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16 August 2022

s 9(2)(a)

By email: s 9(2)(a)

Ref: H202208059

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 17 June 2022 for information regarding the COVID-19 vaccines and vaccine mandates. The period of time available to respond to your request was extended on 18 July 2022 under section 15A of the Act. You requested the following:

- Please provide the evidence (references to published sources and/or citations re: data collected and analysed) underpinning the New Zealand government's requirement to continue mandatory vaccination and/or boosters for workers in the following categories: Health and disability sector workers — including aged care workers
Prison staff
Border and MIQ workers
And any remaining roles within the NZ police, NZ Defence Force and Fire and Emergency New Zealand*
- Provide the official rationale for a continuation of the mandates, given that up-to-date research no longer demonstrates vaccine efficacy in halting either infection or transmission of Covid-19. (Indeed, even the WHO and CDC no longer make such claims.) In light of emerging evidence, the purpose of the NZ vaccination order now appears to be out of date:
"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 and have received a booster dose."
(Covid-19 Public Health Response (Vaccinations) Order 2021*

Document 1 has been identified in scope of your request with a copy enclosed with this response. 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.

A Cabinet Paper titled 'Report back on review of health and disability sector workers and prison workers covered by the COVID-19 Public Health Response (Vaccinations) Order 2021' is also in scope of your request. This part of your request is refused under section 18(d) of the Act as the information requested will soon be publicly available no later than 11 October 2022.

3. Provide the evidence (references to published sources and/or citations re: data collected and analysed) underpinning the comments made on 14 June in a media briefing by the Ministry of Health's chief science adviser Dr Ian Town (quoted in NZ Herald coverage) :

Town says for those that have been hospitalised with Covid and are not vaccinated, the data shows the rate is about six times higher.

It also shows that those that are unvaccinated while they are in hospital have a more severe illness and about three times more likely to end up in ICU.

<https://www.rnz.co.nz/news/national/469078/covid-19-dr-ashley-bloomfield-gives-an-update-on-nz-s-omicron-response>

| Vaccination status when reported as a case | cases | hospitalisations | icu | pct_cases_hospitalised | pct_cases_ICU |
|--|---------|------------------|-----|------------------------|---------------|
| No doses received prior to being reported as a case | 50456 | 1417 | 98 | 2.81 | 0.194 |
| Partially vaccinated | 1907 | 97 | 5 | 5.09 | 0.262 |
| Fully vaccinated at least 7 days before reported as a case | 310514 | 2105 | 74 | 0.68 | 0.024 |
| Received booster at least 7 days before being reported as a case | 667106 | 3392 | 107 | 0.51 | 0.016 |
| Total | 1029983 | 7011 | 284 | 0.68 | 0.028 |

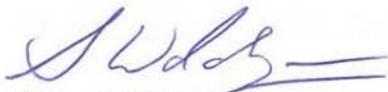
This data is for cases aged 20 and over reported up to 11:59pm 10 July 2022. Please note that in all the responses, cases aged under 20 years are excluded as many are ineligible for a COVID-19 booster vaccine (or for any doses if under 5 years) and have a different hospitalisation risk to the rest of the population.

The "6x" number for risk reported matches up well with current data –0.51% of boosted cases have been hospitalised, and 2.81% of unvaccinated cases have been hospitalised. $2.81/0.51 = 5.5$.

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 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.

Nāku noa, nā



Steve Waldegrave
**Acting Deputy Director-General
Strategy, Policy and Legislation**

Briefing

Review of border workers covered by the COVID-19 Public Health Response (Vaccinations) Order 2021

| | | | |
|------------------------|---|------------------------------|----------|
| Date due to MO: | 20 May 2022 | Action required by: | <N/A> |
| Security level: | IN CONFIDENCE | Health Report number: | 20220891 |
| To: | Hon Chris Hipkins, Minister for COVID-19 Response | | |

Contact for telephone discussion

| Name | Position | Telephone |
|-----------------------|--------------------------------|-----------|
| Stephen Glover | Group Manager, COVID-19 Policy | s 9(2)(a) |
| Robyn Shearer | Acting Director General | 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

Review of border workers covered by the COVID-19 Public Health Response (Vaccinations) Order 2021

Security level: IN CONFIDENCE **Date:** 19 May 2022

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

Purpose of report

1. This report provides a review of the border workers covered by the COVID-19 Public Health Response (Vaccinations) Order 2021 (Vaccinations Order).
2. This report discloses all relevant information and implications.

Summary

3. The Vaccination Order has been effective in supporting high levels of booster uptake among border workers.
4. The intent of the vaccine mandate to increase vaccine uptake to protect vulnerable populations and maintain personal safety will shortly have been fulfilled and will only capture new border workers. There is limited value in maintaining vaccine mandates for border workers as they stand.
5. Public health advice indicates there is no longer a clear public health rationale for continuing to include border workers under the Vaccination Order.
6. If you agree to the removal of border workers from the vaccine mandate, the Ministry will issue drafting instructions to the Parliamentary Counsel Office on revoking these provisions.
7. The requirement for border workers to wear medical grade face masks is connected to the vaccine mandate for border workers through clause 23A of the COVID-19 Public Health Response (Protection Framework) Order 2021. This paper does not recommend the removal of this requirement but notes that more complex drafting (including potentially requiring a new order) will be required.

Recommendations

| | | |
|-----------------------------|---|--------------|
| It is recommended that you: | | |
| a) | Note that COVID-19 Public Health Response (Vaccinations) Order 2021 has been effective in supporting high levels of booster uptake among border workers to date. | Noted |

| | | |
|----|--|---------------|
| b) | Note that once current border workers have met their booster requirements (very soon), the Vaccination Order will only be capturing new employees coming into the sector. | Noted |
| c) | Note that public health advice indicates there is no longer a clear public health rationale for continuing to include border workers under the Vaccination Order. | Noted |
| d) | Note s 9(2)(h) [REDACTED] [REDACTED] | Noted |
| e) | Agree to the removal of border workers from the COVID-19 Public Health Response (Vaccinations) Order 2021 | Yes/No |
| f) | Agree to the Ministry instructing the Parliamentary Counsel Office to draft an amendment to the (Vaccinations) Order to give effect to recommendations on revoking these provisions. | Yes/No |
| g) | Agree to circulate this report to the Prime Minister, the Minister of Justice, the Minister of Health and any other Ministers you think, for consultation, to fulfil the requirements for making orders under section 11AA of the COVID-19 Public Health Response Act (2020). | Yes/No |



Robyn Shearer
Acting Director-General of Health
 20/05/2022



Hon Chris Hipkins
Minister for COVID-19 Response
 25/5/22

Review of border workers covered by the COVID-19 Public Health Response (Vaccinations) Order 2021

Background

1. Vaccine mandates were enacted with a clear public health rationale to provide personal protection against COVID-19 to workers in high-risk settings (such as border workers), and to help prevent transmission between workers and vulnerable people to whom they have a duty of care, or to those in public facing roles.
2. Omicron is now spreading widely in the community and the initial wave has passed its peak, although, based on modelling, there is likely to be a further wave over the winter. For most people it will cause milder illness than earlier variants, it is more transmissible, and the vaccinations are less effective at reducing transmission. Our intent to maintain broad population protection with high vaccination uptake remains, with the focus moving to providing personal protection to reduce health impacts and hospitalisations, rather than a strong focus on reducing transmission.
3. The vaccination requirements in the Vaccinations Order represent a limitation on the right to refuse medical treatment for affected workers. These requirements were shown to be reasonable, justified and proportionate in the circumstances under which they were enacted. Given the change in the risk profile now that we have a highly vaccinated population, open borders, and widespread Omicron, careful consideration of the ongoing limitation on BORA rights and the proportionality of vaccine mandates is required.
4. Reviewing these measures reflects the requirement in the COVID-19 Public Health Response Act (2020) to keep Orders under review, and to ensure that our approach remains responsive and effective.

Reviewing the Vaccinations Order

5. The Vaccinations Order is being kept under regular review to ensure it is still a proportionate measure in our overall COVID-19 response and in relation to the current public health risk. The range of workers covered by the Vaccinations Order has already been narrowed.
6. On 21 March 2022, Cabinet agreed to remove early childhood and schooling education workers¹ from the Vaccinations Order. Additionally, Cabinet agreed to remove My Vaccine Pass requirements from the COVID-19 Protection Framework as well as the vaccine requirement for workers on premises where My Vaccine Pass was used, from the Vaccinations Order (including tertiary education). These changes took effect from 11.59pm on 4 April 2022.
7. This decision was supported by public health advice from the Strategic COVID-19 Public Health Advisory Group (SPHAG). The SPHAG noted that the case for or against retaining

¹ Includes registered schools and hostels.

occupational vaccine mandates has become finely balanced, due to our relatively high vaccination coverage, increasing natural immunity², and the apparent reduced vaccine effectiveness against transmission of the Omicron variant.

8. The Ministry committed to providing further advice about ongoing use of vaccine mandates, by 27 June and then 26 September, unless changes were proposed earlier. We are considering the ongoing use of the mandates sooner rather than later in the context of a changing public health rationale and in the context of new information on how vaccinations rates are progressing under the mandates.
9. Further work is also being conducted on new variants of concern that may emerge to ensure a comprehensive approach based on the characteristics of a new variant of concern. The Ministry of Health is developing a variants of concern plan and there is wider cross-government work to support preparedness across all sectors. This will be important for health equity as any future outbreaks could have a disproportionate impact on at risk communities, as has been the case historically.
10. On 4 May 2022, Cabinet agreed to retain a vaccine mandate for certain health and disability work settings at least until the end of winter 2022, and to remove workers for whom being onsite at health and disability premises is incidental to their core role, such as Police, social workers and external contractors [SWC-22-MIN-0078 refers]. In addition, the Department of Corrections is completing a risk assessment for COVID-19 in prisons and will provide advice to Ministers in late May 2022 on the ongoing need for a vaccine mandate for prison workers. This review considers the vaccine mandate for border workers listed in Schedule 2 of the Vaccinations Order (see Appendix 1).

For info, the Cabinet minute also records that:

- s 9(2)(h) [REDACTED]
- The Ministry of Health has prioritised progress towards a longer-term employer-based solution beyond winter 2022. The Ministry will also review guidance provided to employers to help clarify the application the "care and support worker" category under the Order.

Border workers

11. Officials have obtained up-to-date data³ on the vaccination status of border workers:

| Workforce Type | Need NHI match | No Dose | 1 Dose | 2 Doses | 3+ Doses | Grand Total |
|--------------------------|----------------|---------|--------|---------|----------|-------------|
| Border Workforce Aircrew | 0% | 0% | 1% | 3% | 96% | 190 |
| Border Workforce Airport | 0% | 0% | 0% | 2% | 98% | 1,724 |

² Natural immunity is the immunity gained by people who have recently had COVID; which is increasing in the community due to the increased prevalence of COVID-19 within the community.

³ As of 17 May 2022

| | | | | | | |
|------------------------|-------------|-------------|-------------|------------|--------------|--------------|
| Border Workforce MIQF | 0% | 0% | 0% | 3% | 97% | 861 |
| Border Workforce Other | 0% | 0% | 0% | 2% | 98% | 251 |
| Border Workforce Port | 0% | 0% | 0% | 12% | 87% | 1,203 |
| Grand Total (%) | 0.1% | 0.1% | 0.1% | 5% | 95% | 4,229 |
| Grand Total (#) | 6 | 5 | 4 | 220 | 3,994 | 4,229 |

12. There is high compliance among border workers. As of 2 May 2022, 95% of active workers were boosted. All of the workers that have had two doses but not the booster dose (5% of total workers) are not yet due for their booster dose.
13. Vaccination rates among border workers are high, and without further requirements for additional booster/vaccine doses, the mandates will shortly no longer serve a purpose for the current workforce and it will be limited to new employees coming into the sector.
14. Employers of border workers have instituted policies to protect their staff and kept these up-to-date in the constantly changing environment to ensure the health and safety of their workers. The vaccine mandate now sits as another layer on top of these and can create confusion for border workers about meeting the requirements. Streamlining the requirements supports employers of border workers to create clear messaging that can be adjusted for the risks their workers face and may change rapidly in the future.
15. We have obtained the most relevant data⁴ on the positivity rate among border workers:

| Month | Description | Border Workforce Aircrew | Border Workforce Airport | Border Workforce MIQF | Border Workforce Other | Border Workforce Port | Total | Positivity Rate |
|---------|-------------|--------------------------|--------------------------|-----------------------|------------------------|-----------------------|-------|-----------------|
| 2021-04 | Tests | 1889 | 6228 | 19810 | 1116 | 5547 | 34590 | |
| | Positives | 0 | 2 | 11 | 0 | 0 | 13 | 0.04% |
| 2021-05 | Tests | 1980 | 7759 | 19807 | 1124 | 6539 | 37209 | |
| | Positives | 0 | 0 | 0 | 0 | 0 | 0 | 0.00% |
| 2021-06 | Tests | 1942 | 7665 | 19031 | 1177 | 6856 | 36671 | |
| | Positives | 0 | 4 | 2 | 0 | 0 | 6 | 0.02% |
| 2021-07 | Tests | 2529 | 6257 | 15265 | 978 | 6600 | 31629 | |
| | Positives | 0 | 0 | 0 | 0 | 2 | 2 | 0.01% |
| 2021-08 | Tests | 3255 | 9708 | 19373 | 1907 | 6432 | 40675 | |
| | Positives | 1 | 8 | 9 | 0 | 2 | 20 | 0.05% |
| 2021-09 | Tests | 4389 | 10053 | 22598 | 1870 | 7167 | 46077 | |
| | Positives | 0 | 4 | 8 | 0 | 1 | 13 | 0.03% |

⁴ The data is from PCR tests which were only used until December 2021. The data from January 2022 is based on rapid antigen tests reporting and covers a period where there was widespread community transmission so it is difficult to disaggregate cases from the border from cases from the community.

| | | | | | | | | |
|------------------------|-----------|--------------|--------------|--------------|--------------|--------------|--------|-------|
| 2021-10 | Tests | 6050 | 12681 | 27348 | 2622 | 8138 | 56839 | |
| | Positives | 0 | 8 | 10 | 0 | 4 | 22 | 0.04% |
| 2021-11 | Tests | 5786 | 13435 | 49552 | 3041 | 9750 | 81564 | |
| | Positives | 1 | 17 | 28 | 2 | 6 | 54 | 0.07% |
| 2021-12 | Tests | 1868 | 4320 | 18183 | 1039 | 3334 | 28744 | |
| | Positives | 2 | 3 | 2 | 0 | 2 | 9 | 0.03% |
| Total | Tests | 29688 | 78106 | 210967 | 14874 | 60363 | 393998 | |
| | Positives | 4 | 46 | 70 | 2 | 17 | 139 | 0.04% |
| Positivity rate | | 0.01% | 0.06% | 0.03% | 0.01% | 0.03% | | |

16. The incidence of COVID-19 among border workers was low in the ten months leading up to December 2021. The rates from January 2022 cannot be directly compared as there was a change in testing method and it is difficult to disaggregate cases from the border with those from community transmission. As well as facilitating high vaccination rates, the internal COVID-19 policies employers in this area have introduced have also helped to keep COVID-19 case numbers low.⁵

Analysis

17. Public health advice is that there is no longer a clear public health rationale for a continued vaccine mandate for border workers now that they are currently at no greater risk in their work setting than in the community for Omicron. However, there is an increased risk of exposure to a variant of concern for those border workers in close contact, customer facing roles.
18. In relation to the areas identified in the strategic approach to manage post peak settings:
- **Minimise the impact by ensuring high rates of up-to-date vaccination** - Border workers are a highly vaccinated population, and the vaccine mandate is a strong measure to promote up-to-date vaccination amongst this community who are already highly vaccinated. Vaccine requirements can be met through employment contracts for new border workers, where appropriate and strongly justified.
 - **Support the health system to cope with both residual baseline and potential surges in demand** – Employers in this area already have policies in place to manage vaccination requirements for their staff and are better placed to assess the risks for different groups of workers to ensure their risk is reduced. This will support border workers' employers to self-manage COVID-19 and target resources appropriately for their workers, using already existing health and safety legislation. This could also reduce confusion for workers and improve understanding of relevant measures as the vaccine mandates will no longer be layered over employer policies.

⁵ For example, requirements to use PPE, no contact processes where possible (e.g. for unloading ships at ports) and policies to ensure air crew meet the requirements of the foreign countries they enter.

- **Focus resources on those most at risk** – border workers are at no greater risk than those in the community and the resources of employers could be more efficiently used to control COVID-19 through internal policies and health and safety practices.

Legal advice (privileged)

■ s 9(2)(h) [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

Conclusion

23. There is limited value in maintaining vaccine mandates for border workers as they stand, particularly with high booster compliance. At this point, the intent of increasing vaccine uptake to protect priority populations and maintain personal safety will have been fulfilled, s 9(2)(h) [Redacted]

24. We propose that all border workers are removed from the Vaccination Order. Removing border workers carries the least legal risk and also supports a transition to managing COVID-19 appropriately under existing legislation such as the Health and Safety at Work Act 2015.

25. Similar to the proposals for health and disability workers, clear communications and public health messaging and alternative means of incentivising uptake could be used to support on-going up-to-date vaccination amongst border workers.

Equity

26. As articulated by the Courts and the Waitangi Tribunal, equity is a principle of Te Tiriti, and one of the principles recommended by the 2019 Hauora report for the Health system. Within this principle, it has been critical to ensure that any changes to vaccination requirements consider equitable outcomes.
27. The COVID-19 pandemic has historically had a disproportionate impact on priority populations and these communities will need to understand the significance of the change, how to keep up-to-date with vaccinations and testing if symptomatic, and what support is available to them as members of the community (eg, RATS tests, welfare supports, mental health and wellbeing supports).
28. Work on future outbreaks and new variants of concern should consider the impact on at risk communities and take a long-term equity approach.

Next steps

29. If you agree to the removal of Parts 1-6 from Schedule 2 of the Vaccinations Order covering border workers, the Ministry will issue drafting instructions to with the Parliamentary Counsel Office on revoking these provisions.
30. The requirement for border workers to wear medical grade face masks is connected to the vaccine mandate for borders workers through clause 23A of the COVID-19 Public Health Response (Protection Framework) Order 2021. This paper does not address the removal of this requirement or This paper does not recommend the removal of this requirement but notes that more complex drafting (including potentially requiring a new order) will be required.

ENDS.

Appendix 1 – Border workers in Schedule 2 of the Vaccinations Order

| | |
|---|--|
| Part 1: Groups in relation to managed quarantine facilities | |
| 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 |
| Part 2: Groups in relation to managed isolation facilities | |
| 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 |
| Part 3: Groups in relation to affected airports | |
| 3.1 | All airside workers (other than excluded airport persons) |
| 3.2 | All landside workers who interact with international arriving or international transiting passengers |
| 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 |
| Part 4: Groups in relation to affected ports | |
| 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 |
| Part 5: Groups in relation to aircraft | |
| 5.1 | Aircrew members |
| 5.2 | Workers at accommodation services (other than private dwellinghouses) where relevant aircrew members are self-isolating |

| Part 6: Groups in relation to affected items | |
|--|--|
| 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 |

Released under the Official Information Act 1982