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19 January 2022

By email: s 9(2)(a)
Ref: H202117902

Dear s 9(2)(a)

Response to your enquiry.

Thank you for your enquiry, your request was transferred from the Department of Internal Affairs to the Ministry of Health (the Ministry) on 8 December 2021.

In your enquiry, you have asked the following questions:

1. *CAN YOU PLEASE CONFIRM IF THIS MANADATORY VAX INFORMATION POLICIES REGARDING LOSS OF JOBS AND SANCTIONS ON UN-VAXED IS ACTUALLY LEGAL AND LAWFUL?*
2. *IS THIS LEGISLATION REQUIRED TO GO BEFORE THE COURTS BEFORE IT CAN BE MANDATED?*
3. *OR IS THIS [NO-JOB, NO JAB] AN UNSANCTIONED REQUEST BY THE GOVERNMENT?*

Please find a response to each of your questions, including some additional information, below.

Mandatory vaccination for people undertaking certain work.

The COVID-19 Public Health Response (Vaccinations) Order 2021 (Vaccinations Order) sets out the requirements for certain workers to be vaccinated against COVID-19 to undertake certain work. The Vaccinations Order is freely accessible here:

<https://www.legislation.govt.nz/regulation/public/2021/0094/latest/LMS487853.html>

Like other Public Health Response Orders, the Vaccinations 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. The COVID-19 Public Health Response Act 2020 is freely accessible here:

<https://www.legislation.govt.nz/act/public/2020/0012/latest/LMS344134.html#LMS344121>

How legislation is lawfully made in New Zealand

Orders made under the COVID-19 Public Health Response Act 2020 are pieces of secondary legislation. There are two main type of legislation in New Zealand: Acts of Parliament (primary legislation) and secondary legislation. Secondary legislation can have titles like “regulations”, “orders”, and “rules”. For the definition of secondary legislation, please see the following:

<https://www.legislation.govt.nz/glossary.aspx>

Acts of Parliament are laws made by Parliament. Once Parliament passes the ‘Act’ (and the Governor-General gives their Royal Assent) it becomes law. Pieces of secondary legislation, such as the Vaccination Order, are laws that are made by someone other than Parliament, usually the Executive Council (all Ministers) or a Minister who has been delegated the authority in a particular Act to make those regulations. Once the regulation has received Ministerial and/or Executive Council approval and has been published, it becomes law and can be implemented.

New Zealand has three branches of Government, the Legislature, the Executive and the Judiciary which operate independently from one another, a principle known as the ‘separation of powers’. Each branch of government acts as a check on the others. See more information on the 3 different branches of government here: <https://www.justice.govt.nz/courts/going-to-court/without-a-lawyer/representing-yourself-civil-high-court/new-zealands-constitutional/>

The role of the Judiciary/courts

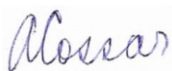
The role of the Judiciary (ie the courts) is to interpret and apply the law. They do not have a role in passing new legislation, either primary or secondary legislation. If someone wants to dispute a particular regulation made by a Minister, such as the Vaccinations Order, they can take a case for Judicial Review of the decision the Minister has made. The courts will not intervene unless a case is made out for Judicial Review.

The courts do not need to ‘sanction’ any laws before they can be implemented. Therefore, the Vaccinations Order, (that sets out the requirements for certain workers to be vaccinated to undertake certain work), has been lawfully made by the Minister for COVID-19 Response, via the powers delegated to him by Parliament (under the COVID-19 Public Health Response Act 2020).

You can find out more about the general legislative process (how bills become Acts) here:

<https://www.parliament.nz/en/visit-and-learn/how-parliament-works/fact-sheets/parliament-brief-the-legislative-process/>

Yours sincerely



Alison Cossar
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Public Health System Policy