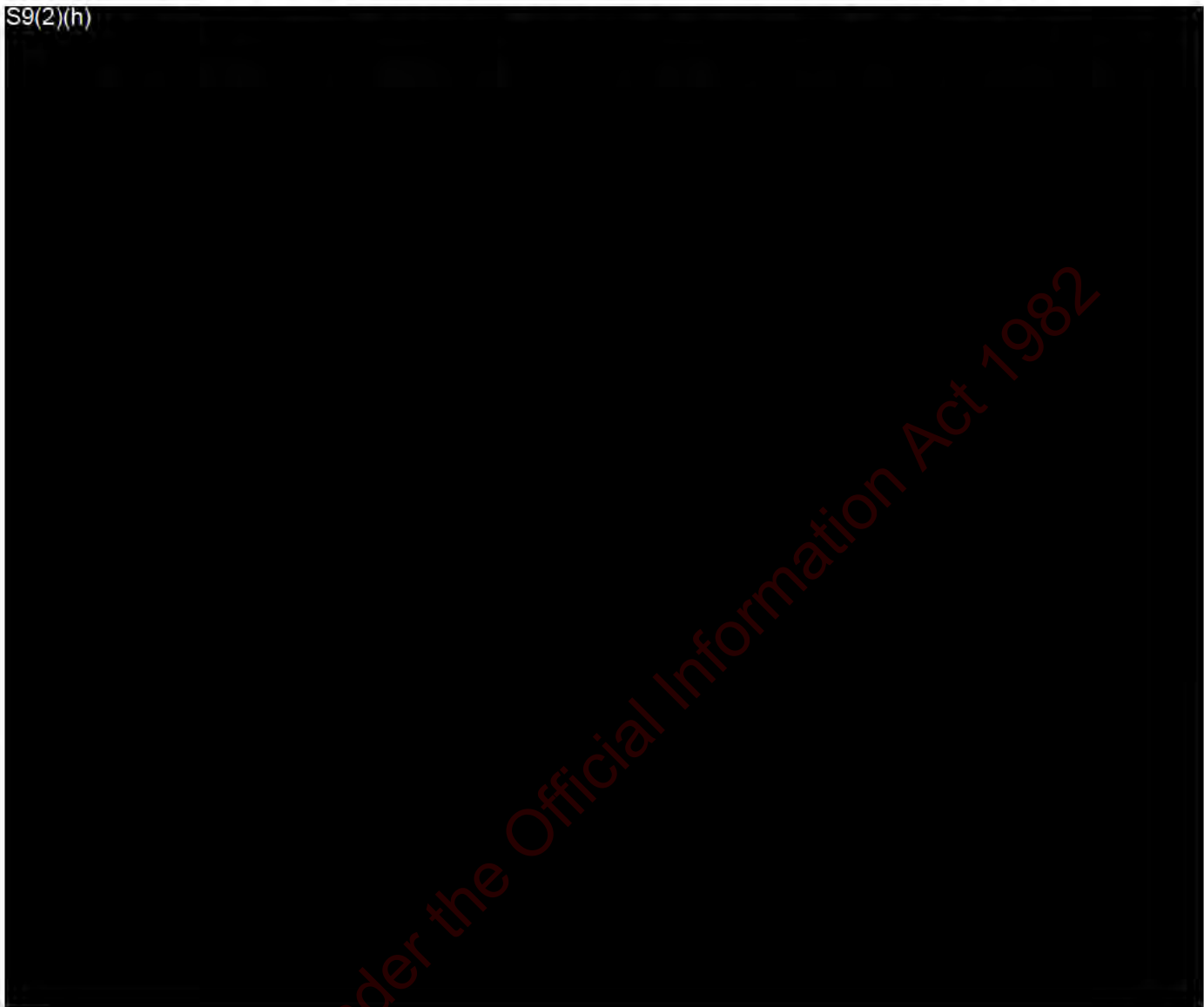
### **Next steps**

34. Further advice will be provided from the Border Executive Board agencies on the recommended approach to requiring specified high-risk work performed by other workforces operating at the border that can only be done by a vaccinated worker, including any proposed exemptions and other issues for Ministers to consider, such as the scope of work and workers impacted at affected airports and affected ports.
35. Following this further advice, an Amendment to the Order could be made to bring additional groups into the Order.
36. We recommend that you sign the attached Order on 28 April 2021 (today) so that it can be gazetted by 5:00pm. This will ensure that the Order enters into force at 11:59pm on 30 April 2021.

**ENDS.**

**Appendix 2: Summary of Crown Law Office advice – Legally Privileged**

S9(2)(h)



Released under the Official Information Act 1982

# Briefing

## Final policy decisions required to draft the amendments to the COVID-19 Public Health Response (Vaccinations) Order

**Date due to MO:** 4 June 2021 **Action required by:** 8 June 2021

**Security level:** IN CONFIDENCE **Health Report number:** 20211235

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

**Copy to:** Rt Hon Jacinda Ardern, Prime Minister  
 Hon Andrew Little, Minister of Health  
 Hon Dr Ayesha Verrall, Associate Minister of Health  
 Hon Peeni Henare, Associate Minister of Health  
 Hon Aupito William Sio, Associate Minister of Health  
 Hon Michael Wood, Minister of Transport and Minister for Workplace Relations & Safety

### Contact for telephone discussion

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

### Minister's office to complete:

- Approved
  Decline
  Noted
- 
- Needs change
  Seen
  Overtaken by events
- See Minister's Notes
  Withdrawn

Comment:



# Final policy decisions required to draft the amendments to the COVID-19 Public Health Response (Vaccinations) Order

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**Security level:** IN CONFIDENCE      **Date:** 4 June 2021

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

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## Purpose of report

1. This report provides you with advice on the Vaccinations Amendment Order (the Amended Order), including further opportunities to clarify the policy intent and to provide greater certainty to employers (Persons Conducting Businesses or Undertakings, or PCBUs) and affected workers.

## Executive summary

2. The COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order) came into force on 1 May 2021 and requires that specified work at the Border only be performed by workers who have been vaccinated.
3. The Order currently applies to:
  - a. all work undertaken in the context of Managed Isolation and Quarantine (MIQ) facilities (including transportation to and from MIQ facilities), and
  - b. work undertaken by government officials in affected workplaces (airports and aircraft, ports and ships).
4. Implementation of the Order requires employers (PCBUs) and their workers to anticipate whether they will undertake work which will require the worker to be vaccinated. This is different to the COVID-19 Public Health Response (Required Testing) Order 2020 (RTO), which only requires a person to be tested after they have been exposed to the relevant public health risk.
5. Ministers have recently made decisions [OC210396 refers] to:
  - a. extend the scope of the Order to cover additional work performed at the Border, including workers that handle items removed from a MIQF, Managed Isolation Facility (MIF) or affected aircraft or ship; and
  - b. create a public health exception so that people who have no interaction with international travellers or crew will not be subject to the requirement to be vaccinated.
6. Agencies (the Ministry of Health, Ministry of Transport, the Ministry for Business Innovation and Employment and New Zealand Customs) alongside the Crown Law Office

(CLO) have worked together to give practical effect to Government's policy intent. In doing so, we have identified some unexpected issues.

7. It is necessary to clarify the policy intent to ensure that amendments to the Order align and are lawful, and so employers and affected workers (particularly people handling affected items) understand their vaccination obligations. Appendix One provides an illustration of the current scope of the Order, impact of the Amended Order and options under consideration. Appendix Two provides CLO advice on matters.
8. We propose two main options in relation to workers who handle affected items to clarify the policy intent and provide greater certainty to employers and affected workers. Option Two is proposed as the recommended option, which would add a requirement that workers who 'handle affected items' must be limited to people who:
  - a. are 'routinely engaged (eg specifically contracted) to provide services in relation to a MIQF, MIF, affected aircraft or affected ship'; and
  - b. 'have contact with' persons who belong to different groups in the Amended Order (to align with definitions in the RTO).
9. This recommendation takes into consideration key policy, operational and legal risks. A summary of options analysed by agencies is provided in the table at Appendix Three.
10. We propose that workers who handle affected items is the only group of workers eligible to access the public health exception. The approach will ensure policy consistency between the Order and Amended Order and reduce legal risks.
11. We also propose you include an exemption for workers who handle affected items and cannot be vaccinated for health-related reasons. This proposal recognises that these workers are likely to have a lower risk of exposure to COVID-19 and that certain health conditions (eg anaphylactic reactions) may warrant exclusion from the requirement to be vaccinated.
12. The Ministry of Health will provide you with a draft Amended Order for Ministerial consultation within ten working days of receiving your decisions. The Amended Order is proposed to come into force seven weeks from being signed (for wider government workforces); and 12 weeks from being signed for other groups. We seek your permission to begin signalling the impact of the amendments to key stakeholders.

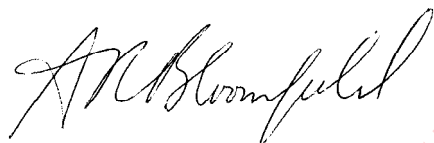
## Recommendations

We recommend you:

- a) **Note** that you made a series of decisions on amendments to the COVID-19 Public Health Response (Vaccinations) Order 2021 through a report submitted by the Ministry of Transport on 12 May 2021 [OC210396 refers] ✓
- b) **Note** that your decisions to include the following groups are sufficiently specific to provide certainty to employers and affected workers:
  1. other government border workers (Group A) undertaking specified work at affected airports, ports or ships ✓
  2. New Zealand domiciled aircrew (Group B) involved in operating international flights (excluding those involved only in quarantine-free travel) ✓

3. all other border workers (Group C) covered by 7 and 14-day testing requirements (under the Required Testing Order) ✓
- c) **Note** that people currently subject to the Required Testing Order (a subset across all groups) are well positioned to meet their obligations under an amendment to the Vaccinations Order because the employer (eg PCBU), the Ministry of Health and the individual are likely to understand that the obligation exists ✓
- d) **Note** we have identified issues related to the lack of specificity and certainty about the intended breadth of coverage for the Order as applied to workers who 'handle affected items' (Group D), which could undermine the policy intent and potentially result in the Amendment Order being deemed ultra vires ✓
- e) **Confirm** that the overarching policy intent for the Amendment Order is to capture workers across all groups whose roles will reasonably be anticipated to include activities which involve a risk of exposure to COVID-19  Yes  No
- f) **Confirm** that the policy intent of the inclusion of the 'people who handle affected items groups' is to EITHER:
- i. Include only people who are 'routinely engaged to provide services for a MIQF, MIF, affected aircraft or affected ship'  Yes  No
- OR**
- ii. Include people who are 'routinely engaged to provide services in relation to a MIQF, MIF, affected aircraft or affected ship and 'have contact with' persons who belong to different groups in the Vaccination Order (**recommended**)  Yes  No
- (g) **Confirm** that the Amendment Order include a public health exception to address situations where it is clear that an individual's specific role does not involve any form of interaction with, or close to, international travellers or crew, and that it applies to EITHER:
- i. all groups under the Order (potentially undermining policy intent with the existing Order)  Yes  No
- OR**
- ii. the new groups to be added through the Amended Order, being wider government, and private sector workforces at the Border and the workers who handle affected items group (meaning that workers at the Border with a similar risk profile have different opportunities to apply for an exception)  Yes  No
- OR**

- iii. only the workers who handle affected items group (meaning that workers like stevedores would not be able to access the exception) **(recommended)**  Yes/No
- (h) **Agree** that for workers who handle affected items the Amendment Order include an exemption to the requirement to be vaccinated in circumstances where a person has a particular physical or other need which a suitably qualified health professional determines would make it inappropriate for the person to be vaccinated  Yes/No
- (i) **Note** that the Minister for COVID-19 Response must consult with the Prime Minister, Minister of Justice and the Minister of Health prior to making the Amendment Order
- (j) **Agree** to forward a copy of this briefing to COVID-19 Vaccine Ministers, Border Ministers, and the Attorney-General  Yes/No
- (k) **Note** that officials will provide you with a draft amendment Order for Ministerial consultation within ten working days of receiving your decisions
- (l) **Confirm** the amendment Order is proposed to come into force seven weeks from being signed (for wider government workforces); and 12 weeks from being signed for other groups  Yes/No
- (m) **Permit** the interagency engagement group to communicate the high-level scope and timing of the proposed amended Order with key stakeholders.  Yes/No



Dr Ashley Bloomfield  
**Te Tumu Whakarae mō te Hauora**  
**Director-General of Health**

Date: 4 June 2021



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

Date: 9/6/2021

# Final policy decisions required to draft the amendments to the COVID-19 Public Health Response (Vaccinations) Order

## Purpose

1. This paper seeks your decisions on a final set of policy issues that are required to inform the drafting of amendments to the COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order).
2. In particular, we seek to clarify the policy intent for the Amended Order as it applies to 'workers who handle affected items' and the intended application of exemptions and exceptions to the Order. We have identified a need to better define this group of workers to:
  - a. provide greater certainty to employers (eg PCBUs) and affected workers about their vaccination obligations
  - b. reduce the potential for the provision to be interpreted too broadly and significantly impact on the timeframes for rollout of the COVID-19 vaccine
  - c. ensure the Order fulfils requirements under the Bill of Rights Act 1990 (BORA).

## Background

3. The Order came into force on 1 May 2021, requiring that specified work at the Border only be performed by workers who have been vaccinated.
4. The Order currently applies to:
  - a. all work undertaken in the context of Managed Isolation and Quarantine (MIQ) facilities (including transportation to and from MIQ facilities), and
  - b. work undertaken by government officials in affected workplaces (airports and aircraft, ports and ships).
5. Ministers have recently made decisions to extend the scope of the Order to cover additional work performed at the Border and to include workers that regularly handle items removed from a MIQF, MIF, aircraft or ship [OC210396 refers].
6. We are working with the Parliamentary Counsel Office (PCO) to draft the Amended Order to give effect to Ministers' decisions. As part of this process, and as a result of our evolving understanding of the practical implications of the Amended Order, we have identified several key issues that need to be addressed to ensure that it is fit for purpose.
7. The lack of alignment between the retrospective nature of the RTO ('who has *been* exposed to COVID-19') and the anticipatory nature ('who is *likely to be* exposed to COVID-19') of the Order has notably broadened the class of workers that must be vaccinated, which has policy, operational and legal implications.
8. However, the primary concern is the need to clarify the intended scope of policy decisions made about workers who 'handle affected items' and to ensure that the

Amended Order provides sufficient certainty to PCBUs and others subject to it, while fulfilling the policy intent of Government.

## Extension of the Order to a broader group of workers

### Ministers made decisions on the scope of the amended Order

9. Ministers received advice on 14 May 2021 and agreed to extend the scope of the Order to incorporate:
  - a. other government border workers (Group A) undertaking specified work at affected airports, ports or ships
  - b. New Zealand domiciled aircrew (Group B) involved in operating international flights (excluding those involved only in quarantine-free travel or QFT)
  - c. all other border workers (Group C) covered by 7 and 14-day testing requirements (under the Required Testing Order)
  - d. all persons who handle items (Group D) removed from managed isolation or quarantine facilities (within 72 hours of removal from that facility), or removed from an affected aircraft (within 24 hours of removal from that aircraft), or from an affected ship (within 72 hours of removal from that facility) – regardless of whether they are subject to a testing order [OC210396 refers].
10. Ministers also agreed to include public health exception to address situations where it is clear that an individual's specific role does not (or would not) involve any form of interaction with, or close to, international travellers or crew.
11. Agencies (the Ministry of Health, Ministry of Transport, the Ministry for Business Innovation and Employment and New Zealand Customs) alongside the Crown Law Office (CLO) have worked together to give practical effect to Government's policy intent. In doing so, we have identified some unexpected issues.
12. Groups A and B are clearly identifiable and, as with the current Order, direct links are made to a place of work. As reported to Ministers on 14 May, the majority of government workers and aircrew in these positions are either already vaccinated or will be shortly<sup>1</sup>.
13. Group C includes a range of workforces who have varying rates of vaccination coverage. However, our analysis suggests that workforces currently subject to the RTO are well positioned to meet their obligations under an amendment to the Vaccinations Order because the employer (eg PCBU), the Ministry of Health and the worker will likely to understand obligations.
14. Group D appears to capture a very large group of people. However, when read in conjunction with the public health exception set out at paragraph [10] above it appears that a large group would be initially within scope under Group D, but would then be removed through the application of the public health exception.

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<sup>1</sup> The Ministry of Transport has previously advised that the Aviation and Security Service has a small but significant number of staff that have declined vaccination for non-medical reasons.

15. Appendix One illustrates the current scope of the Order and the impact of the Amended Order.

**It is likely that some workers handling affected items will be uncertain about their vaccination obligations under the amended Order**

16. Ongoing discussions with CLO have highlighted issues in relation to the lack of specificity about the intended breadth of coverage of the Order, particularly as applied to workers who handle affected items (with the potential unintended consequence of broadening the policy intent).
17. To address the overall broadening of the policy intent, we propose clarifying that the policy intent for the Amended Order is to capture workers across all groups whose roles will reasonably be anticipated to include activities which involve a risk of exposure to COVID-19.
18. The addition of the public health exception for people who do not interact at all with international crew or overseas travellers seems to contradict the intended scope of the inclusion of workers who handle affected items and would likely render some unintended results. We consider that the combination of these issues contributes to a lack of certainty for employers and affected workers.
19. In considering these issues we have considered the scope of Group D first, then the application of the exception.
20. The sole basis for this group of workers (Group D) being included within the Amended Order is that they 'handle affected items'. The policy intent underpinning the inclusion of this group is to ensure that people who regularly come into contact with fomites<sup>2</sup> should be vaccinated, particularly if there is a risk of exposure to COVID-19. This is broadly supported by public health advice which notes that, while the risk of COVID-19 being transmitted through contact with an affected item is very low, it cannot be eliminated.

**Surface-based transmission from fomite is technically possible but very rare**

21. Evidence continues to emerge about pathways of transmission for the COVID-19 virus. Laboratory studies have identified that SARS-CoV-2 virus can survive on surfaces for many days in suitable environments and therefore are a potential source of infection. Although laboratory evidence suggests that surface or fomite transmission is possible, it appears to be very rare, based on real life studies of transmission events.
22. Investigation of transmission events identify that elements of airborne and surface transmission in addition to close contact transmission could have occurred – it is difficult at times to ascertain the exact source of transmission. However, the case investigations of transmission at the border, where fomite transmission was considered a possibility, indicated that airborne spread may have been the more likely method of transmission in the absence of close contact.

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<sup>2</sup> Objects that are likely to carry an infection (eg COVID-19)

## Targeting workers who handle affected items results in a very broad group being captured by the Order

23. As we have investigated the practical implications of this policy approach, it has become clear that reliance on this single-factor definition will likely result in a very broad group of people being captured by the Order. This lack of specificity within the definition extends the scope of the Order beyond the policy intent and consequently creates a lack of certainty for employers and affected workers. (Box 1 provides an example of the practical application of the approach, as currently expressed).

### BOX 1: Example of application of the 'workers who handle affected items' rule

A fumigator boards a ship and takes their tools and equipment on board. Most of the tools and equipment will be taken off the ship when the fumigator disembarks. The fumigating chemicals will be left on board, but the packaging of these products will be removed for disposal. The packaging goes to a refuse centre for disposal within 72 hours and is handled by a worker at the refuse centre.

The refuse worker is responsible for moving rubbish from one point to another within the refuse centre. Amongst the multitude of rubbish handled is the packaging (or other waste) removed from an affected ship within 72 hours.

In this scenario, the fact that the fumigator boards affected ships as a core part of their employment acts as a 'trigger' that would cause them and/or their employer to consider their vaccination obligations.

However, while the current policy proposal for 'workers who handle affected items' would place an obligation on the refuse worker to be vaccinated – there is no such 'trigger' to alert employers or workers - giving rise to issues of certainty for the employer and employee, particularly since the refuse worker is not required to undergo mandatory testing for COVID-19.

The employee would need to prove that they do not interact with international crew or travellers in the course of their work. This may be difficult to definitively prove for a refuse worker who collects rubbish from the wider community and may come into contact with international crew unknowingly.

## To ensure the amended Order is lawful, we need to be careful to only capture people who are subject to some risk of being infected with COVID-19 in the course of their work

24. s 9(2)(h) [REDACTED]  
[REDACTED] This risk centres on the potential for the Amended Order to inadvertently capture people who are at 'no risk' of exposure to COVID-19 (including any risk that is so remote as to be considered fanciful).
25. We illustrate this risk by expanding upon the example of the refuse worker above. If all refuse workers across a business that handles rubbish from various sources were required to be vaccinated, it would be difficult to demonstrate that there is more than a fanciful risk of exposure to COVID-19 for many of the workers. A series of unlikely or unrealistic events would need to occur for many of them to be exposed to COVID-19.



26. The decoupling of the 'handling of items' from any other marker or 'trigger' also means that, in practice, workers at no risk of exposure to COVID-19 will be captured. In the RTO, the term 'have contact with' provides a proxy for situations that carry a risk of exposure to COVID-19 (eg proximity to infectious persons or spaces), which supports public health advice that transmission events often involve a combination of airborne and surface transmission in addition to close contact with infectious people.
27. s 9(2)(h) [REDACTED]
28. You previously agreed to a public health exception that enabled a person to not be vaccinated where it is clear their specific role does not involve any interaction with, or close proximity to, international travellers or crew [Recommendation 22, OC210396 refers]. However, such an exception would not prevent a large number of dry cleaners or taxi drivers potentially being captured by the Amended Order.
29. A summary of Crown Law advice is provided at Appendix Two.

**It is important that we can vaccinate all those affected by the Amended Order and can monitor compliance**

30. The practical effect of extending the scope of the Order is that the Ministry of Health and DHBs would need to take steps to ensure that this new class of workers were vaccinated (eg the refuse workers described above) and their household contacts.
31. It would be necessary to re-establish vaccination centres for workplaces which have already had border workers vaccinated as part of Group 1 of the COVID-19 Immunisation Programme.
32. Also, we would first draw on the Comirnaty (Pfizer/BioTech) COVID-19 vaccines allocated for the purpose of mandatory vaccinations. However, it is likely we will also have to draw on the supply of vaccines currently being delivered that were previously intended for Groups 3 and 4.
33. It may seem inequitable to require people at low or no risk of exposure to COVID-19 to be vaccinated prior to undertaking work, given Group 3 of the COVID-19 Immunisation Programme includes people who are at risk of getting very sick from COVID-19.

## Options to clarify the policy intent and to provide greater certainty to employers and affected workers

34. From your decisions on the 14 May 2021, Tranche 2 advice [OC210396 refers], we understand that:
- a. you aim to prevent, and limit the risk of, the outbreak or spread of COVID-19 by requiring work at certain places to be carried out by affected persons who are vaccinated
  - b. you would like to use the Amendment Order to require people who regularly 'handle affected items' to be vaccinated; and
  - c. you do not intend for the RTO to serve as a strict limit on who might be subject to the Order.
35. Since the Order covers people who are anticipated to undertake work in the future that would require them to be vaccinated, it captures a larger number of workers (ie any worker who potentially could be exposed to COVID-19) to ensure coverage of any worker that will actually undertake such work. This is particularly the case when the classes of work captured are not strictly linked to Border, MIQF or MIF settings.
36. Therefore, we recommend that consideration is given to defining this group in a different way, to provide greater certainty to PCBUs and workers about their vaccination obligations, reduce the potential for the provision to be interpreted too broadly [REDACTED] s 9(2)(h) [REDACTED]
37. Agencies have worked together to develop solutions to address the identified issues. We have developed two main options, which involve introducing one or more additional descriptors (to the 'handling affected items' requirement as currently defined):
- a. add a requirement that workers who 'handle affected items' must be limited to only people who work for providers who are 'routinely engaged (eg contracted) to provide services for a MIQF, affected aircraft or affected ship'
  - b. **(recommended option)** add a requirement that workers who 'handle affected items' must be limited to people who:
    - i. are 'routinely engaged (eg specifically contracted) to provide services in relation to a MIQF, MIF, affected aircraft or affected ship'; and
    - ii. 'have contact with' persons who belong to different groups in the Order
38. We illustrate the coverage of the group in Appendix One. A summary of the analysis of all options agencies considered is provided in the table at Appendix Three.
39. Consideration was given to attempting to defining the term 'affected item', but it has not been pursued on the basis that it is not feasible to predict the range of potential items, nor does the scientific evidence base support such distinctions to be made.

### We recommend linking the handling of affected items with the routine engagement of services for certain places and contact with people

40. On balance, we recommend you limit the 'handling of affected items' group to include only people who work for PCBUs who are 'routinely engaged to provide services in

relation to a MIQF, MIF, affected aircraft or affected ship' and 'have contact with' persons who belong to groups in the Order. This provides the greatest amount of:

- a. Specificity: to ensure that we do not capture workers who are at no risk of coming into contact with COVID-19 and consequently to fulfil BORA requirements; and
- b. Certainty: to employers and affected workers as to their vaccination obligations.

41. We consider that this approach:

- a. achieves the policy intent while also reducing the risk that people who are at no risk of coming into contact with COVID-19 are captured by the Order
- b. provides a broader scope than the RTO
- c. is consistent with Ministers' previous decision to enable public health exception to address situations where there is no form of interaction with international travellers or crew that would expose the worker to COVID-19
- d. is likely to limit the impact of the Amended Order on the COVID-19 vaccine rollout, as there will be a clearer limitation on the number of different service providers captured by the Order.

42. The Ministry of Health will work with the Ministry of Transport and the Ministry for Business Innovation and Employment to ensure that the service providers who may be affected by the 'people who handle affected items' amendment to the Order understand and can fulfil their obligations.

43. Subject to your agreement, we will work with PCO to ensure that the wording of these provisions is fit for purpose.

## **Other drafting matters to clarify the intent of the Order**

### **The anticipatory nature of the Vaccination Order**

44. s 9(2)(h)



### **We are considering whether it might be appropriate to clarify the policy intent of the term 'interact' through the amended Order**

45. The Order currently sets out that it applies to Government officials who interact with international arriving or transiting passengers or people required to be in managed isolation or quarantine.

46. We are currently considering whether it is appropriate to use this opportunity to clarify that the policy intent underpinning the term 'interact' is to capture work activities that involve a degree of proximity which exposes the worker to a risk of exposure to COVID-19. The interpretation of this term is currently subject to litigation through the Employment Court. We will continue to work with CLO to determine whether the legislative intent will continue to be sufficiently clear once other amendments are made.

**We recommend you clarify the groups of workers under the Order who will be eligible for the public health exception**

47. At present, there are no public health exceptions to the requirement under the Order that all work undertaken at MIQFs or by government officials in affected workplaces (airports and aircraft, ports and ships) is undertaken by people who are vaccinated. This means that people undertaking this work must be vaccinated even if there is no form of interaction with, or close to, international travellers or crew.
48. Ministers have agreed through the Amended Order to a public health exception to address situations where it is clear that an individual's specific role does not involve any form of interaction with, or close to, international travellers or crew [OC210396 refers].
49. We understand that Ministers intend for the exception to apply to all groups of workers within the amended Order (i.e. other government border workers, New Zealand domiciled, non-QFT aircrew, all other border workers and all persons who handle affected items).
50. However, we note that most of these groups face a similar level of exposure risk as the groups already covered in the Order. For example, government officials (eg customs officers) generally will have the same level of risk of exposure to COVID-19 as other border workers (eg airside airline worker), but government officials will not be able to access the exception. There is a potential risk of challenge in relation to differential treatment across groups of workers, especially if there is no clear reason associated with the risk of exposure to COVID-19.
51. To address this risk, you can choose to clarify that the public health exception only applies to the group of workers who handle affected items because this group is less likely to undertake high risk work at the border in comparison to the other groups of workers.
52. In practice, this clarification would mean that no other people undertaking work at the border could access an exception under public health grounds. For example, stevedores would not be eligible to apply for this exception. We note that in certain cases where employers are not able to redeploy workers, this could negatively impact on the workers' employment situation (eg job loss).

**We recommend you include an exemption for workers who handle affected items and cannot be vaccinated for health-related reasons**

53. In the preparation of this advice, it became apparent that workers who handle affected items will be at lower risk of coming into contact with COVID-19 while they work, and that they may have certain health conditions which mean that a health professional does not recommend vaccination (eg anaphylactic reactions).
54. We seek your agreement that the Amended Order include an exemption to the requirement to be vaccinated to be available in such circumstances. The exemption could apply where a person has a particular physical or other need which a suitably qualified health professional determines it would be inappropriate for the person to be vaccinated. We recommend this exemption only applies to the group of workers who

handle affected items. The aim of this exemption would be to further protect the health and safety of these people as they undertake work close to the border.

55. As with the proposal for the public health exception, this approach would mean that no other people undertaking work at the border (eg stevedores) could access an exemption for health-related reasons. Again, we note that the lack of access to an exemption could negatively impact on some workers' employment situation.
56. We do not propose an exemption for people with an ethical or religious objection to vaccination. We are satisfied that different treatment of those with a medical reason for objection is justified. This is because those with a medical reason can provide objective proof of their inability to be vaccinated and their health risk can be accommodated without compromising the effectiveness of the Order. We do not consider there is a way that PCBUs or the Ministry of Health could objectively validate whether a person held an objection to vaccination on the basis of religious or ethical belief instead of or in comparison to a mere strongly held opinion.
57. There is further discussion in the summary of CLO's advice at Appendix Two.

## Equity

58. We do not have good information on the demographics of the groups who are likely to be impacted by the proposals in this paper. However, much of the affected work is expected to be low-wage.
59. If workers who are subject to the Order are not vaccinated, their employers may choose to redeploy them; or (following appropriate HR process) may choose to terminate their employment.
60. It is important to note that Māori have traditionally lower vaccination rates than non-Māori. This may mean that Māori are more likely to be negatively impacted by the Amended Order.
61. We anticipate that a high number of people affected by the Order will be migrants or have English as a second language. Therefore, it may be difficult for them to understand what is being asked of them, why and the potential limitations, exceptions or exemptions of the Order. This language barrier could lead to their employment being terminated inappropriately.
62. Some vulnerable workers who handle affected items may benefit from the ability to apply for the public health exception and/or exemption due to health-related reasons.

## Consultation

63. This advice has been prepared in consultation with the CLO, the Department of Prime Minister and Cabinet, Ministries of Justice, Transport and Business, Innovation and Employment, and New Zealand Customs.

## Next steps

64. The Order will come into effect for the first tranche of worker groups from 1 July 2021. The proposed tentative timeline for drafting and introduction of the Amended Order covering the second tranche of workers groups is set out below.

Stage	Indicative timeframe	Owner
2 <sup>nd</sup> Policy decisions signed	Tuesday 8 June	Minister's Office
Drafting instructions to PCO	Thursday 10 June (5 days to draft)	MOH Legal
PCO provide draft Order and undertake agency consultation on draft Order	Wednesday 16 June (3 days)	PCO/MoT/MOH
Advice to Minister's Office to support consultation	Tuesday 22 – Monday 28 June (5 days for consultation) (10 business days from decisions made)	Minister's Office
PCO finalise Order for Ministerial signing	Tuesday 29 June (2 days)	PCO
Final Order and HR sent to the Minister	Monday 5 July (as requested for beginning of week)	MOH Policy
Minister of COVID-19 Response signs Order	Tuesday 6 July	Minister's Office
PCO Gazette Order	Wednesday 7 July by 5pm (2 weeks delayed commencement)	PCO
Commencement	Seven weeks from being signed	

65. To prepare for implementation of tranche two changes, it will be necessary to communicate with key stakeholders about the requirements that will come into effect.
66. We seek your permission for the interagency engagement group to communicate tranche two requirements at a high-level with key stakeholders. This action will enable us to circulate key messages and address any misinformed speculation.

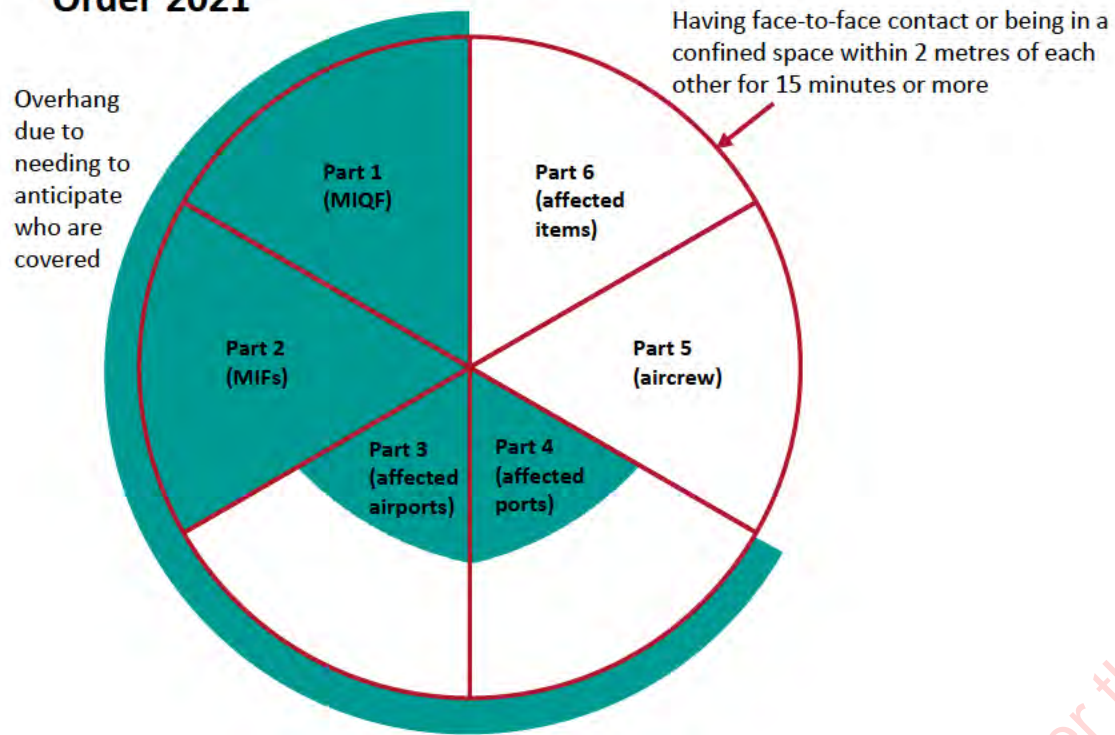
ENDS.

**Appendix One – Illustration of current Vaccination Order, impact of Amended Order and options for consideration**

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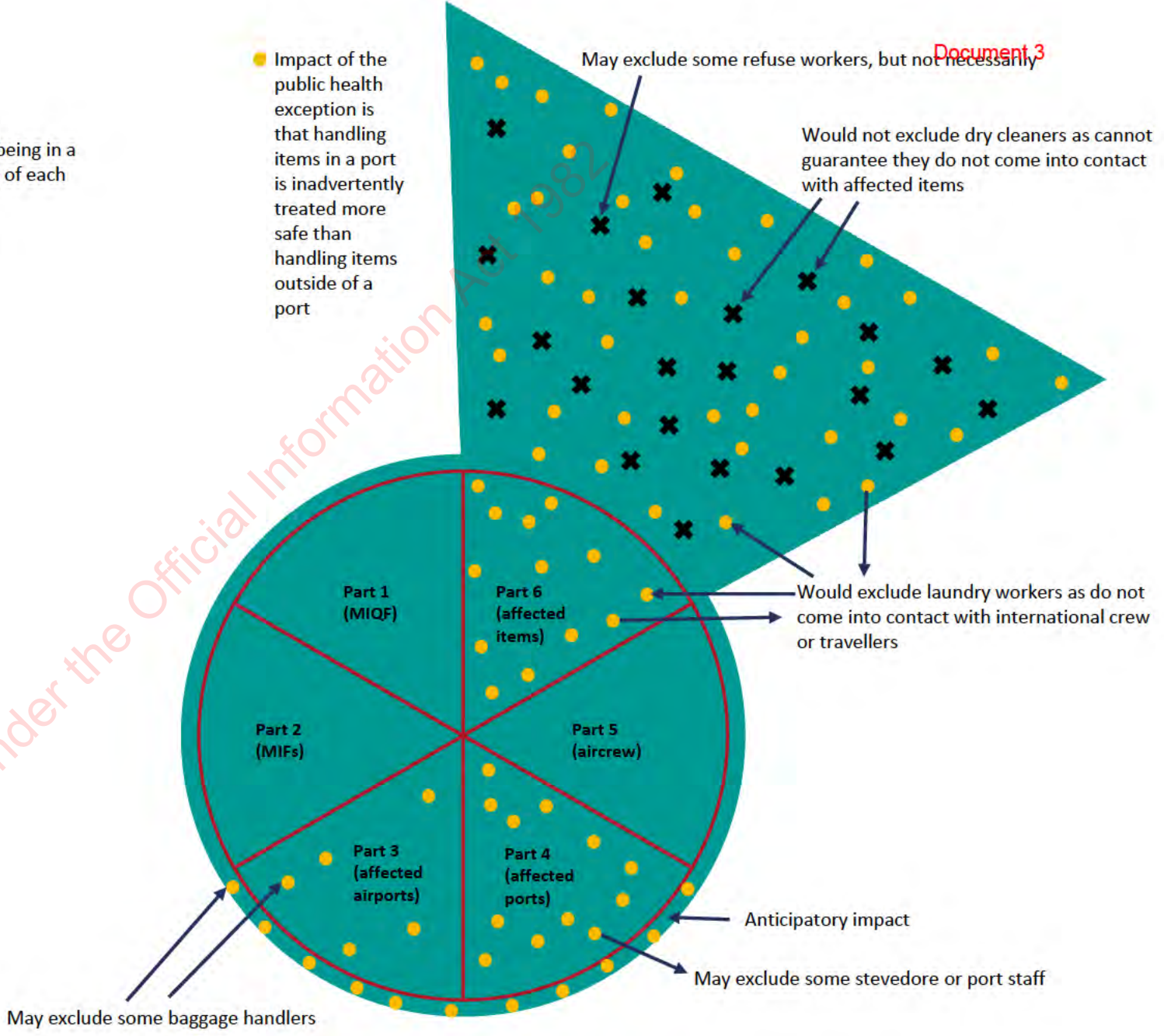
# Appendix One

## COVID-19 Public Health Response (Vaccinations) Order 2021



- Key:**
- Groups under the Border Workforce Testing Register (BWTR) as reflected in Schedule 2
  - Vaccination Order
  - Impact of public health exemption
  - ✕ People subject to the Order who are at no/fanciful risk of contracting COVID-19 in the course of their roles subject to the Order

● Impact of the public health exemption is that handling items in a port is inadvertently treated more safe than handling items outside of a port



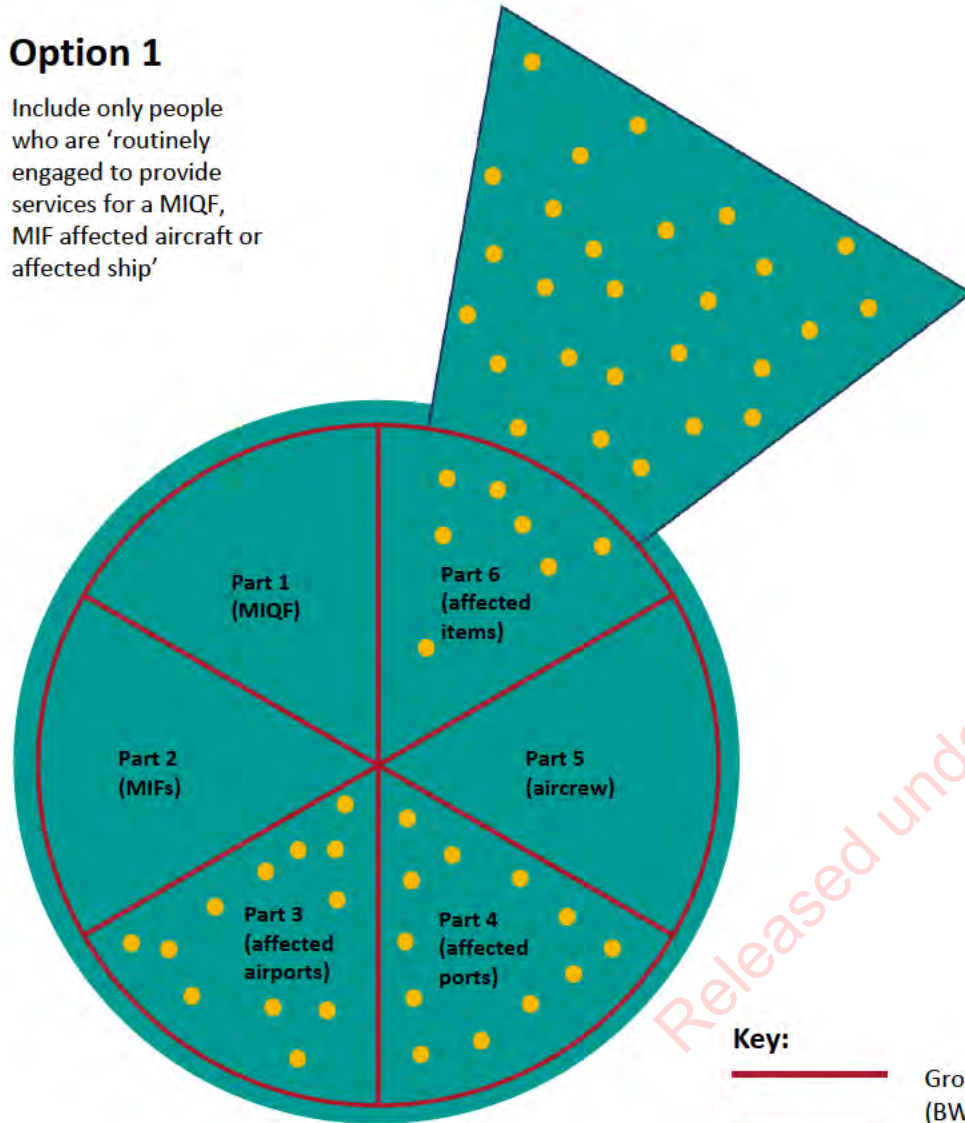
Document 3

Impact of decisions on 14 May advice for Amended Order



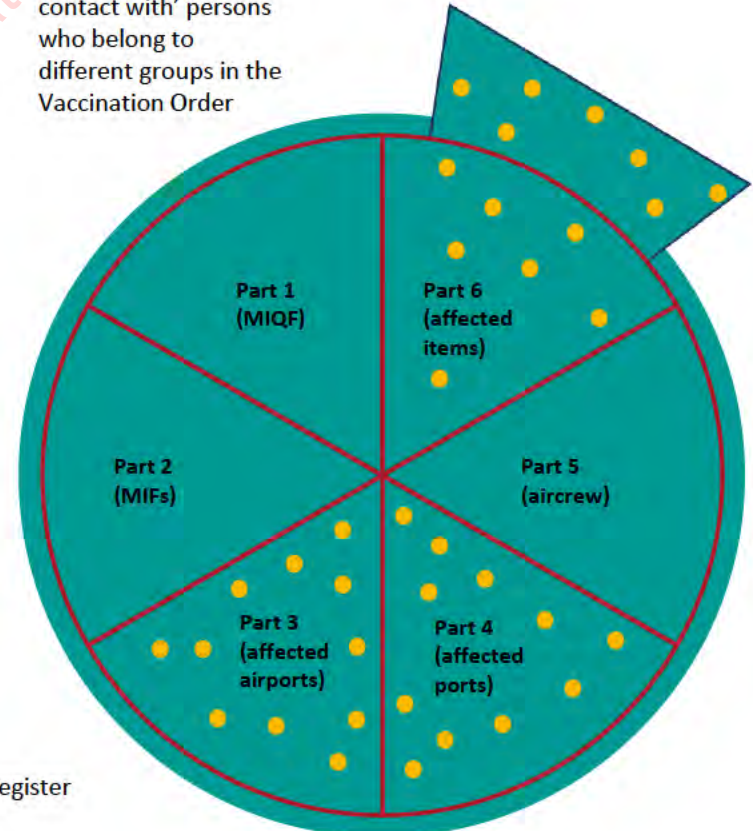
### Option 1

Include only people who are 'routinely engaged to provide services for a MIQF, MIF affected aircraft or affected ship'



### Option 2

Include people who are 'routinely engaged to provide services in relation to a MIQF, MIF affected aircraft or affected ship and 'have contact with' persons who belong to different groups in the Vaccination Order



**Key:**



Groups under the Border Workforce Testing Register (BWTR) as reflected in Schedule 2  
Vaccination Order  
Impact of public health exemption

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## Appendix Two – Summary of Crown Law advice

s 9(2)(h)

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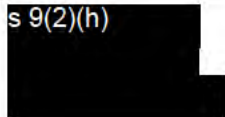
s 9(2)(h)

Released under the Official Information Act 1982

### Appendix Three - Summary of options analysis for the Amendment Order

Options	How this would work	Pros/cons	Assessment (based on CLO and public health considerations)
<p>For group workers who handle affected items:</p> <p><b>(i) Include only people who 'have contact with' persons who belong to groups in the Order</b> (as aligned with the approach for the RTO)</p>	<p>This is expected to capture workers currently subject to the RTO, plus a wider group due to the anticipatory nature of the Vaccination Order.</p> <p>This would likely result in many drycleaners coming within scope of the Order because they could clean aircrew uniforms (or other clothing) and also come into contact with international aircrew.</p> <p>This means that some people could be affected by the Vaccination Order despite never coming into contact with fomites and a person subject to Vaccination Order.</p>	<p>Offers moderately broad precautionary approach to address any risk of transmission.</p> <p>Provides some specificity about who is required to be vaccinated and how this contributes to or is likely to contribute to preventing the risk of an outbreak or spread of COVID-19. There is a risk of capturing workers who are at no risk of exposure to COVID-19.</p> <p>Lacks sufficient certainty about who the workers are that must be vaccinated so they can anticipate who will likely have contact with other people covered by the Order</p> <p>There is the likelihood that government could implement, monitor and regulate to ensure compliance to the vaccination requirement. This could significantly impact on COVID-19 vaccine rollout.</p>	<p>s 9(2)(h)</p> <p>[REDACTED]</p>
<p>For group workers who handle affected items:</p> <p><b>(ii) Include only people who work for a service provider</b></p>	<p>This is expected to capture a narrower subset of workers subject to the Vaccination Order, specifically the group of workers undertaking work that will very regularly or primarily involve the handling of items from affected spaces.</p>	<p>Offers precautionary approach to address any risk of transmission – ties worker to regular contact with affected places.</p>	<p>s 9(2)(h)</p> <p>[REDACTED]</p>

<p><b>who are 'routinely engaged to provide services for a MIQF, MIF, affected aircraft or affected ship'</b></p>	<p>For example, a worker fulfilling obligations under a dedicated PCBU contract that involves laundering of items from an international non-QFT aircraft.</p>	<p>Provides some specificity about who is required to be vaccinated and how this contributes to or is likely to contribute to preventing the risk of an outbreak or spread of COVID-19. It is unlikely to capture workers who are at no risk of exposure to COVID-19.</p> <p>Provides moderate certainty about who the workers are that must be vaccinated, as they are regularly engaged to undertake work connected with affected places.</p> <p>It is likely that government could implement, monitor and regulate to ensure compliance to the vaccination requirement. This could have a notable impact on the COVID-19 vaccine rollout.</p>	
<p>For group workers who handle affected items:</p> <p>(iii) <b>Include people who:</b></p> <ul style="list-style-type: none"> <li>• <b>are 'routinely engaged to provide services in relation to a MIQF, MIF, affected aircraft or affected ship'</b></li> </ul> <p><b>AND</b></p> <ul style="list-style-type: none"> <li>• <b>'have contact with'</b> persons who belong to</li> </ul>	<p>This is expected to capture a narrower subset of workers than is specified for options i and ii, but it will still be broader than the group of workers currently subject to the RTO.</p> <p>It would address the risk that all drycleaners would inadvertently be within scope.</p>	<p>Offers precautionary approach to address any risk of transmission – ties worker to contact with people covered by the Order and with affected places.</p> <p>Provides considerable specificity about who is required to be vaccinated and how this contributes to or is likely to contribute to preventing the risk of an outbreak or spread of COVID-19. It is unlikely to capture people at no risk of exposure to COVID-19.</p>	<p>s 9(2)(h)</p>

<p>different groups in the Order</p>		<p>Provides a significant level of certainty about who the workers are that must be vaccinated:</p> <ul style="list-style-type: none"> <li>• They are regularly engaged to undertake work connected with affected places</li> <li>• They can anticipate who will likely have contact with other people covered by the Order.</li> </ul> <p>It is likely that government could implement, monitor and regulate to ensure compliance to the vaccination requirement. This would have a minimal impact on COVID-19 vaccine rollout.</p>	
<p>For group workers who handle affected items:</p> <p>(iv) <b>Further define other specific aspects of the work activities</b>, such as:</p> <p><b>workplaces/locations</b> where the handling of items takes place</p> <p><b>-classes/groups of employers (eg PCBU)</b></p> <p><b>-nature/type of the work activities (eg laundering, cleaning and disposal of wastes)</b></p>	<p>This is expected to be a much broader group of workers than currently captured by the RTO, which is then somewhat narrowed to address particular aspects of workers' activities of concern or interest. For example, all workers who handle items removed from affected spaces through refuse centres nearby.</p>	<p>Offers moderately broad precautionary approach to address any risk of transmission – ties worker to an 'affected place', employer class/group, and/or work type.</p> <p>Provides some specificity about who is required to be vaccinated and how this contributes to or is likely to contribute to preventing the risk of an outbreak or spread of COVID-19. It is still likely to capture people at no risk of exposure to COVID-19, although it provides greater specificity.</p> <p>Provides some certainty about who the workers are that must be vaccinated with further defined aspects of work.</p>	<p>s 9(2)(h)</p> 

		<p>It is likely government could implement, monitor and regulate to ensure compliance to the vaccination requirement, but developing advice to define specific aspects could be difficult (eg all workplaces). This could moderately to minimally impact on the existing COVID-19 vaccine rollout.</p>	
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# Briefing

## COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 for Ministerial consultation

**Date due to MO:** 24 June 2021      **Action required by:** 30 June 2021

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**Security level:** IN CONFIDENCE      **Health Report number:** 20211133

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

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### Contact for telephone discussion

Name	Position	Telephone
Maree Roberts	Deputy Director-General, System Strategy and Policy	S9(2)(a)
Wendy Illingworth	Group Manager, Public Health System Policy	

### Minister's office to complete:

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

Comment:



# COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 for ministerial consultation

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**Security level:** IN CONFIDENCE      **Date:** 24 June 2021

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

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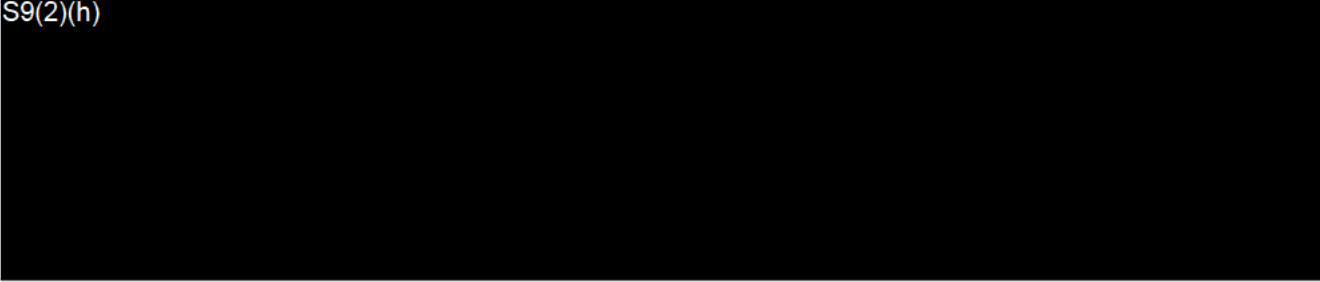
## Purpose of report

1. This report recommends that you consult with the Prime Minister and Ministers of Justice, Health, Transport, and Workplace Relations and Safety, and any other Ministers that you think fit, on the attached draft COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (Amendment Order).
2. The Amendment Order expands the groups of workers required to be vaccinated to include all government workers and private workers who undertake specified work at the border.
3. This report discloses known relevant information and implications.

## Summary

4. The Ministry considers that there is a public health rationale for requiring that specified roles only be undertaken by vaccinated people, in response to the current pandemic. This is due to the risk that these individuals may be exposed to, and infected by, COVID-19 during their work. Vaccines provide another layer of individual protection and, in doing so, may also be effective in preventing transmission in the community.
5. On 17 May 2021, you agreed to amend the COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order) to require additional groups of workers to be vaccinated to work at certain higher-risk workplaces [OC210396 refers].
6. On 9 June 2021, you agreed that the amendment would include workers who are routinely engaged to provide services in relation to managed isolation and quarantine facilities (MIQFs) and (MIFs), affected aircraft or affected ship, and 'have contact with' persons who belong to different groups in the Vaccination Order [HR20211235 refers].

S9(2)(h)



8. The Order will allow the Minister to grant an exemption for specified workers from the vaccination requirement if satisfied that it is necessary to avoid significant negative economic impacts arising from the disruption of the supply chain. To ensure this provision is consistent with the underlying public health rationale for the Order, we recommend this provision does not come into force until 28 days after the commencement of the Amendment Order (8 August 2021).
9. The Border Executive Board (BEB) propose that the Order is reviewed. The review would be to ensure the Order is fit for purpose, given that most of the eligible population in New Zealand would have been offered a COVID-19 vaccine by the end of the year. We recommend that officials provide you advice by the end of the first quarter of next year (eg 21 March 2022), after undertaking a cross-agency review.
10. Following Ministerial consultation, officials and the Parliamentary Counsel Office (PCO) will finalise the Amendment Order and provide you with a final version on Tuesday 6 July 2021 for signing by Wednesday 7 July 2021.
11. The Amendment Order will be gazetted on Thursday 8 July 2021 and will come into effect at 11:59pm Sunday 11 July 2021.
12. This will enable all persons conducting a business or undertaking (PCBU)s to access the vaccination status of their employees from the Border Workforce Testing Register from this date.
13. The requirement for the new groups of workers to have received at least one dose of the vaccine will commence on:
  - a. 11:59pm Thursday 26 August 2021 for government workers not already captured by the Order
  - b. 11:59pm Thursday 30 September 2021 for all other groups brought under the Order.
14. All workers will need to have received two doses of the vaccine within 35 days of the commencement date for their group.

## Recommendations

We recommend you:

- a) **Note** that the Ministry considers there is a public health rationale for requiring specified roles be performed by vaccinated individuals only, in response to the current pandemic. This is because there is a risk that these individuals may be exposed to, and infected by, COVID-19 during their work. Vaccines provide another layer of individual protection and, in doing so, may also be effective in preventing transmission in the community.
- b) **Note** that officials advise that the draft COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 is in line with the purposes of the COVID-19 Public Health Response Act 2020, to prevent and limit the risk of, the outbreak or spread, of COVID-19.
- c) **Note** these measures engage rights protected by the New Zealand Bill of Rights Act 1990 (NZBORA).

- d) **Note** that you must be satisfied that the Order does not limit, or is a justified limit, on the rights and freedoms in the New Zealand Bill of Rights Act 1990, as part of issuing the Order.
- e) **Note** that a distinct public health exception for the group of workers who handle affected items is no longer necessary given the agreed definition of the 'affected items' group which provides sufficient clarity.
- f) **Agree** to consult on the draft COVID-19 Public Health Response (Vaccinations) Amendment Order 2021, which gives effect to the policy previously agreed in OC210341 and HR2021123.  Yes/No
- g) **Agree** to commit to review of the COVID-19 Public Health Response (Vaccinations) Order 2021 by either:
- i) embedding the requirement for a review by the end of the first quarter of next year (eg 31 March 2022) through the Amendment Order; or  Yes/No
- ii) agreeing that officials provide you advice by the end of the first quarter of next year (eg 31 March 2022) after undertaking a cross-agency policy review (**recommended**).  Yes/No
- h) **Agree** that the power for the Minister to grant an economic exemption for specified workers to avoid significant economic impacts arising from the disruption of the supply chain comes into force 28 days after the commencement of the Amendment Order (8 August 2021).  Yes/No



Maree Roberts

**Deputy Director-General**

System Strategy and Policy

Date: 24/06/21



Hon Chris Hipkins

**Minister for COVID-19 Response**

Date: 27/6/2021

# COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 for Ministerial consultation

## Background

1. The COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order) came into force on 1 May 2021. It requires that specified work at the border only be performed by workers who have been vaccinated.
2. The Order currently applies to:
  - a. all work undertaken in the context of managed isolation and quarantine facilities (MIQFs) (MIFs) - including transportation to and from these facilities, and
  - b. work undertaken by certain government officials in affected workplaces (airports and aircraft, ports and ships).
3. On 17 May 2021, you agreed to amend the Order to require additional groups of workers be vaccinated to work at certain higher-risk workplaces [OC210396 refers].
4. On 9 June 2021, you agreed that certain workers who handle “affected items” removed from MIQFs, MIFs, aircraft and ships would be included if those workers were routinely engaged to provide services in relation to a MIQF, MIF, affected aircraft or affected ship, and ‘have contact with’ persons who belong to different groups in the Order [HR20211235].

## Contents of the draft Amendment Order

### The Amendment Order expands the requirement to be vaccinated to additional groups

5. The Amendment Order expands the groups of persons required to be vaccinated to perform certain kinds of work at specified workplaces. Specifically, persons must be vaccinated to perform the following:
  - a. all work at MIQFs and MIFs
  - b. all work in airside area of affected airports, and some other higher risk work at airports
  - c. certain higher risk work at affected ports
  - d. work conducted at accommodation services where specified aircrew members are self-isolating
  - e. work that involves handling affected items removed from ships, aircraft or MIQFs or MIFs, where the worker works for a PCBU routinely engaged to provide services for an aircraft, ship, MIQF or MIF, and ‘has contact with’ persons who belong to different groups in the Order.

## Exemptions

6. A person who handles affected items is not subject to the Order if a suitably qualified health professional determines that it would be inappropriate for that person to be vaccinated.
7. The Order provides the Minister with the power to grant an exemption for specified workers from the vaccination requirement if satisfied that it is necessary to avoid significant negative economic impacts arising from the disruption of the supply chain.
  - a. To ensure this provision is consistent with the underlying public health rationale for the Order, we recommend this provision does not come into force until 28 days after the commencement of the Amendment Order (8 August 2021).
  - b. This will ensure that PCBUs do not apply for the economic exemption before they have had the opportunity to genuinely engage with their obligations under the Amendment Order.
  - c. This proposed commencement date would still allow eight weeks for PCBUs to make their exemption applications and for officials to process them before the commencement of the vaccination obligations.
  - d. We are continuing to develop the operational policy for the economic exemption process. It may be necessary to make adjustments to the drafting of these provisions prior to finalising the Amendment Order to ensure the policy intent of the economic exemption provision is clear.
8. You had also agreed to include a public health exception for the group of workers who handle affected items to address situations where it is clear that an individual's specific role does not have contact with, or is close to, international travellers or crew, (or any other workers covered by the Order). The purpose of this exception was to eliminate any doubt of who is intended to be covered by the requirement to be vaccinated before undertaking work at the border, given the anticipatory nature of the Order.
9. However, as we have drafted the Amendment Order, it has become clear that a distinct public health exception for this group of workers is no longer necessary given the agreed definition of the 'affected items' group which provides sufficiently clarity.

## The Border Executive Board propose the Vaccinations Order 2021 is reviewed

10. You and the Director-General of Health have obligations under the COVID-19 Public Health Response Act 2020 Act (the Act) to review the Order on an ongoing basis. The BEB propose that you commit to a review of the Order. This would ensure that the Order is fit for purpose, especially given that most of the New Zealand population 16 years of age or older, are expected to have been offered a COVID-19 vaccine by the end of the year. If you agree to undertake a review, we suggest that the review occur by the end of the first quarter of next year to give sufficient time for the Order to have an impact. You can either:
  - a. embed the requirement for a review through the Amendment Order, or
  - b. agree that officials provide you advice after undertaking a cross-agency policy review (**recommended**).

11. We recommend that (b) officials provide you advice by the end of the first quarter of next year (eg 31 March 2022), after undertaking a cross-agency policy review. This approach takes into consideration your obligations under the Act and will provide a timely opportunity to consider how the COVID-19 vaccine rollout has impacted on settings. It also has a greater potential to support compliance within the sector, as it does not signal that compliance requirements are time-limited.

### **Process for amending a section 11 Order**

12. Under the Act an Order may be made if either:
- a. a state of emergency has been declared (under the Civil Defence Emergency Management Act 2002);
  - b. an Epidemic Notice is in force (under the Epidemic Preparedness Act 2006); or
  - c. it has been authorised by the Prime Minister.
13. There is currently an Epidemic Notice in place, which allows Orders to be made under section 11 of the Act.
14. As the Minister for COVID-19 Response, you may make Orders under section 11 of the Act.
15. To make or amend an Order under section 11 you must:
- a. have received advice from the Director-General about:
    - i. the risks of the outbreak or spread of COVID-19; and
    - ii. the nature and extent of measures that are appropriate to address those risks; and
  - b. be satisfied that the proposed Amendment Order does not limit or is a justified limit on the rights and freedoms as specified in NZBORA; and
  - c. consult with the Prime Minister, the Minister of Justice, Minister of Health, and any other Ministers you think necessary; and
  - d. be satisfied that this Amendment Order is appropriate to achieve the purposes of the Act.
16. Public health advice about the risks of the outbreak or spread of COVID-19 and the nature and extent of measures that are appropriate to manage those risks was previously provided [HR20210994 refers] and is also set out below.

### **Public health rationale**

17. You have previously been provided with detailed public health rationale for the proposed draft Amendment Order [OC210396 and HR20210994 refers].
18. The Ministry has advised that there is a public health rationale for requiring that specified roles only be undertaken by vaccinated people, in response to the current pandemic. This is because there is a risk that these individuals may be exposed to, and infected by, COVID-19 during their work and may transmit the disease to others. However, this may not be required indefinitely into the future, as information about disease transmission and population immunity may change.

19. A number of international studies have shown that vaccination leads to a significant reduction in the rate of transmission of COVID-19.<sup>1</sup>
20. Vaccines offer a high degree of protection for individuals who are vaccinated, alongside a range of other public health measures. A worker who has been vaccinated will have a very high likelihood that they will be protected from serious illness or death and are more likely to be asymptomatic if infected.
21. Therefore, while vaccination does not prevent all possible episodes of transmission, it has a clinically relevant impact on reducing the risk of transmission. The risk of COVID-19 infection in New Zealand is currently highest amongst those in high-risk roles at the border. Ensuring that such workers are vaccinated will therefore greatly protect the wider community.

### **Border Workers**

22. It is important to note that not all border work carries the same level of public health risk. Factors that influence the risk of being exposed to COVID-19 include the following:
  - a. the number of international travellers (potentially infected people) the border worker may come in contact with (the more travellers, the higher the risk)
  - b. the ability of the border worker to maintain physical distancing from international travellers (the less physical distancing, the higher the risk)
  - c. the length of interactions the border worker may have with international travellers (the longer the interaction, the higher the risk)
  - d. whether the interaction is inside or outside (inside is higher risk).
23. MIQF and MIF workers are likely to be higher-risk when assessed against the above criteria. However, a person that handles affected items, and does not have any contact with international travellers is at lower risk.
24. The risk of exposure for border workers is recognised in the COVID-19 Public Health Public Health Response (Required Testing) Order 2020 (RTO). The RTO focusses on high-risk workers at the border and, even within this group, not all workers are tested to the same frequency. Some border workers are not required to be tested at all because of the low-risk nature of their work.

### **New Zealand Bill of Rights Act 1990**

25. A summary of Crown Law's advice is attached as Annex One.

### **Equity**

26. There is potential for the Amendment Order to discriminate against workers on the grounds of sex, disability and religion. We are also aware that many of the affected workers are in low paying jobs and are carried out by ethnic minorities and women, who would potentially be more impacted.

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<sup>1</sup> [https://www.health.govt.nz/system/files/documents/pages/science\\_updates\\_7\\_may\\_2021.pdf](https://www.health.govt.nz/system/files/documents/pages/science_updates_7_may_2021.pdf)

27. Given that the vaccination is available to all groups, we do not consider the equity concerns above are sufficient to prohibit the requirement that specified high-risk roles only be undertaken by vaccinated people.
28. If workers who are subject to the Order are not vaccinated, their employers may choose to redeploy them; or (following appropriate HR process) may choose to terminate their employment.
29. It is important to note that Māori have traditionally lower vaccination rates than non-Māori. This may mean that Māori are more likely to be negatively impacted by the Amendment Order. However, we also know from historical examples that Māori and Pacific peoples are likely to be disproportionately affected by a widespread epidemic. This means that there is an equity imperative to do everything possible, within the requirement that the Minister must be satisfied that there is no limitations on rights, or that any limitation on rights is justified, to minimise the potential risk to the community from COVID-19.
30. We anticipate that a high number of people affected by the Order will be migrants or have English as a second language. Therefore, it may be difficult for them to understand what is being asked of them, why and the potential limitations, or exemptions of the Order. This language barrier could lead to their employment being terminated inappropriately.
31. Some vulnerable workers who handle affected items may be exempted from the vaccination requirement due to health-related reasons.

## Implementation

32. The Border Worker Testing Register (BWTR) is the most comprehensive database of the border and MIQF and MIF workforce. The Order allows the Ministry to pre-populate data from the BWTR with the COVID-19 Immunisation Register to proactively identify who should be vaccinated.
33. The Order authorises the sharing of vaccination status of workers (subject to the Order) with their PCUBs/employers. This provides PCUBs/employers with an accurate record of the vaccination status of their workforce, and assists them to manage their obligations, under the Order, in a more efficient way.
34. Work is underway to ensure that PCUBs and workers are appropriately supported to meet their obligations under the Amendment Order.
35. The interagency engagement group will communicate the new requirements with key stakeholders. This will enable us to circulate key messages and address any misinformed speculation.

## Next steps

36. As per the Act, you must consult on the proposed Amendment Order with the Prime Minister and the Ministers of Justice and Health. You may also wish to consult with the Minister for Workplace Relations and Safety, Transport, and any other Minister you think fit. Comments from this consultation must be provided to officials by 5pm on Wednesday 30 June 2021, to allow for inclusion into the draft Amendment Order.
37. Following Ministerial consultation, officials and the PCO will finalise the Amendment Order and provide you with a final version on Tuesday 6 July 2021 for signing by Wednesday 7 July 2021.



38. The Amendment Order will be gazetted on Thursday 8 July 2021, and it will come into effect at 11:59pm Sunday 11 July 2021.
39. This will enable all PCBUs to access the vaccination status of their employees from the BWTR from this date.
40. The requirement for the new groups of workers to have received their vaccines are as follows:

<b>Groups</b>	<b>1<sup>st</sup> dose</b>	<b>2<sup>nd</sup> dose</b>
All other government workers	11:59pm 26 August 2021	11:59pm 30 September 2021
All other groups	11:59pm 30 September 2021	11:59pm 4 November 2021

41. There is no change to requirements for workers already subject to the Order.

ENDS

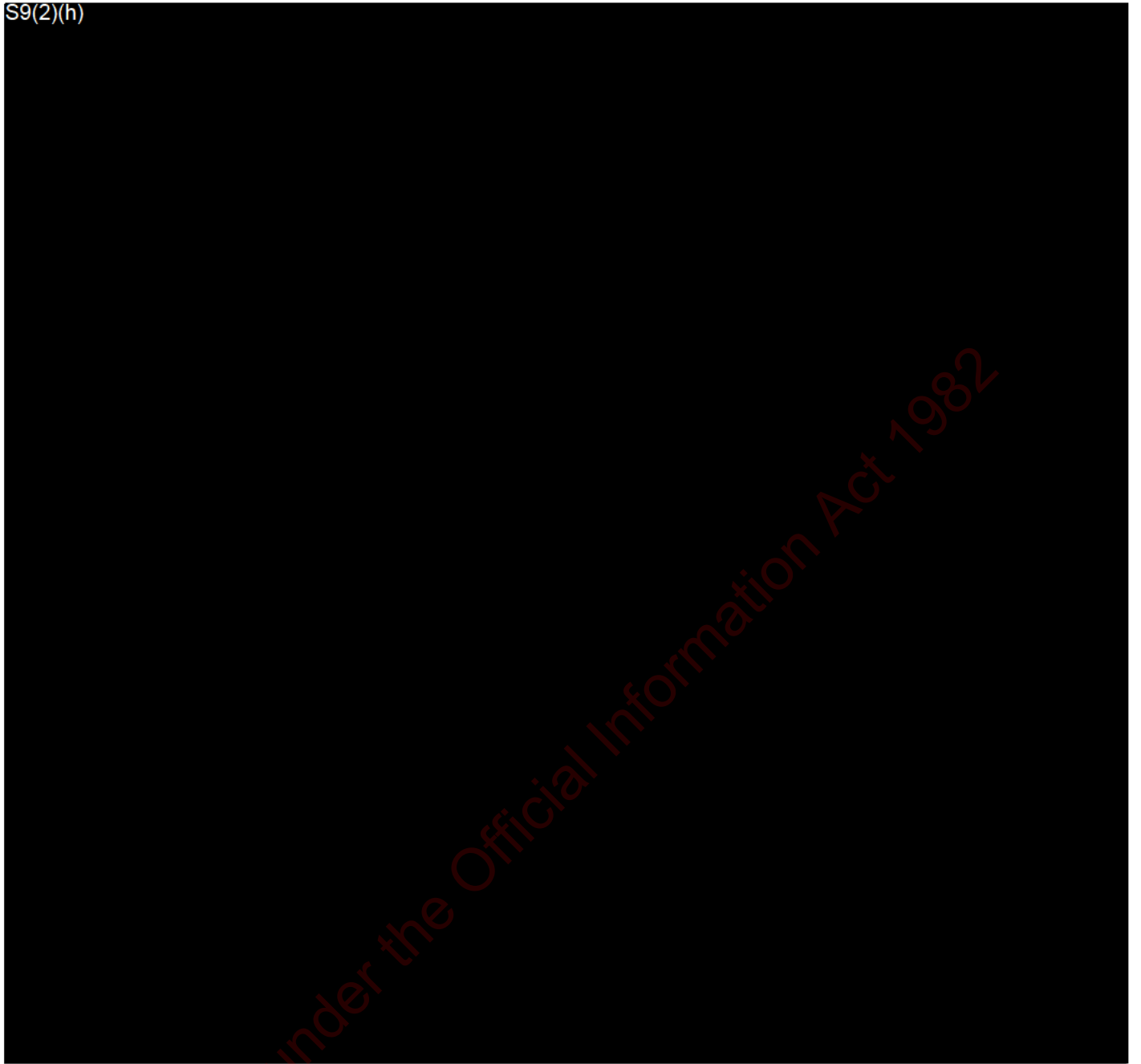
Released under the Official Information Act 1982

Annex 1 – Crown Law advice (Legally Privileged)

S9(2)(h)

Released under the Official Information Act 1982

S9(2)(h)



Released under the Official Information Act 1982

# Briefing

## COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 for signing

**Date due to MO:** 8 July 2021                      **Action required by:** 11 July 2021

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**Security level:** IN CONFIDENCE                      **Health Report number:** 20211520

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

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### Contact for telephone discussion

Name	Position	Telephone
<b>Dr Ashley Bloomfield</b>	Director-General of Health	S9(2)(a)
<b>Steve Waldegrave</b>	Group Manager, COVID-19 Policy Response	

### Minister's office to complete:

- Approved                       Decline                       Noted
- Needs change                       Seen                       Overtaken by events
- See Minister's Notes                       Withdrawn

Comment:

# COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 for signing

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**Security level:** IN CONFIDENCE      **Date:** 8 July 2021

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

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## Purpose of report

1. This report recommends that you sign the attached COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (the Amendment Order). The Amendment Order expands the groups of workers required to be vaccinated to include all government workers and private workers who undertake specified work at the border.
2. This report discloses all known relevant information and implications.

## Summary

3. The Ministry of Health (the Ministry) considers there is a public health rationale for requiring that specified roles only be undertaken by vaccinated people, in response to the current pandemic. This is due to the risk that these individuals may be exposed to, and infected by, COVID-19 during their work. Vaccines provide another layer of individual protection and, in doing so, may also be effective in preventing transmission in the community.
4. On 17 May 2021, you agreed to amend the COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order) to require additional groups of workers to be vaccinated to work at certain higher-risk workplaces [OC210396 refers].

S9(2)(h)

6. You undertook Ministerial consultation, and this was completed on 5 July 2021.
7. We recommend that you sign the attached Amendment Order by 11 July 2021. This will allow the Amendment Order to be gazetted on or before 12 July 2021 to ensure we meet our statutory obligation to provide at least 48 hours' notice between gazetting and the Amendment Order coming into effect.

8. The Amendment Order will then come into effect at 11:59pm on Wednesday 14 July 2021. This will enable persons conducting a business or undertaking (PCBU)s to access the vaccination status of their employees from the Border Workforce Testing Register from this date.
9. The requirement for the new groups of workers to have received at least one dose of the vaccine will commence on:
  - a. 11:59pm Thursday 26 August 2021 for government workers not already captured by the Order
  - b. 11:59pm Thursday 30 September 2021 for all other groups brought under the Order.
10. All workers will need to have received two doses of the vaccine within 35 days of the commencement date for their group.

## Recommendations

We recommend you:

- a) **Note** that the Ministry considers there is a public health rationale for requiring specified roles be performed by vaccinated individuals only, in response to the current pandemic.
- b) **Note** that officials advise that the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 is in line with the purposes of the COVID-19 Public Health Response Act 2020, to prevent and limit the risk of, the outbreak or spread, of COVID-19.
- c) **Note** that these measures engage rights protected by the New Zealand Bill of Rights Act 1990 (NZBORA).
- d) **Note** that you must be satisfied that the Order does not limit, or is a justified limit, on the rights and freedoms in the New Zealand Bill of Rights Act 1990, as part of issuing the Order.
- e) **Note** that following Ministerial consultation, the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 has been finalised for your approval.
- f) **Sign** the attached COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 by 11 July 2021. **Yes/No**



Dr Ashley Bloomfield

**Director-General of Health**

**Te Tumu Whakarae mō te Hauora**

Date: 08/07/2021

Hon Chris Hipkins

**Minister for COVID-19 Response**

Date:

# COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 for signing

## Background

1. The COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order) came into force on 1 May 2021. It requires that specified work at the border only be performed by workers who have been vaccinated.
2. The Order currently applies to:
  - a. all work undertaken in the context of managed isolation and quarantine facilities (MIQFs) (MIFs) - including transportation to and from these facilities, and
  - b. work undertaken by certain government officials in affected workplaces (airports and aircraft, ports and ships).
3. On 17 May 2021, you agreed to amend the Order to require additional groups of workers be vaccinated to work at certain workplaces [OC210396 refers].
4. On 9 June 2021, you agreed that certain workers who handle "affected items" removed from MIQFs, MIFs, aircraft and ships would be included in the Order if those workers routinely provide services in relation to a MIQF, MIF, affected aircraft or affected ship, and 'have contact with' persons who belong to different groups in the Order [HR20211235].

## Contents of the Amendment Order

### The Amendment Order expands the requirement to be vaccinated to additional groups

5. The Amendment Order expands the groups of persons required to be vaccinated to perform certain kinds of work at specified workplaces. The impact of this will be that persons must be vaccinated to perform the following:
  - a. all work at MIQFs and MIFs
  - b. all work in airside areas of affected airports, and some other higher risk work at airports
  - c. certain higher risk work at affected ports
  - d. work conducted at accommodation services where specified aircrew members are self-isolating
  - e. work that involves handling affected items removed from ships, aircraft or MIQFs or MIFs, where the worker works for a PCBU routinely engaged to provide services for an aircraft, ship, MIQF or MIF, and 'has contact with' persons who belong to different groups in the Order.

## Exemptions

6. In addition to the exceptions that are already under the Order, the Amendment Order provides two conditions that allow for an exemption from the vaccination requirement: an exemption under medical grounds; and an exemption if it is necessary to avoid significant negative economic impacts arising from the disruption of the supply chain.

### *Medical grounds*

7. A person who handles affected items is not subject to the Order if a suitably qualified health professional determines that it would be inappropriate for that person to be vaccinated.

### *Avoiding significant negative economic impacts arising from the disruption of the supply chain*

8. The Amendment Order provides the Minister with the power to grant an exemption for specified workers from the vaccination requirement if satisfied that it is necessary to avoid significant negative economic impacts arising from the disruption of the supply chain.
- a. To ensure this provision is consistent with the underlying public health rationale for the Order, this provision does not come into force until 28 days after the commencement of the Amendment Order (11:59pm Wednesday 11 August 2021).
  - b. This will ensure that PCBUs do not apply for the economic exemption before they have had the opportunity to genuinely engage with their obligations under the Amendment Order.
  - c. This commencement date allows seven weeks for PCBUs to make their exemption applications and for officials to process them before the commencement of the vaccination obligations.

## Process for amending a section 11 Order

9. Under the COVID-19 Public Health Response Act 2020 (the Act) an order may be made if either:
- a. an epidemic notice is in force (under the Epidemic Preparedness Act 2006);
  - b. a state of emergency has been declared (under the Civil Defence Emergency Management Act 2002); or
  - c. it has been authorised by the Prime Minister.
10. There is currently an epidemic notice in place, which allows orders to be made under section 11 of the Act.
11. As the Minister for COVID-19 Response, you may make orders under section 11 of the Act.
12. To make or amend an order under section 11 you must:
- a. have received advice from the Director-General about:
    - i. the risks of the outbreak or spread of COVID-19
    - ii. the nature and extent of measures that are appropriate to address those risks



- b. be satisfied that the proposed Amendment Order does not limit or is a justified limit on the rights and freedoms as specified in NZBORA
  - c. consult with the Prime Minister, the Minister of Justice, Minister of Health, and any other Ministers you think necessary, and
  - d. be satisfied that the order is appropriate to achieve the purposes of the Act.
13. Public health advice about the risks of the outbreak or spread of COVID-19 and the nature and extent of measures that are appropriate to manage those risks was previously provided [HR20210994 refers] and is also set out below.

### **The Vaccinations Order 2021 will be reviewed in the first quarter of 2022**

14. You and the Director-General of Health have obligations under the Act to review the Order on an ongoing basis. A review would ensure that the Order is fit for purpose, especially given that most of the New Zealand population 16 years of age or older are expected to have been offered a COVID-19 vaccine by the end of the year.
15. The Ministry will review the Order on an ongoing basis and advise you on any changes that may be required. Additionally, as agreed, officials will provide you detailed advice by the end of the first quarter of 2022 after undertaking a cross-agency policy review. This approach takes into consideration your obligations under the Act and will provide a timely opportunity to consider how the COVID-19 vaccine rollout has impacted on settings. It also has a greater potential to support compliance within the sector, as it does not signal that compliance requirements are time-limited.

### **Consultation**

16. You undertook Ministerial consultation, and this was completed on Monday 5 July 2021.
17. During consultation, the Ministry of Justice suggested that consideration could be given to including an exemption for religious beliefs, should the Minister wish to reduce risk further in relation to the discrimination issue arising from the exemption on medical grounds.
18. As per previous advice to you [HR20211235], we do not propose an exemption for individuals with an ethical or religious objection to vaccination.
19. Crown Law Advice on this matter is contained in Annex One.

### **Public health rationale**

20. You have previously been provided with detailed public health rationale for the Amendment Order [OC210396 and HR20210994 refers].
21. The Ministry has advised that there is a public health rationale for requiring that specified roles only be undertaken by vaccinated people, in response to the current pandemic. This is because there is a risk that these individuals may be exposed to, and infected by, COVID-19 during their work and may transmit the disease to others. However, this may not be required indefinitely into the future, as information about disease transmission and population immunity may change.

22. A number of international studies have shown that vaccination leads to a significant reduction in the rate of transmission of COVID-19.<sup>1</sup>
23. Vaccines offer a high degree of protection for individuals who are vaccinated, alongside a range of other public health measures. A worker who has been vaccinated will have a very high likelihood that they will be protected from serious illness or death and are more likely to be asymptomatic if infected.
24. Therefore, while vaccination does not prevent all possible episodes of transmission, it has a clinically relevant impact on reducing the risk of transmission. The risk of COVID-19 infection in New Zealand is currently highest amongst those in high-risk roles at the border. Ensuring that such workers are vaccinated will therefore greatly protect the wider community.

### Border Workers

25. It is important to note that not all border work carries the same level of public health risk. Factors that influence the risk of being exposed to COVID-19 include the following:
  - a. the number of international travellers (potentially infected people) the border worker may come in contact with (the more travellers, the higher the risk)
  - b. the ability of the border worker to maintain physical distancing from international travellers (the less physical distancing, the higher the risk)
  - c. the length of interactions the border worker may have with international travellers (the longer the interaction, the higher the risk)
  - d. whether the interaction is inside or outside (inside is higher risk).
26. MIQF and MIF workers are likely to be higher-risk when assessed against the above criteria. However, a person that handles affected items, and does not have any contact with international travellers is at lower risk.
27. The risk of exposure for border workers is recognised in the COVID-19 Public Health Public Health Response (Required Testing) Order 2020 (RTO). The RTO focusses on high-risk workers at the border and, even within this group, not all workers are tested to the same frequency. Some border workers are not required to be tested at all because of the low-risk nature of their work.

### New Zealand Bill of Rights Act 1990

28. A summary of Crown Law's advice is attached as Annex One.

### Te Tiriti o Waitangi

29. Requiring specified work to be undertaken by workers who have been vaccinated could potentially undermine equity and may have Te Tiriti o Waitangi implications. This is because Māori traditionally have lower vaccination rates than non-Māori. This may mean that Māori are more likely to be negatively impacted by the Amendment Order.

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<sup>1</sup> [https://www.health.govt.nz/system/files/documents/pages/science\\_updates\\_7\\_may\\_2021.pdf](https://www.health.govt.nz/system/files/documents/pages/science_updates_7_may_2021.pdf)

30. However, we know from historical examples that Māori are likely to be disproportionately affected by a widespread epidemic. This means that there is an equity imperative to do everything possible, within the requirement that the Minister must be satisfied that there is no limitations on rights, or that any limitation on rights is justified, to minimise the potential risk to the community from COVID-19.

## Equity

31. There is potential for the Amendment Order to discriminate against workers on the grounds of sex, disability and religion. We are also aware that many of the affected workers are in low paying jobs and are carried out by ethnic minorities and women, who would potentially be more impacted.
32. If workers who are subject to the Order are not vaccinated, their employers may choose to redeploy them or (following appropriate HR process) may choose to terminate their employment.
33. We also anticipate that a high number of people affected by the Order will be migrants or have English as a second language. Therefore, it may be difficult for them to understand what is being asked of them, why and the potential limitations, or exemptions of the Order. This language barrier could lead to their employment being terminated inappropriately.
34. Given that the vaccination is available to all groups, we do not consider the equity concerns above are sufficient to prohibit the requirement that specified high-risk roles only be undertaken by vaccinated people.

## Implementation

35. The Border Workforce Testing Register (BWTR) is the most comprehensive database of the border and MIQF and MIF workforce. The Order allows the Ministry to pre-populate the BWTR with data from the COVID-19 Immunisation Register to proactively identify who should be vaccinated.
36. The Order authorises the sharing of vaccination status of workers (subject to the Order) with their PCBU/employers. This provides PCBU/employers with an accurate record of the vaccination status of their workforce and assists them to manage their obligations, under the Order, in a more efficient way.
37. Work is underway to ensure that PCBUs and workers are appropriately supported to meet their obligations under the Amendment Order.
38. The interagency engagement group will communicate the new requirements with key stakeholders. This will enable us to circulate key messages and address any misinformed speculation.

## Next steps

39. We recommend that you sign the attached Amendment Order by 11 July 2021. This will allow the Amendment Order to be published and gazetted on 12 July 2021 to ensure we meet our statutory obligation to provide at least 48 hours' notice between gazetting and the Amendment Order coming into effect.

40. The Amendment Order and will come into force at 11:59pm 14 July 2021. This will enable all PCBUs to access the vaccination status of their employees from the BWTR from this date.
41. The requirement for the new groups of workers to have received their vaccines are as follows:

<b>Groups</b>	<b>1<sup>st</sup> dose</b>	<b>2<sup>nd</sup> dose</b>
All other government workers	11:59pm 26 August 2021	11:59pm 30 September 2021
All other groups	11:59pm 30 September 2021	11:59pm 4 November 2021

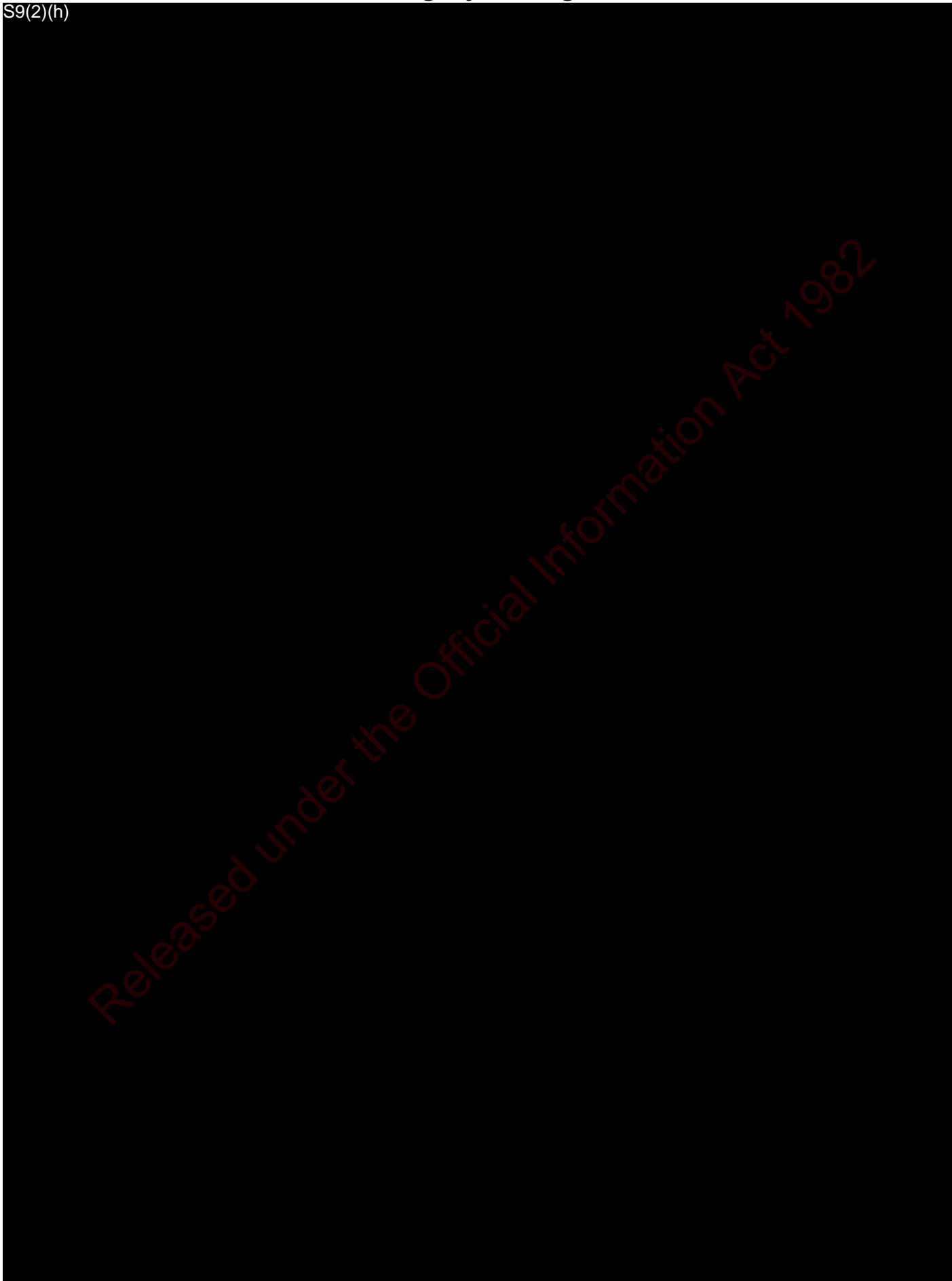
42. There is no change to requirements for workers already subject to the Order.

ENDS

Released under the Official Information Act 1982

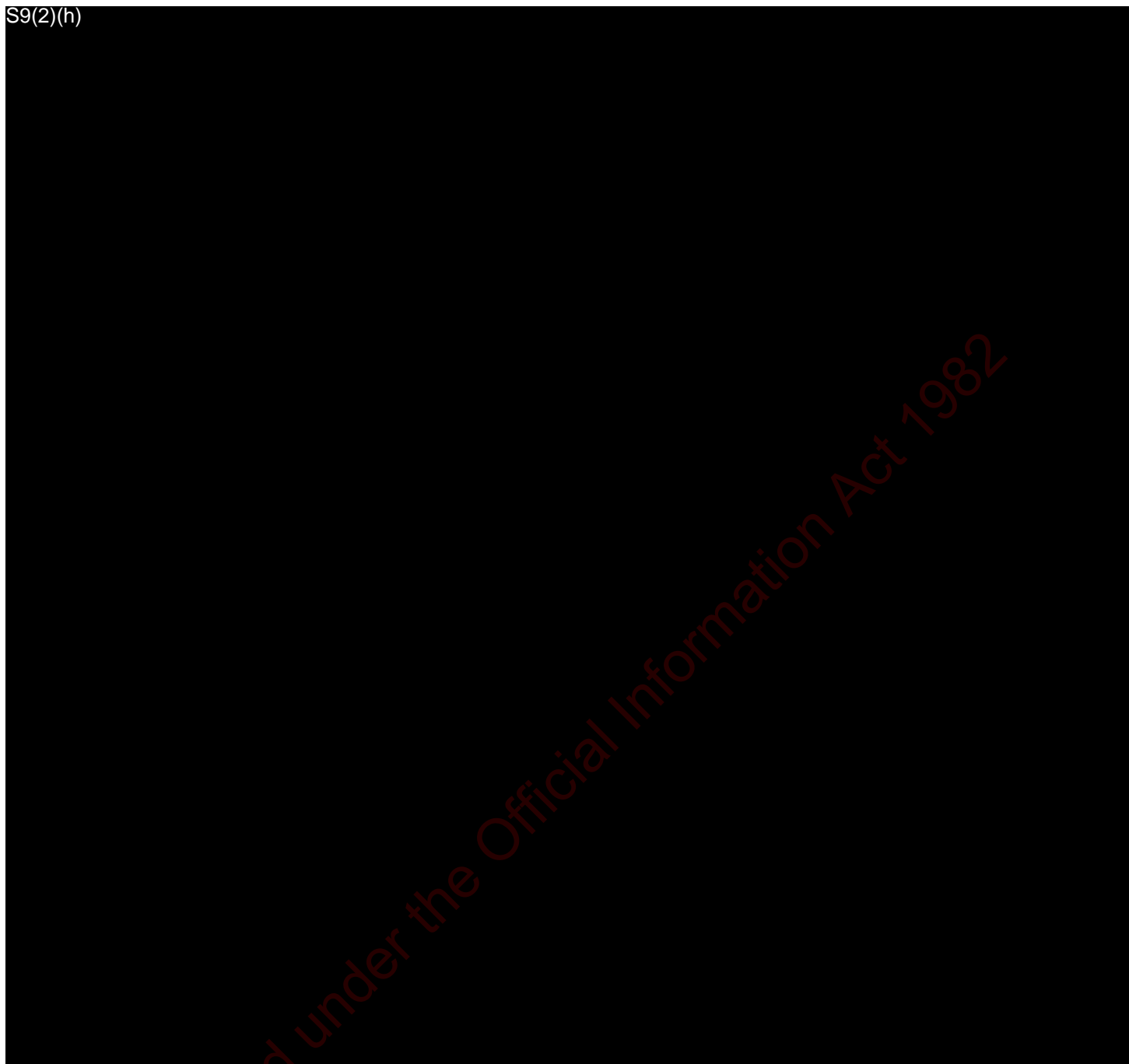
**Annex 1 – Crown Law advice (Legally Privileged)**

S9(2)(h)



Released under the Official Information Act 1982

S9(2)(h)



Released under the Official Information Act 1982

# Briefing

## COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021: Extending the types of recognised vaccines for affected workers – Ministerial consultation

**Date due to MO:** 12 October 2021      **Action required by:** 13 October 2021

**Security level:** IN CONFIDENCE      **Health Report number:** 20212177

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

### Contact for telephone discussion

Name	Position	Telephone
Maree Roberts	Deputy Director-General, System Strategy and Policy	S9(2)(a)
Jolanda Meijer	Policy Director, System Strategy and Policy	

### Minister's office to complete:

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

Comment:

# COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021: Extending the types of recognised vaccines for affected workers – Ministerial consultation

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**Security level:** IN CONFIDENCE      **Date:** 12 October 2021

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

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## Purpose of report

1. This report recommends that you consult with the Prime Minister and Ministers of Justice, Health, Transport, and Workplace Relations and Safety, and any other Ministers that you think fit, on the attached draft COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021 (Amendment Order).
2. The draft Amendment Order proposes to expand the types of recognised vaccines that affected workers may receive under the COVID-19 Public Health Response (Vaccinations) Order 2021 (Vaccinations Order).

## Summary

3. Currently, affected workers captured by the COVID-19 Public Health Response (Vaccination) Order 2021 are required have received two doses of the Pfizer/BioNTech COVID-19 vaccine.
4. The Order does not accommodate affected workers who are fully, or partially, vaccinated overseas with a COVID-19 vaccine other than the Pfizer/BioNTech vaccine. This is increasing staffing pressures at managed isolation and quarantine facilities and has impacts on an individual's employment.
5. To address this issue, on 2 October 2021, you agreed to amend the Order so that affected workers may be vaccinated with the **AstraZeneca, Moderna, or Janssen** vaccines and fulfil their vaccination obligations.
6. The Amendment Order enables the Director-General of Health to authorise an affected person who has not been vaccinated to carry out certain work if they have received at least one dose of a COVID-19 vaccine. This is particularly important for affected persons who have not received a COVID-19 vaccine recognised in New Zealand (e.g. Sinovac or



Sinopharm) after the commencement of the Amendment Order to enable a pathway for them to become "vaccinated" under the Vaccinations Order.

7. The Amendment Order also proposes minor and technical amendments, including inserting the definition of 'international layover', and revoking a clause that requires PCBUs to make its records available to an enforcement officer upon request for investigation and enforcement purposes.
8. Following Ministerial consultation, officials will work with the Parliamentary Counsel Office and provide you with a final Amendment Order on Monday 18 October 2021.
9. Officials recommend that you sign the final Amendment Order no later than the morning of Tuesday 19 October 2021, so that it can be published in the *Gazette* that day. This will allow officials to meet the statutory obligation to provide at least 48 hours' notice between gazetting and the Amendment Order coming into effect.
10. Once signed the Amendment Order will then come into effect at 11:59pm on Thursday 21 October 2021.

## Recommendations

We recommend you:

- a) **Note** that on 2 October 2021 you agreed to a range of amendments to the COVID-19 Public Health Response (Vaccinations) Order 2021 [HR20212018 refers]. **Noted**
- b) **Note** that officials advise that the draft COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021 (Amendment Order) is in line with the purposes of the COVID-19 Public Health Response Act 2020, to prevent and limit the risk of, the outbreak or spread, of COVID-19. **Noted**
- c) **Note** that you must be satisfied that the Amendment Order does not limit, or is a justified limit, on the rights and freedoms in the New Zealand Bill of Rights Act 1990, as part of issuing in the Amendment Order. **Noted**
- e) **Agree** to consult on the draft Amendment Order, which gives effect to the policy previously agreed in HR20212018. **Yes/No**

Maree Roberts

**Deputy Director-General**

System Strategy and Policy

Date: 11 October 2021

Hon Chris Hipkins

**Minister for COVID-19 Response**

Date:

# COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021 – expanding the types of recognised vaccines for affected persons

## Background

1. On 1 May 2021, the COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order) came into force. It requires that certain work at the border be undertaken only by workers vaccinated with the Pfizer/BioNTech vaccine, due to the risk that they may be exposed to, and transmit the COVID-19 virus.
2. On 15 July 2021, the Order was amended to extend the groups required to be vaccinated, and now includes workers:
  - a. at managed isolation and quarantine facilities (MIQFs)
  - b. at airside area of affected airports and some other high-risk areas at airports
  - c. at affected ports
  - d. at accommodation services where specified aircrew members are self-isolating
  - e. who handle items removed from the affected places listed above, and touch affected items while undertaking work for a relevant PCBU that is contracted to provide regular services for MIQFs, an affected aircraft, or an affected ship (for example, cleaning, laundering, or refuse disposal services).
3. Currently, workers who have been vaccinated overseas with a vaccine other than the Pfizer/BioNTech vaccine do not meet the Vaccination Order requirements. This is increasing pressure on staffing of managed isolation and quarantine facilities and has impacts on an individual's employment.
4. On 2 October 2021, you agreed to amend the Order [HR20212018 refers] to expand the types of recognised vaccines for work at the border:

## Contents of the Amendment Order

### Expanding the types of recognised vaccines for affected workers

5. The amendment proposes a change to the definition of "vaccinated" to extend the types of recognised vaccines to include AstraZeneca, Moderna, and Janssen.
6. The below table outlines the proposed vaccination requirements for affected workers.

Vaccine types and doses	Administration requirements
2 doses of Pfizer/BioNTech	Either: a) both doses received prior to becoming an affected person b) 1 dose received prior to becoming an affected person and the second dose received within 35 days after becoming an affected person
2 doses of AstraZeneca	Both doses received prior to becoming an affected person
2 doses of Moderna	Both doses received prior to becoming an affected person
1 dose of Janssen	Dose received prior to becoming an affected person
1 of AstraZeneca and 1 dose of Pfizer/BioNTech	1 dose of AstraZeneca received prior to becoming an affected person 1 dose of Pfizer/BioNTech received within 35 days after becoming an affected person
1 dose of Moderna and 1 dose of Pfizer/BioNTech	1 dose of Moderna received prior to becoming an affected person 1 dose of Pfizer/BioNTech received within 35 days after becoming an affected person

### Director-General of Health's power to authorise

7. To reflect the range of vaccination options emerging overseas and the frequently changing nature of scientific evidence, the amendment proposes a power for the Director-General of Health to authorise a person to perform work in an affected role.
8. Clause 9A of the Amendment Order specifies that on application by a PCBU, the Director-General of Health may authorise an affected person to perform work as an affected person if the person has received one dose of a COVID-19 vaccine and is awaiting their second dose.
9. Before granting the authorisation, the Director-General must be satisfied that the vaccination received by the person adequately prevents, and limits the risk of the outbreak or spread of COVID-19, considering the risks associated with the affected person's specific role.
10. The Director-General may impose conditions on the authorisation including a condition on meeting the full vaccination requirement, including a condition of receiving one or more doses of a vaccination approved for use in New Zealand.

11. If an authorisation is granted, the PCBU must provide the affected person with written notice of the authorisation, including any conditions.

## Technical amendments

### *International Layover*

12. The draft Amendment Order inserts the definition of 'international layover' to include a stay in accommodation provided by an accommodation service at a place outside New Zealand for a period of 6 hours or more.
13. This is proposed to reduce ambiguity regarding the coverage of the 'air crew member' definition and aligns with your previous decisions with respect to the air crew members who are to be subject to this Order. If you agree to this change, this amendment will be mirrored in an upcoming amendment to the COVID-19 Public Health Response (Required Testing) Order 2020.

### *Duties regarding vaccination register*

S9(2)(h)

15. The draft Amendment Order therefore deletes this clause. This will bring the duties regarding the register in line with the similar clause in the COVID-19 Public Health Response (Required Testing) Order 2021. Enforcement officers who are tasked with enforcing the Order will still be able to access all information necessary to enforce the Order.

## Process for amending a section 11 Order

16. Under the COVID-19 Public Health Response Act 2020 (the Act) an order may be made if either:
  - a. an epidemic notice is in force (under the Epidemic Preparedness Act 2006);
  - b. a state of emergency has been declared (under the Civil Defence Emergency Management Act 2002); or
  - c. it has been authorised by the Prime Minister.
17. There is currently an epidemic notice in place, which allows orders to be made under section 11 of the Act.
18. As the Minister for COVID-19 Response, you may make orders under section 11 of the Act.
19. To make or amend an order under section 11 you must:
  - a. have received advice from the Director-General of Health about:
    - i. the risks of the outbreak or spread of COVID-19
    - ii. the nature and extent of measures that are appropriate to address those risks

- b. be satisfied that the proposed Amendment Order does not limit or is a justified limit on the rights and freedoms as specified in NZBORA
  - c. consult with the Prime Minister, the Minister of Justice, Minister of Health, and any other Ministers you think necessary, and
  - d. be satisfied that the order is appropriate to achieve the purposes of the Act.
20. Public health advice about the risks of the outbreak or spread of COVID-19 and the nature and extent of measures that are appropriate to manage those risks was previously provided [HR20212018 refers] and is also set out below.

### Public health rationale

- 21. You have previously been provided with advice on the rationale for the increasing the range of vaccines suitable for border workers [HR20212018 refers].
- 22. CV-TAG advises that mixing vaccine doses is unlikely to result in adverse effects and could provide an improved immune response. A further dose of Pfizer/BioNTech would ensure workers who have not received a full course of a recognised COVID-19 vaccine have a sufficient level of immunity for high-risk work at the border.

### New Zealand Bill of Rights Act 1990

- 23. We do not consider that the proposed amendments will have any implications under the New Zealand Bill of Rights Act 1990, as they do not change the coverage of workers captured by the Order or otherwise impose additional obligations that impact on individual rights.

### Equity

- 24. If workers who are subject to the Order are not vaccinated, their employers may choose to redeploy them or (following appropriate human resources process) may choose to terminate their employment.
- 25. Expanding the approved types of vaccines for workers captured by the Vaccination Amendment Order will potentially increase uptake of the vaccination overall, particularly for those workers who are hesitant to receive the Pfizer/BioNTech vaccine but are willing to receive the Janssen vaccine.
- 26. This impact may lower the risk of infection for these workers and the risk of transmission to communities of people that these workers ordinarily interact with including place, ethnicity, faith, and age-based communities.

### Next steps

- 27. Following Ministerial consultation, officials will work with the Parliamentary Counsel Office and provide you with a final Amendment Order on Monday 18 October 2021.
- 28. Officials recommend that you sign the final Amendment Order no later than the morning of Tuesday 19 October 2021, so that it can be published in the *Gazette* that day. This will allow officials to meet the statutory obligation to provide at least 48 hours' notice between gazetting and the Amendment Order coming into effect.

29. Once signed the Amendment Order will then come into effect at 11:59pm on Thursday 21 October 2021.

ENDS.

Released under the Official Information Act 1982

Released under the Official Information Act 1982

# Briefing

## COVID-19 Public Health Response (Vaccinations) Amendment (No 3) Order 2021: Health Workers, Prison Staff, Educators – for signature

**Date due to MO:** 22 October 2021      **Action required by:** 22 October 2021

**Security level:** IN CONFIDENCE      **Health Report number:** 20212209

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

### Contact for telephone discussion

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

### Minister's office to complete:

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

Comment:

Released under the Official Information Act 1982



# COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021: Health workers, Prison Staff, and Educators – for signature

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**Security level:** IN CONFIDENCE      **Date:** 22 October 2021

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

---

## Purpose of report

1. This report recommends that you sign the attached COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (the Amendment Order). The Amendment Order requires work in the health and disability sector, prisons, and education services, be undertaken by vaccinated workers.

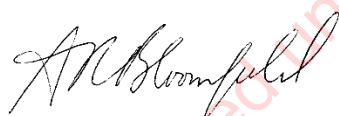
## Summary

2. On 1 May 2021, the COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order) entered into force and required that certain work only be undertaken by vaccinated workers.
3. Cabinet has since agreed to expand the types of work requiring vaccinated workers, to the **health and disability sector, education sector** and at **prisons** [CAB-21-MIN-0413 and CAB-21-MIN-0422 refer]. The Amendment Order would give effect to those decisions.
4. Officials recommend that you sign the final Amendment Order no later than midday on Friday 22 October 2021, so that it can be published in the *New Zealand Gazette* that day. This will allow officials to meet the statutory obligation to provide at least 48 hours' notice between gazetting and the Amendment Order coming into effect. The Amendment Order will then come into effect at 11:59pm on Monday 25 October 2021.
5. The deadline for workers to have received their first dose and second doses of the vaccine vary depending on the group of workers, but all workers will need to have received two doses of the vaccine within 35 days of the commencement date for their group.

## Recommendations

We recommend you:

- a) **Note** that the Ministry considers there is a public health rationale for requiring specified roles be performed by vaccinated individuals only, in response to the current pandemic. **Noted**
- b) **Note** that Cabinet agreed to extend the requirement to be vaccinated to include workers in the health and disability sector, education sector, and at prisons [CAB-21-MIN-0413 and CAB-21-MIN-0422 refer]. **Noted**
- c) **Note** that officials advise that the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021, which gives effect to Cabinet's decision, is in line with the purposes of the COVID-19 Public Health Response Act 2020 (the Act), to prevent and limit the risk of, the outbreak or spread, of COVID-19. **Noted**
- d) **Note** that these measures engage rights protected by the New Zealand Bill of Rights Act 1990 (NZBORA). **Noted**
- e) **Note** that you must be satisfied that the Amendment Order does not limit, or is a justified limit, on the rights and freedoms in the NZBORA, as part of issuing the Amendment Order. **Noted**
- f) **Note** that, as Cabinet's agreement to extend the vaccination requirement fulfils your obligation to consult under section 9(1)(c) of the Act, the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 has been finalised for your approval. **Noted**
- g) **Sign** the attached COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 on Friday 22 October 2021. **Yes/No**



Dr Ashley Bloomfield  
**Te Tumu Whakarae mō te Hauora**  
**Director-General of Health**

Date: 22 October 2021



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

Date: 22/10/21

# COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021: Health workers, Prison Staff, and Educators – for signature

## Background

6. On 1 May 2021, the COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order) entered into force and required that certain work only be undertaken by vaccinated workers.
7. On 15 July 2021, the Order was amended to extend the groups required to be vaccinated, and now includes workers:
  - a. at managed isolation and quarantine facilities (MIQFs)
  - b. at airside area of affected airports and some other high-risk areas at airports
  - c. at affected ports
  - d. at accommodation services where specified aircrew members are self-isolating
  - e. who handle items removed from the affected places listed above, and touch affected items while undertaking work for a relevant Person Conducting a Business or Undertaking (PCBU).
8. On 11 October 2021, Cabinet agreed to amend the COVID-19 Public Health Response (Vaccinations) Order 2021 to require high risk work in the health and disability sector, and in the education sector, to be undertaken by vaccinated workers [CAB-21-MIN-0413, CAB-21-MIN-0414 refer].
9. On 18 October 2021, Cabinet agreed to require work in correction facilities to be undertaken by vaccinated staff [CAB-21-MIN-0422 refers].

## Contents of the amendment order

### Health workers

10. The amendment order requires the following workers in the health and disability sector to be vaccinated:
  - a. health practitioners
  - b. workers who work at a workplace where health services are provided by 1 or more health practitioners, and whose role involves being within 2 meters or less of a health practitioner or any member of the public for a period of 15 minutes or more
  - c. workers employed or engaged by certified providers

- d. care and support workers.

### Corrections staff

11. The Amendment Order requires that any worker of a prison who is required to undergo a security screening process before being allowed entry into prison be vaccinated. This excludes workers who are specified visitors or statutory visitors.
12. Given that the announcement for workers in prisons was made one week after the announcement for health and disability workers, it is fair to provide an extension to the deadline for workers in prisons to be vaccinated.
13. Corrections has liaised with the Public Service Association (PSA) and the Corrections Association of New Zealand (CANZ) on the timeframes for Corrections staff to get their mandatory vaccines. Corrections consider that it is equitable to provide a one-week extension to the deadline for non-health and disability workers in prisons to be vaccinated. This would give these affected workers the same length of time to be vaccinated as workers in the health and disability sector.

### Education services

14. The Amendment Order requires the following people in the education sector to be vaccinated:
  - a. workers over the age of 12 year who carry out work at or for an affected education service (including as a volunteer worker or an unpaid worker) and who:
    - i. May have contact with children or students in the course of carrying out the work; or
    - ii. Will be present at the affected education services at a time when children or students are also present
  - b. providers of a home-based education and care service.

### Transitional provision

15. Anyone in the following groups who has not been fully vaccinated when the Amendment Order comes into effect will have until the following dates to get their two doses:

	1 <sup>st</sup> dose	2 <sup>nd</sup> dose
<b>Prison workers</b>	6 November 2021	8 December 2021
<b>Health and disability workers</b>	15 November 2021	1 January 2022
<b>Education service workers</b>	15 November 2021	1 January 2022

16. Until 1 January 2022, educators who are not fully vaccinated are required to undergo weekly testing. The requirement of a PCBU to not allow an affected

person to carry out work at an education service applies from 2 January 2022. This obligation is not delayed for PCBUs of other workforces.

### **Exemption from duty**

17. If a health practitioner believes they require an exemption from the requirement to be vaccinated, another health practitioner must undertake an examination to determine whether vaccination would be inappropriate.

### **Additional duties of relevant education workforce PCBUs in relation to vaccination**

18. The Amendment Order states that a PCBUs must not allow an affected person who provides a home-based education and care service to carry out certain work unless satisfied that every person over the age of 12 years in the home based education and care service is provided is vaccinated.

### **Chief Executive authorisation**

19. Unlike the other groups within the Order, a chief executive cannot authorise healthcare workers who have not been vaccinated to carry out certain work.

### **Power of Minister to grant exemptions**

20. The Amendment Order expands the Minister's power to grant exemptions where if necessary, or desirable, to prevent significant disruption to health services and the essential operations of a prison. This will mitigate any harm that may occur due to the potential disruption of those services.

### **Duties of relevant PCBUs employing or engaging health care workers and corrections staff**

21. The Amendment Order requires a relevant PCBU to keep and maintain a written record of information of the person's vaccination status.

### **Process for amending a section 11 Order**

22. Under the COVID-19 Public Health Response Act 2020 (the Act) an order may be made if either:
  - a. an epidemic notice is in force (under the Epidemic Preparedness Act 2006);
  - b. a state of emergency has been declared (under the Civil Defence Emergency Management Act 2002); or
  - c. it has been authorised by the Prime Minister.
23. There is currently an epidemic notice in place, which allows orders to be made under section 11 of the Act.
24. As the Minister for COVID-19 Response, you may make orders under section 11 of the Act.
25. To make or amend an order under section 11 you must:
  - a. have received advice from the Director-General about:
    - i. the risks of the outbreak or spread of COVID-19

- ii. the nature and extent of measures that are appropriate to address those risks
- b. be satisfied that the proposed Amendment Order does not limit or is a justified limit on the rights and freedoms as specified in New Zealand Bill of Rights Act (NZBORA).
- c. consult with the Prime Minister, the Minister of Justice, Minister of Health, and any other Ministers you think necessary, and
- d. be satisfied that the order is appropriate to achieve the purposes of the Act.

## Consultation

- 26. As above, under section 9(1)(c) of the COVID-19 Act you are required to consult with the Prime Minister, Minister of Justice and Minister of Health before making or amending a COVID-19 order.
- 27. As these Ministers form part of Cabinet, their decision to amend the order meets consultation requirements.
- 28. The Ministry of Education and the Department of Corrections were consulted throughout the development of the Order.
- 29. There has been very broad support for the intent of the requirement, but wide concern in the health and disability sector about the short timeframes for implementation. There is concern that this does not give people enough time to get vaccinated before they have to stand down from work, but the principal concern is that it creates challenges for staffing services and could leave significant gaps in rosters. On the basis of this feedback, we have advised pushing out the dates for health sector compliance to match those of the Education sector.

## Public health rationale

- 30. You have previously been provided with advice on the rationale for requiring work in the health and disability sectors, education sector, and at corrections facilities, be undertaken by vaccinated workers only [CAB-21-MIN-0413 and CAB-21-MIN-0422 refer].
- 31. Workers in the health and disability sector provide critical health and support services to all New Zealanders particularly our most vulnerable population. This population is likely to be at a higher risk of exposure to COVID-19, particularly in the event of an outbreak and/or work with people who are more likely to experience serious illness if infected by COVID-19.
- 32. Vaccination helps protect the vulnerable who are at greater risk of being hospitalised due to COVID-19 and reduces impacts on staffing within the health and disability sector if COVID-19 circulates, ensuring the system is more resilient in the event of an outbreak.
- 33. If a worker at a corrections facility becomes infected with COVID-19, they could become a vector for transmission into a prison. Due to their confined living conditions, prisoners generally are conspicuously vulnerable to COVID-19.

## New Zealand Bill of Rights Act 1990

34. Crown Law Office advice is attached in Annex 1.

### Equity

35. If workers who are subject to the Amendment Order are not vaccinated, their employers may choose to redeploy them or (following appropriate human resource process) may choose to terminate their employment.
36. Given that the vaccination is available to all groups, we do not consider the equity concerns above override the public health need for specified high-risk roles to only be undertaken by vaccinated people.
37. Requiring vaccination may lower the risk of transmission to communities of people that these workers ordinarily interact with including place, ethnicity, faith, and age-based communities. It is also important to reduce risks to the community through the overwhelming of health capacity.
38. Requiring vaccination may lower the risk of infection for these workers and the risk of transmission to communities of people that these workers ordinarily interact with including place, ethnicity, faith, and age-based communities.

### *Health work force*

39. As Māori and Pacific populations have lower vaccination rates, those people working in the health and disability sector are more likely to be required to take action under the Amendment Order.
40. There is likely to be employment implications for those non-regulated Māori and Pacific workers within health service settings and environments leading to termination of their employment with significant loss of income impacting on many households. Although we do not have official figures, we note that there will be a potential impact.

### *Correction staff*

41. Prisoners are disproportionately likely to have other compromising health conditions, including (but not solely) because of Māori over-representation in prison populations. An additional risk that a vaccination mandate for workers in prisons may guard against is the healthcare system becoming overburdened by an increase in vulnerable people becoming infected.

### *Education workers*

42. As Māori and Pacific peoples are likely to be disproportionately affected by a widespread epidemic and prolonged disconnection from education services, the Amendment Order is likely to have a positive effect on reducing their exposure to COVID-19 and related socio-economic impacts.
43. However, as Māori and Pacific peoples also have traditionally lower vaccination rates, Māori and Pacific people working in the education workforce may be disproportionately affected. The Ministry of Education will address this through a bespoke communications campaign aiming at this part of the education workforce, and targeted vaccination measures that will be developed in

conjunction with Māori and Pacific Education Peak Bodies and Social Service providers.

### *Te Tiriti o Waitangi implications*

44. The Government as Kāwanatanga and Ōritetanga has responsibilities to support health and socio-economic outcomes for Māori. While there continues to be a focus on increasing vaccination uptake for Māori, the Amendment Order may undermine the agency of iwi, hapū and whānau to protect their own wellbeing, afforded to them under the principle of tino rangatiratanga.
45. In the past, and particularly throughout the COVID-19 response, iwi, hapū and whānau have exercised, and in many cases exceeded, good practice in line with government guidelines to maintain the wellbeing of their own whānau.
46. The Ministry and other stakeholders (eg Immunisation Implementation Advisory Sector) will continue to work with Māori (and Pacific) providers to increase the number of kaimahi (staff) able to deliver the COVID-19 vaccination. This will remain a critical enabler for lifting Māori (and Pacific) vaccination rates, encouraging uptake and increasing trust and transparency.
47. It will also be important to ensure clear, constant and consistent information is provided to Māori in English and Māori through appropriate channels.
48. The Amendment Order supports health system resilience, the minimisation of community outbreaks, and any associated increase in Alert Level restrictions. This is critical to minimising and addressing existing inequities and is consistent with Te Tiriti principle of active protection.

## **Implementation**

49. The Border Workforce Testing Register (BWTR) is the most comprehensive database of the border and MIQF and MIF workforce. The principal Order allows the Ministry to pre-populate the BWTR with data from the COVID-19 Immunisation Register to proactively identify who should be vaccinated.
50. The Amendment Order does not mandate the use of a register by workers or PCBUs. This means that there will not be a single centralised record of vaccination status – the use of the register could be mandated in future through a future amendment.
51. Instead, the Amendment Order requires PCBUs/employers to keep records of vaccinations and requires workers to provide vaccination details to their PCBU/employer.
52. The Ministry is developing a register that PCBUs will be required to use to keep a record of the vaccine status for all workers added by the Amendment Order, and, for secondary schools, eligible students. We expect that the register could be operational from early December 2021. Consideration can be given to mandating the use of this register closer to that time



## **Next steps**

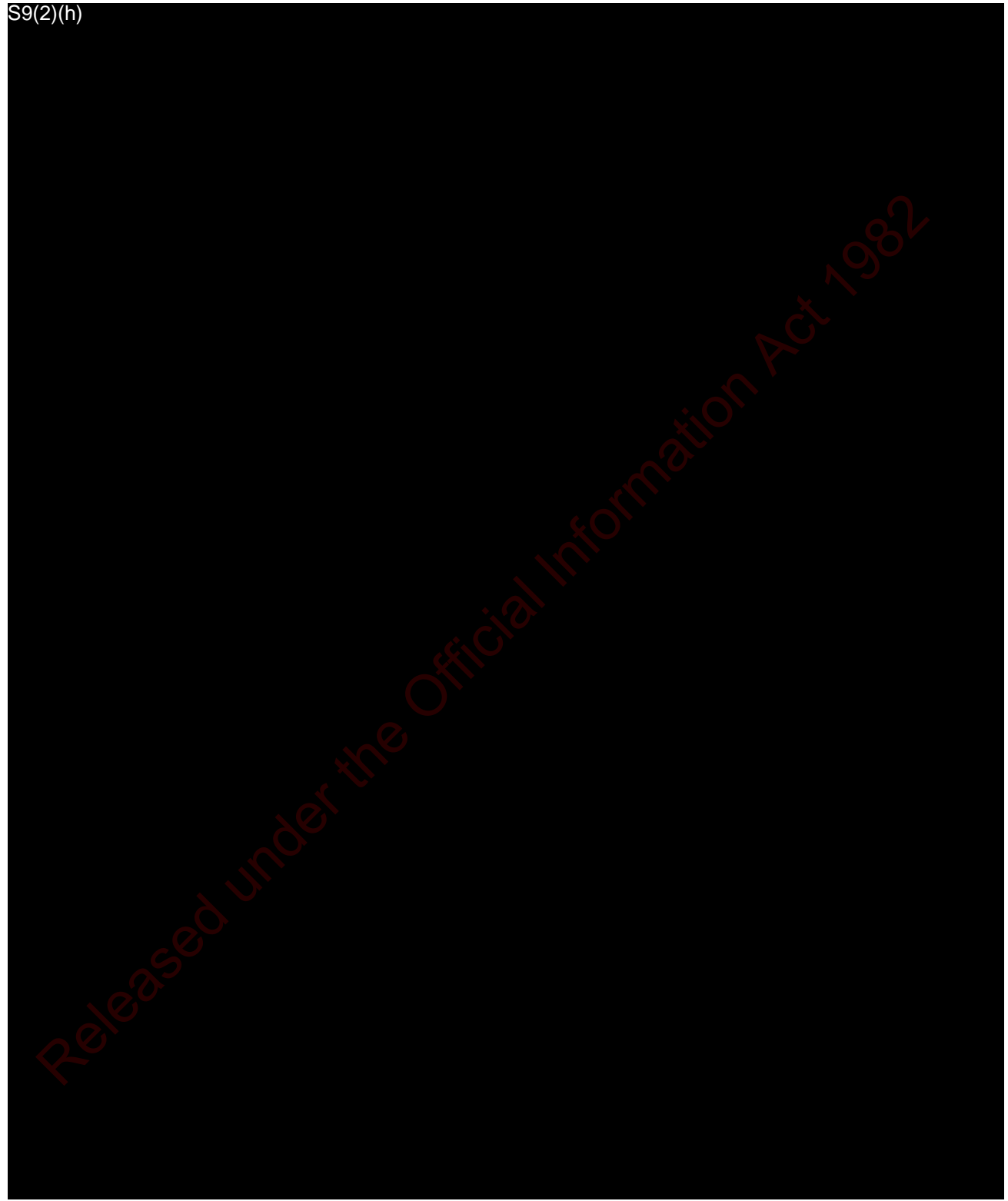
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54. Once signed the Amendment Order will come into effect at 11:59pm on Monday 25 October 2021.

**ENDS.**

Released under the Official Information Act 1982

**Annex 1: Crown Law Office Advice**

S9(2)(h)



Released under the Official Information Act 1982

# Briefing

## COVID-19 Public Health Response (Vaccinations) Amendment (No 3) Order 2021: Health Workers, Prison Staff, Educators – for signature

**Date due to MO:** 22 October 2021      **Action required by:** 22 October 2021

**Security level:** IN CONFIDENCE      **Health Report number:** 20212209

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

### Contact for telephone discussion

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

### Minister's office to complete:

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

Comment:

Released under the Official Information Act 1982

# COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021: Health workers, Prison Staff, and Educators – for signature

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**Security level:** IN CONFIDENCE      **Date:** 22 October 2021

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

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## Purpose of report

1. This report recommends that you sign the attached COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (the Amendment Order). The Amendment Order requires work in the health and disability sector, prisons, and education services, be undertaken by vaccinated workers.

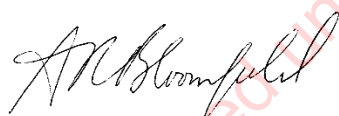
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2. On 1 May 2021, the COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order) entered into force and required that certain work only be undertaken by vaccinated workers.
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5. The deadline for workers to have received their first dose and second doses of the vaccine vary depending on the group of workers, but all workers will need to have received two doses of the vaccine within 35 days of the commencement date for their group.

## Recommendations

We recommend you:

- a) **Note** that the Ministry considers there is a public health rationale for requiring specified roles be performed by vaccinated individuals only, in response to the current pandemic. **Noted**
- b) **Note** that Cabinet agreed to extend the requirement to be vaccinated to include workers in the health and disability sector, education sector, and at prisons [CAB-21-MIN-0413 and CAB-21-MIN-0422 refer]. **Noted**
- c) **Note** that officials advise that the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021, which gives effect to Cabinet's decision, is in line with the purposes of the COVID-19 Public Health Response Act 2020 (the Act), to prevent and limit the risk of, the outbreak or spread, of COVID-19. **Noted**
- d) **Note** that these measures engage rights protected by the New Zealand Bill of Rights Act 1990 (NZBORA). **Noted**
- e) **Note** that you must be satisfied that the Amendment Order does not limit, or is a justified limit, on the rights and freedoms in the NZBORA, as part of issuing the Amendment Order. **Noted**
- f) **Note** that, as Cabinet's agreement to extend the vaccination requirement fulfils your obligation to consult under section 9(1)(c) of the Act, the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 has been finalised for your approval. **Noted**
- g) **Sign** the attached COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 on Friday 22 October 2021. **Yes/No**



Dr Ashley Bloomfield  
**Te Tumu Whakarae mō te Hauora**  
**Director-General of Health**

Date: 22 October 2021



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

Date: 22/10/21

# COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021: Health workers, Prison Staff, and Educators – for signature

## Background

6. On 1 May 2021, the COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order) entered into force and required that certain work only be undertaken by vaccinated workers.
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## Contents of the amendment order

### Health workers

10. The amendment order requires the following workers in the health and disability sector to be vaccinated:
  - a. health practitioners
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### Transitional provision

15. Anyone in the following groups who has not been fully vaccinated when the Amendment Order comes into effect will have until the following dates to get their two doses:

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### **Exemption from duty**

17. If a health practitioner believes they require an exemption from the requirement to be vaccinated, another health practitioner must undertake an examination to determine whether vaccination would be inappropriate.

### **Additional duties of relevant education workforce PCBUs in relation to vaccination**

18. The Amendment Order states that a PCBUs must not allow an affected person who provides a home-based education and care service to carry out certain work unless satisfied that every person over the age of 12 years in the home based education and care service is provided is vaccinated.

### **Chief Executive authorisation**

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### **Power of Minister to grant exemptions**

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### **Duties of relevant PCBUs employing or engaging health care workers and corrections staff**

21. The Amendment Order requires a relevant PCBU to keep and maintain a written record of information of the person's vaccination status.

### **Process for amending a section 11 Order**

22. Under the COVID-19 Public Health Response Act 2020 (the Act) an order may be made if either:
  - a. an epidemic notice is in force (under the Epidemic Preparedness Act 2006);
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23. There is currently an epidemic notice in place, which allows orders to be made under section 11 of the Act.
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    - i. the risks of the outbreak or spread of COVID-19



- ii. the nature and extent of measures that are appropriate to address those risks
- b. be satisfied that the proposed Amendment Order does not limit or is a justified limit on the rights and freedoms as specified in New Zealand Bill of Rights Act (NZBORA).
- c. consult with the Prime Minister, the Minister of Justice, Minister of Health, and any other Ministers you think necessary, and
- d. be satisfied that the order is appropriate to achieve the purposes of the Act.

## Consultation

- 26. As above, under section 9(1)(c) of the COVID-19 Act you are required to consult with the Prime Minister, Minister of Justice and Minister of Health before making or amending a COVID-19 order.
- 27. As these Ministers form part of Cabinet, their decision to amend the order meets consultation requirements.
- 28. The Ministry of Education and the Department of Corrections were consulted throughout the development of the Order.
- 29. There has been very broad support for the intent of the requirement, but wide concern in the health and disability sector about the short timeframes for implementation. There is concern that this does not give people enough time to get vaccinated before they have to stand down from work, but the principal concern is that it creates challenges for staffing services and could leave significant gaps in rosters. On the basis of this feedback, we have advised pushing out the dates for health sector compliance to match those of the Education sector.

## Public health rationale

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## New Zealand Bill of Rights Act 1990

34. Crown Law Office advice is attached in Annex 1.

### Equity

35. If workers who are subject to the Amendment Order are not vaccinated, their employers may choose to redeploy them or (following appropriate human resource process) may choose to terminate their employment.
36. Given that the vaccination is available to all groups, we do not consider the equity concerns above override the public health need for specified high-risk roles to only be undertaken by vaccinated people.
37. Requiring vaccination may lower the risk of transmission to communities of people that these workers ordinarily interact with including place, ethnicity, faith, and age-based communities. It is also important to reduce risks to the community through the overwhelming of health capacity.
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### *Health work force*

39. As Māori and Pacific populations have lower vaccination rates, those people working in the health and disability sector are more likely to be required to take action under the Amendment Order.
40. There is likely to be employment implications for those non-regulated Māori and Pacific workers within health service settings and environments leading to termination of their employment with significant loss of income impacting on many households. Although we do not have official figures, we note that there will be a potential impact.

### *Correction staff*

41. Prisoners are disproportionately likely to have other compromising health conditions, including (but not solely) because of Māori over-representation in prison populations. An additional risk that a vaccination mandate for workers in prisons may guard against is the healthcare system becoming overburdened by an increase in vulnerable people becoming infected.

### *Education workers*

42. As Māori and Pacific peoples are likely to be disproportionately affected by a widespread epidemic and prolonged disconnection from education services, the Amendment Order is likely to have a positive effect on reducing their exposure to COVID-19 and related socio-economic impacts.
43. However, as Māori and Pacific peoples also have traditionally lower vaccination rates, Māori and Pacific people working in the education workforce may be disproportionately affected. The Ministry of Education will address this through a bespoke communications campaign aiming at this part of the education workforce, and targeted vaccination measures that will be developed in

conjunction with Māori and Pacific Education Peak Bodies and Social Service providers.

### *Te Tiriti o Waitangi implications*

44. The Government as Kāwanatanga and Ōritetanga has responsibilities to support health and socio-economic outcomes for Māori. While there continues to be a focus on increasing vaccination uptake for Māori, the Amendment Order may undermine the agency of iwi, hapū and whānau to protect their own wellbeing, afforded to them under the principle of tino rangatiratanga.
45. In the past, and particularly throughout the COVID-19 response, iwi, hapū and whānau have exercised, and in many cases exceeded, good practice in line with government guidelines to maintain the wellbeing of their own whānau.
46. The Ministry and other stakeholders (eg Immunisation Implementation Advisory Sector) will continue to work with Māori (and Pacific) providers to increase the number of kaimahi (staff) able to deliver the COVID-19 vaccination. This will remain a critical enabler for lifting Māori (and Pacific) vaccination rates, encouraging uptake and increasing trust and transparency.
47. It will also be important to ensure clear, constant and consistent information is provided to Māori in English and Māori through appropriate channels.
48. The Amendment Order supports health system resilience, the minimisation of community outbreaks, and any associated increase in Alert Level restrictions. This is critical to minimising and addressing existing inequities and is consistent with Te Tiriti principle of active protection.

## **Implementation**

49. The Border Workforce Testing Register (BWTR) is the most comprehensive database of the border and MIQF and MIF workforce. The principal Order allows the Ministry to pre-populate the BWTR with data from the COVID-19 Immunisation Register to proactively identify who should be vaccinated.
50. The Amendment Order does not mandate the use of a register by workers or PCBUs. This means that there will not be a single centralised record of vaccination status – the use of the register could be mandated in future through a future amendment.
51. Instead, the Amendment Order requires PCBUs/employers to keep records of vaccinations and requires workers to provide vaccination details to their PCBU/employer.
52. The Ministry is developing a register that PCBUs will be required to use to keep a record of the vaccine status for all workers added by the Amendment Order, and, for secondary schools, eligible students. We expect that the register could be operational from early December 2021. Consideration can be given to mandating the use of this register closer to that time

## Next steps

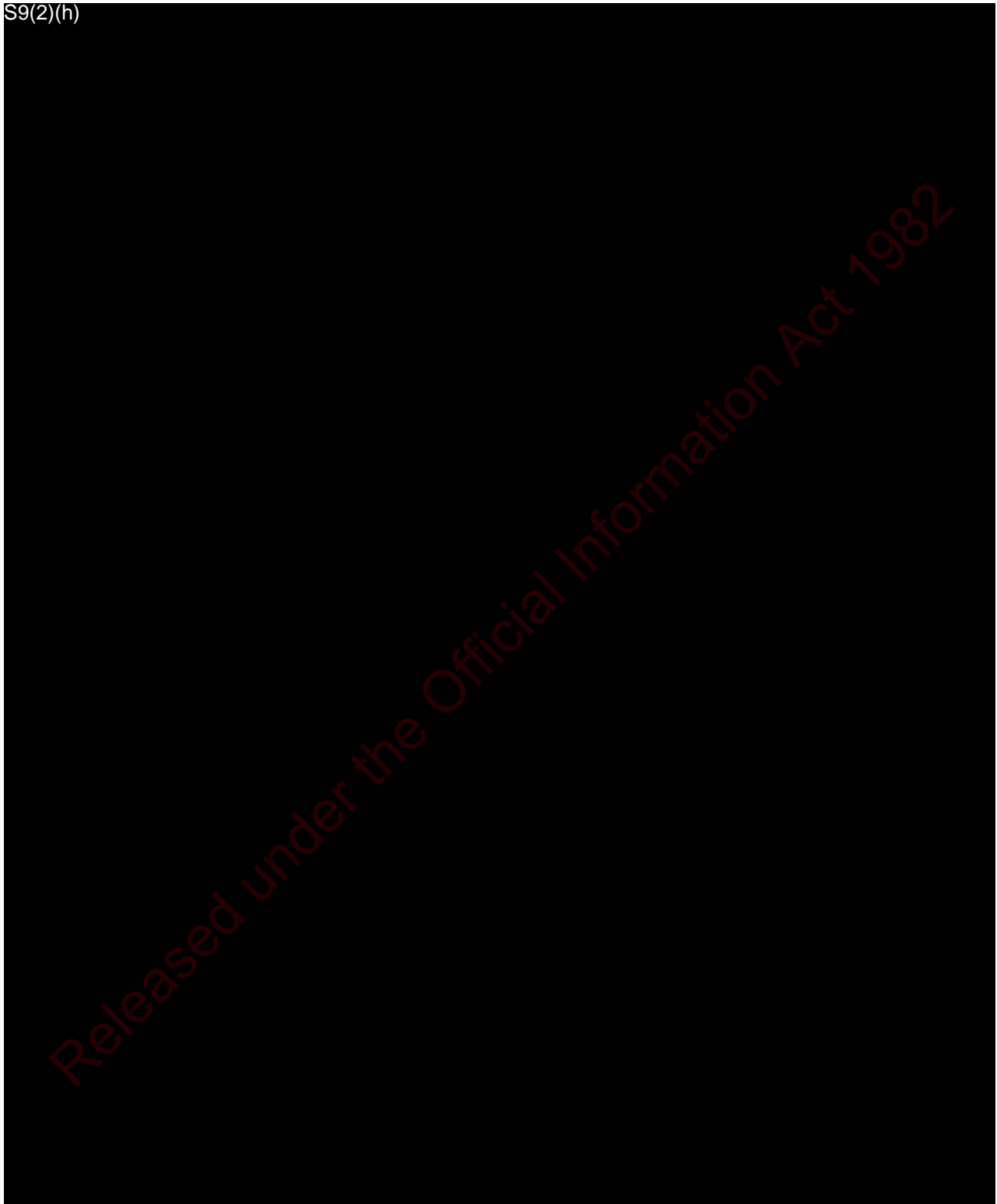
53. Officials recommend that you sign the final Amendment Order no later than the midday on Friday 22 October 2021, so that it can be published in the *New Zealand Gazette* that day. This will allow officials to meet the statutory obligation to provide at least 48 hours' notice between gazetting and the Amendment Order coming into effect.
54. Once signed the Amendment Order will come into effect at 11:59pm on Monday 25 October 2021.

**ENDS.**

Released under the Official Information Act 1982

**Annex 1: Crown Law Office Advice**

S9(2)(h)



Released under the Official Information Act 1982

Version  
as at 25 October 2021



## COVID-19 Public Health Response (Vaccinations) Order 2021

(LI 2021/94)

This order is made by the Minister for COVID-19 Response under section 11 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 (Vaccinations) Order 2021.

### 2 Commencement

This order comes into force at 11.59 pm on 30 April 2021.

### 3 Purpose

The purpose of this order is to prevent, and limit the risk of, the outbreak or spread of COVID-19 by requiring certain work to be carried out by affected persons who are vaccinated.

Clause 3: amended, at 11.59 pm on 14 July 2021, by clause 4 of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

### 4 Interpretation

In this order, unless the context otherwise requires,—

**affected aircraft** means an aircraft (other than an aircraft undertaking a QFT flight) that arrives from a location outside New Zealand

**affected airport** means an airport at which an affected aircraft arrives from a location outside New Zealand

**affected education service** means—

- (a) an early childhood service (other than a playgroup):
- (b) a registered school:
- (c) a hostel

**affected item** means—

- (a) an item (apart from cargo or freight) removed for cleaning, disposal, or reuse from an affected ship or a passenger area of an affected aircraft:
- (b) an item removed for cleaning, disposal, or reuse from a managed quarantine facility or a managed isolation facility

**affected person** means a person who belongs to a group (or whose work would cause them to belong to a group)

**affected port** means a port where a ship arrives from a location outside New Zealand

**affected ship** means a ship with any person or persons on board who are required to be isolated or quarantined in accordance with a COVID-19 order

**aircraft** has the same meaning as in section 2(1) of the Civil Aviation Act 1990

**aircrew member** means any of the following persons:

- (a) cabin crew who—
  - (i) are ordinarily resident in New Zealand; and
  - (ii) work on an international flight (other than a QFT flight) on or after 15 July 2021:
- (b) other persons who—
  - (i) are ordinarily resident in New Zealand; and
  - (ii) are identified as crew members on a crew manifest for an affected aircraft that has travelled internationally on or after 15 July 2021; and
  - (iii) have an international layover during that travel:
- (c) cabin crew who, on or after 15 July 2021, travel on a domestic flight within New Zealand that carries international arriving or international transiting passengers (other than QFT persons) who have not yet completed isolation or quarantine at a managed isolation or quarantine facility

**airside**, in relation to an affected airport, means any part of the affected airport that is inaccessible to the general public but that is accessible to international arriving or international transiting passengers (for example, a Customs-controlled area)

**care and support services** means services that are funded by the Ministry of Health, a DHB, or ACC and provided to a person for the purpose of—

- (a) assisting the person to continue to live in the person's home or in the community (such as personal care and household management services); or
- (b) providing mental health and addiction support services, or vocational and disability support services; or



- (c) if the person has a disability, assisting the person to work in the community; or
- (d) if the person has an injury covered by the Accident Compensation Act 2001, supporting the person's rehabilitation from the injury or supporting them to achieve and sustain their maximum level of participation in everyday life

**care and support worker** means a person employed or engaged to carry out work that includes going to the home or place of residence of another person (not being the home or place of residence of a family member) to provide care and support services

**certain work**, in relation to an affected person, means work that the affected person carries out (whether paid or unpaid) in respect of a group specified in Schedule 2

**certified provider** means a person who is certified under section 26(1) of the Health and Disability Services (Safety) Act 2001 to provide health care services of any kind

**COVID-19 vaccination record**, in relation to an affected person, means the record of COVID-19 vaccinations received by the person that is held on the register

**COVID-19 vaccine** means a COVID-19 vaccine specified in the first column of the table in Schedule 3

**crew** has the same meaning as in clause 4 of the COVID-19 Public Health Response (Maritime Border) Order (No 2) 2020

**Defence Force** has the same meaning as in section 2(1) of the Defence Act 1990

**early childhood service** has the same meaning as in section 10(1) of the Education and Training Act 2020

**enclosed space**,—

- (a) in relation to an aircraft, means an enclosed or a partially enclosed space on board the aircraft in which physical distancing from the aircrew or international arriving or international transiting passengers is not practicable;
- (b) in relation to an affected ship, means an enclosed or partially enclosed space on board the ship in which physical distancing from the ship's crew is not practicable

**excluded airport person**, in relation to a group, means a person who—

- (a) works at an affected airport and only interacts with international departing passengers (other than international transiting passengers); or
- (b) works on the airside of an affected airport only in areas that are inaccessible to international arriving or international transiting passengers, and

does not interact with international arriving or international transiting passengers on the landside of the affected airport

**excluded port person**, in relation to a group, means a person who is in isolation or quarantine on a ship under a COVID-19 order

**exempt person** means an affected person who, under clause 7A, is exempt from the duty in clause 7

**group** means a group of affected persons specified in the second column of an item of the table set out in Schedule 2

**have contact with**, in relation to persons who belong to different groups, means—

- (a) having face-to-face contact within 2 metres of each other for 15 minutes or more; or
- (b) being in a confined space within 2 metres of each other for 15 minutes or more

**health care services** has the same meaning as in section 4(1) of the Health and Disability Services (Safety) Act 2001

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

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

**home-based education and care service** has the same meaning as in section 10(1) of the Education and Training Act 2020

**home or place of residence** includes a residential care facility, retirement village, and rest home

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

**international layover** means a stay in accommodation provided by an accommodation service (for example, a stay in a hotel) at any place outside New Zealand for a period of 6 hours or more

**landside**, in relation to an affected airport, means any part of the affected airport that is not airside

**managed isolation facility** means a facility that is designated by the New Zealand Government for use as a place of isolation

**managed quarantine facility** means a facility that is designated by the New Zealand Government for use as a place of quarantine

**mental health and addiction support services** has the same meaning as in section 5 of the Support Workers (Pay Equity) Settlements Act 2017

**Minister** means the Minister for COVID-19 Response

**physical distancing**, in relation to other persons, means remaining at least 2 metres away from those persons

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

**public service agency** means any of the agencies listed in section 10(a) of the Public Service Act 2020

**QFT flight** has the meaning given by clause 4A of the COVID-19 Public Health Response (Air Border) Order (No 2) 2020

**QFT person** has the meaning given by clause 4(1) of the COVID-19 Public Health Response (Air Border) Order (No 2) 2020

**register** means the register that the Director-General must ensure is kept, maintained, and monitored under clause 12

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

**relevant aircrew member** means a person—

- (a) who is in isolation following a flight on which the person arrived in New Zealand; and
- (b) who was—
  - (i) on the crew manifest for the flight; or
  - (ii) on the flight at the direction of an airline for which the person carries out work as a pilot, co-pilot, or flight attendant

**relevant PCBU** means the PCBU (within the meaning of section 17 of the Health and Safety at Work Act 2015) who employs or engages an affected person to carry out certain work

**service worker** means a person who carries out work for or on behalf of—

- (a) the State services;
- (b) the Defence Force

**ship** has the same meaning as in section 2(1) of the Maritime Transport Act 1994

**specified visitor** has the same meaning as in section 3(1) of the Corrections Act 2004

**staff member of a prison** has the same meaning as in section 3(1) of the Corrections Act 2004

**State services**—

- (a) means all instruments of the Crown in respect of the Executive Government of New Zealand, whether public service agencies, bodies corporate, agencies, or other instruments; and
- (b) includes Crown entities; but

- (c) excludes those instruments specified in paragraph (c) or (e) of the definition of State services in section 5 of the Public Service Act 2020

**statutory visitor** has the same meaning as in section 3(1) of the Corrections Act 2004

**vaccinated**, in relation to an affected person, means the person has received all of the doses of a COVID-19 vaccine or combination of COVID-19 vaccines specified in the first column of the table in Schedule 3 administered in accordance with the requirements specified for that vaccine or combination of vaccines in the second column of that table

**vocational and disability support services** has the same meaning as in section 5 of the Support Workers (Pay Equity) Settlements Act 2017

**workers who handle affected items** means persons—

- (a) who belong to a group specified in Part 6 of Schedule 2; and
- (b) who touch affected items while carrying out certain work for a relevant PCBU that is contracted to provide regular services for a managed quarantine facility, a managed isolation facility, an affected aircraft, or an affected ship (for example, cleaning, laundering, or refuse disposal services).

Clause 4 **affected education service**: inserted, at 11.59 pm on 25 October 2021, by clause 4 of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

Clause 4 **affected item**: inserted, at 11.59 pm on 14 July 2021, by clause 5(1) of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

Clause 4 **affected person**: replaced, at 11.59 pm on 14 July 2021, by clause 5(2) of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

Clause 4 **aircraft**: inserted, at 11.59 pm on 14 July 2021, by clause 5(1) of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

Clause 4 **aircrew member**: inserted, at 11.59 pm on 14 July 2021, by clause 5(1) of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

Clause 4 **aircrew member** paragraph (b)(iii): amended, at 11.59 pm on 17 October 2021, by clause 4(1) of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021 (LI 2021/315).

Clause 4 **care and support services**: inserted, at 11.59 pm on 25 October 2021, by clause 4 of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

Clause 4 **care and support worker**: inserted, at 11.59 pm on 25 October 2021, by clause 4 of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

Clause 4 **certain work**: inserted, at 11.59 pm on 14 July 2021, by clause 5(1) of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

Clause 4 **certified provider**: inserted, at 11.59 pm on 25 October 2021, by clause 4 of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

Clause 4 **COVID-19 vaccination record**: inserted, at 11.59 pm on 17 October 2021, by clause 4(3) of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021 (LI 2021/315).

Clause 4 **COVID-19 vaccine**: inserted, at 11.59 pm on 17 October 2021, by clause 4(3) of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021 (LI 2021/315).

Clause 4 **crew**: inserted, at 11.59 pm on 14 July 2021, by clause 5(1) of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

Clause 4 **Defence Force**: inserted, at 11.59 pm on 14 July 2021, by clause 5(1) of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

Clause 4 **early childhood service**: inserted, at 11.59 pm on 25 October 2021, by clause 4 of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

Clause 4 **enclosed space**: inserted, at 11.59 pm on 14 July 2021, by clause 5(1) of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

Clause 4 **excluded airport person**: inserted, at 11.59 pm on 14 July 2021, by clause 5(1) of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

Clause 4 **excluded port person**: inserted, at 11.59 pm on 14 July 2021, by clause 5(1) of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

Clause 4 **exempt person**: inserted, at 11.59 pm on 17 October 2021, by clause 4(3) of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021 (LI 2021/315).

Clause 4 **government official**: revoked, at 11.59 pm on 14 July 2021, by clause 5(3) of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

Clause 4 **have contact with**: inserted, at 11.59 pm on 14 July 2021, by clause 5(1) of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

Clause 4 **health care services**: inserted, at 11.59 pm on 25 October 2021, by clause 4 of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

Clause 4 **health practitioner**: inserted, at 11.59 pm on 14 July 2021, by clause 5(1) of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

Clause 4 **health service**: inserted, at 11.59 pm on 25 October 2021, by clause 4 of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

Clause 4 **home-based education and care service**: inserted, at 11.59 pm on 25 October 2021, by clause 4 of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

Clause 4 **home or place of residence**: inserted, at 11.59 pm on 25 October 2021, by clause 4 of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

Clause 4 **hostel**: inserted, at 11.59 pm on 25 October 2021, by clause 4 of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

Clause 4 **international layover**: inserted, at 11.59 pm on 17 October 2021, by clause 4(3) of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021 (LI 2021/315).

Clause 4 **landside**: inserted, at 11.59 pm on 14 July 2021, by clause 5(1) of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

Clause 4 **mental health and addiction support services**: inserted, at 11.59 pm on 25 October 2021, by clause 4 of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

Clause 4 **Minister**: inserted, at 11.59 pm on 25 October 2021, by clause 4 of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

Clause 4 **physical distancing**: inserted, at 11.59 pm on 14 July 2021, by clause 5(1) of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

Clause 4 **place**: revoked, at 11.59 pm on 14 July 2021, by clause 5(4) of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

Clause 4 **playgroup**: inserted, at 11.59 pm on 25 October 2021, by clause 4 of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

Clause 4 **register**: inserted, at 11.59 pm on 14 July 2021, by clause 5(1) of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

Clause 4 **registered school**: inserted, at 11.59 pm on 25 October 2021, by clause 4 of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

Clause 4 **relevant aircrew member**: inserted, at 11.59 pm on 14 July 2021, by clause 5(1) of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

Clause 4 **relevant PCBU**: amended, at 11.59 pm on 14 July 2021, by clause 5(5) of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

Clause 4 **service worker**: inserted, at 11.59 pm on 14 July 2021, by clause 5(1) of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

Clause 4 **ship**: inserted, at 11.59 pm on 14 July 2021, by clause 5(1) of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

Clause 4 **specified visitor**: inserted, at 11.59 pm on 25 October 2021, by clause 4 of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

Clause 4 **staff member of a prison**: inserted, at 11.59 pm on 25 October 2021, by clause 4 of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

Clause 4 **State services**: inserted, at 11.59 pm on 14 July 2021, by clause 5(1) of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

Clause 4 **statutory visitor**: inserted, at 11.59 pm on 25 October 2021, by clause 4 of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

Clause 4 **vaccinated**: replaced, at 11.59 pm on 17 October 2021, by clause 4(2) of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021 (LI 2021/315).

Clause 4 **vocational and disability support services**: inserted, at 11.59 pm on 25 October 2021, by clause 4 of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

Clause 4 **workers who handle affected items**: inserted, at 11.59 pm on 14 July 2021, by clause 5(1) of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

## **5 Transitional, savings, and related provisions**

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

## **6 Application of order**

This order applies to the whole of New Zealand.

### *Duties in relation to vaccinations*

## **7 Duty of affected person not to carry out certain work unless vaccinated**

An affected person must not carry out certain work unless they are vaccinated.

Clause 7 heading: amended, at 11.59 pm on 14 July 2021, by clause 6(1) of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

Clause 7: amended, at 11.59 pm on 14 July 2021, by clause 6(2) of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

### **7A Exemption from duty under clause 7**

- (1) This clause applies to an affected person who belongs to a group specified in Part 6, 7, 8, or 9 of the table in Schedule 2.
- (2) An affected person may carry out certain work without being vaccinated if—

- (a) the affected person has particular physical or other needs that a suitably qualified health practitioner (in the course of examining the person) determines would make it inappropriate for the person to be vaccinated; and
- (b) in any case where the affected person belongs to the group specified in Part 6 of the table in Schedule 2, the relevant PCBU who employs or engages the affected person has provided the register with written confirmation that a suitably qualified health practitioner—
  - (i) has examined the affected person; and
  - (ii) has determined that vaccinating the affected person would be inappropriate.
- (3) If the affected person is a health practitioner, the examination referred to in subclause (2) must be undertaken by another health practitioner who is suitably qualified to conduct the examination.

Clause 7A: replaced, at 11.59 pm on 25 October 2021, by clause 5 of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

## **8 Duties of relevant PCBUs in relation to vaccinations**

- (1) A relevant PCBU must not allow an affected person (other than an exempt person) to carry out certain work unless satisfied that the affected person is vaccinated.
- (2) A relevant PCBU—
  - (a) must notify each affected person of their duty to be vaccinated; and
  - (b) must not prevent the affected person from reporting for, and undergoing, vaccination during their working hours, if vaccinations are available during those hours.
- (3) A relevant PCBU must not allow an affected person who provides a home-based education and care service to carry out certain work unless satisfied that every person over the age of 12 years in the home where the home-based education and care service is provided is vaccinated.

Clause 8(1): amended, at 11.59 pm on 17 October 2021, by clause 5 of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021 (LI 2021/315).

Clause 8(1): amended, at 11.59 pm on 14 July 2021, by clause 8 of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

Clause 8(3): inserted, at 11.59 pm on 25 October 2021, by clause 6 of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

## **9 Chief executive may authorise affected persons not vaccinated to carry out certain work**

- (1) This clause—
  - (a) applies despite anything in clause 7 or 8; but

- (b) does not apply to an affected person who belongs to a group specified in Part 7 or 9 of the table in Schedule 2.
- (2) A chief executive may authorise an affected person who has not been vaccinated to carry out certain work if the work—
- (a) is unanticipated, necessary, and time-critical and cannot be carried out by a person who is vaccinated; and
- (b) must be carried out to prevent the ceasing of operations.
- (3) An affected person who is authorised to carry out certain work under subclause (2) may be authorised to re-enter as many times as is necessary to complete the work.
- (4) An affected person may enter any place without approval if they need to enter to preserve or protect a person's life, health, or safety in an emergency.
- (5) In this clause, **chief executive**,—
- (a) in relation to a worker at a managed isolation facility or a managed quarantine facility, means the chief executive of the Ministry of Business, Innovation, and Employment:
- (b) in relation to a worker who is not a service worker and who works at an affected port or on board an affected ship, means the Director of Maritime New Zealand:
- (c) in relation to a worker who is not a service worker and who works at an affected airport or on board an affected aircraft, means the Director of Civil Aviation:
- (ca) in relation to a staff member of a prison, means the chief executive of the Department of Corrections:
- (d) in relation to any other worker, means the chief executive of the relevant PCBU.

Clause 9 heading: replaced, at 11.59 pm on 17 October 2021, by clause 6(1) of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021 (LI 2021/315).

Clause 9(1): replaced, at 11.59 pm on 25 October 2021, by clause 7(1) of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

Clause 9(2): amended, at 11.59 pm on 17 October 2021, by clause 6(2) of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021 (LI 2021/315).

Clause 9(2): amended, at 11.59 pm on 14 July 2021, by clause 9(1) of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

Clause 9(2)(b): amended, at 11.59 pm on 14 July 2021, by clause 9(2) of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

Clause 9(3): amended, at 11.59 pm on 17 October 2021, by clause 6(3) of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021 (LI 2021/315).

Clause 9(3): amended, at 11.59 pm on 14 July 2021, by clause 9(3) of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

Clause 9(4): replaced, at 11.59 pm on 14 July 2021, by clause 9(4) of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).



Clause 9(4): amended, at 11.59 pm on 17 October 2021, by clause 6(3) of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021 (LI 2021/315).

Clause 9(5): replaced, at 11.59 pm on 14 July 2021, by clause 9(5) of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

Clause 9(5)(ca): inserted, at 11.59 pm on 25 October 2021, by clause 7(2) of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

**9A Director-General may authorise affected persons not fully vaccinated to carry out certain work**

- (1) This clause applies despite anything in clause 7 or 8.
- (2) The Director-General may, on the application of a relevant PCBU (the **applicant**), authorise an affected person who is not fully vaccinated to carry out certain work.
- (3) The Director-General may give an authorisation in respect of an affected person only if—
  - (a) the person has received at least 1 dose of a COVID-19 vaccine (not being the Janssen vaccine); and
  - (b) the Director-General is satisfied, taking into account the certain work to be carried out by the person, that the receipt of that vaccine adequately prevents, or limits the risk of,—
    - (i) an outbreak of COVID-19; or
    - (ii) the spread of COVID-19.
- (4) The Director-General may impose 1 or more conditions on an authorisation (for example, that the affected person meet the vaccination requirements set out in Schedule 3 within a specified time frame).
- (5) The Director-General must give the applicant written notice of the outcome of an application and, if an authorisation has been given, of any conditions imposed on the authorisation.
- (6) The applicant must give a copy of a written notice received under subclause (5) to the affected person who is the subject of the application.

Clause 9A: inserted, at 11.59 pm on 17 October 2021, by clause 7 of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021 (LI 2021/315).

**10 Duties of relevant PCBUs of affected persons belonging to groups specified in Parts 1 to 6 of Schedule 2: vaccination records**

- (1AAA) This clause applies to a relevant PCBU who employs or engages an affected person who belongs to a group specified in any of Parts 1 to 6 of the table in Schedule 2.
- (1) The relevant PCBU—
    - (a) must, before a person the relevant PCBU employs or engages actually carries out certain work, update the register to provide the Ministry of Health with confirmation that the person is an affected person; and

- (b) must—
- (i) ask the Ministry of Health to provide details of the COVID-19 vaccination record of an affected person whom the relevant PCBU employs or has engaged to carry out certain work; or
  - (ii) access the register to obtain the affected person's COVID-19 vaccination record.
- (2) The relevant PCBU must notify the affected person that—
- (a) the affected person has a duty to be vaccinated; and
  - (b) the relevant PCBU has checked the affected person's COVID-19 vaccination record under subclause (1).
- (2A) The relevant PCBU must inform an affected person if the person's COVID-19 vaccination record shows that the person is not vaccinated.
- (3) The relevant PCBU must, as soon as practicable, notify the Ministry of Health—
- (a) of any notice and evidence received by the PCBU from an affected person under clause 11(2);
  - (b) that a person that the relevant PCBU has engaged or employed has ceased to be an affected person for the relevant PCBU.
- (4) The relevant PCBU must ensure that the register has, in respect of an affected person the relevant PCBU employs or has engaged to carry out certain work, the following information:
- (a) the affected person's full legal name and date of birth;
  - (b) a telephone number by which the affected person may be reached.
- (5) The affected person must—
- (a) provide the relevant PCBU with (or give the relevant PCBU access to) the information specified in subclause (4) as soon as practicable; and
  - (b) ensure that the information is updated as soon as practicable after it changes.

Clause 10 heading: replaced, at 11.59 pm on 25 October 2021, by clause 8(1) of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

Clause 10(1AAA): inserted, at 11.59 pm on 25 October 2021, by clause 8(2) of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

Clause 10(1): replaced, at 11.59 pm on 14 July 2021, by clause 10(2) of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

Clause 10(1)(b): replaced, at 11.59 pm on 17 October 2021, by clause 8(1) of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021 (LI 2021/315).

Clause 10(2)(b): amended, at 11.59 pm on 17 October 2021, by clause 8(2) of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021 (LI 2021/315).

Clause 10(2A): replaced, at 11.59 pm on 17 October 2021, by clause 8(3) of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021 (LI 2021/315).

Clause 10(3)(a): replaced, at 11.59 pm on 17 October 2021, by clause 8(4) of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021 (LI 2021/315).

Clause 10(4): inserted, at 11.59 pm on 14 July 2021, by clause 10(4) of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

Clause 10(5): inserted, at 11.59 pm on 14 July 2021, by clause 10(4) of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

## **11 Duties of affected person regarding vaccination records**

- (1) An affected person who carries out certain work for a relevant PCBU must—
  - (a) allow the relevant PCBU to access any COVID-19 vaccination record that the Ministry of Health may have for the affected person; and
  - (b) advise the relevant PCBU if they have received 1 or more doses of a COVID-19 vaccine or combination of COVID-19 vaccines outside New Zealand.
- (2) If an affected person who carries out certain work for a relevant PCBU considers that their COVID-19 vaccination record is not up to date because it does not include a record of any dose of a COVID-19 vaccine that they have received (whether inside or outside New Zealand), the affected person may—
  - (a) notify the relevant PCBU of that fact; and
  - (b) provide to the relevant PCBU evidence of having received that dose and of the date on which it was received.
- (3) An affected person who carries out certain work for a relevant PCBU must, if they are an exempt person, provide written confirmation of that fact to—
  - (a) the relevant PCBU; and
  - (b) an enforcement officer on request.

Clause 11: replaced, at 11.59 pm on 17 October 2021, by clause 9 of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021 (LI 2021/315).

## **11A Duties of relevant PCBUs of affected persons belonging to groups specified in Part 7, 8, or 9 of Schedule 2: vaccination records**

- (1) This clause applies to a relevant PCBU who employs or engages an affected person who belongs to a group specified in Part 7, 8, or 9 of the table in Schedule 2.
- (2) The relevant PCBU must, for each affected person employed or engaged by the PCBU, keep and maintain a record of the following information:
  - (a) the affected person's full name;
  - (b) the affected person's date of birth;
  - (c) a telephone number and email address by which the affected person may be contacted;
  - (d) whether the affected person is vaccinated;
  - (e) if the affected person is vaccinated,—

- (i) the name of the COVID-19 vaccine or vaccines they have received; and
- (ii) the date or dates on which they received a dose of the vaccine or vaccines:
- (f) if the affected person is not vaccinated because they have received a first, but not a second, dose of a COVID-19 vaccine, the latest date by which they must have the second dose of a COVID-19 vaccine to be vaccinated:
- (g) if the affected person is not vaccinated because they have not received a dose of a COVID-19 vaccine, the latest dates by which they must have their first and second doses of a COVID-19 vaccine to be vaccinated:
- (h) if the affected person is not vaccinated in reliance on an exemption under clause 7A or 12A, or an authorisation under clause 9 or 9A,—
  - (i) confirmation of that fact; and
  - (ii) a copy of the exemption or authorisation.
- (3) The record must be in writing or kept in a form or in a manner that allows the information in the record to be easily accessed and converted into written form.
- (4) For the purposes of this clause, the affected person must—
  - (a) provide the relevant PCBU with (or give the relevant PCBU access to) the information specified in subclause (2)(a) to (h) as soon as practicable; and
  - (b) ensure that the information is updated as soon as practicable after it changes.

Clause 11A: inserted, at 11.59 pm on 25 October 2021, by clause 9 of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

## 12 Duties regarding vaccination register

- (1) The Director-General must ensure that a register that records COVID-19 vaccinations of affected persons belonging to a group specified in any of Parts 1 to 6 of the table in Schedule 2 is kept, maintained, and monitored.
- (2) The Ministry of Health must provide a relevant PCBU with access to the register in respect of an affected person if the relevant PCBU has, under clause 10, updated the register to confirm that the relevant PCBU employs or has engaged the affected person to carry out certain work.
- (3) For the purposes of enforcing this order, the Director-General must enable the provision of any relevant COVID-19 vaccination record that the Ministry of Health keeps to enforcement officers who are investigating non-compliance with this order.
- (4) *[Revoked]*

Clause 12: replaced, at 11.59 pm on 14 July 2021, by clause 11 of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

Clause 12(1): amended, at 11.59 pm on 25 October 2021, by clause 10(1) of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

Clause 12(2): amended, at 11.59 pm on 25 October 2021, by clause 10(2) of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

Clause 12(3): amended, at 11.59 pm on 17 October 2021, by clause 10(1) of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021 (LI 2021/315).

Clause 12(4): revoked, at 11.59 pm on 17 October 2021, by clause 10(2) of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021 (LI 2021/315).

### *Exemptions*

Heading: inserted, on 12 August 2021, by clause 12 of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

#### **12A Power of Minister to grant exemptions**

- (1) A relevant PCBU may, by notice in writing to the Minister, apply for an exemption for a person specified in the application from any other provision of this order.
- (2) The relevant PCBU must, in writing, inform the person specified in the application of the application.
- (3) If the Minister receives an application, the Minister may ask the relevant PCBU to provide any evidence or other information that the Minister reasonably requires for the purposes of deciding whether to grant the exemption.
- (4) The Minister may exempt the person specified in the application from any provision of this order for a specified period if satisfied, on the basis of the evidence or other information provided, that—
  - (a) the exemption is necessary or desirable—
    - (i) to promote the purposes of the Act; and
    - (ii) to prevent significant disruption to—
      - (A) essential supply chains, in the case of an application to exempt from any provision of this order a person belonging to a group specified in any of Parts 1 to 6 of the table in Schedule 2; or
      - (B) health services, in the case of an application to exempt from any provision of this order a person belonging to a group specified in Part 7 of the table in Schedule 2; or
      - (C) the essential operations of a prison, in the case of an application to exempt from any provision of this order a person belonging to a group specified in Part 8 of the table in Schedule 2; and
  - (b) the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.

- (5) Before granting an exemption, the Minister must take into account—
- (a) if applicable, the potential for significant supply chain disruption if the work carried out by a particular person does not occur, including the extent of the risk to the public interest if the work does not occur; and
  - (b) the extent to which the work is necessary, including whether it could reasonably be—
    - (i) delayed to facilitate the vaccination of the persons needed to carry out work; or
    - (ii) performed by other persons who have been vaccinated; and
  - (c) the public health risk associated with the work.
- (6) The Minister may impose conditions on the exemption as the Minister considers necessary.
- (7) The Minister must, in writing, inform the relevant PCBU and the person specified in the application of the outcome of the application and, if the exemption is granted, when the exemption expires.
- (8) If an exemption is granted under this clause, the relevant PCBU must provide the person exempted with written notice of the exemption that states when the exemption expires.

Compare: LI 2021/6 cl 46

Clause 12A: inserted, on 12 August 2021, by clause 12 of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

Clause 12A(4)(a)(ii): replaced, at 11.59 pm on 25 October 2021, by clause 11(1) of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

Clause 12A(5)(a): amended, at 11.59 pm on 25 October 2021, by clause 11(2) of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

### *Infringement offences*

#### **13 Infringement offence**

A breach of clause 7, 8, 10, 11, 11A, or 12(4) is an infringement offence for the purposes of section 26(3) of the COVID-19 Public Health Response Act 2020.

Clause 13: amended, at 11.59 pm on 25 October 2021, by clause 12 of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

Clause 13: amended, at 11.59 pm on 14 July 2021, by clause 13 of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

## Schedule 1

### Transitional, savings, and related provisions

cl 5

#### Part 1

##### Provisions relating to this order as made

#### 1 **Transitional provision for affected persons on or before commencement**

If, on or before the commencement of this clause, an affected person has had 1 injection of the Pfizer/BioNTech COVID-19 vaccine, the affected person must be treated as being vaccinated until the close of 4 June 2021.

#### 2 **Transitional provision for persons who become affected persons after commencement**

- (1) This clause applies to a person who becomes an affected person on or after 1 May 2021.
- (2) The person must, until the date that is 35 days after the date on which they become an affected person, be treated as being vaccinated if they have had 1 injection of the Pfizer/BioNTech COVID-19 vaccine before becoming an affected person.

#### Part 2

##### Provisions relating to COVID-19 Public Health Response (Vaccinations) Amendment Order 2021

Schedule 1 Part 2: inserted, at 11.59 pm on 14 July 2021, by clause 14 of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

#### 3 **Transitional provision for affected persons on or before commencement**

- (1) If an affected person who belongs to a group specified in Schedule 2 (as replaced by the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021) is not vaccinated before 11.59 pm on 14 July 2021, the affected person must,—
  - (a) if the person is a service worker,—
    - (i) have their first injection of the Pfizer/BioNTech COVID-19 vaccine before the close of 26 August 2021; and
    - (ii) have their second injection of the Pfizer/BioNTech COVID-19 vaccine no later than 35 days after their first injection:
  - (b) if the person is not a service worker,—
    - (i) have their first injection of the Pfizer/BioNTech COVID-19 vaccine before the close of 30 September 2021; and

- (ii) have their second injection of the Pfizer/BioNTech COVID-19 vaccine no later than 35 days after their first injection.
- (2) However, if clause 1 of this schedule applied to the affected person before 11.59 pm on 14 July 2021, the requirements of that clause continue to apply as if the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 had not been made.

Schedule 1 clause 3: inserted, at 11.59 pm on 14 July 2021, by clause 14 of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

#### **4 Transitional provision for persons who become affected persons after commencement**

- (1) This clause applies to a person—
- (a) who is a service worker and who becomes an affected person on or after 26 August 2021:
- (b) who is not a service worker and who becomes an affected person on or after 30 September 2021.
- (2) The person must, until the date that is 35 days after the date on which they become an affected person, be treated as being vaccinated if they have had 1 injection of the Pfizer/BioNTech COVID-19 vaccine before becoming an affected person.

Schedule 1 clause 4: inserted, at 11.59 pm on 14 July 2021, by clause 14 of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

### **Part 3**

#### **Provisions relating to COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021**

Schedule 1 Part 3: inserted, at 11.59 pm on 25 October 2021, by clause 13(a) of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

##### *Health and disability sector*

Heading: inserted, at 11.59 pm on 25 October 2021, by clause 13(a) of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

#### **5 Transitional provision for affected persons working in health and disability sector before commencement**

- (1) If an affected person who belongs to a group specified in Part 7 of the table in Schedule 2 is not vaccinated before the commencement of this clause, the affected person must—
- (a) be treated as vaccinated until 15 November 2021 if they have their first dose of a COVID-19 vaccine before the close of that date:
- (b) be treated as vaccinated until 1 January 2022 (and after that date) if they—



- (i) have their first dose of a COVID-19 vaccine before the close of 15 November 2021; and
  - (ii) have their second dose of a COVID-19 vaccine before the close of 1 January 2022.
- (2) If an affected person who belongs to a group specified in Part 7 of the table in Schedule 2 is not vaccinated before the commencement of this clause and does not have their first dose of a COVID-19 vaccine before the close of 15 November 2021, the affected person must be treated as vaccinated—
- (a) on the date on which they have their first dose of a COVID-19 vaccine; and
  - (b) from that date until 1 January 2022 (and after 1 January 2022) if they have their second dose of a COVID-19 vaccine before the close of 1 January 2022.

Schedule 1 clause 5: inserted, at 11.59 pm on 25 October 2021, by clause 13(a) of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

### *Prisons*

Heading: inserted, at 11.59 pm on 25 October 2021, by clause 13(a) of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

## **6 Transitional provision for affected persons working in prisons before commencement**

- (1) If an affected person who belongs to a group specified in Part 8 of the table in Schedule 2 is not vaccinated before the commencement of this clause, the affected person must—
- (a) be treated as vaccinated until 6 November 2021 if they have their first dose of a COVID-19 vaccine before the close of that date;
  - (b) be treated as vaccinated until 8 December 2021 (and after that date) if they—
    - (i) have their first dose of a COVID-19 vaccine before the close of 6 November 2021; and
    - (ii) have their second dose of a COVID-19 vaccine before the close of 8 December 2021.
- (2) If an affected person who belongs to a group specified in Part 8 of the table in Schedule 2 is not vaccinated before the commencement of this clause and does not have their first dose of a COVID-19 vaccine before the close of 6 November 2021, the affected person must be treated as vaccinated—
- (a) on the date on which they have their first dose of a COVID-19 vaccine; and
  - (b) from that date until 8 December 2021 (and after 8 December 2021) if they have their second dose of a COVID-19 vaccine before the close of 8 December 2021.

Schedule 1 clause 6: inserted, at 11.59 pm on 25 October 2021, by clause 13(a) of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

### *Affected education services*

Heading: inserted, at 11.59 pm on 25 October 2021, by clause 13(a) of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

## **7 Transitional provision for affected persons working in affected education services before commencement**

- (1) If an affected person who belongs to a group specified in Part 9 of the table in Schedule 2 is not vaccinated before the commencement of this clause, the affected person must—
- (a) be treated as being vaccinated until 15 November 2021 if they have their first dose of a COVID-19 vaccine before the close of that date;
  - (b) be treated as vaccinated until 1 January 2022 (and after that date) if they—
    - (i) have their first dose of a COVID-19 vaccine before the close of 15 November 2021; and
    - (ii) have their second dose of a COVID-19 vaccine before the close of 1 January 2022.
- (2) If an affected person who belongs to a group specified in Part 9 of the table in Schedule 2 is not vaccinated before the commencement of this clause and does not have their first dose of a COVID-19 vaccine before the close of 15 November 2021, the affected person must be treated as vaccinated—
- (a) on the date on which they have their first dose of a COVID-19 vaccine; and
  - (b) from that date until 1 January 2022 (and after 1 January 2022) if they have their second dose of a COVID-19 vaccine before the close of 1 January 2022.

Schedule 1 clause 7: inserted, at 11.59 pm on 25 October 2021, by clause 13(a) of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

## **8 Transitional provision for relevant PCBUs of affected education services**

Clause 8(1) and (3) does not apply to a relevant PCBU of an affected education service until 2 January 2022.

Schedule 1 clause 8: inserted, at 11.59 pm on 25 October 2021, by clause 13(a) of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

## Schedule 2

### Groups of affected persons

cl 4

Schedule 2: replaced, at 11.59 pm on 14 July 2021, by clause 15 of the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182).

<b>Item</b>	<b>Group</b>
	<i>Part 1: Groups in relation to managed quarantine facilities</i>
1.1	Workers at managed quarantine facilities
1.2	Workers who transport to or from managed quarantine facilities persons required to be in isolation or quarantine under COVID-19 order
	<i>Part 2: Groups in relation to managed isolation facilities</i>
2.1	Workers at managed isolation facilities
2.2	Workers who transport to or from managed isolation facilities persons required to be in isolation or quarantine under COVID-19 order
	<i>Part 3: Groups in relation to affected airports</i>
3.1	All airside workers (other than excluded airport persons)
3.2	All landside workers who interact with international arriving or international transiting passengers (other than those arriving on QFT flights)
3.3	Baggage handlers who work at affected airports and who handle baggage from affected aircraft
3.4	Persons (other than excluded airport persons) who enter enclosed space on board affected aircraft
	<i>Part 4: Groups in relation to affected ports</i>
4.1	All workers (other than excluded port persons) who board affected ships
4.2	Pilots (other than excluded port persons) carrying out work on or around affected ships
4.3	Stevedores (other than excluded port persons) carrying out work on or around affected ships
4.4	All workers who transport persons (other than crew) to or from affected ships
4.5	All other port workers (other than excluded port persons) who interact with persons required to be in isolation or quarantine under COVID-19 order
	<i>Part 5: Groups in relation to aircraft</i>
5.1	Aircrew members
5.2	Workers at accommodation services (other than private dwellinghouses) where relevant aircrew members are self-isolating
	<i>Part 6: Groups in relation to affected items</i>
6.1	Workers who handle affected items within 72 hours of removal of items from managed quarantine facilities and who have contact with members of groups specified in Part 1 or 2 while both are working
6.2	Workers who handle affected items within 72 hours of removal of items from managed isolation facilities and who have contact with members of groups specified in Part 1 or 2 while both are working
6.3	Workers who handle affected items within 24 hours of removal of items from affected aircraft and who have contact with members of groups specified in Part 3 or 5 while both are working
6.4	Workers who handle affected items within 72 hours of removal of items from affected ships and who have contact with members of groups specified in Part 4 while both are working

Version as at  
25 October 2021

**COVID-19 Public Health Response (Vaccinations)  
Order 2021**

Schedule 2

<b>Item</b>	<b>Group</b>
	<i>Part 7: Groups in relation to health and disability sector</i>
7.1	Health practitioners
7.2	Workers who carry out work where health services are provided to members of the public by 1 or more health practitioners and whose role involves being within 2 metres or less of a health practitioner or a member of the public for a period of 15 minutes or more
7.3	Workers who are employed or engaged by certified providers and carry out work at the premises at which health care services are provided
7.4	Care and support workers
	<i>Part 8: Groups in relation to prisons</i>
8.1	Staff members of a prison (other than specified visitors or statutory visitors), and persons employed or engaged by a contractor or sub-contractor to provide services in respect of a prison, who may be required to undergo a security screening process before being allowed entry into the prison
	<i>Part 9: Groups in relation to affected education services</i>
9.1	Workers over the age of 12 years who carry out work at or for an affected education service (including as a volunteer or an unpaid worker) and who— <ul style="list-style-type: none"> <li>(a) may have contact with children or students in the course of carrying out that work; or</li> <li>(b) will be present at the affected education service at a time when children or students are also present</li> </ul>
9.2	Providers of a home-based education and care service

Schedule 2 Part 7: inserted, at 11.59 pm on 25 October 2021, by clause 14 of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

Schedule 2 Part 8: inserted, at 11.59 pm on 25 October 2021, by clause 14 of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

Schedule 2 Part 9: inserted, at 11.59 pm on 25 October 2021, by clause 14 of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325).

## Schedule 3 Vaccinations

cls 4, 9A

Schedule 3: inserted, at 11.59 pm on 17 October 2021, by clause 11 of the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021 (LI 2021/315).

<b>Doses of COVID-19 vaccine</b>	<b>Administration requirements</b>
2 doses of Comirnaty (also known as Pfizer/BioNTech)	Either— (a) both doses received before becoming an affected person; or (b) 1 dose received before becoming an affected person and the second dose received within 35 days after becoming an affected person
2 doses of AstraZeneca	Both doses received before becoming an affected person
2 doses of Moderna	Both doses received before becoming an affected person
1 dose of Janssen	Dose received before becoming an affected person
1 dose of AstraZeneca and 1 dose of Comirnaty	1 dose of AstraZeneca received before becoming an affected person and 1 dose of Comirnaty received within 35 days after becoming an affected person
1 dose of Moderna and 1 dose of Comirnaty	1 dose of Moderna received before becoming an affected person and 1 dose of Comirnaty received within 35 days after becoming an affected person

Dated at Wellington this 28th day of April 2021.

Hon Dr Ayesha Verrall,  
Associate Minister of Health.

Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*: 28 April 2021.

## Reprints notes

### 1 *General*

This is a reprint of the COVID-19 Public Health Response (Vaccinations) Order 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 (Vaccinations) Amendment Order (No 3) 2021 (LI 2021/325)  
COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021 (LI 2021/315)  
COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (LI 2021/182)

# Briefing

## Policy decisions required for further amendments to the COVID-19

### Public Health Response (Vaccinations) Order 2021

**Date due to MO:** 3 November 2021      **Action required by:** 4 November 2021

**Security level:** IN CONFIDENCE      **Health Report number:** H202212418

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

**Copy to:** Hon Andrew Little, Minister of Health

### Contact for telephone discussion

Name	Position	Telephone
<b>Maree Roberts</b>	Deputy Director-General, System Strategy and Policy	S9(2)(a)
<b>Alison Cossar</b>	Manager, Public Health Policy, System Strategy and Policy	

### Minister's office to complete:

- Approved       Decline       Noted  
 Needs change       Seen       Overtaken by events  
 See Minister's Notes       Withdrawn

Comment:

# Briefing title

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**Security level:** IN CONFIDENCE      **Date:** 03 November 2021

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

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## Purpose of report

1. This report provides advice on further amendments to the COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order) to clarify issues and processes for relevant groups of workers prior to the deadline for mandatory vaccination, and seeks your agreement to issue drafting instructions for the amendments.
2. This report discloses all relevant information and implications known at this time.

## Summary

3. On 25 October 2021 the COVID-19 Public Health (Vaccinations) Amendment Order (No 3) 2021 came into force, extending mandatory vaccination to all healthcare workers undertaking high risk work in the health and disability care sector, as well as all workers in affected education services who may have contact with children or students, and all workers who will enter a prison, either as staff or to provide prison services.
4. Further amendments are now required to address practical issues that have been identified in the lead up to the dates specified for mandatory vaccinations. It is necessary to clarify the policy intent to ensure that amendments to the Order align and are lawful, are practical and robust, and so employers and affected workers understand their vaccination obligations.
5. Amendments to be included are from the Ministry of Health, Ministry of Education, Department of Corrections and New Zealand Police. The Department of Corrections and NZ Police are briefing you separately.
6. Amendments to the Order are needed urgently before the first dose for Corrections staff is required, and therefore the amendments will need to be signed and gazetted on Friday 5 November 2021.
7. If you agree to the Ministry issuing drafting instructions to the Parliamentary Counsel Office (PCO), the Ministry will provide you with a draft Amended Order for Ministerial consultation by 5 November 2021. The Amended Order is proposed to come into force on 7 November 2021 after being signed.



## Recommendations

We recommend you:

- a) **Note** that the amendments to the COVID-19 Public Health Response (Vaccinations) Order 2021 are required to ensure that the mandatory vaccinations are workable. The amendments will include changes from NZ Police and the Department of Corrections that are addressed in separate advice.
- b) **Agree** that an amendment is drafted that refines the scope of clause 7A of the COVID-19 Public Health Response (Vaccinations) Order 2021 for clinical exemptions from vaccination  Yes/  No
- c) **Agree** to the proposed process outlined in this report for workers applying for clinical exemptions from being vaccinated against COVID-19  Yes/  No
- d) **Agree** that health practitioners who solely conduct consultations with patients online or remotely are not included in the COVID-19 Public Health Response (Vaccinations) Order 2021  Yes/  No
- e) **Note** the current exemption for care and support workers living in the same house as the person they are providing services to, is inconsistent with the government's overall policy of having a workforce that is vaccinated against COVID-19, and is inconsistent with the Government's overall response to the Family Carers' litigation
- f) **Agree** to an amendment to the COVID-19 Public Health Response (Vaccinations) Order 2021 to include care and support workers living in the same house as the person they are providing services to  Yes/  No
- g) **Agree** that the COVID-19 Public Health Response (Vaccinations) Order 2021 be amended to enable the Minister to grant exemptions to prevent the significant disruption to the operation of learning in registered schools or to the essential operations of hostels  Yes/  No
- h) **Agree** that the power to grant exemptions for schools and hostels ceases on 1 January 2022  Yes/  No
- i) **Agree** that the power to grant exemptions to prevent the significant disruption to the operation of learning in registered schools or to the essential operations of hostels is delegated by the Minister for COVID-19 Response to the Secretary for Education  Yes/  No  
see comment
- j) **Agree** that the COVID-19 Public Health Response (Vaccinations) Order 2021 and the COVID-19 Public Health Response (Required Testing) Order 2020 be amended to clarify that only licensed early childhood services are captured by the requirements in these orders  Yes/  No

Regarding re (i) I would like the delegations consistent across all exemptions processes. As Minister I currently approve the border and health worker exemptions so don't agree to this current proposal, but I'm happy to consider a proposal to delegate in a more consistent way across the workforces. CH

- k) **Note** that advice on further amendments to the COVID-19 Public Health Response (Vaccinations) Order 2021 regarding workers at the Department of Corrections and NZ Police will be provided to you separately
- l) **Agree** the Ministry will issue drafting instructions to Parliamentary Counsel Office to draft the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 4) 2021.
- m) **Note** that under section 9(1)(c) of the COVID-19 Act you are required to consult with the Prime Minister, Minister of Justice and Minister of Health before making or amending a COVID-19 Order.

Yes/  No



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

Hon Chris Hipkins  
**Minister for Covid-19 Response**  
Date: 4/11/2021

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## Policy decisions required for further amendments to the COVID-19

### Public Health Response (Vaccinations) Order 2021

#### Background

10. The COVID-19 Public Health (Vaccinations) Order 2021 (the Order) came into force on 1 May 2021. It makes it mandatory for work at certain places to be carried out by affected persons who are vaccinated. This is due to the risk of exposure to, and transmission of COVID-19 by these workers. In the originating Order this applied to specified work performed at the Border.
11. On 14 July 2021 the COVID-19 Public Health (Vaccinations) Amendment Order 2021 came into force, extending the scope of the Order to cover additional work performed at the Border, and to create a public health exception for certain workers at the Border who have no interaction with travellers or crew.
12. On 17 October 2021 the COVID-19 Public Health (Vaccinations) Amendment Order (No 2) 2021 came into force, to make allowance for affected persons to be vaccinated with COVID-19 vaccines other than the Pfizer/BioNTech vaccine.
13. On 25 October 2021 the COVID-19 Public Health (Vaccinations) Amendment Order (No 3) 2021 came into force, extending mandatory vaccination to all healthcare workers undertaking specific work in the health and disability care sector, all workers in affected education services who may have contact with children or students, and all workers who will enter a prison, either as staff or to provide prison services.
14. Further amendments are now required to address practical issues that have been identified in the lead up to the dates specified for mandatory vaccinations. It is necessary to clarify the policy intent to ensure that amendments to the Order align and are lawful, are practical and robust, and so employers and affected workers understand their vaccination obligations.

#### Comment

##### Amendments to clinical exemptions

###### *Context*

15. Evidence of clinical exemption for vaccination is important for people who are mandated to be vaccinated under the Order.
16. Currently the COVID-19 Public Health (Vaccinations) Order 2021, at clause 7A, outlines that the relevant PCBU who employs the affected person can provide the register with written confirmation that a suitably qualified health practitioner:
  - (i) has examined the affected person; and
  - (ii) has determined that vaccinating the affected person would be inappropriate.
17. This clause is no longer fit for purpose and requires amendment. The Ministry is aware some people have already sought an exemption from their healthcare practitioners. However, it has become clear that some people who wish to avoid vaccination, but do not

meet the clinical criteria, have been approaching healthcare practitioners requesting an exemption, and some practitioners have provided one.

18. The Ministry is also aware that some healthcare practitioners have received excessive demands from patients including some who have used aggression towards their practitioner.
19. The COVID-19 Vaccine Technical Advisory Group (CV TAG) have advised that to date, the Pfizer COVID-19 vaccine has shown an excellent safety and efficacy profile and is recommended for all New Zealanders 12 years of age and over.
20. The only contraindication to the Pfizer vaccine is hypersensitivity to the active substance or to any of the excipients, for example anaphylaxis to a vaccine component, such as polyethylene glycol (PEG). Such reactions are rare and, even people with this history can usually receive the Pfizer vaccine after specialist assessment under supervision.
21. Well-defined clinical criteria for a temporary clinical exemption from full vaccination are needed for both the health professionals who will be asked to provide the exemption and for the people applying for an exemption.

#### *Proposed principles of clinical exemptions*

22. As there are very few situations where a vaccine is contraindicated a clinical exemption is expected to be rarely required.
23. Vaccinations may reasonably be temporarily deferred for individuals with some acute major medical conditions, such as undergoing major surgery or hospital admission for a serious illness. Typically, these conditions are considered time-limited, and therefore a temporary exemption is considered appropriate.
24. Exemptions should only be given where a suitable alternative COVID-19 vaccine is not readily available for the individual.
25. Exemptions should be for a specified time, reflecting, for example, recovery from clinical conditions or the availability of alternate vaccines.
26. It is likely that most people who have other medical conditions or who have experienced adverse events can be safely vaccinated with extra precautions.

#### *Proposed process for clinical exemptions requests*

27. Amending the Order to provide a clear centralised process for approving exemptions will ensure the narrow scope of the exemption's framework is maintained. It will also provide clarity and certainty for those who truly cannot receive the vaccine and avoid confusion for those who do not meet the clinical criteria.
28. The Ministry proposes the following process for people who need to request a clinical exemption. This process aligns with the process already proposed as part of the CVC Order:
  - i) When seeking a clinical exemption:
    - a. The person must be examined by a medical practitioner or a nursing practitioner

- b. The medical practitioner or nursing practitioner must assess whether the individual meets a clinical contraindication specified by the Director-General by notice in the gazette. If satisfied that such a clinical contraindication exists, the health practitioner must:
    - complete a request for an exemption on behalf of the individual, setting out the gazetted clinical contraindication that the individual is considered to have and the reasons for that belief; and
    - submit the exemption to the Ministry of Health approval panel for consideration.
  - ii) The approval panel will consider exemption requests that are submitted in accordance with these requirements and decide:
    - a. if an exemption is to be granted; and
    - b. the duration of the exemption (maximum duration of 6 months).
  - iii) The Ministry must notify the applicant practitioner and the individual in writing of their decision.
29. The Order will make exemptions obtained before the 7 November 2021 void and people will have to re-submit via the new process. This will ensure that only those who genuinely require clinical exemptions receive them. This is likely to require a short transition period for some workers to arrange a new exemption, or get vaccinated for those whose first dose would be due on the 6 November 2021.
30. We anticipate this new process will create frustration for those people who have already obtained an exemption from their healthcare practitioner. This situation will apply to a very small number of people as there are very few people in New Zealand who are likely to meet the clinical criteria.

### Healthcare practitioners who conduct consultations via remote means

31. On 11 October 2021, Cabinet agreed that high risk work in the health and disability sector be undertaken by vaccinated workers (CAB-21-MIN-0413 refers). The Amendment Order was amended to reflect this decision. However, there have been uncertainty as to whether the Amendment Order applies to healthcare practitioners who conduct their work through either online or phone consultations.
32. As the policy intent for the Amendment Order was intended to be directed at those health care workers undertaking high risk work in the health and disability sector, the risk for healthcare practitioners conducting consultations virtually (i.e. online or by phone) is very low thus should not be captured by the Amendment Order.
33. The Amendment Order does not currently specify this, and the Ministry proposes an amendment to clarify this situation for virtual consultations. These practitioners would not be required to be vaccinated as long as the risk remains low and consultations are virtual or remotely.
34. The amendment will stipulate that these practitioners must conduct consultations remotely for all their patients and for all consultations.

## Care and support workers who live in the same house as the person they provide service to (usually family carers)

### Context

35. The Family Carers litigation found that the policy of not paying family carers to support disabled people was inconsistent with the Human Rights Act 1993 and could not be justified under the New Zealand Bill of Rights Act 1990. This Government's general response to the litigation is to treat paid family carers the same as other carers.
36. The COVID-19 Public Health Response (Vaccinations) Order 2021, however, creates different vaccination requirements for different groups of people who are employed or engaged to provide care and support to disabled people:
  - a. care and support workers are generally required to be vaccinated under the COVID-19 Public Health Response (Vaccinations) Order 2021.
  - b. but, care and support workers who live in the same house as the person they are providing services to (usually family carers), are not required to be vaccinated.
37. Whilst this exception was included in CAB-21-MIN-0413, requiring all people who are employed or engaged as care and support workers to be vaccinated is consistent with the government's overall policy of having a workforce that is vaccinated against COVID-19 and is consistent with the Government's overall response to the Family Carers' litigation. It also removes the risk of recreating policies that may be found to be inconsistent with the Human Rights Act 1993. The disability community – including carers - is strongly supportive of this approach.
38. The Ministry proposes an amendment to the Order that revokes the exemption for care and support workers who live in the same house as the person they provide services to and includes them in the general definition of care and support workers, to ensure they are captured by the Order.
39. Some paid family carers may consider that this means they are being forced to be vaccinated, and there are likely to be difficulties enforcing vaccination requirements, especially when the paid family carer lives in the same house as the disabled person. This requirement, however, flows from them seeking to be treated the same as other employees.

### Amendments for schools and hostels

40. The COVID-19 Public Health Response (Vaccinations) Order 2021 requires most members of the early learning and schooling workforce to have a first dose of the COVID-19 vaccine by 15 November 2021. After this date, an unvaccinated person who provides a service in which they may have contact with children or students or works onsite while children or students are present is in breach of the vaccination order and commits an infringement offence.
41. While employers will not be in breach of the vaccination order at this point in time, they will have other legal responsibilities which makes it unlikely that they will allow unvaccinated persons to provide an onsite service to children and students after 15 November 2021.

42. As a result of this, some education services, particularly if they are small, rural, or whānau-led, have been concerned about their ability to continue operating face-to-face services after 15 November 2021. The Ministry of Education has already received multiple reports of education services not having enough vaccinated staff to continue operating after 15 November 2021.
43. To give more flexibility for employers to manage staff ahead of 1 January 2022 and to ensure the continuity of face-to-face learning for children and students, we consider that the vaccinations order should be amended to enable the Minister for COVID-19 Response (the Minister) to grant exemptions to prevent the significant disruption to the operation of face-to-face learning in registered schools; or to the essential operations of a hostel.
44. The Ministry of Education does not propose including the early learning sector in this exemption process as we have advised that due to the diverse nature of arrangements that exist in the early learning context an exemption would create possible public health risks. Additionally, unlike compulsory schooling, attendance at early learning is not compulsory. Children do not have a statutory right to attend early childhood education services, and parents do not have a corresponding obligation to send their children there.
45. The Minister would only be able to provide such an exemption until 1 January 2022. After this date, only clinical exemptions would be allowed.
46. Enabling the Minister to grant an exemption for schools and hostels is consistent with the existing exemptions that the Minister can grant to prevent the significant disruption to essential supply chains, health services and essential operations of a prison.
47. In addition to ensuring continuity of face-to-face education and/or care and providing employers with more flexibility to make staffing arrangements ahead of 1 January 2022, the exemption application process would provide further insight into communities that are struggling with vaccination. This could better enable the Government to provide targeted vaccination support to these education services and communities.
48. It is recommended that the power to grant exemptions to prevent the significant disruption to the operation of face-to-face learning in registered schools; or to the essential operations of a hostel is delegated by the Minister to the Secretary for Education.

*Clarification of vaccination and testing orders application to early childhood education services*

49. As part of the education system vaccination and testing requirements decisions made by Cabinet on 11 October, Cabinet agreed that the definition of 'education services' includes 'all early childhood education services, including homebased education and care services, but excluding playgroups' [CAB-21-MIN-0414]. This definition could be argued to inadvertently capture unlicensed early childhood education services. We recommend an amendment to the order clarifying that only licensed early childhood services are intended to be captured.

## Further amendments to the Order by Department of Corrections and New Zealand Police

50. Further amendments are being provided in separate advice from the Department of Corrections and NZ Police and will have staggered commencement dates. For Police, this will be immediate when gazetted to ensure that the new requirement is in place before their deadline, and after 48 hours of gazetting for the other changes.

## Human Rights

51. Previous Bill of Rights Act advice has been given on the policy of the recent amendments to the COVID-19 Public Health Response (Vaccinations) Order 2021. These new changes ensure the Order appropriately implements those decisions and no further BORA considerations apply.

## Equity

52. The relevant equity issues have been outlined in CAB-21-SUB-0413.
53. If workers who are subject to the Amendment Order are not vaccinated, their employers may choose to redeploy them or (following appropriate human resource process) may choose to terminate their employment.
54. Given that the vaccination is available to all groups, we do not consider the equity concerns above override the public health need for specified high-risk roles to only be undertaken by vaccinated people.
55. Requiring vaccination may lower the risk of transmission to communities of people that these workers ordinarily interact with including place, ethnicity, faith, and age-based communities. It is also important to reduce risks to the community through the overwhelming of health capacity.
56. Requiring vaccination may lower the risk of infection for these workers and the risk of transmission to communities of people that these workers ordinarily interact with including place, ethnicity, faith, and age-based communities.

### *Te Tiriti o Waitangi implications*

57. The Government as Kāwanatanga and Ōritetanga has responsibilities to support health and socio-economic outcomes for Māori. While there continues to be a focus on increasing vaccination uptake for Māori, the Amendment Order may undermine the agency of iwi, hapū and whānau to protect their own wellbeing, afforded to them under the principle of tino rangatiratanga.
58. In the past, and particularly throughout the COVID-19 response, iwi, hapū and whānau have exercised, and in many cases exceeded, good practice in line with government guidelines to maintain the wellbeing of their own whānau.
59. The Ministry and other stakeholders (eg Immunisation Implementation Advisory Sector) will continue to work with Māori (and Pacific) providers to increase the number of kaimahi (staff) able to deliver the COVID-19 vaccination. This will remain a critical enabler for lifting Māori (and Pacific) vaccination rates, encouraging uptake and increasing trust and transparency.



60. It will also be important to ensure clear, constant and consistent information is provided to Māori in English and Māori through appropriate channels.
61. The Amendment Order supports health system resilience, the minimisation of community outbreaks, and any associated increase in Alert Level restrictions. This is critical to minimising and addressing existing inequities and is consistent with Te Tiriti principle of active protection.

### **Next steps**

62. Officials recommend you sign this report no later than midday Thursday 4 November 2021 to ensure that drafting of the amendments can be undertaken by Parliamentary Counsel Office.
63. The final Order will be provided to you on Friday 5 November for signature, so that it can be published in the *New Zealand Gazette* on that date. This will allow officials to meet the statutory obligation to provide at least 48 hours' notice between gazetting and the Amendment Order coming into effect.

**ENDS.**

Released under the Official Information Act 1982

# Briefing

## COVID-19 Public Health Response (Required Testing and Vaccinations) Amendment Order 2021

**Date due to MO:** 5 November 2021      **Action required by:** 5 November 2021

**Security level:** IN CONFIDENCE      **Health Report number:** 20212386

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

### Contact for telephone discussion

Name	Position	Telephone
Dr Ashley Bloomfield	Director-General of Health	S9(2)(a)
Jolanda Meijer	Director, COVID-19 Policy Response, System Strategy and Policy	

### Minister's office to complete:

- Approved       Decline       Noted
- Needs change       Seen       Overtaken by events
- See Minister's Notes       Withdrawn

Comment:

# COVID-19 Public Health Response (Required Testing and Vaccinations) Amendment Order 2021

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**Security level:** IN CONFIDENCE      **Date:** 5 November 2021

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

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## Purpose of report

1. This report recommends that you sign the attached COVID-19 Public Health Response (Required Testing and Vaccinations) Amendment Order 2021, which amends the COVID-19 Public Health Response (Vaccinations) Order 2021 and the COVID-19 Public Health Response (Required Testing) Order 2020.

## Summary

2. On Thursday 4 November 2021, you agreed to amend the COVID-19 Public Health Response (Vaccinations) Order 2021 (Vaccinations Order) and the COVID-19 Public Health Response (Required Testing) Order 2020 (Required Testing Order) to clarify issues and processes for relevant groups of workers prior to the deadline for mandatory vaccination [HR20212418 refers].
3. You also agreed to narrow the scope for grounds in which clinical exemptions for vaccinations may be granted.
4. Once consultation is complete, you must sign the COVID-19 Public Health Response (Required Testing and Vaccinations) Amendment Order 2021 (Amendment Order) on Friday 5 November 2021, so that it can be published in the *New Zealand Gazette* that day (today). This will allow officials to meet the statutory obligation to provide at least 48 hours' notice between gazetting and the Amendment Order coming into effect.
5. However, the provisions relating to excluding workers at Police jails and Court cells will come into force within 24 hours' notice at 11:59pm on Saturday 6 November 2021. This is required as 'prison staff' captured by the Vaccinations Order are required to have had their first dose by Sunday 7 November 2021. As this amendment to the relevant provision does not impose further restrictions, 48 hours' notice is not required.
6. Once the Amendment Order is signed:
  - a. the provisions regarding workers at Police jails and Court cells in the Vaccinations Order will come into force at 11:59pm on Saturday 6 November 2021
  - b. all other provisions in the Required Testing and Vaccinations Orders will come into force at 11:59pm Sunday 7 November 2021.

## Recommendations

We recommend you:

- a) **Note** that the Ministry of Health considers there is a public health rationale for requiring specified roles be performed by vaccinated individuals only, in response to the current COVID-19 pandemic. **Noted**
- b) **Note** that officials advise that the COVID-19 Public Health Response (Required Testing and Vaccinations) Amendment Order 2021 (Amendment Order) is in line with the purposes of the COVID-19 Public Health Response Act 2020, to prevent and limit the risk of, the outbreak or spread, of COVID-19. **Noted**
- c) **Note** that these measures engage rights protected by the New Zealand Bill of Rights Act 1990. **Noted**
- d) **Note** that you must be satisfied that the Amendment Order does not limit, or is a justified limit, on the rights and freedoms in the New Zealand Bill of Rights Act 1990, as part of issuing the Amendment Order. **Yes/No**
- e) **Note** that following your agreement [HR20212418 refers] the Amendment Order been finalised for your approval. **Noted**
- f) **Sign** the attached Amendment Order 2021 by Friday 5 November 2021. **Yes/No**



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



Hon Chris Hipkins  
**Minister for COVID-19 Response**  
 Date: 5/11/2021

# COVID-19 Public Health Response (Required Testing and Vaccinations) Amendment Order 2021

## Background / context

1. On Saturday 1 May 2021, the COVID-19 Public Health Response (Vaccinations) Order 2021 (the Vaccination Order) entered into force and required that certain work be undertaken only by vaccinated workers.
2. On Thursday 15 July and Monday 25 October 2021, the Order was amended to extend the groups required to be vaccinated, and now includes workers:
  - a. at managed isolation and quarantine facilities
  - b. at airside area of affected airports and some other high-risk areas at airports
  - c. at affected ports
  - d. at accommodation services where specified aircrew members are self-isolating
  - e. who handle items removed from the affected places listed above, and touch affected items while undertaking work for a relevant Person Conducting a Business or Undertaking (PCBU)
  - f. who provide a health and disability service
  - g. who provide an education service
  - h. at prisons.
3. On Monday 18 October 2021, the COVID-19 Public Health Response (Required Testing) Order 2020 (Required Testing Order) was amended to outline testing requirements that apply to the education sector in Alert Level 3 areas, which included early learning staff [HR20212279 refers].
4. On Thursday 4 November 2021, you agreed to amend the Required Testing and Vaccinations Orders to address practical issues that have been identified in the lead up to the dates specified for mandatory vaccinations, as well as necessary changes to the clinical exemption process [HR20212418 refers].

## Contents of the Amendment Order

### Exemptions from the vaccination requirement

#### *Clinical exemptions scope and process*

5. Currently, to be granted an exemption, a suitably qualified health practitioner determines whether it would be inappropriate for that person to be vaccinated.

6. The Amendment Order narrows the criteria for which an exemption can be granted. The criteria will be specified by the Director-General of Health by notice in the *New Zealand Gazette*. Exemptions can only be granted for up to six months.
7. The Amendment Order will make exemptions obtained before Sunday 7 November 2021 void and people will have to re-submit via the new process. This will ensure that only genuine cases receive a clinical exemption.
8. To ensure that individuals who require an exemption have time to comply with the new process, a two-week transitional period is provided for affected prison workers and border workers who handle affected items only. This is because prison staff are required to have their first dose sooner than the other groups, and workers who handle affected items would have had their medical exemptions already. No exemptions are logged into the register and therefore this is unlikely to benefit workers in the handling affected items group in practice. This will allow those individuals to be treated as compliant for two weeks from commencement unless an exemption request for that individual is refused by the Ministry of Health before the expiry of that period.

#### *New Ministerial power to grant exemptions*

9. To provide employers more flexibility to manage education staff ahead of the Saturday 1 January 2022 deadline, and to ensure the continuity of learning for children and students, the Amendment Order enables the Minister for COVID-19 Response to grant exemptions to prevent the significant disruption to the operation of:
  - a. learning in registered schools or
  - b. to the essential operations of a hostel.
10. The early learning sector is excluded in this exemption as inclusion would create possible public health risks due to the diverse nature of arrangements that exist in the early learning context. Additionally, unlike compulsory schooling, attendance at early learning is not compulsory.
11. The power to provide such an exemption expires on Saturday 1 January 2022. After this date, only clinical exemptions will be allowed.

#### **New sub-groups included in the vaccination mandate**

##### *Family carers*

12. Currently, care and support workers who live in the same house as the person they are providing services to (usually family carers), are not required to be vaccinated.
13. The Amendment Order revokes the exemption for care and support workers who live in the same house as the person they provide services to. It includes them in the general definition of care and support workers, to ensure they are captured by the Vaccination Order.

## Sub-groups excluded from the vaccinated mandate

### *Healthcare practitioners who conduct consultations via remote means*

14. The Vaccination Order currently includes all health practitioners. This includes health practitioners who conduct consultations with patients solely by remote means, such as online or over the phone.
15. The Amendment Order clarifies the situation for these healthcare workers, so that they are not captured by the Order.

### *Unlicensed early childhood educators*

16. As part of decisions made on Monday 11 October 2021, Cabinet agreed that the definition of 'education services' includes 'all early childhood education services, including homebased education and care services, but excluding playgroups' [CAB-21-MIN-0414 refers].
17. The Amendment Order changes the definition of 'early childhood services' in the Vaccinations and Required Testing Orders to clarify that only licensed early childhood services are captured.

### *Police jails and Court cells staff*

18. To maintain consistency with Cabinet decisions [CAB-21-MIN-0422 refers], the Amendment Order clarifies that workers in Police jails and court cells are out of scope for mandatory vaccination requirements covering workers in prisons (refer B4249 provided to you by the Department of Corrections on Sunday 3 November 2021.)

### *Statutory and specified visitors to a prison*

19. The Amendment Order clarifies that statutory and specified visitors are excluded from the vaccination requirement for prisons, in line with Cabinet decisions [CAB-21-MIN-0422 refers].

## Extending vaccination deadlines

20. Police staff who enter schools during school hours or work closely alongside health practitioners providing health services are captured by the Vaccination Order. Given the nature of Police work in communities and their role in emergency response, this covers a considerable number of Police staff.
21. While Police support the Vaccination Order, logistically they need more time to notify affected staff and allow them to meet the vaccination mandate.
22. The Amendment Order extends the time for affected Police staff to get vaccinated.

	<b>Current</b>	<b>Amendment</b>
<b>Dose one</b>	Monday 15 November 2021	Monday 29 November 2021
<b>Dose two</b>	Saturday 1 January 2022	Friday 14 January 2022

## Process for amending a section 11 Order

23. Under the COVID-19 Public Health Response Act 2020 (the Act) an order may be made if either:
  - a. an epidemic notice is in force (under the Epidemic Preparedness Act 2006) or
  - b. a state of emergency has been declared (under the Civil Defence Emergency Management Act 2002) or
  - c. it has been authorised by the Prime Minister.
24. There is currently an epidemic notice in place, which allows orders to be made under section 11 of the Act.
25. As the Minister for COVID-19 Response, you may make orders under section 11 of the Act.
26. To make or amend an order under section 11 of the Act you must:
  - a. have received advice from the Director-General of Health about
    - i. the risks of the outbreak or spread of COVID-19
    - ii. the nature and extent of measures that are appropriate to address those risks
  - b. be satisfied that the proposed Amendment Order does not limit or is a justified limit on the rights and freedoms as specified in New Zealand Bill of Rights Act.
  - c. consult with the Prime Minister, the Minister of Justice, Minister of Health, and any other Ministers you think necessary
  - d. be satisfied that the order is appropriate to achieve the purposes of the Act.

## Consultation

27. The Department of Corrections, the Ministry of Education, and the New Zealand Police were consulted throughout the development of the Amendment Order.
28. Ministerial consultation is yet to occur.

## Public health rationale

29. You have previously been provided with advice on the rationale for requiring work in the health and disability sectors, education sector, and at corrections facilities, be undertaken by vaccinated workers only [CAB-21-MIN-0413 and CAB-21-MIN-0422 refer].
30. The attached Amendment Order address practical issues that have been identified in implementing the decision to require mandatory vaccinations, as well as necessary changes to the clinical exemption process.

## New Zealand Bill of Rights Act 1990

31. Previous New Zealand Bill of Rights Act 1990 (NZBORA) advice has been given on the policy of the recent amendments to the Vaccination Order [HR20212291 refers]. These new changes ensure the Amendment Order appropriately implements those decisions and no further NZBORA considerations apply.



## Equity

32. The relevant equity issues have been previously outlined [CAB-21-SUB-0413 refers].
33. If workers who are subject to the Amendment Order are not vaccinated, their employers may choose to redeploy them or (following appropriate human resource process) may choose to terminate their employment.
34. Given that vaccination is available to all affected groups, we do not consider the equity concerns above override the public health need for specified high-risk roles to only be undertaken by vaccinated people.
35. Requiring vaccination may lower the risk of transmission to communities of people that these workers ordinarily interact with including place, ethnicity, faith, and age-based communities. It is also important to reduce risks to the community through the overwhelming of health capacity.
36. Requiring vaccination may lower the risk of infection for these workers and the risk of transmission to communities of people that these workers ordinarily interact with including place, ethnicity, faith, and age-based communities.

### *Te Tiriti o Waitangi implications*

37. The Government as Kāwanatanga and Ōritetanga has responsibilities to support health and socio-economic outcomes for Māori. While there continues to be a focus on increasing vaccination uptake for Māori, the Amendment Order may undermine the agency of iwi, hapū and whānau to protect their own wellbeing, afforded to them under the principle of tino rangatiratanga.
38. In the past, and particularly throughout the COVID-19 pandemic response, iwi, hapū, and whānau have exercised, and in many cases exceeded, good practice in line with Government guidelines to maintain the wellbeing of their own whānau.
39. The Ministry of Health and other stakeholders (eg the Immunisation Implementation Advisory Sector) will continue to work with Māori (and Pacific) providers to increase the number of kaimahi (staff) able to deliver the COVID-19 vaccination. This will remain a critical enabler for lifting Māori (and Pacific) vaccination rates, encouraging uptake and increasing trust and transparency.
40. It will also be important to ensure clear, constant, and consistent information is provided to Māori in English and Māori through appropriate channels.
41. The Amendment Order supports health system resilience, the minimisation of community outbreaks, and any associated increase in COVID-19 Alert Levels. This is critical to minimising and addressing existing inequities and is consistent with the active protection Te Tiriti principle.

## Next steps

42. Officials recommend that you sign the final Amendment Order on Friday 5 November 2021, so that it can be published in the *New Zealand Gazette* that day (today). This will allow officials to meet the statutory obligation to provide at least 48 hours' notice between gazetting and the Amendment Order coming into effect.

43. However, the provisions relating to excluding workers at Police jails and Court cells will come into force within 24 hours' notice at 11:59pm on Saturday 6 November 2021. This is required as 'prison staff' captured by the Vaccinations Order are required to have had their first dose by Sunday 7 November 2021. As this amendment to the relevant provision does not impose further restrictions, 48 hours' notice is not required.
44. Once the Amendment Order is signed:
  - a. provisions regarding workers at Police jails and Court cells in the Vaccinations Order will come into force at 11:59pm on Saturday 6 November 2021
  - b. all other provisions in the Required Testing and Vaccinations Orders will come into force at 11:59pm on Sunday 7 November 2021.

ENDS.

Released under the Official Information Act 1982

**IN CONFIDENCE****COVID-19 Public Health Response (Required Testing and Vaccinations) Amendment Order 2021**

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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**COVID-19 Public Health Response (Required Testing  
and Vaccinations) Amendment Order 2021**

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cl 1

14      Schedule 2 amended      6

**Schedule**      8

**New Part 4 inserted into Schedule 1**

**Order**

**1 Title**

This order is the COVID-19 Public Health Response (Required Testing and Vaccinations) Amendment Order 2021.

**2 Commencement**

- (1) Clauses 7, 10, 12(1), 13(1) and (2), and 14(2) come into force at 11.59 pm on 6 November 2021.
- (2) The rest of this order comes into force at 11.59 pm on 7 November 2021.

**Part 1**

**Amendments to COVID-19 Public Health Response (Required  
Testing) Order 2020**

**3 Principal order**

This Part amends the COVID-19 Public Health Response (Required Testing) Order 2020.

**4 Clause 12A amended (Interpretation)**

- (1) In clause 12A, definition of **affected education service**, replace paragraph (a) with.

(a) a licensed early childhood service:

- (2) In clause 12A, revoke the definition of **early childhood service**.
- (3) In clause 12A, insert in its appropriate alphabetical order:

**licensed early childhood service** has the same meaning as in section 10(1) of the Education and Training Act 2020

**5 Clause 12C amended (Affected persons required to return negative result from COVID-19 test)**

In clause 12C(1), replace “an early childhood service” with “a licensed early childhood service”.

## Part 2

### Amendments to COVID-19 Public Health Response (Vaccinations) Order 2021

#### 6 Principal order

This Part amends the COVID-19 Public Health Response (Vaccinations) Order 2021.

#### 7 Clause 4 amended (Interpretation)

- (1) In clause 4, definition of **affected education service**, replace paragraph (a) with.

(a) a licensed early childhood service:

- (2) In clause 4, replace the definition of **care and support worker** with:

**care and support worker** means a person employed or engaged to carry out work that involves going to the home or place of residence of another person to provide care and support services

- (3) In clause 4, revoke the definition of **early childhood service**.

- (4) In clause 4, insert in its appropriate alphabetical order:

**licensed early childhood service** has the same meaning as in section 10(1) of the Education and Training Act 2020

- (5) In clause 4, replace the definition of **exempt person** with:

**exempt person** means a person who has a COVID-19 vaccination exemption

- (6) In clause 4, replace the definition of **staff member of a prison** with:

**staff member of a corrections prison—**

- (a) means—

(i) any officer of a corrections prison; and

(ii) any employee appointed or engaged to provide non-custodial services in respect of a corrections prison or any prisoner detained in a corrections prison; and

- (b) in relation to any particular corrections prison, means—

(i) any officer of that corrections prison; and

(ii) any employee appointed or engaged to provide non-custodial services in respect of that corrections prison or any prisoner detained in that corrections prison

- (7) In clause 4, insert in their appropriate alphabetical order:

**corrections prison—**

- (a) includes a prison operated by the Department of Corrections (including a temporary prison) and a contract prison; but

**COVID-19 Public Health Response (Required Testing  
and Vaccinations) Amendment Order 2021**

- (b) does not include—
- (i) a Police jail; or
  - (ii) any of the following that have been declared by notice in the *Gazette* to be part of a corrections prison:
    - (A) a cell block;
    - (B) a court cell and any adjacent areas

**COVID-19 vaccination exemption** means a COVID-19 vaccination exemption granted by the Director-General under clause 9B

**medical practitioner** means a health practitioner who—

- (a) is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine; and
- (b) holds a current practising certificate

**nurse practitioner** means a health practitioner who—

- (a) is, or is deemed to be, registered with the Nursing Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of nursing and whose scope of practice permits the performance of nurse practitioner functions; and
- (b) holds a current practising certificate

**8 Clause 7 replaced (Duty of affected person not to carry out certain work unless vaccinated)**

Replace clause 7 with:

**7 Duty of affected person not to carry out certain work**

An affected person must not carry out certain work unless they are—

- (a) vaccinated; or
- (b) an exempt person.

**9 Clause 7A revoked (Exemption from duty under clause 7)**

Revoke clause 7A.

**10 Clause 9 amended (Chief executive may authorise affected persons not vaccinated to carry out certain work)**

In clause 9(5)(ca), replace “prison” with “corrections prison”.

**11 New clause 9B inserted (Director-General may grant COVID-19 vaccination exemption)**

After clause 9A, insert:

**COVID-19 Public Health Response (Required Testing  
and Vaccinations) Amendment Order 2021**

Part 2 cl 11

**9B Director-General may grant COVID-19 vaccination exemption**

- (1) A suitably qualified medical practitioner or nurse practitioner (the **applicant**) may apply for a COVID-19 vaccination exemption on behalf of a person who—
  - (a) belongs to a group specified in Part 6, 7, 8, or 9 of the table in Schedule 2; and
  - (b) is not vaccinated.
- (2) An application may be made only if the person meets the specified COVID-19 vaccination exemption criteria.
- (3) The person on whose behalf the application is made (the **person**) must—
  - (a) certify that the information that they have provided to the applicant for the purposes of making the application is true; and
  - (b) sign the application.
- (4) An application must be accompanied by a certificate signed by the applicant certifying that they—
  - (a) have reviewed the person's medical history and assessed the person's state of health; and
  - (b) have reasonable grounds for believing that the person meets the specified COVID-19 vaccination exemption criteria.
- (5) The applicant must state their grounds for believing that the person meets the specified COVID-19 exemption criteria.
- (6) On receiving an application, the Director-General may ask the applicant or person to provide any evidence or further information that the Director-General reasonably requires for the purposes of deciding whether to grant the application.
- (7) The Director-General may grant the application if the Director-General is satisfied, on the basis of the evidence or other information provided, that the person meets the specified COVID-19 vaccination exemption criteria.
- (8) A COVID-19 vaccination exemption is valid for the period that the Director-General determines, which must be no longer than 6 months.
- (9) The Director-General must notify the applicant and the person of the outcome of the application.
- (10) If the application is granted, the Director-General must provide a copy of the COVID-19 vaccination exemption in written or electronic form to the applicant and person that states the date on which the exemption expires.
- (11) At any time before or after a COVID-19 vaccination exemption expires, a new application may be made under this clause by any medical practitioner or nurse practitioner on behalf of the person in respect of whom the exemption was granted for a further exemption.

Part 2 cl 12

**COVID-19 Public Health Response (Required Testing and Vaccinations) Amendment Order 2021**

- (12) In this clause, **specified COVID-19 vaccination exemption criteria** means the criteria determining when a person may be granted a COVID-19 vaccination exemption that the Director-General has approved in a notice published—
- (a) on a publicly accessible Internet site maintained by or on behalf of the New Zealand Government; and
  - (b) in the Gazette.

**12 Clause 12A amended (Power of Minister to grant exemptions)**

- (1) In clause 12A(4)(a)(ii)(C), replace “prison” with “corrections prison”.
- (2) After clause 12A(4)(a)(ii)(C), insert:
  - (D) the operation of learning in registered schools, in the case of an application to exempt from any provision of this order a person belonging to a group specified in Part 9 of the table in Schedule 2; or
  - (E) the essential operations of a hostel in the case of an application to exempt from any provision of this order a person belonging to a group specified in Part 9 of the table in Schedule 2; and
- (3) After clause 12A(8), insert:
- (9) Subclause (4)(a)(ii)(D) and (E) are revoked on 1 January 2022.

**13 Schedule 1 amended**

- (1) In Schedule 1, replace the cross-heading above clause 6 with:

*Corrections prisons*

- (2) In Schedule 1, heading to clause 6, replace “**prisons**” with “**corrections prisons**”.
- (3) In Schedule 1,—
  - (a) insert the Part set out in the Schedule of this order as the last Part; and
  - (b) make all necessary consequential amendments.

**14 Schedule 2 amended**

- (1) In Schedule 2, replace item 7.1 with:

7.1 Health practitioners providing health services to patients in person

- (2) In Schedule 2, replace Part 8 with:

*Part 8: Groups in relation to corrections prisons*

- 8.1 Staff members of a corrections prison (other than staff members of a corrections prison who are specified visitors or statutory visitors) who may be required to undergo a security screening process before being allowed entry into the corrections prison
- 8.2 Persons employed or engaged by a contractor or subcontractor to provide services in respect of a corrections prison (other than persons who are specified visitors or statutory



**COVID-19 Public Health Response (Required Testing  
and Vaccinations) Amendment Order 2021**

Part 2 cl 14

visitors) who may be required to undergo a security screening process before being allowed entry into the corrections prison

Released under the Official Information Act 1982

**Schedule**  
**New Part 4 inserted into Schedule 1**

cl 13

**Part 4**  
**Provisions relating to COVID-19 Public Health Response (Required Testing and Vaccinations) Amendment Order 2021**

- 9 Transitional provision for Police employees working where health services are provided or at or for affected education services before commencement**
- (1) This clause applies despite clauses 5 and 7.
  - (2) If an affected person who belongs to a group specified in item 7.2 or 9.1 of the table in Schedule 2 is a Police employee and is not vaccinated before the commencement of this clause, the affected person must—
    - (a) be treated as vaccinated until 29 November 2021 if they have their first dose of a COVID-19 vaccine before the close of that date;
    - (b) be treated as vaccinated until 14 January 2022 (and after that date) if they—
      - (i) have their first dose of a COVID-19 vaccine before the close of 29 November 2021; and
      - (ii) have their second dose of a COVID-19 vaccine before the close of 14 January 2022.
  - (3) If an affected person who belongs to a group specified in item 7.2 or 9.1 of the table in Schedule 2 is a Police employee who is not vaccinated before the commencement of this clause and does not have their first dose of a COVID-19 vaccine before the close of 29 November 2021, the affected person must be treated as vaccinated—
    - (a) on the date on which they have their first dose of a COVID-19 vaccine; and
    - (b) from that date until 14 January 2022 (and after that date) if they have their second dose of a COVID-19 vaccine before the close of 14 January 2022.
  - (4) In this clause, **Police employee** has the same meaning as in section 4 of the Policing Act 2008.
- 10 Transitional provision for affected workers who are exempt persons before commencement of Amendment Order**
- (1) This clause applies to an affected worker who—
    - (a) belongs to a group specified in Part 6 or 8 of the table in Schedule 2; and

**COVID-19 Public Health Response (Required Testing  
and Vaccinations) Amendment Order 2021**

Explanatory note

- (b) was granted an exemption under clause 7A before the commencement of the Amendment Order.
- (2) An affected worker continues to be an exempt person until the earlier of the following dates:
- (a) the close of 21 November 2021;
- (b) the close of the date on which they receive notification that an application made on their behalf under clause 9B has not been granted.
- (3) For the purposes of subclause (1),—
- (a) the definition of exempt person set out in clause 4 of this order as in force immediately before the commencement of the Amendment Order continues to apply; and
- (b) clause 7A of this order as in force immediately before the commencement of the Amendment Order continues to apply.
- (4) In this clause, **Amendment Order** means the COVID-19 Public Health Response (Required Testing and Vaccinations) Amendment Order 2021.

Dated at this day of 2021.

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 amends the COVID-19 Public Health Response (Required Testing) Order 2020 and the COVID-19 Public Health Response (Vaccinations) Order 2021.

The amendments to the COVID-19 Public Health Response (Required Testing) Order 2020 come into force at 11.59 pm on 7 November 2021. The effect of those amendments is to ensure that the testing requirements in that order that apply to affected education services in an alert level 3 area do not apply to unlicensed early childhood services.

The amendments to the COVID-19 Public Health Response (Vaccinations) Order 2021 (the **Vaccination Order**) fall into 2 groups.

The first group of amendments to the Vaccination Order come into force at 11.59 pm on 6 November 2021 and clarify that persons working in and around Police jails or court cells do not belong to the group specified in Part 8 of Schedule 2 of the Vaccinations Order (groups in relation to prisons) and are not required to be vaccinated.

The second group of amendments to the Vaccination Order come into force at 11.59 pm on 7 November 2021. The effect of those amendments is to—

Explanatory note **COVID-19 Public Health Response (Required Testing and Vaccinations) Amendment Order 2021**

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- revoke clause 7A, which enables an affected worker to carry out certain work without being vaccinated if a suitably qualified health practitioner determines that it would be inappropriate for the affected worker to receive a COVID-19 vaccination because of their physical or other needs (but existing exemptions under clause 7A continue until 21 November 2021):
- insert *new clause 9B*, which enables a suitably qualified medical practitioner or nurse practitioner to apply to the Director-General of Health on behalf of an affected worker for a temporary exemption from the requirement to be vaccinated on the ground that they meet the specified COVID-19 vaccination exemption criteria:
- require all care and support workers who provide care and support services to a person in the person's home or place of residence to be vaccinated::
- provide that health practitioners who conduct consultations with patients by remote means, for example, on-line or by telephone, are not required to be vaccinated:
- enable the Minister for COVID-19 Response, until 1 January 2022, to grant exemptions under clause 12A to prevent significant disruption to the operation of learning in a registered school or to the essential operation of a hostel:
- extend the period for which Police employees working in the health and disability sector or at or for affected education services are treated as vaccinated (until 29 November 2021 if they receive their first dose of a COVID-19 vaccine on or before that date, and until 14 January 2022 if they receive their first dose of a COVID-19 vaccine on or before 29 November 2021 and their second dose of a COVID-19 vaccine on or before 14 January 2022).

Issued under the authority of the Legislation Act 2019.  
 Date of notification in *Gazette*:  
 This order is administered by the Ministry of Health.

# Briefing

## Policy decisions required for a further amendment to the COVID-19 Public Health Response (Vaccinations) Order 2021

**Date due to MO:** 11 November 2021      **Action required by:** 11 November 2021

**Security level:** IN CONFIDENCE      **Health Report number:** H20212479

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

**Copy to:** Hon Andrew Little, Minister of Health

### Contact for telephone discussion

Name	Position	Telephone
Maree Roberts	Deputy Director-General, System Strategy and Policy	S9(2)(a)
Alison Cossar	Manager, Public Health Policy, System Strategy and Policy	

### Minister's office to complete:

- Approved       Decline       Noted  
 Needs change       Seen       Overtaken by events  
 See Minister's Notes       Withdrawn

Comment:

# Policy decisions required for a further amendment to the COVID-19 Public Health Response (Vaccinations) Order 2021

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**Security level:** IN CONFIDENCE                      **Date:** 11 November 2021

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

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## Purpose of report

1. This report provides advice on further amendments to the COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order) to provide an extension of the dates for the vaccination for Fire and Emergency New Zealand personnel. It seeks your agreement to issue drafting instructions for the amendments.
2. This report discloses all relevant information and implications known at this time.

## Summary

3. On 25 October 2021 the COVID-19 Public Health (Vaccinations) Amendment Order (No 3) 2021 came into force, extending mandatory vaccination to all healthcare workers undertaking high risk work in the health and disability care sector, as well as all workers in affected education services who may have contact with children or students, and all workers who will enter a prison, either as staff or to provide prison services.
4. Further amendments are now required to address practical issues that have been identified in the lead up to the dates specified for mandatory vaccinations.
5. FENZ have requested the dates are extended by four weeks, i.e. first dose before the close of 13 December 2021 and second dose before the close of 29 January 2022. The Ministry recommends that the dates be aligned with the Police, rather than extend further.
6. Amendments to the Order are needed urgently before the first dose requirement comes into effect for FENZ personnel. This is due to the large number of volunteers. Therefore, the amendments will need to be signed and gazetted on Friday 12 November 2021.
7. If you agree to the Ministry issuing drafting instructions to the Parliamentary Counsel Office (PCO), the Ministry will provide you with a draft Amendment Order for Ministerial consultation by 12 November 2021. The Amendment Order is proposed to come into force on 14 November 2021 after being signed.

## Recommendations

We recommend you:

- a) **Note** that the amendments to the COVID-19 Public Health Response (Vaccinations) Order 2021 are required to ensure that the mandatory vaccinations are workable. The amendments will include changes from Fire and Emergency New Zealand.

- b) **Agree** that an amendment is drafted that extends the dates for the vaccination for Fire and Emergency New Zealand personnel to 29 November for the first dose and 14 January for the second dose, aligned with the Police [**recommended**]

Yes/No

**OR**

**Agree** that an amendment is drafted that extends the dates for the vaccination for Fire and Emergency New Zealand personnel to 13 December for the first dose and 29 January for the second dose.

Yes/No

- c) **Agree** the Ministry will issue drafting instructions to Parliamentary Counsel Office to draft the Order.

Yes/No

- d) **Note** that under section 9(1)(c) of the COVID-19 Act you are required to consult with the Prime Minister, Minister of Justice and Minister of Health before making or amending a COVID-19 Order.



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



Hon Chris Hipkins  
**Minister for Covid-19 Response**  
Date: 11/11/2021

## Policy decisions required for further amendments to the COVID-19 Public Health Response (Vaccinations) Order 2021

### Background

12. The COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order) came into force on 1 May 2021. It makes it mandatory for work at certain places to be carried out by affected persons who are vaccinated. This is due to the high risk of exposure to, and transmission of COVID-19 by these workers. In the originating Order this applied to specified work performed at the Border.
13. On 14 July 2021 the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 came into force, extending the scope of the Order to cover additional work performed at the Border, and to create a public health exception for certain workers at the Border who have no interaction with travellers or crew.
14. On 17 October 2021 the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021 came into force, to make allowance for affected persons to be vaccinated with COVID-19 vaccines other than the Pfizer/BioNTech vaccine.
15. On 25 October 2021 the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 came into force, extending mandatory vaccination to all healthcare workers undertaking specific work in the health and disability care sector, all workers in affected education services who may have contact with children or students, and all workers who will enter a prison, either as staff or to provide prison services.
16. On 7 November 2021 the COVID-19 Public Health Response (Required Testing and Vaccinations) Amendment Order 2021 came into force, to address practical issues that had been identified in the lead up to the dates specified for mandatory vaccinations.
17. A further amendment is now required to address practical issues that have been identified in the lead up to the dates specified for mandatory vaccinations for Fire and Emergency New Zealand (FENZ) personnel.

### Comment

#### Extension of dates for mandatory vaccination for Fire and Emergency New Zealand personnel

18. FENZ has requested an extension to the dates for their first and second mandatory vaccinations. This is due to the large number of volunteers (estimated to be in the thousands) with regard to this sector and the need to ensure they all understand the requirements and to undertake mitigations.
19. This extension is fairly straightforward, as FENZ personnel have a statutory definition in section 6 of the Fire and Emergency New Zealand Act 2017.
20. FENZ have requested the dates are extended by four weeks, i.e. first dose before the close of 13 December 2021 and second dose before the close of 29 January 2022. This is two weeks longer than all other groups, including the Police who have deadline dates of 29 November and 14 January.



21. The Ministry recommends that the dates be aligned with the Police, rather than extend further.

## Human Rights

22. Previous Bill of Rights Act advice has been given on the policy of the recent amendments to the COVID-19 Public Health Response (Vaccinations) Order 2021. These new changes ensure the Order appropriately implements those decisions and no further BORA considerations apply.
23. The Ministry is seeking legal advice from Crown Law in relation to the proposed change. Any advice received will be provided prior to the final order being provided.

## Equity

24. The relevant equity issues have been outlined in CAB-21-SUB-0413.
25. There is a risk to the continuity of fire and emergency services if large portions of the workforce are unavailable to provide this service. The safety and wellbeing of the community could be at risk and allowing more time for FENZ to liaise with their volunteers in particular is important.
26. If workers who are subject to the Amendment Order are not vaccinated, their employers may choose to redeploy them or (following appropriate human resource process) may choose to terminate their employment.
27. Given that the vaccination is available to all groups, we do not consider the equity concerns above override the public health need for specified high-risk roles to only be undertaken by vaccinated people.
28. Requiring vaccination may lower the risk of transmission to communities of people that these workers ordinarily interact with including place, ethnicity, faith, and age-based communities. It is also important to reduce risks to the community through the overwhelming of health capacity.
29. Requiring vaccination may lower the risk of infection for these workers and the risk of transmission to communities of people that these workers ordinarily interact with including place, ethnicity, faith, and age-based communities.

### *Te Tiriti o Waitangi implications*

30. The Government as Kāwanatanga and Ōritetanga has responsibilities to support health and socio-economic outcomes for Māori. While there continues to be a focus on increasing vaccination uptake for Māori, the Amendment Order may undermine the agency of iwi, hapū and whānau to protect their own wellbeing, afforded to them under the principle of tino rangatiratanga.
31. In the past, and particularly throughout the COVID-19 response, iwi, hapū and whānau have exercised, and in many cases exceeded, good practice in line with government guidelines to maintain the wellbeing of their own whānau.
32. The Ministry and other stakeholders (eg Immunisation Implementation Advisory Sector) will continue to work with Māori (and Pacific) providers to increase the number of kaimahi (staff) able to deliver the COVID-19 vaccination. This will remain a critical enabler

for lifting Māori (and Pacific) vaccination rates, encouraging uptake and increasing trust and transparency.

33. It will also be important to ensure clear, constant and consistent information is provided to Māori in English and Māori through appropriate channels.

### **Next steps**

34. Officials recommend you sign this report by 10 am Friday 12 November 2021 to ensure that drafting of the amendments can be undertaken by Parliamentary Counsel Office.
35. The final Order will be provided to you on Friday 12 November for signature, so that it can be published in the *New Zealand Gazette* on that date. This will allow officials to meet the statutory obligation to provide at least 48 hours' notice between gazetting and the Amendment Order coming into effect.

**ENDS.**

Released under the Official Information Act 1982

# Briefing

## COVID-19 Public Health Response (Vaccination) Amendment Order (No 4) 2021

**Date due to MO:** 12 November 2021      **Action required by:** 12 November 2021

**Security level:** IN CONFIDENCE      **Health Report number:** 20212484

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

### Contact for telephone discussion

Name	Position	Telephone
Alison Cossar	Manager, Public Health Policy	S9(2)(a)
Jolanda Meijer	Policy Director, System Strategy and Polic	

### Minister's office to complete:

- Approved       Decline       Noted  
 Needs change       Seen       Overtaken by events  
 See Minister's Notes       Withdrawn

Comment:

# COVID-19 Public Health Response (Vaccination) Amendment Order (No 4) 2021

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**Security level:** IN CONFIDENCE      **Date:** 12 November 2021

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

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## Purpose of report

1. This report recommends that you:
  - a. consult with the Prime Minister and the Ministers of Justice and Health, and any other Ministers that you think fit, on the attached COVID-19 Public Health Response (Vaccinations) Amendment Order (No 4) 2021 (the Amendment Order), and
  - b. sign the attached Amendment Order following that consultation.
2. The Amendment Order extends the dates for when Fire and Emergency New Zealand personnel must receive their first and second doses to address practical issues identified in the lead up to the implementation of mandatory vaccinations under the Order.

## Contents of the Order

3. On 25 October 2021, the COVID-19 Public Health (Vaccinations) Order (No 3) 2021 (the Order) came into force, extending mandatory vaccinations to workers in the health and disability care and education sectors and prisons. The attached Amendment Order gives effect to decisions you have made to address practical issues identified in the lead up to the implementation of mandatory vaccinations under the Order by extending the dates for Fire and Emergency New Zealand (FENZ) personnel must receive their first and second doses.
4. On 12 November 2021 [HR20212479 refers], you agreed the dates should be extended to:
  - a. 29 November for the first dose, and
  - b. 14 January for the second dose.
5. Once you have consulted with the Prime Minister, the Minister of Justice, Minister of Health, and any other Ministers you think necessary, officials recommend you sign the attached Amendment Order.
6. It is anticipated that Order will come into effect upon gazettal on 12 November 2021.

## Recommendations

We recommend you:

- a) **Note** that amendments to the COVID-19 Public Health Response (Vaccinations) Order 2021 are required to ensure that the mandatory vaccination requirements are workable. **Noted**
- b) **Note** that the attached COVID-19 Public Health Response (Vaccinations) Amendment Order (No 4) 2021 (the Amendment Order) gives effect to your decision to extend the timeframe for Fire and Emergency New Zealand staff to receive their mandatory vaccinations to:
- i. 29 November for the first dose; and
  - ii. 14 January for the second dose.
- c) **Note** that officials advise that the attached draft Order is in line with the purposes of the COVID-19 Public Health Response Act 2020, to prevent and limit the risk of, the outbreak or spread, of COVID-19. **Noted**
- d) **Agree** to consult on the contents of the attached Amendment Order with the Prime Minister, the Minister of Justice, Minister of Health, and any other Ministers you think necessary. **Yes/No**
- e) **Agree** to sign the attached Amendment Order. **Yes/No**

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

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

Released under the Official Information Act 1982

# COVID-19 Public Health Response (Vaccination) Amendment Order (No 4) 2021

## Process for making a section 11 Order

7. Under the COVID-19 Public Health Response Act 2020 (the Act) an order may be made if either:
  - a. an epidemic notice is in force (under the Epidemic Preparedness Act 2006);
  - b. a state of emergency has been declared (under the Civil Defence Emergency Management Act 2002); or
  - c. it has been authorised by the Prime Minister.
8. There is currently an epidemic notice in place, which allows orders to be made under section 11 of the Act.
9. As the Minister for COVID-19 Response, you may make orders under section 11 of the Act.
10. To make or amend an order under section 11 you must:
  - a. have received advice from the Director-General of Health about:
    - i. the risks of the outbreak or spread of COVID-19
    - ii. the nature and extent of measures that are appropriate to address those risks
  - b. be satisfied that the proposed Amendment Order does not limit or is a justified limit on the rights and freedoms as specified in NZBORA
  - c. consult with the Prime Minister, the Minister of Justice, Minister of Health, and any other Ministers you think necessary, and
  - d. be satisfied that the order is appropriate to achieve the purposes of the Act.
11. Public health advice about the risks of the outbreak or spread of COVID-19 and the nature and extent of measures that are appropriate to manage those risks was previously provided [HR20212018 refers] and is also set out below.

## Public health rationale

12. The public health issues have been outlined in CAB-21-SUB-0413 and HR20212479.

## New Zealand Bill of Rights Act 1990

S9(2)(h)

14. In this case, FENZ provides an essential service of a life preserving nature that is urgent and unplanned. Due to the situation where a large number of their personnel are

volunteers on differing shift rotations, it is considered that an extension of two weeks to the vaccination deadline is warranted.

## Equity

15. The relevant equity issues have been outlined in CAB-21-SUB-0413 and HR20212479 [CAB-21-MIN-0421 and HR20212479 refer].

## Next steps

16. Officials recommend that you sign the Amendment Order on Friday 12 November 2021, so that it can be published in the *New Zealand Gazette* that day.
17. Section 14 (3)(b) of the Act states that the Minister or Director-General (as the case may be) need not comply with the 48-hour time limit in subsection (2) if satisfied that the effect of the order is only to remove or reduce requirements imposed by a COVID-19 order.
18. The commencement is proposed to be upon gazettal as the effect of the Order is only to remove or reduce requirements imposed by a COVID-19 order.
19. Once signed the Order will come into effect at 11:59pm on Friday 12 November 2021.

ENDS.

Released under the Official Information Act 1982

PCO 24308/3.0

Drafted by Cathy Pooke

**IN CONFIDENCE**

## **COVID-19 Public Health Response (Vaccinations) Amendment Order (No 4) 2021**

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.

### **Contents**

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### **Order**

- 1 Title**  
This order is the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 4) 2021.
- 2 Commencement**  
This order comes into force at 11.59 pm on 12 November 2021.
- 3 Principal order**  
This order amends the COVID-19 Public Health Response (Vaccinations) Order 2021.



**COVID-19 Public Health Response (Vaccinations)  
Amendment Order (No 4) 2021**

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cl 4

**4 Clause 9B amended (Director-General may grant COVID-19 vaccination exemption)**

In clause 9B(1), after “apply”, insert “to the Director-General”.

**5 Clause 11A amended (Duties of relevant PCBUs of affected persons belonging to groups specified in Part 7, 8, or 9 of Schedule 2: vaccination records)**

In clause 11A(2)(h), replace “7A” with “9B”.

**6 Schedule 1 amended**

In Schedule 1,—

- (a) insert the Part set out in the Schedule of this order as the last Part; and
- (b) make all necessary consequential amendments.

**COVID-19 Public Health Response (Vaccinations)  
Amendment Order (No 4) 2021**

Schedule

**Schedule  
New Part 5 inserted into Schedule 1**

cl 6

**Part 5  
Provision relating to COVID-19 Public Health Response  
(Vaccinations) Amendment Order (No 4) 2021**

- 11 Transitional provision for FENZ personnel working where health services are provided or at or for affected education services before commencement**
- (1) This clause applies despite clauses 5 and 7.
  - (2) If an affected person who belongs to a group specified in item 7.2 or 9.1 of the table in Schedule 2 is a FENZ personnel member and is not vaccinated before the commencement of this clause, the affected person must—
    - (a) be treated as vaccinated until 29 November 2021 if they have their first dose of a COVID-19 vaccine before the close of that date;
    - (b) be treated as vaccinated until 14 January 2022 (and after that date) if they—
      - (i) have their first dose of a COVID-19 vaccine before the close of 29 November 2021; and
      - (ii) have their second dose of a COVID-19 vaccine before the close of 14 January 2022.
  - (3) If an affected person who belongs to a group specified in item 7.2 or 9.1 of the table in Schedule 2 is a FENZ personnel member who is not vaccinated before the commencement of this clause and does not have their first dose of a COVID-19 vaccine before the close of 29 November 2021, the affected person must be treated as vaccinated—
    - (a) on the date on which they have their first dose of a COVID-19 vaccine; and
    - (b) from that date until 14 January 2022 (and after that date) if they have their second dose of a COVID-19 vaccine before the close of 14 January 2022.
  - (4) In this clause, **FENZ personnel** has the same meaning as in section 6 of the Fire and Emergency New Zealand Act 2017.

Explanatory note

**COVID-19 Public Health Response (Vaccinations)  
Amendment Order (No 4) 2021**

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Dated at Wellington this            day of            2021.

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, which comes into force at 11.59 pm on 12 November 2021, amends the COVID-19 Public Health Response (Vaccinations) Order 2021 (the **principal order**), which requires persons belonging to specified groups who carry out certain work to be vaccinated.

The effect of the amendments is to extend the period for which FENZ personnel working in the health and disability sector, or at or for affected education services, are treated as vaccinated (until 29 November 2021 if they receive their first dose of a COVID-19 vaccine on or before that date, and until 14 January 2022 if they receive their first dose of a COVID-19 vaccine on or before 29 November 2021 and their second dose of a COVID-19 vaccine on or before 14 January 2022).

Two technical amendments are also made to the principal order. The first amendment is to clause 9B of the principal order, to clarify that an application for a COVID-19 vaccination exemption is made to the Director-General. The second amendment is to clause 11A of the principal order to update the reference to clause 7A (which was revoked on 7 November 2021) with a reference to clause 9B.

#### *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 that does not happen, the order is revoked on the expiry of that period.

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*:

This order is administered by the Ministry of Health.

# Briefing

## Policy decisions required for further amendments to the COVID-19 Public Health Response (Vaccinations) Order (No. 5) 2021

**Date due to MO:** 22 November 2021      **Action required by:** 22 November 2021

**Security level:** IN CONFIDENCE      **Health Report number:** 20212495

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

**Copy to:** Hon Andrew Little, Minister of Health

### Contact for telephone discussion

Name	Position	Telephone
<b>Wendy Illingworth</b>	General Manager, Public Health System Policy, System Strategy and Policy	S9(2)(a)
<b>Susanna Chung</b>	Principal Policy Analyst, Public Health System Policy, System Strategy and Policy	

### Minister's office to complete:

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

Comment:

# Policy decisions required for further amendments to the COVID-19 Public Health Response (Vaccinations) Order (No. 5) 2021

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**Security level:** IN CONFIDENCE      **Date:** 22 November 2021

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

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## Purpose of report

- 1 This report provides advice on further amendments to the COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order) to:
  - 1.1 update the administration requirements of COVID-19 vaccines following the availability of the AstraZeneca vaccine in New Zealand as an alternative option to the Pfizer/BioNTech vaccine ("Pfizer")
  - 1.2 expand the recognised list of COVID-19 vaccines suitable for vaccination mandates for affected workers
  - 1.3 require Persons Conducting a Business or Undertaking (PCBUs) of workers listed in part 8.1 of Schedule 2 of the Order (i.e., staff members of a Corrections prison) to access and use the Border Workforce Testing Register (the Register).
- 2 This report discloses all relevant information and implications known at this time and seeks your agreement to issue drafting instructions for the amendments.

## Summary

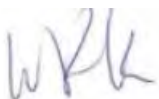
- 3 On 25 October 2021 the COVID-19 Public Health (Vaccinations) Amendment Order (No. 3) 2021 came into force, extending mandatory vaccination to all affected healthcare workers undertaking high risk work in the health and disability care sector, as well as all workers in affected education services who may have contact with children or students, and all prison workers.
- 4 Further amendments are required to address practical issues that have been identified to facilitate compliance with vaccination requirements under the Order. These amendments:
  - 4.1 update the administration requirements of COVID-19 vaccines following the availability of AstraZeneca vaccine as an alternative option to Pfizer
  - 4.2 expand the recognised list of COVID-19 vaccines suitable for vaccination mandates for affected workers
  - 4.3 require PCBUs of workers listed in part 8.1 of Schedule 2 of the Order (staff members of a Corrections prison) to access and use the Register.
- 5 Mandating access to and use of the Register will be the most efficient way to assist PCBUs to verify vaccination status of affected staff and support their compliance with the Vaccinations Order.
- 6 If you agree to the Ministry of Health (the Ministry) issuing drafting instructions to the Parliamentary Counsel Office (PCO), the Ministry will provide you with an Order for Ministerial

consultation, signing and gazettal by Friday 26 November 2021. The Amended Order is proposed to come into force on 11:59 pm Sunday, 29 November 2021.

## Recommendations

We recommend you:

- a) **Note** that the amendments to the COVID-19 Public Health Response (Vaccinations) Order 2021 are required to ensure that the mandatory vaccinations provisions are workable and relevant.
- b) **Agree** to update the administration requirements of all COVID-19 vaccines particularly for the AstraZeneca vaccine which is now an alternative option to Pfizer vaccine in New Zealand  Yes/No
- c) **Agree** to expand the recognised list of COVID-19 vaccines allowable under the vaccination mandates for affected workers  Yes/No
- d) **Agree** to an amendment that requires Person Conducting a Business or Undertaking (PCBUs) of workers listed in part 8.1 Schedule 2 of the Order (staff members of a Corrections prison) to access and use the Border Workforce Testing Register (the Register)  Yes/No
- e) **Agree** the Ministry will issue drafting instructions to Parliamentary Counsel Office to draft the COVID-19 Public Health Response (Vaccinations) Amendment Order (No. 5) 2021.  Yes/No
- f) **Note** that under section 9(1)(c) of the COVID-19 Act you are required to consult with the Prime Minister, Minister of Justice and Minister of Health before making or amending a COVID-19 Order.



Wendy Illingworth  
General Manager – Public Health System  
Policy  
System Strategy and Policy  
Date: 22 November 2021



Hon Chris Hipkins

**Minister for Covid-19 Response**

Date: 24/11/2021

## **Policy decisions required for further amendments to the COVID-19 Public Health Response (Vaccinations) Order (No. 5) 2021**

### **Background**

- 7 The COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order) came into force on 1 May 2021. It makes it mandatory for work at certain places to be carried out by affected persons who are vaccinated. This is due to the risk of exposure to, and transmission of COVID-19 by these workers.
- 8 The originating Order applied to specified work performed at the Border. Subsequent amendments came into force to make allowance for affected persons to be vaccinated with COVID-19 vaccines other than the Pfizer vaccine as well as to extend vaccination requirements to certain workers undertaking specific work (i.e., healthcare workers, workers in affected education services, and all prison workers).
- 9 Further amendments are required to address practical issues that have been identified to facilitate compliance with vaccination requirements under the Order. It is necessary to continue to clarify the policy intent to ensure that amendments to the Order align and remain lawful, practical and robust. This is to ensure employers and employees, and all affected persons, understand their vaccination obligations.

### **Comment**

#### **Amendments to the administration requirements of COVID-19 vaccines following the availability of AstraZeneca vaccine as an alternative option to the Pfizer/BioNTech vaccine**

- 10 The AstraZeneca vaccine will be available for a small group of New Zealanders 18 years of age and over, who cannot have the Pfizer vaccine due to medical reasons, and to those who are hesitant to receive a Pfizer vaccine, particularly if their job requires them to be vaccinated.
- 11 Schedule 3 of the current Order sets out the administration requirements for a COVID-19 vaccine for those to whom the Order will apply to. Under Schedule 3, workers are required to have received the first dose of the Pfizer vaccine before becoming an "affected person" (i.e., before the mandate came into force) and a subsequent second dose after becoming an "affected person".
- 12 With Government now having provisionally approved the availability of the AstraZeneca vaccine as an alternative option to Pfizer vaccine, the administration requirement for the vaccine in Schedule 3 needs to be amended to reflect both options.
- 13 Amendments are required to Schedule 3 of the Order to allow for "affected persons" to have received one or both doses of either Pfizer or AstraZeneca vaccine before or after becoming an "affected person".

#### **Amendment to expand the list of recognised acceptable COVID-19 vaccines in New Zealand**

- 14 On 17 October 2021, an amendment extending the list of COVID-19 vaccines recognised for work at the border in New Zealand came into force (HR 20212018 refers). This amendment added three COVID-19 vaccines (AstraZeneca (Oxford), Moderna, Janssen (Johnson and

Johnson)), in addition to Pfizer, that had been provisionally or fully approved by Medsafe and authorised for emergency use by Medsafe-recognised authorities.

- 15 As part of the Reconnecting New Zealanders strategy as we look to reconnect New Zealanders globally, the likelihood of international travel will increase. We need to establish a position on which vaccines, administered overseas, will be recognised in the New Zealand context to inform a range of legal requirements, operational policies, clinical guidance, and business rules.
- 16 The current Order recognises four COVID-19 vaccines under Schedule 3. These are:
  - i. Comirnaty, also known as Pfizer/BioNTech
  - ii. Janssen (Johnson and Johnson)
  - iii. AstraZeneca (Oxford)
  - iv. Moderna
- 17 The COVID-19 Vaccine Technical Advisory Group (CV TAG) has since provided advice on the definition of “fully vaccinated” for use in New Zealand settings and has recommended expanding the list of vaccines recognised for this purpose. Based on this advice, the Director-General of Health has confirmed that the list of recognised COVID-19 vaccines in New Zealand include any of the Medsafe or World Health Organization for Emergency Use Listing (WHO EUL)<sup>1</sup> approved vaccines. Recognising the WHO EUL vaccines is in line with the most recent recommendation of the International Health Regulations (2005) Emergency Committee regarding the COVID-19 pandemic.
- 18 At the time of writing this report, there are currently eight vaccines approved by Medsafe or WHO EUL but this will change over time. These have also been reported as the most common COVID-19 vaccines that arrivals into Managed Isolation and Quarantine Facilities (MIQ) have received.
- 19 The eight COVID-19 vaccines approved by Medsafe or WHO EUL are:
  - i. Pfizer/BioNTech
  - ii. Janssen (Johnson and Johnson)
  - iii. AstraZeneca (Oxford)
  - iv. AstraZeneca/Covishield (Serum Institute of India)
  - v. Moderna
  - vi. Sinopharm, Beijing (BBIBP-CorV, Covilo)
  - vii. Sinovac (CoronaVac)
  - viii. Bharat Biotech (Covaxin)
- 20 The CV TAG definition of “fully vaccinated” against COVID-19 includes the following accepted primary vaccination schedules:

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<sup>1</sup> To be approved for WHO EUL, COVID-19 vaccines are required to have an efficacy of 50 percent or above.



- (i) the approved number of doses of any **Medsafe or WHO EUL approved vaccine** (currently Pfizer, Janssen, AstraZeneca (Oxford and Covidshield/Serum Institute of India), Moderna, Sinopharm, Sinovac and Covaxin (Bharat Biotech))
  - (ii) two doses of **any combination of the Medsafe or WHO approved vaccines** (heterologous schedules)
  - (iii) a complete primary course of any other COVID-19 vaccines authorised by at least one government or authority **PLUS** a single dose of a Medsafe approved vaccine (the Moderna COVID-19 vaccine is also acceptable as the additional dose in the case that it was administered outside of New Zealand)
  - (iv) a single dose of any of the COVID-19 vaccines authorised by at least one government or authority **PLUS** a single dose of a Medsafe approved vaccine (the Moderna COVID-19 vaccine is also acceptable as the additional dose in the case that it was administered outside of New Zealand).
- 21 If a person has received an incomplete primary course of one of these eight vaccines currently approved by Medsafe or WHO EUL, then they will require a dose of a Medsafe approved vaccine (for a total of two doses) to be considered “fully vaccinated” in the New Zealand context.<sup>2</sup>
- 22 The Ministry recommends amending the Order to update the accepted COVID-19 vaccines and vaccination schedules under Schedule 3 as set out above. This includes the recommended acceptable doses of the AstraZeneca vaccine. The Ministry will work with Parliamentary Counsel Office on the best drafting mechanism to enable the list to be kept up to date over time, within the drafting time available.
- 23 These amendments will also allow for the AstraZeneca vaccine as a second dose option, for those over the age of 18 years, should the first dose have been any of the Medsafe approved or WHO EUL listed COVID-19 vaccines.
- 24 It should be noted that the AstraZeneca vaccine continues to be used as a second-line vaccine in New Zealand, with Pfizer remaining the first-line and preferred vaccine. This is consistent with the proposed use of AstraZeneca vaccine for those unable to, or hesitant, to take an mRNA vaccine.
- 25 The Ministry proposes a further amendment to clause 9A of the Order to amend reference to a “COVID-19 vaccine” in the Order to “any available vaccine for COVID-19” to allow the Director-General of Health more flexibility in view of the above expanded list of recognised COVID-19 vaccines. This is a technical drafting amendment that ensures full implementation of your past policy decision.

### **Amendment to mandate access to and use of the Border Workforce Testing Register to verify vaccination status and support implementation of the Order**

- 26 The Register is the secure online tool developed by the Ministry to assist a relevant person conducting a business or undertaking (PCBUs) with their record keeping in respect of worker’s COVID-19 swabbing dates and testing activity. The Register also currently records

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<sup>2</sup> Noting Janssen only requires one vaccine to be considered ‘fully vaccinated’.

the vaccination status of workers to ensure that under the Vaccination Order, only vaccinated workers perform certain roles.

- 27 Amendments to the Order were made to require certain high-risk roles to be undertaken by workers vaccinated against COVID-19. These high-risk roles were in the health and disability sector, affected education services and in prisons. Access to and use of the Register will facilitate compliance with and implementation of the Order.

*Access to the Register for staff members of a corrections prison*

- 28 Access to the Register will enable the Department of Corrections and Serco (who run the Auckland South Corrections Facility) to efficiently verify vaccination status of their workers to support compliance with the Order as well as enable them to record testing data from affected workers. In the interim, the Department of Corrections and Serco rely mainly on staff to provide accurate information about their vaccination status.
- 29 Requiring the Department of Corrections and Serco as PCBUs to access and use the Register to verify and record vaccination status and testing of affected workers will require amendments to the Order.
- 30 Schedule 2 of the Order currently specifies staff members of a Corrections prison, and persons employed or engaged by a contractor or subcontractor to provide services in a Corrections prison, as "affected persons."
- 31 The proposed amendment to the Order will only require the Department of Corrections and Serco to use the Register for affected workers who are staff members of a Corrections prison. This applies to approximately 6,000 to 7,000 prison-based workers. Contractors and subcontractors will have the option of accessing the Register to verify the vaccination status of their employees but will not be mandated to use it as operationally this would be very complex to manage.
- 32 The Department of Corrections have advised that further amendments should be made to allow Corrections and Serco (as the relevant PCBUs) to be mandated to access and use the register to verify the vaccination status of staff members.
- 33 Once access to the Register is approved, it would take one week for the Ministry's information technology systems to facilitate Corrections and Serco access to the Register and to complete associated NHI data matching. The necessary resources across both agencies are available to do this work and drafting will support a transitional period if needed.

## **Human Rights**

- 34 We do not consider the proposed changes will have any implications in relations to obligations under the New Zealand Bill of Rights Act (BORA) 1990. This is mainly because the proposed amendments do not change the coverage of the mandated workers within the Vaccinations Order.
- 35 The proposed amendments would benefit some people through providing a wider choice of vaccines that allows them to meet their obligations under the Vaccination Order.

## **Equity**

- 36 Requiring vaccinations may lower the risk of infection and transmission to communities of people that these workers ordinarily interact with including place, ethnicity, faith, and age-

based communities. Vaccinations are also important to reduce risks to the community as well as potentially overwhelming the public health system.

- 37 Unvaccinated workers subject to the Order (i.e., “affected persons”), may be redeployed by their employers or may have their employment terminated (following appropriate human resource processes).
- 38 Increasing the list of recognised COVID-19 vaccines also provides additional options for workers, particularly those who are vaccine hesitant, and is an integral part of the Reconnecting New Zealand strategy as we look to opening the borders and reconnecting globally.
- 39 Requiring vaccination may promote equity by lowering the risk of transmission to communities of people that these workers ordinarily interact with. It is also important to reduce risks to the community by helping to prevent an overwhelmed health system.

#### *Te Tiriti o Waitangi implications*

- 40 The Ministry and other stakeholders will continue to work with Māori (and Pacific) providers to increase the number of kaimahi (staff) able to deliver the COVID-19 vaccinations. This will remain a critical enabler for lifting Māori (and Pacific) vaccination rates, encouraging uptake and increasing trust and transparency.
- 41 The Amendment Order supports health system resilience, the minimisation of community outbreaks, and any associated increase in Alert Level restrictions. This is critical to minimising and addressing existing inequities and is consistent with Te Tiriti principle of active protection.

#### **Next steps**

- 42 Officials will prepare material to support communication with key stakeholders. Clear communication is important to provide support for, and facilitate compliance with, these requirements.
- 43 Officials recommend you sign this report no later than 10 am Wednesday 24 November 2021 to ensure that drafting of the amendments can be undertaken by Parliamentary Counsel Office.
- 44 The final Order will be provided to you on Friday 26 November 2021 for signature, so that it can be published in the *New Zealand Gazette* on that date. This will allow officials to meet the statutory obligation to provide at least 48 hours’ notice between gazetting and the Amendment Order coming into effect on 11:59pm Sunday 29 November 2021.

**ENDS.**

# Briefing

## COVID-19 Public Health Response (Vaccination) Amendment Order (No 6) 2021

**Date due to MO:** 30 November 2021      **Action required by:** 30 November 2021

**Security level:** IN CONFIDENCE      **Health Report number:** 20212648

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

### Contact for telephone discussion

Name	Position	Telephone
Dr Ashley Bloomfield	Director-General of Health	S9(2)(a)
Steve Waldegrave	Group Manager, COVID-19 Policy	

### Minister's office to complete:

- Approved       Decline       Noted  
 Needs change       Seen       Overtaken by events  
 See Minister's Notes       Withdrawn

Comment:

# COVID-19 Public Health Response (Vaccination) Amendment Order (No 6) 2021 – for signature

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**Security level:** IN CONFIDENCE      **Date:** 30 November 2021

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

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## Purpose of report

1. This report recommends that you sign the attached COVID-19 Public Health Response (Vaccinations) Amendment Order (No 6) 2021.

## Summary

2. On 26 November 2021, Cabinet agreed [CAB-21-MIN-0436] that, under the COVID-19 Protection Framework (CPF), at all colour settings vaccinations will be required for work done in certain business and services. This requirement is regardless of whether a business or service chooses to require COVID-10 Vaccination Certificates from its customers.
3. To give effect to Cabinet's decision above, the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 6) 2021 (the Amendment Order) broadens the range of work covered by vaccination requirements, in line with the CPF. The Amendment Order will introduce vaccination requirements for workers at food and beverage businesses or services, gyms, permitted events, close-proximity businesses or services, and at tertiary education providers.
4. Once Ministerial consultation on the draft Amendment Order is complete, Officials recommend that you sign the final Amendment Order on Tuesday 30 November 2021, so that it can be published in the *New Zealand Gazette* that day. This will allow officials to meet the statutory obligation to provide at least 48 hours' notice between gazetting and the Amendment Order coming into effect.
5. It is anticipated that Order will come into effect at 12:00 am on Friday 3 December 2021, one minute after the COVID-19 Protection Framework (CPF) Order commences at 11:59pm on Thursday 2 December 2021. This one minute difference is needed because the Amendment Order references terms defined in the CPF Order.

## Recommendations

We recommend you:

- a) **Note** that on 26 October 2021, Cabinet agreed to require vaccination for work done in settings where COVID-19 Vaccination Certificates (CVCs) must be used to operate or operate with fewer restrictions under the COVID-19 Protection Framework (CPF) [CAB-21-MIN-0436]. **Noted**
- b) **Note** that you and the Minister for Workplace Relations and Safety have since confirmed that the above decision includes the Green level of the COVID-19 Protection Framework (i.e. the vaccination requirements are intended to apply across all CPF colour settings). **Noted**
- c) **Note** that on 24 November 2021, the Social Wellbeing Committee (SWC) agreed that the mandate referred to in paragraphs a and b above will apply to gatherings covered by the COVID-19 Protection Framework only if they choose to apply the CVC requirements [SWC-21-MIN-0199]. **Noted**
- d) **Note** that Officials advise that the attached draft Amendment Order is in line with the purposes of the COVID-19 Public Health Response Act 2020, to prevent and limit the risk of, the outbreak or spread, of COVID-19. **Noted**
- e) **Note** that the Cabinet decisions referred to in this paper fulfil your requirement to consult on the contents of the attached Amendment Order with the Prime Minister, the Minister of Justice, Minister of Health, and any other Ministers you think necessary. **Noted**
- f) **Agree** to sign the attached Amendment Order. **Yes/No**



Dr Ashley Bloomfield

**Te Tumu Whakarae mō te Hauora**  
**Director-General of Health**

Date: 30 / 11 / 2021

Hon Chris Hipkins

**Minister for COVID-19 Response**

Date:

# COVID-19 Public Health Response (Vaccination) Amendment Order (No 6) 2021 – For signature

## Contents of the Order

6. The Amendment Order broadens the range of work covered by vaccination requirements, corresponding to the introduction of the COVID-19 Protection Framework (CPF). Vaccination will be required at all levels of the CPF for work done in the following businesses or services, regardless of whether the business or service chooses to require CVCs from customers [CAB-21-MIN-0436]:
  - a. Hospitality,
  - b. Events,
  - c. Close contact businesses,
  - d. Gyms, and
  - e. At the Red level only, tertiary education.
7. To facilitate the introduction of the CPF, a new part will be added to Schedule 2 (“groups of affected persons”) of the Amendment Order to include workers at food and beverage businesses or services, gyms, permitted events, close-proximity businesses or services, and at tertiary education providers. The definition of these terms will refer to the order establishing the CPF, to ensure consistency.
8. The following existing clauses of the Amendment Order are amended to apply to the new types of work being added to Schedule 2:
  - a. Clause 7 (duty of affected person not to carry out certain work): this will apply to the new types of work.
  - b. Clause 8 (duties of relevant PCBUs in relation to vaccination): this will apply to the new types of work.
  - c. Clause 9: the Chief Executive of MBIE will be able to authorise affected persons who are not vaccinated to carry out work that is unanticipated, necessary, time-critical, cannot be carried out by someone who is vaccinated, and that must be carried out to prevent the ceasing of operations.
  - d. Clauses 9A and 9B (Director-General authorisation for workers to work without being fully vaccinated, and exemptions from vaccination requirements): these clauses will apply to the new types of work.
  - e. Clauses 10 and 11: these clauses will not apply to the new types of work because the Ministry of Health register will not be available for these types of work.
  - f. Clause 11A (record-keeping duties for employers): this clause will apply to the new types of work, except clause 11A(4). This is to avoid workers being liable for a

penalty when the likely consequence of not providing updated information includes job loss.

- g. Clause 12A (power of Minister to grant exemptions): this clause will apply to the new types of work, but additional exemption grounds are not being added to clause 12A. MBIE officials consider this means it is highly unlikely a business would meet the existing thresholds in clause 12A (e.g. preventing significant disruption of essential supply chains).
  - h. Clause 13 (infringement offence): this clause will apply to the new types of work.
9. Cabinet has since decided that work done at gatherings does not require vaccination. Instead, if the organiser of a gathering has decided to require CVCs from attendees, workers in those settings will be treated similarly [SWC-21-MIN-0199].
  10. Workers carrying out the new types of work being added to the Amendment Order can continue working with a single dose of a COVID-19 vaccine until 17 January 2021, at which point two doses of a COVID-19 vaccine will be required.

### Process for making a section 11 Order

11. Under the COVID-19 Public Health Response Act 2020 (the Act) an order may be made if either:
  - a. an epidemic notice is in force (under the Epidemic Preparedness Act 2006);
  - b. a state of emergency has been declared (under the Civil Defence Emergency Management Act 2002); or
  - c. it has been authorised by the Prime Minister.
12. There is currently an epidemic notice in place, which allows orders to be made under section 11 of the Act.
13. As the Minister for COVID-19 Response, you may make orders under section 11 of the Act.
14. To make or amend an order under section 11 you must:
  - a. have received advice from the Director-General of Health about:
    - i. the risks of the outbreak or spread of COVID-19
    - ii. the nature and extent of measures that are appropriate to address those risks
  - b. be satisfied that the proposed Amendment Order does not limit or is a justified limit on the rights and freedoms as specified in NZBORA
  - c. consult with the Prime Minister, the Minister of Justice, Minister of Health, and any other Ministers you think necessary, and
  - d. be satisfied that the order is appropriate to achieve the purposes of the Act.
15. Public health advice about the risks of the outbreak or spread of COVID-19 and the nature and extent of measures that are appropriate to manage those risks was previously provided [HR20212018 refers] and is also set out below.



## Public health rationale

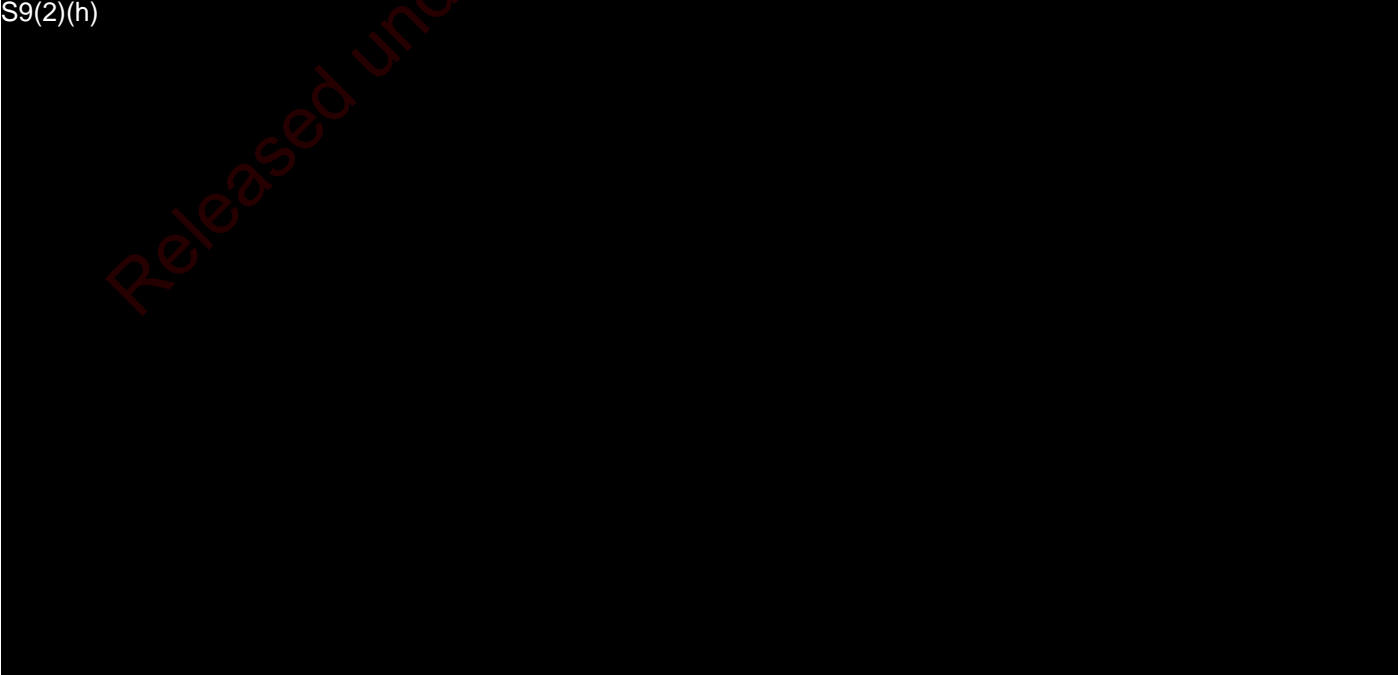
16. The public health issues have been outlined in the joint Ministry of Health and Department of the Prime Minister and Cabinet (DPMC) briefings DPMC-2021/22-412 dated 24 September 2021 and DPMC-2021/22-585 dated 14 October 2021.

## New Zealand Bill of Rights Act 1990

17. Requiring vaccination for work (e.g. in CVC settings) limits section 11 (the right to refuse to undergo medical treatment) and section 19 (freedom from discrimination) of the New Zealand Bill of Rights Act 1990 (BORA).
18. The proposals limit the right to refuse to undergo medical treatment because, faced with a choice between being vaccinated and losing their job, a person may feel compelled to be vaccinated (i.e. their decision to refuse may be overborne). The proposals may also limit the right to be free from discrimination in the case of individuals who have a medical reason for not being vaccinated, such as a severe allergy. This may constitute a "disability" for the purposes of section 19 of BORA.
19. In order for the Government to impose limits on these rights, the purpose that mandatory vaccination seeks to achieve must be an important one. Vaccination must be clearly linked with the intended purpose, and there must not be an alternative that restricts the rights less (such as frequent testing or wearing of PPE) which would achieve the objective instead.
20. Limitations on these rights are justified because of the strong public health objectives of the CPF, and the apparent lack of less-restrictive alternatives to achieve those objectives. The Employment Relations Act was amended last week to protect workers who lose their job because of a Government-imposed vaccination mandate. This includes a requirement for employers to provide a minimum of four weeks' paid notice of termination. The possibility for exemptions for people who cannot be vaccinated for medical reasons is also relevant.

## Crown Law advice

S9(2)(h)



S9(2)(h)

**Equity**

26. The relevant equity issues have been outlined in the Cabinet submission under CAB-21-MIN-0436.

**Next steps**

27. Officials strongly recommend that you sign the Amendment Order on Tuesday 30 November 2021, so that it can be published in the *New Zealand Gazette* that day. This will allow officials to meet the statutory obligation to provide at least 48 hours' notice between gazetting and the Order coming into effect.
28. Once signed the Order will come into effect at 12:00 am on Friday 3 December 2021, one minute after the CPF Order commences at 11:59pm on Thursday 2 December 2021.

**ENDS.**

# Briefing

## Policy decisions required for further amendments to the COVID-19 Public Health Response (Vaccinations) Order (No. 7) 2021

**Date due to MO:** 22 December 2021      **Action required by:** 22 December 2021

**Security level:** IN CONFIDENCE      **Health Report number:** 20212779

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

**Copy to:** Hon Andrew Little, Minister of Health

### Contact for telephone discussion

Name	Position	Telephone
<b>Maree Roberts</b>	Deputy Director-General, System Strategy and Policy	S9(2)(h)
<b>Alison Cossar</b>	Manager, Public Health Policy, System Strategy and Policy	

### Minister's office to complete:

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

Comment:

# Policy decisions required for further amendments to the COVID-19 Public Health Response (Vaccinations) Order (No. 7) 2021

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**Security level:** IN CONFIDENCE      **Date:** 22 December 2021

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

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## Purpose of report

- 1 This report seeks policy decisions on:
  - 1.1 further amendments to the COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order) to require certain workers under the Order aged 18 years and over to receive a Pfizer/BioNTech COVID-19 vaccine (the Pfizer vaccine) booster dose, and
  - 1.2 seeks your agreement to issue drafting instructions for the amendments.
- 2 This report discloses all relevant information and implications known at this time.

## Summary

- 3 The COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order) came into force on 1 May 2021 and requires that specified work at the border only be performed by workers who have been vaccinated against COVID-19 (HR20211235 refers).
- 4 On 25 October 2021 the COVID-19 Public Health (Vaccinations) Amendment Order (No 3) 2021 came into force, extending mandatory vaccination to all healthcare workers undertaking high risk work in the health and disability care sector, as well as all workers in affected education services who may have contact with children or students, and all workers who will enter a Correction's prison, either as staff or to provide prison services.
- 5 On 20 December 2021 Cabinet considered advice from the Director-General of Health and agreed to a proposal from Vaccine Ministers to reduce the approved booster dose interval of the Pfizer vaccine (for those aged 18 years and older) from six months to four months. The reduction in the booster dose interval was approved due to the emergence of the highly infectious Omicron variant and the importance of ensuring a high proportion of people have their COVID-19 vaccine booster dose ahead of winter 2022.
- 6 Cabinet further agreed that to maintain a high level of protection, Managed Isolation and Quarantine (MIQ), Managed Isolation Facility (MIF), border and healthcare workers be required to receive a Pfizer booster dose after six months of completing their primary course. As these groups of workers are likely to be already eligible for the booster dose, we recommend maintaining the six month interval.
- 7 For those workers in the specified group that are already eligible for a booster dose (having received their primary vaccination six months prior), it is recommended that they be required to have received their boosters by 31 January 2022.

- 8 Further amendments are required to address the practical issues identified in the lead up to the dates specified for mandatory booster vaccinations. It is necessary to clarify the policy intent to ensure that amendments to the Order align and are lawful, are practical and robust, and so employers and affected workers understand their vaccination obligations.
- 9 If you agree, the Ministry of Health (the Ministry) will issue drafting instructions to the Parliamentary Counsel Office (PCO) and will provide you with an Order for Ministerial consultation, signing and gazettal by Thursday 13 January 2022. The Amended Order is proposed to come into force on 11:59 pm Sunday 16 January 2022.

## Recommendations

We recommend you:

- a) **Note** that the amendments to the COVID-19 Public Health Response (Vaccinations) Order 2021 are required to ensure that the mandatory vaccinations provisions are workable and relevant
- b) **Note** that early evidence indicates that a Pfizer booster vaccine dose provides greater protection than two doses, four months after the second dose
- c) **Note** that the Pfizer booster dose is the only COVID-19 booster available in New Zealand
- d) **Note** that CV TAG has advised that AstraZeneca can also be used as a booster dose ("off-label") if available for specific situations including if an individual has had a significant adverse reaction after a previous Pfizer vaccine dose (and if AstraZeneca is not contraindicated)
- e) **Note** that the Pfizer booster dose is only available to workers 18 years of age and older who have received their second dose of their full primary vaccination six months prior to when their booster is due
- f) **Agree** that the Order be amended to allow workers (MIF, MIQ and borders and healthcare workers included in Parts 1 to 7 of the Order) aged 18 years and over and eligible for a Pfizer booster dose (having completed their primary course six months prior) to be required to have received a booster dose by 31 January 2022 **Yes/No**
- g) **Agree** that the Order be amended to allow all remaining workers under the Order required to be fully vaccinated at a later date, to have received a Pfizer or AstraZeneca booster dose by 1 March 2022, if eligible, or six months from the date of completion of their primary vaccination course **Yes/No**
- h) **Agree** the Ministry will issue drafting instructions to Parliamentary Counsel Office to draft the COVID-19 Public Health Response (Vaccinations) Amendment Order (No. 7) 2021 **Yes/No**
- i) **Note** that the draft Amendment Order which will be provided to you 13 January 2022 is intended to mandate booster doses for workers (MIF, MIQ and borders and healthcare workers included in Parts 1 to 7 of the


Order) and all other amendments for the remaining workers will be progressed separately

- j) **Note** that under section 9(1)(c) of the COVID-19 Act you are required to consult with the Prime Minister, Minister of Justice and Minister of Health before making or amending a COVID-19 Order.

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

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

S9(2)(g)(i)



Released under the Official Information Act 1982

# Policy decisions required for further amendments to the COVID-19 Public Health Response (Vaccinations) Order (No. 7) 2021

## Background

- 10 The COVID-19 Public Health (Vaccinations) Order 2021 (the Order) came into force on 1 May 2021 and makes it mandatory for work at certain places to be carried out by affected persons who are vaccinated. On 14 July 2021 the COVID-19 Public Health (Vaccinations) Amendment Order 2021 came into force, extending the scope of the Order to cover additional work performed at the Border, and to create a public health exception for certain workers at the Border who have no interaction with travellers or crew. This is due to the risk of exposure to, and transmission of COVID-19 by these workers.
- 11 The originating Order applied to specified work performed at the border. Subsequent amendments came into force to make allowance for affected persons to be vaccinated with COVID-19 vaccines other than the Pfizer vaccine as well as to extend vaccination requirements to certain workers undertaking specific work (i.e., healthcare workers undertaking specific work in the health and disability care sector, workers in affected education services, and workers in Correction's prisons).
- 12 With the emergence of the highly infectious Omicron variant and on advice from the Director-General of Health and the COVID-19 Vaccine Technical Advisory Group (CV TAG), Cabinet has agreed to shorten the booster dosing interval to four months as well as to mandating Pfizer booster doses for workers at MIQ, MIF, border and health care workers under the Order.
- 13 Requiring booster doses continues to achieve our objective to maintain a high level of population protection particularly for these groups of workers who are already eligible for a booster dose and at a higher risk of exposure to the Omicron variant.
- 14 Further amendments are required to address practical issues to facilitate compliance with vaccination requirements under the Order. It is necessary to continue to clarify the policy intent to ensure that amendments to the Order align and remain lawful, practical and robust. This is to ensure employers and employees, and all affected persons, understand their vaccination obligations.

## Comment

### Amendments to require COVID-19 Pfizer booster doses in response to the Omicron variant

- 15 Evidence of COVID-19 vaccine effectiveness against the Omicron variant and the need for booster doses is still emerging. Current data indicating that boosters increase effectiveness is looking promising. Studies also indicate a booster dose of the COVID-19 vaccines significantly increase antibody levels and should offer increased protection against Omicron over two doses vaccine, more than four months after the second dose.
- 16 Current evidence also indicates that antibody levels against COVID-19 wane over time following a second dose of the Pfizer COVID-19 vaccine. There is a reduction in protection against infection from the Delta variant, particularly from six months after a primary

vaccination course. Protection against transmission from vaccinated individuals who are infected also appears to wane over time.

- 17 Although these studies are preliminary and further research is required, they do provide important initial evidence in a rapidly evolving situation with the Omicron variant spreading around the world. It is now becoming the dominant strain in the UK as it spreads across regions, with four out of five cases tested in London last week being Omicron.
- 18 The CV TAG has indicated that one of the potential reasons to consider early booster doses is to potentially provide higher protection against COVID-19 caused by new variants.

*Requiring workers in MIQ, MIF, Borders and health care workers under the Order to receive a COVID-19 Pfizer booster dose*

- 19 Requiring a Pfizer booster doses for workers working at MIQ and MIF, border and health care workers under the Order is in line with the original policy intent which is to reduce the risk for people undertaking certain work who are at a higher risk of exposure to COVID-19 and particularly the new Omicron variant.
- 20 Most of the workers in these groups are or will soon be eligible for their booster dose. Requiring them to receive a booster dose is a necessary step towards maintaining our public health objective and ensuring population protection. It may also ease the pressure on the public health system, particularly when the effects of the Omicron variant are still unknown.
- 21 Requiring these groups of workers to receive a booster dose will require further amendments to the Order to enable these groups of workers to continue to undertake their work in a safe environment.
- 22 We therefore recommend that the Order be amended to allow those workers over the age of 18 years (MIF, MIQ and borders and healthcare workers) being eligible for a booster dose on 17 January 2022, with a Pfizer booster required no later than six months after primary vaccination by 31 January 2022. These workers are included under Parts 1 to 7<sup>1</sup> under the current Order.
- 23 In November 2021, CV TAG has raised concerns about vaccine mandates requiring younger age groups (e.g. those under 18 years) to be fully vaccinated. Consideration should be given to permitting younger people who have had one dose to be permitted to work or undertake other activities covered by the mandate.
- 24 For those workers who are captured by the Order but are not eligible for a booster dose by the above dates, we recommend that these workers should then be required to have received their Pfizer booster dose within four to six months from the date of completion of their primary vaccination course.

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<sup>1</sup> Affected workers under Parts 1 to 7 under the Order are as follows: Part 1: Groups in relation to managed quarantine facilities; Part 2: Groups in relation to managed isolation facilities; Part 3: Groups in relation to affected airports; Part 4: Groups in relation to affected ports; Part 5: Groups in relation to aircraft; Part 6: Groups in relation to affected items; Part 7: Groups in relation to health and disability sector.



*Requiring workers in the remaining groups under Schedule 2 of the Order to receive a COVID-19 Pfizer booster dose*

- 25 There are additional groups under the Order which are required to be vaccinated to undertake certain work. These workers include those in education services in Schedule 2 of the Order and correction prison services (item 8.1 and 8.2 of Schedule 2 of the Order).
- 26 We further propose that workers in these remaining groups under the Order also be required to receive a Pfizer booster dose, once they are eligible within the six months since completing their primary course of vaccination. As these workers were required to be fully vaccinated at a later date, the amendments would need to require them to have received a Pfizer booster dose by 1 March 2022 if they are of the age of 18 years and over.
- 27 For those workers who are captured by the Order but are not eligible for a booster dose by the above dates, we recommend that these workers should then be required to have received their Pfizer booster dose within six months from the date of completion of their primary vaccination course.
- 28 Should workers fall under a different group from the other workers already identified, then the earlier date provided will be applicable (i.e. Police working at MIQ or classified as health workers).
- 29 Further details will be resolved through the drafting of the amendments. Amendments for the remaining groups under the Order will be provided to you separate to the amendments requiring workers working at MIQ and MIF, border and health care workers.

*Workers required under the Order who have received an AstraZeneca COVID-19 vaccine*

- 30 AstraZeneca was granted provisional consent by Medsafe to be used as an alternative COVID-19 vaccine in New Zealand for people aged 18 years and over. Following Cabinet approval, the AstraZeneca COVID-19 vaccine became available in New Zealand on 29 November 2021 (CAB-21-MIN-0460 refers).
- 31 The aim of providing the AstraZeneca vaccine was to allow those people who are unable to or hesitant to take an mRNA vaccine to have a second option. This remains in line with the overall aim of increasing the proportion of people who have a level of protection from COVID-19 and reducing the potential harm COVID-19 could cause in our communities if there was an outbreak. Certain workers under the Order have therefore opted to receive the AstraZeneca vaccine.
- 32 Without the option of an alternative booster to Pfizer, which AstraZeneca provides, the risk of a reduced workforce is greater. Allowing for the provision of the AstraZeneca as a booster alternative addresses the issues of equity and access to COVID-19 vaccines.
- 33 On 10 November 2021, CV TAG advised that AstraZeneca can also be used as a booster dose ("off-label") if available for specific situations including if an individual has had a significant adverse reaction after a previous Pfizer vaccine dose (and if AstraZeneca is not contraindicated). We recommend that an AstraZeneca booster dose be permissible, as per CV TAG advice, to fulfil the requirements of a booster dose under the Order, administered under sections 25 and 29 of the Medicines Act 1981.
- 34 Primary course "off-label" doses of COVID-19 vaccines are already administered in New Zealand, including to individuals who have had an adverse reaction to their first dose of the

Pfizer vaccine who are to be able to receive a one-off dose of the COVID-19 AstraZeneca vaccine. The COVID-19 Vaccination and Immunisation Programme guidance to Providers is that "off-label" doses of COVID-19 vaccines should only be administered with a prescription, informed consent in writing, and informed consent obtained from a medical practitioner.

*Workers required under the Order who have received a COVID-19 vaccine other than a Pfizer or AstraZeneca*

- 35 Workers under the Order who have received a COVID-19 vaccine other than a Pfizer or AstraZeneca vaccine will be required to have received either a Pfizer booster dose or an additional AstraZeneca booster dose (administered "off-label" under sections 25 and 29 of the Medicines Act 1981) within the required period as these are the only options currently available in New Zealand.

## Human Rights

- 36 Vaccination plainly constitutes medical treatment and therefore engages the right of every person to refuse it if they choose. Compulsory vaccination of whatever sort, and by whatever means will be inconsistent with that right unless it can be demonstrably justified. The state has a legitimate interest in impeding community transmission of the virus. If the Minister of COVID-19 Response is satisfied on the basis of credible evidence that compulsory vaccination of affected workers will have that effect or make a substantial contribution to it that cannot be otherwise achieved, it will be justified.

37 S9(2)(h)

- 38 Previous Bill of Rights Act advice has been given on the policy of the recent amendments to the COVID-19 Public Health Response (Vaccinations) Order 2021.
- 39 The proposed amendments to require booster doses for these groups of workers is to continue to maintain protection against the same level of risk of exposure particularly against the highly infectious Omicron variant. The proposed amendments therefore ensures that the Order appropriately implements those decisions and no further BORA considerations apply.

## Equity

- 40 Requiring vaccinations (including boosters) may lower the risk of infection and transmission to communities of people that these workers ordinarily interact with including place, ethnicity, faith, and age-based communities. Vaccinations (including boosters) remain important to reduce risks to the community as well as potentially overwhelming the public health system, particularly with the highly infectious Omicron variant and particularly as New Zealand looks to reopen its borders in 2022.
- 41 As evidence indicates that immunity and transmissibility could potentially wane around six months the risk of exposure remains high and the likelihood that there be higher health risks without a booster dose particularly against the Omicron variant is still present.
- 42 Māori and Pacific peoples are disproportionately affected so the Order may have a positive effect on reducing their exposure to COVID-19 and its highly infectious Omicron variant.

Currently, Māori and Pacific people have lower vaccination rates meaning those people covered under the Order are more likely to be required to take action under the Order.

- 43 Workers subject to the Order unwilling to receive a subsequent Pfizer booster dose may be redeployed by their employers or may have their employment terminated (following appropriate human resource processes).
- 44 There is likely to be employment implications for those non-regulated Māori and Pacific workers within these environments leading to termination of their employment with significant loss of income impacting on many households. Although we do not have official figures, we note that there will be a potential impact.
- 45 Disabled people, older people and their whānau will also continue to be positively impacted by the Order. There are high risks for disabled people and older people, many of whom experience co-morbid health conditions that raise the vulnerability for being infected by the virus and the significant health and well-being impact if they are infected by the virus.
- 46 Requiring vaccination and boosters may promote equity by lowering the risk of transmission to communities of people that these workers ordinarily interact with. It is also important to reduce risks to the community by helping to prevent an overwhelmed health system.

#### *Te Tiriti o Waitangi implications*

- 47 The Ministry and other stakeholders will continue to work with Māori (and Pacific) providers to increase the number of kaimahi (staff) able to deliver the COVID-19 vaccinations and boosters. This will remain a critical enabler for lifting Māori (and Pacific) vaccination rates, encouraging uptake and increasing trust and transparency.
- 48 The Order supports health system resilience, the minimisation of community outbreaks, and any associated increase in restrictions. This is critical to minimising and addressing existing inequities and is consistent with Te Tiriti principle of active protection.

#### **Next steps**

- 49 Officials recommend you sign this report no later than midday Thursday 23 December 2021 to ensure that drafting of the amendments can be undertaken by Parliamentary Counsel Office as soon as the Office reopens on 10 January 2022.
- 50 Officials will provide the draft Amendment Order to you on 13 January 2022 intended to mandate booster doses for workers (MIF, MIQ and borders and healthcare workers included in Parts 1 to 7 of the Order) and all other amendments for the remaining workers will be progressed separately.
- 51 The final Order will be provided to you Thursday 13 January for signature, so that it can be published in the *New Zealand Gazette* on that date. This will allow officials to meet the statutory obligation to provide at least 48 hours' notice between gazetting and the Amendment Order coming into effect.

**ENDS.**

# Briefing

## Further policy decision required for amendments to the COVID-19 Public Health Response (Vaccinations) Order 2022

**Date due to MO:** 19 January 2022      **Action required by:** 19 January 2022

**Security level:** IN CONFIDENCE      **Health Report number:** 20220059

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

**Copy to:** Hon Andrew Little, Minister of Health

### Contact for telephone discussion

Name	Position	Telephone
<b>Maree Roberts</b>	Deputy Director-General, System Strategy and Policy	S9(2)(a)
<b>Alison Cossar</b>	Manager, Public Health Policy, System Strategy and Policy	

### Minister's office to complete:

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

Comment:

# Further policy decision required for amendments to the COVID-19 Public Health Response (Vaccinations) Order 2022

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**Security level:** IN CONFIDENCE                      **Date:** 19 January 2022

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

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## Purpose of report

- 1 This report seeks a further policy decision for the amendment to the COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order) to extend the date requiring certain workers under the Order to receive a COVID-19 booster dose to 15 February 2022.
- 2 This report discloses all relevant information and implications known at this time.

## Summary

3. On 20 December 2021, Cabinet considered advice from the Director-General of Health and agreed:
  - a. to reduce the approved booster dose interval for those aged 18 years and over from six months to four months after completing their primary course,
  - b. that managed isolation and quarantine facility (MIQF), border and healthcare workers, be required to receive a booster dose after six months of completing their primary course.
4. To give effect to these Cabinet decisions, the policy decisions were approved on 7 January 2022 agreeing to amend the COVID-19 Public Health Response (Vaccinations) Order 2021 (Order) (HR20212779 refers) to:
  - a. require MIQF, border and healthcare workers (included in Parts 1 to 7 of Schedule 2 of the Order) aged 18 years and over, who are eligible for a booster dose (having completed their primary course six months prior), to have received their booster dose by 31 January 2022, or after 183 days since they were vaccinated, whichever is earlier; and
  - b. require affected workers (included in Parts 8 and 9 of the Order) aged 18 years and over, who are eligible for a booster dose (having completed their primary course six months prior), to have received a booster dose by 1 March 2022, or six months (183 days) from the date of completion of their primary vaccination course.
5. The feedback from the MIQF, border and healthcare workers sector on the timing of the Order and a review of the practicalities indicated that a shift in the dates is probably necessary. To be able to facilitate sector concerns and provide sufficient time for communication and implementation, the Ministry proposes that for these workforces the

date of 31 January 2021 be extended to Tuesday 15 February 2022 to allow workers sufficient time to receive their booster dose and for employers to be able to sufficiently plan management of this (e.g. HR processes etc).

6. The Associate Minister of Health as Minister for COVID-19 Response (Acting) requested, on 7 January 2022, further advice on mandating off-label use of the AstraZeneca vaccine under the Order and this has been provided in this paper.
7. If you agree, the Ministry of Health (the Ministry) will issue further drafting instructions to the Parliamentary Counsel Office (PCO) and will provide you with an Order for Ministerial consultation, signing and gazetting by Friday 21 January 2022. The Amended Order is proposed to come into force on 11:59 pm Sunday 23 January 2022.

## Recommendations

We recommend you:

- a) **Note** that amendments to the COVID-19 Public Health Response (Vaccinations) Order 2021 are required to ensure that the mandatory vaccinations provisions are workable and relevant
- b) **Note** that given the urgency of these policy decisions and amendments, potential risks and issues will arise and those that cannot be addressed through the drafting process will be addressed through providing clear guidelines and communications to the sector as the Ministry implements the amendments
- c) **Agree** that the Order extend the deadline requiring workers (MIQF, borders and healthcare included in Parts 1 to 7 of Schedule 2 of the Order) aged 18 years and over and eligible for a booster dose to be required to have received a booster dose to Tuesday 15 February 2022 Yes/No
- d) **Agree** that the Order be amended requiring all remaining workers (Parts 8 and 9 of Schedule 2 of the Order) aged 18 years and over and eligible for a booster dose be required to have received a booster dose by Tuesday 1 March 2022, if eligible, or six months from the date of completion of their primary vaccination course Yes/No
- e) **Note** that the amendments to this Order requiring workers to receive a booster dose does not includes workers where COVID-19 Vaccination Certificate requirements may be required (Part 10 of Schedule 2 of the Order)
- f) **Agree** the Ministry will issue drafting instructions to Parliamentary Counsel Office to draft the COVID-19 Public Health Response (Vaccinations) Amendment Order 2022 Yes/No

- g) **Note** that under section 9(1)(c) of the COVID-19 Act you are required to consult with the Prime Minister, Minister of Justice and Minister of Health before making or amending a COVID-19 Order.



Maree Roberts

Deputy Director-General  
System Strategy and Policy

Date:



Hon Chris Hipkins

**Minister for Covid-19 Response**

Date: 19/1/22

My agreement to a later deadline does not signal a reduction in urgency. It reflects logistical practicalities. I still expect the goal to be to get all border workers booked as soon as possible. CH

Released under the Official Information Act 1982

# Further policy decision required for amendments to the COVID-19 Public Health Response (Vaccinations) Order 2022

## Background

- 8 The COVID-19 Public Health (Vaccinations) Order 2021 (the Order) came into force on 1 May 2021 and makes it mandatory for work at certain places to be carried out by affected persons who are vaccinated.
- 9 The originating Order applied to specified work performed at the border. Subsequent amendments came into force to make allowance for affected persons to be vaccinated with COVID-19 vaccines other than the Pfizer vaccine as well as to extend vaccination requirements to certain workers undertaking specific work (i.e., healthcare workers undertaking specific work in the health and disability care sector, workers in affected education services, and workers in Correction's prisons).
- 10 Policy decisions were approved on 7 January 2022 agreeing to amend the Order (HR20212779 refers) to:
  - a. require MIQF, border and healthcare workers (included in Parts 1 to 7 of Schedule 2 of the Order) aged 18 years and over, who are eligible for a booster dose (having completed their primary course six months prior), to have received their booster dose by 31 January 2022, or after 183 days since they were vaccinated, whichever is earlier; and
  - b. require affected workers (included in Parts 8 and 9 of the Order) aged 18 years and over, who are eligible for a booster dose (having completed their primary course six months prior), to have received a booster dose by 1 March 2022, or six months (183 days) from the date of completion of their primary vaccination course.
- 11 The feedback from the MIQF, border and healthcare workers sector on the timing of the Order and a review of the practicalities indicated that a shift in the dates was probably necessary. To be able to facilitate sector concerns and provide sufficient time for preparation and implementation, the Ministry proposes that the date of 31 January 2021 be extended to Tuesday 15 February 2022 to allow workers sufficient time to receive their booster dose.
- 12 It is necessary to continue to clarify the policy intent to ensure that amendments to the Order align and remain lawful, practical and robust. This is to ensure employers and employees, and all affected persons, understand their vaccination obligations.

## Comment

### Extending the deadline for MIQF, border and health care workers

- 13 Early consultations with the sector have indicated general support for the booster mandate but concerns relating to the timing of the mandate.



- 14 Particular concerns were raised by MIQF, border and healthcare workers sector on the timing of the Order and a review of the practicalities indicated that a shift in the dates is probably necessary.
- 15 The Ministry recognises that there are significant challenges to implement this policy to date and recommend that the date requiring MIQF, border and healthcare workers be extended to Tuesday 15 February 2022.

*Managed isolation and quarantine facility (MIQF), border workers*

- 16 Due to the holiday period over which implementation work would have had to be done by, there has been less opportunity for the sector to prepare for this change. This has led to the compressed timeframe for compliance and therefore the Ministry proposes extending the date to 15 February 2022.
- 17 The Ministry is also unable to provide PCBUs with the booster status records of their workers until the Order is signed and gazetted and this limits the amount of time for PCBUs to target their workers who have not yet received a booster dose.
- 18 Currently 77 percent of eligible border workers are boosted (5,181 workers out of a total 6,703). Eligible workers have had their second dose six months or more ago. There are approximately 1500 to go by 31 January 2022 (13 days). Beyond this, there are a further 2695 border workers who will fall due after the 31 January.
- 19 The Register IT changes are on track to be completed by 1 February. The workaround has been tested and is ready to go so we can provide vaccine records to PCBUs once the Vaccine Order comes into effect.

*Health and disability sector*

- 20 Generally the DHB and health and disability sector providers are supportive of boosters for the workforce but have already raised a number of operational and implementation concerns. These concerns are primarily focused on the timing of 31 January 2022.
- 21 The concerns raised by the health and disability sector were focused more on the health impact the Amendment Order would have on the workforce while they are receiving a booster dose. These considerations include making provisions for staff rotation or staff shortage, particularly if they require time off or sick leave, without impacting the overall health system given that the workforce is currently also busy rolling out the COVID-19 booster programme as well as the paediatric vaccines for children aged 5 to 11 years.
- 22 Operationally, time is also required to implement the human resource process for those who may not want to receive a booster dose and to collate confirmation of who has received a booster dose. This concern is further enhanced by the fact that the health and disability sector is a big group. For example, NZ Health Group have over 11,000 staff and their CE advises that approximately 5000 people would be eligible for a booster by 31 January 2022. However there is enough provider capacity to administer a booster dose to this portion of the population between now and 15 February 2022 in accordance with the DHB capacity plan.
- 23 While the Ministry is working through these implementation issues with the relevant sectors, given the current priorities on the health and disability sector, extending the date to 15 February will allow for better planning for the sector. To mitigate these risks the

Ministry will continue to work with sector to address issues and support the sector as best possible through providing clear communications and guidelines.

### Further advice on section 29 of the Medicine Act 1981 in respect of the Vaccinations Order

- 24 On 7 January the Associate Minister of Health as Minister for COVID-19 Response (Acting) requested further legal and policy advice on mandating off-label use of the AstraZeneca vaccine under the Order (HR20212779 refers), particularly in respect to the mandate not negating the protection that is currently provided through the consent provisions in section 29 of the Medicine Act 1981.

S9(2)(h)

- 26 Furthermore, nothing in the Order limits or excludes the rights of an affected worker under the Code of Health and Disability Service Consumer's rights, including rights to be fully informed (right 6) and the right to give informed consent (right 7). A person retains the right to decline to be vaccinated, although declining will prevent them being able to work in an affected role.

### Risks

- 27 Given the urgency of these amendments and the pace of drafting, potential risks and issues may arise. Those identified and that cannot be addressed through the drafting process will be addressed through providing clear guidelines and communications to the sector as the Ministry implements the amendments to the Order.
- 28 Some of the issues identified are already considerations in ongoing work, particularly in relation to implications of the current definition of "fully vaccinated" in the context of booster doses, COVID Vaccination Certificates (CVCs) and the Order.
- 29 Further examination of scientific evidence and clinical advice is required in some areas, for example:
- a. Immunocompromised people who have received three doses of the COVID-19 vaccine as part of their primary course will be treated as having met their obligation to be boosted under the Order (as they will have had three doses). Further consideration should be given as to whether immunocompromised should be required to have a further dose.
  - b. For those who have had zero doses, (such as those with medical exemptions) with the introduction of booster requirements, it will take around five months to be "fully vaccinated." Temporary medical exemptions expire after a maximum of six months and it is unclear how previously exempted people will now be affected.
  - c. Booster obligations and timeframes for workers who are currently under 18 years old but will turn 18 years old during the mandated period and therefore be obligated to receive a booster dose. This may subsequently not allow for any lead in time to receive a booster dose, so could result in workers being stood down until this occurs.

- d. International arrivals included in the mandated sector who may have received a different booster prior to arriving in New Zealand.
  - e. Workers under Part 10 of Schedule 2 (for example, workers in hospitality, gyms) are currently not included in this amendment but this is being considered.
- 30 There may be further concerns which have not yet been identified, creating uncertainty for the workforce.

## Implementation

- 31 The National Immunisation Programme is supporting implementation of the amended Vaccination Order with a range of implementation activities underpinned by a communications and engagement plan. A series of sector webinars, which commenced 12 January 2022, were attended by over 800 stakeholders; further webinars are scheduled.
- 32 The Programme can run a data matching process for DHBs and other large health and disability sector providers, to establish how many staff still require a booster. This would provide a good baseline. Boosters have been available since November and staff may have already accessed one. Providers are required to meet privacy and security requirements, and we have sound processes in place to make this as easy as possible for them. We will work with providers to ensure all relevant policies and requirements are in place.
- 33 To enable access to vaccinations, we will identify key areas where we can work with DHBs to offer clinics. We are exploring the set-up of a prioritised pathway through our national call centre to prioritise bookings, if staff have problems accessing a booking through BookMyVaccine.
- 34 The Significant Service Disruption Exemptions requirements will be updated to reflect the changes to the mandatory Vaccination Order. Providers can apply for named individual employee exemptions through this process if required.

## Human Rights

- 35 Previous Bill of Rights Act advice has been given on the policy decisions requiring amendments to the Order requiring certain workers aged 18 years and over to receive a booster dose (HR20212779 refers).
- 36 The proposed amendments to require booster doses for these groups of workers is to continue to maintain protection against the same level of risk of exposure particularly against the highly infectious Omicron variant S9(2)(h)

## Equity

- 37 Previous Equity advice has been given on the policy decisions requiring amendments to the Order requiring certain workers aged 18 years and over to receive a booster dose (HR20212779 refers).
- 38 Vaccinations (including boosters) remain important to reduce risks to the community as well as potentially overwhelming the public health system, particularly with the highly infectious Omicron variant and particularly as New Zealand looks to reopen its borders in 2022. As

evidence indicates that immunity and transmissibility could potentially wane around six months the risk of exposure remains high and the likelihood that there be higher health risks without a booster dose particularly against the Omicron variant is still present.

- 39 Māori and Pacific peoples are disproportionately affected so the Order may have a positive effect on reducing their exposure to COVID-19 and its highly infectious Omicron variant.
- 40 Disabled people, older people and their whānau will also continue to be positively impacted by the Order. There are high risks for disabled people and older people, many of whom experience co-morbid health conditions that raise the vulnerability for being infected by the virus and the significant health and well-being impact if they are infected by the virus.

#### *Te Tiriti o Waitangi implications*

- 41 The Ministry and other stakeholders will continue to work with Māori (and Pacific) providers to increase the number of kaimahi (staff) able to deliver the COVID-19 vaccinations and boosters. This will remain a critical enabler for lifting Māori (and Pacific) vaccination rates, encouraging uptake and increasing trust and transparency.
- 42 The Order supports health system resilience, the minimisation of community outbreaks, and any associated increase in restrictions. This is critical to minimising and addressing existing inequities and is consistent with Te Tiriti principle of active protection.

#### **Next steps**

- 43 Officials recommend you sign this report no later than 10am on Thursday 20 January 2022 to ensure that drafting of the amendments can be undertaken by Parliamentary Counsel Office.
- 44 The final Order will be provided to you by no later than 3pm Friday 21 January 2022 for signature, so that it can be published in the *New Zealand Gazette* on that date. This will allow officials to meet the statutory obligation to provide at least 48 hours' notice between gazetting and the Amendment Order coming into effect.

**ENDS.**

# Briefing

## Further extension of date of booster requirement for healthcare workers under the COVID-19 Public Health Response (Vaccinations) Order 2021

**Date due to MO:** 12 February 2022      **Action required by:** 13 January 2022

**Security level:** IN CONFIDENCE      **Health Report number:** HR20220216

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

**Copy to:** Hon Andrew Little, Minister of Health

### Contact for telephone discussion

Name	Position	Telephone
<b>Wendy Illingworth</b>	Group Manager, Public Health System Policy, System Strategy and Policy	S9(2)(a)
<b>Alison Cossar</b>	Manager, Public Health Policy, System Strategy and Policy	

### Minister's office to complete:

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

Comment:

# Further extension of date of booster requirement for healthcare workers under the COVID-19 Public Health Response (Vaccinations) Order 2021

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**Security level:** IN CONFIDENCE      **Date:** 12 February 2022

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

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**Copy to:** Hon Andrew Little, Minister of Health

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## Purpose of report

- 1 This report seeks a policy decision for the amendment to the COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order) to:
  - a. further extend the date requiring healthcare workers under the Order to receive a COVID-19 booster dose from this being due before 15 February 2022 to being due before 25 February 2022 (an additional ten days), and
  - b. seeks your agreement to issue drafting instructions for the amendments.
- 2 This report discloses all relevant information and implications known at this time.

## Summary

3. On 20 December 2021, Cabinet considered advice from the Director-General of Health and agreed that managed isolation and quarantine facility (MIQF), border and healthcare workers be required to receive a booster dose after six months of completing their primary course.
4. To give effect to these Cabinet decisions, the policy decisions were approved on 7 January 2022 agreeing to amend the COVID-19 Public Health Response (Vaccinations) Order 2021 (Order) (HR20212779 refers) to:
  - require MIQF, border and healthcare workers (included in Parts 1 to 7 of Schedule 2 of the Order) aged 18 years and over, who are eligible for a booster dose (having completed their primary course six months prior), to have received their booster dose by 31 January 2022, or after 183 days since they were vaccinated, whichever is earlier.
5. The feedback from the MIQF, border and healthcare workers sector on the timing of the Order and a review of the practicalities indicated that a shift in the dates was necessary. On 19 January 2022 it was agreed that for these workforces the date of 31 January 2021 be extended to Tuesday 15 February 2022 to allow workers sufficient time to receive their booster dose and for employers to be able to sufficiently for the management of this (for

example, releasing cohorts of staff to be vaccinated and human resource processes, and so on) (HR 20220059).

6. Further feedback from the healthcare sector, including DHBs, indicates that at 15 February, despite best efforts, there will still remain a significant proportion of healthcare staff who would not have received their booster and who would need to be redeployed or stood down until they are vaccinated. It has been signalled that additional time is required to reduce this proportion of unvaccinated staff.
7. If you agree, the Ministry of Health (the Ministry) will issue further drafting instructions to the Parliamentary Counsel Office (PCO) and will provide you with an Order for Ministerial consultation, signing and gazetting by Monday 14 February 2022. The amendment order is proposed to come into force at 11:59 pm Monday 14 February 2022 and sets the deadline date at 11:59pm Thursday 24 February 2022.

## Recommendations

We recommend you:

- |    |  |               |
|----|--|---------------|
| a) | <b>Note</b> that amendments to the COVID-19 Public Health Response (Vaccinations) Order 2021 are required to ensure that the mandatory vaccinations provisions are workable for the healthcare sector  | <b>Noted</b>  |
| b) | <b>Note</b> that the healthcare sector has requested a further extension of the deadline for receiving a booster for workforce capacity practicalities given the extraordinary situation we are in with responding to the Omicron outbreak.  | <b>Noted</b>  |
| c) | <b>Agree</b> to amend the order to move the deadline for healthcare workers (in Part 7 of Schedule 2 of the Order) aged 18 or over who were vaccinated more than 6 months ago to receive their booster from being due by Tuesday 15 February to being due by Friday 25 February 2022                                 | <b>Yes/No</b> |
| d) | <b>Agree</b> the Ministry will issue drafting instructions to the Parliamentary Counsel Office to draft the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2022   | <b>Yes/No</b> |
| e) | <b>Note</b> that under section 14 of the COVID-19 Public Health Response Act 2020, a COVID-19 order must be published at least 48 hours before it comes into force, but you need not comply with this if satisfied that the effect of the order is only to remove or reduce requirements imposed by a COVID-19 order | <b>Noted</b>  |
| f) | <b>Agree</b> that as the effect of the order is to reduce requirements imposed by the order as it provides more time for compliance the 48 hour period should be waived to ensure the order is in force before 15 February 2022  | <b>Yes/No</b> |

- g) **Note** that under section 9(1)(c) of the COVID-19 Public health Response Act you are required to consult with the Prime Minister, Minister of Justice and Minister of Health before making or amending a COVID-19 Order. A draft Order is provided with this briefing to facilitate this consultation.

**Noted**



Wendy Illingworth  
Group Manager, Public Health System  
Policy  
System Strategy and Policy  
Date: 12 February 2022



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

Date: 13/2/22

Released under the Official Information Act 1982



# Further extension of date of booster requirement for healthcare workers under the COVID-19 Public Health Response (Vaccinations) Order 2021

## Background

- 8 The COVID-19 Public Health (Vaccinations) Order 2021 (the Order) came into force on 1 May 2021 and makes it mandatory for work at certain places to be carried out by affected persons who are vaccinated.
- 9 Policy decisions were approved on 7 January 2022 agreeing to amend the Order (HR20212779 refers):
  - a. to require MIQF, border and healthcare workers (included in Parts 1 to 7 of Schedule 2 of the Order) aged 18 years and over, who are eligible for a booster dose (having completed their primary course six months prior), to have received their booster dose by 31 January 2022, or after 183 days since they were vaccinated, whichever is earlier; and
  - b. to require affected workers (included in Parts 8 and 9 of the Order) aged 18 years and over, who are eligible for a booster dose (having completed their primary course six months prior), to have received a booster dose by 1 March 2022, or six months (183 days) from the date of completion of their primary vaccination course.
- 10 Feedback from the MIQF, border and healthcare workers on the timing of the Order and a review of the practicalities indicated that a shift in the dates was necessary. To be able to address sector concerns and provide sufficient time for preparation and implementation, the deadline date of 31 January 2022 was extended to Tuesday 15 February 2022 to allow workers sufficient time to receive their booster dose.
- 11 As we move closer to the 15 February deadline, DHBs and other healthcare services have indicated that they still have a significant proportion of staff who will not have received their boosters by 15 February despite efforts to do so. It has been proposed that a further ten days would enable the healthcare sector to avoid service disruption issues and get more staff boosted.

## Comment

### Extending the deadline for healthcare workers

- 12 While the healthcare sector have indicated general support for the booster mandate they have raised concerns relating to the timing of the mandate in view of the practicalities in getting staff boosted.
- 13 DHBs, in particular, raised these concerns, citing difficulties around:
  - adequate communications to staff around the requirement for a booster. Time is required to implement the human resource process for those who may not want to

receive a booster dose and to collate confirmation of who has received a booster dose. This has been exacerbated by the holiday period.

- impacts on provisions for staff rotation and staff shortage, particularly if they require time off or sick leave, without impacting the overall health system given that the workforce is currently also busy rolling out the COVID-19 booster programme as well as the paediatric vaccines for children aged 5 to 11 years and experiencing a rapid increase in Omicron cases in the community.

- 14 It is estimated that over 4000 staff across the 20 DHBs will not have received a booster by 15 February. It is unknown how many staff in other healthcare providers will remain unboosted by this date.

#### *Fire and Emergency New Zealand*

- 15 The Ministry has also been approached by Fire and Emergency New Zealand (FENZ), who advise that they too are experiencing difficulties with the 15 February date. They have 400 career staff and 2,450 volunteers (a total of 2850) without the booster according to their records, and due to the dispersed nature of the workforce are experiencing challenges tracking the vaccination status of volunteers.
- 16 FENZ staff are currently included under Part 7 of the Order as healthcare workers and therefore the extension of time for healthcare workers will include them.

#### *Proposed extension date*

- 17 In order to avoid workforce capacity issues in the weeks following 15 February, the sector have requested an extension of the deadline while they continue to facilitate staff to receive the booster (for DHBs this is up to 500 workers a day).
- 18 The Ministry recognises that there are significant challenges to implement this policy to date and recommend that the date requiring healthcare workers to receive their booster be extended to before Friday 25 February 2022.
- 19 The sector understands the drop-dead nature of the new deadline and that the number of staff due a booster may increase from 15 February as more staff approach the 183 day mark since being vaccinated.
- 20 For FENZ, the extra 10 days is mitigating a critical risk by avoiding service disruption caused by having too few staff to roster on duty.

#### *Workers who remain unboosted by 25 February*

- 21 It is expected that the proposed extension date will allow a significant proportion of the remaining workers to receive their booster. However, there may remain a small group who have not.
- 22 The Order has a process (clause 12A) which allows the Minister to grant exemptions for a person specified in the application from any provision in the Order. Exemptions included are to avoid significant disruption to health services ((clause 12A(4)(a)(ii)(B)).
- 23 This process can be used for those individuals who remain without a booster if there is a risk of service disruption.

#### **Waiver of the 48 hour notice between gazetting and the Amendment Order coming into effect.**

- 24 Section 14 of the COVID-19 Public Health Response Act 2020 requires a 48 hour period between gazetting and the Amendment Order coming into effect. A COVID-19 order must be published at least 48 hours before it comes into force, but you can waive this if satisfied that the effect of the order is only to remove or reduce requirements imposed by a COVID-19 order
- 25 We seek your agreement that, as the effect of the order is to reduce requirements imposed by the order is solely to provide more time for compliance, the 48 hour period should be waived to ensure the order is in force before the due date of 15 February 2022.

## Risks

- 26 Extending the date to before 25 February for healthcare workers only, on the day that the mandate for boosters takes effect for the other workers (MIQ, border workers), may result in complaints from other agencies whose workers are required to still meet the 15 February date.
- 27 However, other agencies have not raised the same concerns and are unlikely to have the same volume of unboosted staff as in the healthcare sector.

## Implementation

- 28 The National Immunisation Programme is supporting implementation of the amended Vaccination Order with a range of workforce-focused vaccination activities underpinned by a communications and engagement plan.
- 29 The Programme is running a data matching process for DHBs and other large health and disability sector providers, to establish how many staff still require a booster. This is run on a daily basis. Providers are required to meet privacy and security requirements, and we have sound processes in place to make this as easy as possible for them. We will continue to work with providers to ensure all relevant policies and requirements are in place.
- 30 To enable access to vaccinations, we continue to identify key areas where we can work with DHBs to offer clinics such as a prioritised pathway through our national call centre to prioritise bookings, if staff have problems accessing a booking through BookMyVaccine.

## Human Rights

- 31 Previous New Zealand Bill of Rights Act advice has been given on the policy decisions requiring amendments to the Order requiring certain workers aged 18 years and over to receive a booster dose (HR20212779 refers).
- 32 The proposed amendments do not impose new or increased measures affecting rights. The amendments provide additional time to comply with existing requirements that are necessary to maintain protection, particularly against the highly infectious Omicron variant. <sup>S9(2)(h)</sup>

## Equity

- 33 Previous Equity advice has been given on the policy decisions requiring amendments to the Order requiring certain workers aged 18 years and over to receive a booster dose (HR20212779 refers).
- 34 Vaccinations (including boosters) remain important to reduce risks to the community as well as potentially overwhelming the public health system, particularly with the highly infectious Omicron variant and particularly as New Zealand looks to reopen its borders in 2022. As evidence indicates that immunity and transmissibility could potentially wane around six months the risk of exposure remains high and the likelihood that there be higher health risks without a booster dose particularly against the Omicron variant is still present.
- 35 Māori and Pacific peoples are disproportionately affected so the Order may have a positive effect on reducing their exposure to COVID-19 and its highly infectious Omicron variant.
- 36 Disabled people, older people and their whānau will also continue to be positively impacted by the Order. There are high risks for disabled people and older people, many of whom experience co-morbid health conditions that raise the vulnerability for being infected by the virus and the significant health and well-being impact if they are infected by the virus.

### *Te Tiriti o Waitangi implications*

- 37 The Ministry and other stakeholders will continue to work with Māori (and Pacific) providers to increase the number of kaimahi (staff) able to deliver the COVID-19 vaccinations and boosters. This will remain a critical enabler for lifting Māori (and Pacific) vaccination rates, encouraging uptake and increasing trust and transparency.
- 38 The Order supports health system resilience, the minimisation of community outbreaks, and any associated increase in restrictions. This is critical to minimising and addressing existing inequities and is consistent with Te Tiriti principle of active protection.

## Next steps

- 39 Officials recommend you sign this report no later than 5pm Sunday 13 February 2022 to ensure that drafting of the amendments can be undertaken by Parliamentary Counsel Office.
- 40 A draft Order is provided with this briefing in order to facilitate a rapid Ministerial consultation.
- 41 The final Order will be provided to you by no later than 3pm Monday 14 February 2022 for signature, so that it can be published in the *New Zealand Gazette* on that date.
- 42 A waiver is sought from the statutory obligation to provide at least 48 hours' notice between gazetting and the Amendment Order coming into effect to ensure there is a smooth alignment for healthcare workers.

**ENDS.**