

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

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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 Withdrawn | |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

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

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

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)¹ 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:

¹ 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.²
- 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

² 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.