

16 February 2022

s 9(2)(a)

By email: s 9(2)(a)  
Ref: H202116279

Dear 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 15 November 2021 for information regarding Ministry of Health advice around COVID-19.

You specifically requested:

*"The MOH's risk assessment that lead it to conclude that "if you are vaccinated and get COVID-19, you may not realise and spread it to others.*

*The MOH's advice to the minister, Cabinet and the Government that banning unvaccinated employees from the workplace such as hospitals, resthomes, healthline, ambulance service, etc protects protects patients, customers, and vaccinated staff from becoming infected with SARS-CoV-2?*

*Any policy or procedures or Orders that facilitate the supply and use of saliva testing to help with early detection of the virus and help keep members of society, their whānau and their communities safe.*

*The MOH's advice to the minister, Cabinet and the Government regarding the utilisation of vaccine passports to give privileges to the vaccinated not granted to the unvaccinated, or to protect society from being infected by the unvaccinated but not from the vaccinated."*

On 13 December 2021, the Ministry notified you that we had extended the period of time needed to respond to your request, advising that you could expect a response on or before 19 January 2022.

I acknowledge that this time frame has been exceeded and apologise for any inconvenience the delay in receiving your response may have caused.

The Ministry has identified six publicly available documents and one briefing within scope of your request. Please note that these documents were led by the Department of Prime Minister and Cabinet. The Ministry is releasing the briefing to you in Appendix 1 attached to this letter. We have removed information deemed to be out of scope.

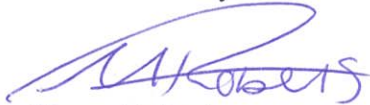
The links to the documents will be provided below. Therefore, this part of your request is refused under section 18(d) of the Act, as the information is publicly available here:

- <https://covid19.govt.nz/assets/Proactive-Releases/Alert-levels-and-restrictions/10-December-2021/Vaccine-Certificates-and-CPF/Initial-advice-on-the-domestic-use-of-COVID-19-Vaccination-certificates.pdf>
- <https://covid19.govt.nz/assets/Proactive-Releases/Alert-levels-and-restrictions/10-December-2021/Vaccine-Certificates-and-CPF/The-domestic-use-of-COVID-19-Certificates-in-high-risk-settings.pdf>
- <https://covid19.govt.nz/assets/Proactive-Releases/Alert-levels-and-restrictions/10-December-2021/Vaccine-Certificates-and-CPF/COVID-19-Vaccine-Certificates-settings-for-domestic-use.pdf>
- <https://covid19.govt.nz/assets/Proactive-Releases/Alert-levels-and-restrictions/10-December-2021/Vaccine-Certificates-and-CPF/COVID-19-Vaccination-Certificates-Implementation-in-Domestic-Settings.pdf>
- <https://covid19.govt.nz/assets/Proactive-Releases/Alert-levels-and-restrictions/10-December-2021/Vaccine-Certificates-and-CPF/COVID-19-Vaccination-Certificates-Further-advice-on-prohibited-settings.pdf>
- <https://www.legislation.govt.nz/regulation/public/2021/0358/latest/LMS591965.html>

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).

Yours sincerely



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

## Appendix 1: List of documents for release

#	Date	Document details	Decision on release
1	10 December 2021	Briefing: COVID-19 Public Health Response (Required Testing) Amendment Order (No2) 2021 for consultation	Released with some information withheld under section 9(2)(a) of the Act – to protect the privacy of natural persons, including that of deceased natural persons.

# Briefing

## COVID-19 Public Health Response (Required Testing and Vaccination) Amendment Order (No 2) 2021 – for consultation

**Date due to MO:** 10 December 2021      **Action required by:** 17 December 2021

**Security level:** IN CONFIDENCE      **Health Report number:** 20212712

**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	s 9(2)(a)
Steve Waldegrave	Group Manager, COVID-19 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 (Required Testing and Vaccination) Amendment Order (No 2) 2021 – for consultation

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**Security level:** IN CONFIDENCE **Date:** 10 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 recommends that you consult on the attached COVID-19 Public Health Response (Required Testing and Vaccinations) Amendment Order 2021 (Amendment Order).

## Saliva testing and vaccination amendments

### Saliva testing changes

2. On 23 November 2021, you agreed that, at the conclusion of consultation with the Prime Minister, Minister of Justice and Minister of Health, COVID-19 Public Health Response (Required Testing) Order 2020 (the Required Testing Order) should be amended to remove the requirement that affected persons using saliva testing submit two samples instead of one [HR20212510 refers].
3. On 3 December 2021, the required Ministerial consultation for this change was completed. To give effect to your decision, the draft Amendment Order would revoke Part 2 (Requirements in relation to recurring saliva testing for COVID-19) of the Required Testing Order. Clauses 10 and 15 and Schedule 2 of the Order are also amended in line with the revocation of Part 2.

Released under the Official Information Act 1982

# Out of scope

# Out of scope

## Recommendations

We recommend you:

- a) **Note** that on 23 November 2021, you agreed, subject to consultation with the Prime Minister, Minister of Justice and Minister of Health, to remove the requirement to submit two saliva samples every seven days under the COVID-19 Public Health (Required Testing) Order 2020 (Required Testing Order). **Noted**
- b) **Note** that Ministerial consultation for the proposed changes to saliva testing was completed on Friday 3 December 2021. **Noted**
- c) **Note** that two additional matters have arisen that require amendments to the Required Testing Order and the COVID-19 Public Health Response (Vaccinations) Order 2021.
- d) **Agree** to consult with the Prime Minister, Minister of Justice and Minister of Health on the attached COVID-19 Public Health Response (Required Testing and Vaccinations) Amendment Order 2021 that gives effect to the amendments. **Yes/No**
- e) **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**



Maree Roberts

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

Date: 10 December 2021

Hon Chris Hipkins

**Minister for COVID-19 Response**

Date:

# COVID-19 Public Health Response (Required Testing and Vaccination) Amendment Order (No 2) 2021 – for consultation

## 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. You were previously provided with the public health rationale for increasing the testing frequency for workers in MIFs [HR20211983 refers]. The rationale for increasing the frequency of testing for healthcare practitioners and workers in MIFs is consistent with that advice.
13. New testing strategies are required to respond to the elevated threat of the transmission of the Delta variant of COVID-19 in the community and in our quarantine facilities and MIFs. As well as being more transmissible, the Delta variant often has a shorter

incubation period than other variants, and vaccinated people are more likely to have no or mild symptoms, meaning that if a worker is infected they are less likely to self-isolate and get a test.

14. I consider that these measure are a proportionate response to the elevated threat of transmission of COVID-19 within the facilities and subsequently into the community.

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

15. Under section 9(1)(ba) of the Act, you must be satisfied that the Order does not limit or is a justified limit on the rights and freedoms in the NZBORA. Increasing testing frequency for a group is justified by assigning a risk level to different categories of workers based on their place of work and contact with people crossing the border. Groups in similar risk categories should be tested at the same frequency (including those currently being tested) and this amendment to the principal Order to increase the testing frequency of healthcare practitioners and workers in MIFs brings their testing regime into line with other MIF workers.

### **Equity**

16. The relevant equity issues have been outlined in previous advice [HR20211983 refers].

### **Next steps**

17. Once you have completed Ministerial consultation, a final version of the Amendment Order will be prepared for your signature.

ENDS.