

# 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  Withdrawn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)
- 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]  
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)



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 s 9(2)(h)
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.

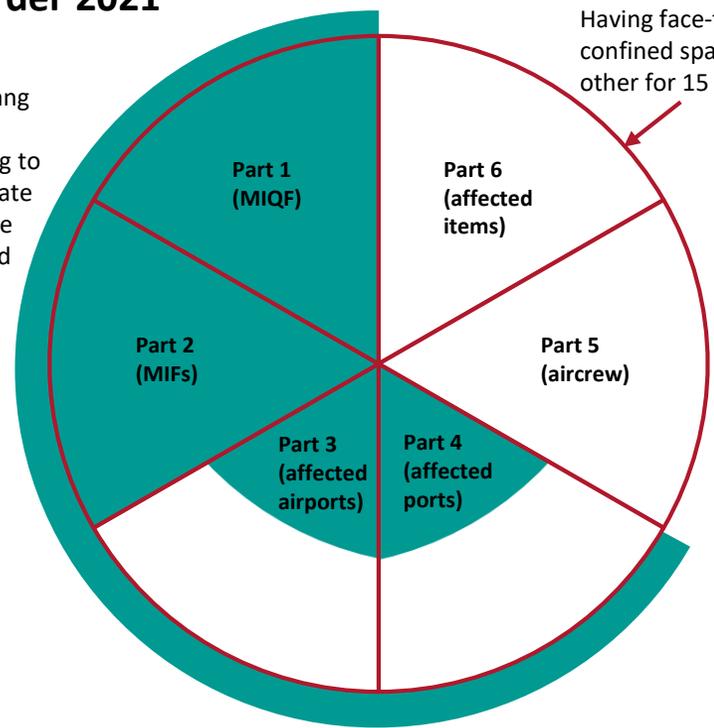
**Appendix One – Illustration of current Vaccination Order, impact of Amended Order and options for consideration**

PROACTIVELY RELEASED

# Appendix One

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

Overhang due to needing to anticipate who are covered



Having face-to-face contact or being in a confined space within 2 metres of each other for 15 minutes or more

- 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

May exclude some refuse workers, but not necessarily

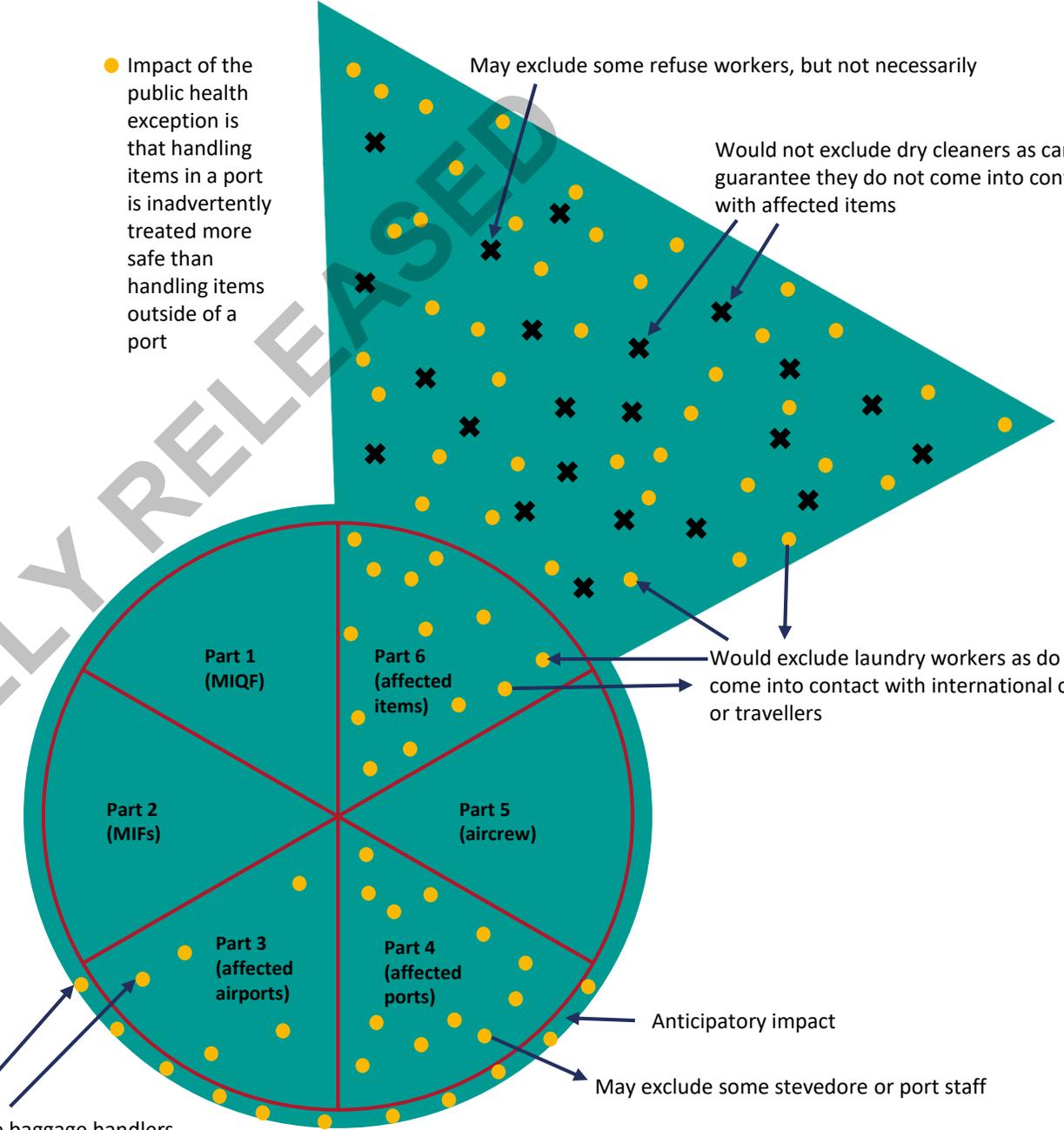
Would not exclude dry cleaners as cannot guarantee they do not come into contact with affected items

Would exclude laundry workers as do not come into contact with international crew or travellers

Anticipatory impact

May exclude some stevedore or port staff

May exclude some baggage handlers

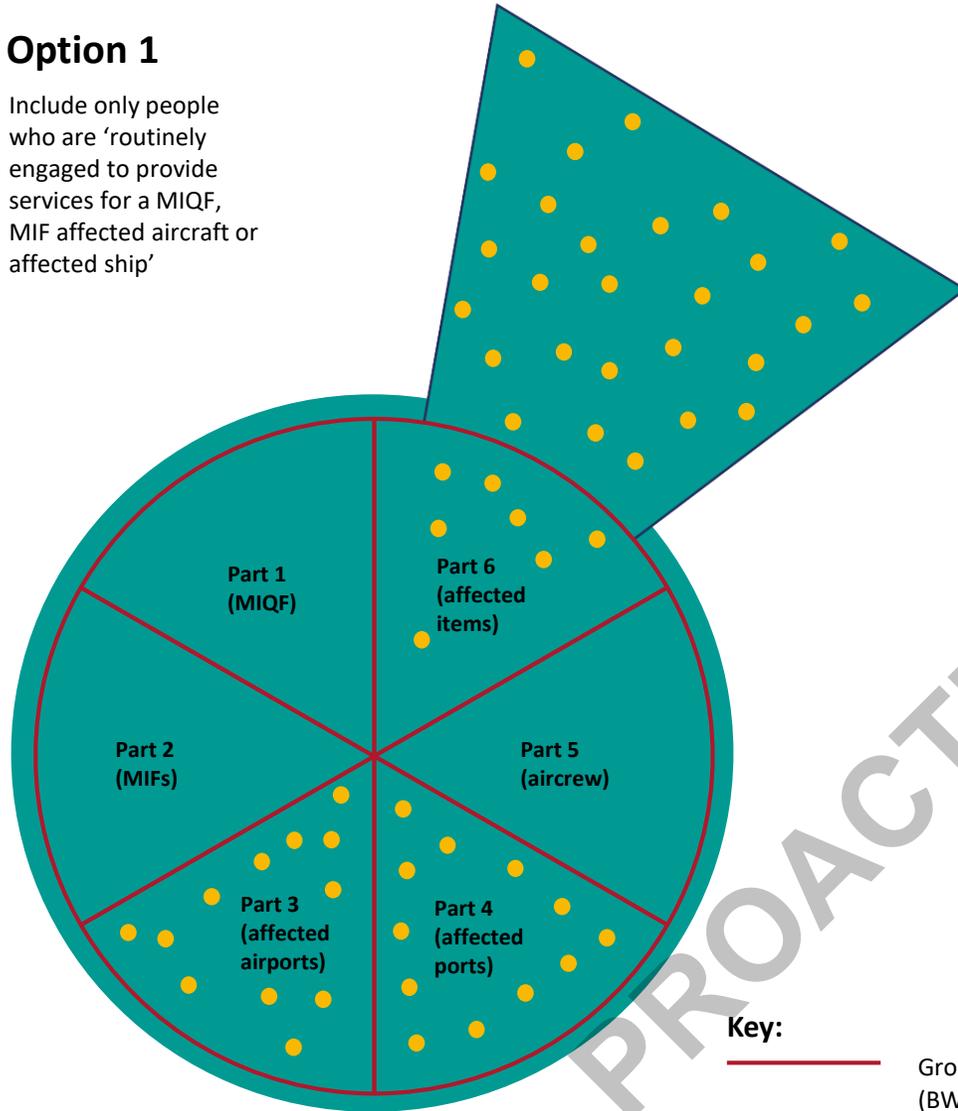


### Impact of decisions on 14 May advice for Amended Order

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

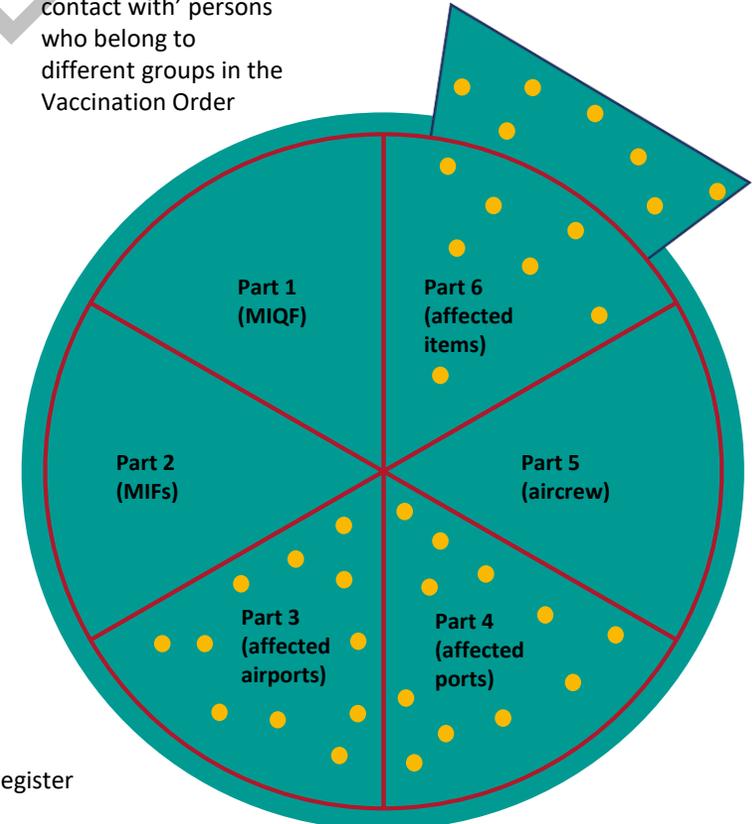
## Option 1

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:



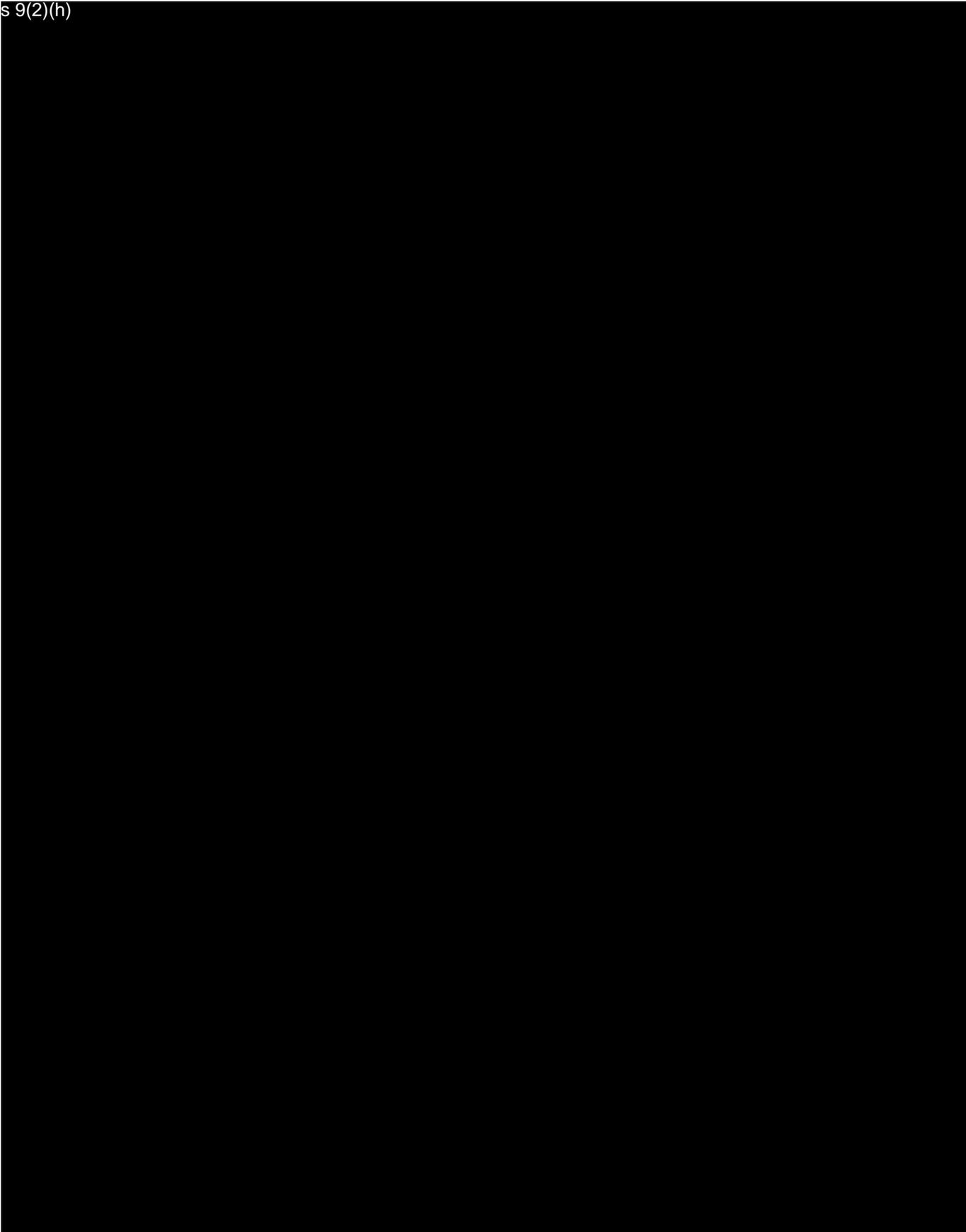
Groups under the Border Workforce Testing Register (BWTR) as reflected in Schedule 2

Vaccination Order

Impact of public health exemption

**Appendix Two – Summary of Crown Law advice**

s 9(2)(h)





PRO

### 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>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><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 PCBUs)</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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PROACTIVELY RELEASED