MANATŪ HAUORA
MINISTRY OF HEALTH

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12 December 2022

s 9(2)(a)

By email: s 9(2)(a)
Ref: H2022014802

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 Manatū Hauora – Ministry of Health on 14 October 2022 for information regarding the Comirnaty (Pfizer) COVID-19 vaccine. Please find a response to each part of your request below.

> *Was the Ministry of Health / Medsafe / New Zealand Government aware that the Pfizer Covid Vaccine was not tested to determine whether it prevented transmission of the Covid Virus before it entered the market and was mandated in New Zealand?*

Information collated by Manatū Hauora about transmission is available on our website on the COVID-19 Science news webpage here: www.health.govt.nz/covid-19-novel-coronavirus/covid-19-resources-and-tools/covid-19-science-news#variants.

In general (not COVID-19-specific), there are two mechanisms through which vaccines can potentially reduce transmission:

1. Preventing infection of the vaccinated person (if a person is uninfected, they cannot transmit the virus). This is measured in vaccine efficacy/effectiveness against infection.
2. Reducing the number of onward infections (if the vaccinated person does become infected). This is measured by assessing the reduction in the number of transmissions to contacts of infected individuals.

These two methods combine to provide a larger effect than either of them in isolation.

For the Pfizer Comirnaty vaccine, there is a substantial body of research available about its ability to reduce the number of infections (and the subsequent effect on transmission through reduction of infection). This data has been monitored by Manatū Hauora and is publicly available at: www.health.govt.nz/covid-19-novel-coronavirus/covid-19-resources-and-tools/covid-19-science-news#variants.

Although the effectiveness of the vaccine against infection reduces over time, an effect does persist for a period after vaccination. For example, it is estimated 50% of infections are prevented at around four months after vaccination for individuals aged 18-59 years. Effects on onward transmissions (that is, the ability of a vaccinated person to transmit on to other people) is substantially more challenging to measure, and the results harder to interpret, as there are fewer studies. The limited data available for Omicron on onward transmission after

infection for all vaccines is publicly available at: www.health.govt.nz/covid-19-novel-coronavirus/covid-19-resources-and-tools/covid-19-science-news#variants.

It should be noted that data for vaccine effectiveness against infection and onward transmission for variants prior to Omicron have been monitored since trial data were first released by Pfizer in 2020. Vaccine effectiveness against infection was generally higher for previous variants than for Omicron.

> *Was the basis of vaccine passports and vaccine mandates premised on the Pfizer vaccine preventing transmission of the Covid virus? If not, what evidence was it based upon?*
> *What data did the Ministry of Health, New Zealand Government and Medsafe rely upon when the policy and PR campaign asking the public to get vaccinated for the good of the community if the Pfizer vaccine was never tested for preventing transmission?*

Manatū Hauora has identified three documents within scope of this part of your request that best explain the rationale for vaccine passports and vaccine mandates. All documents are itemised in Appendix 1 and copies of the documents are enclosed. Where information is withheld under section 9 of the Act, I have considered the countervailing public interest in releasing the information and consider that it does not outweigh the need to withhold at this time.

Further information about COVID-19 vaccines and their effect on viral transmission is available at:
www.health.govt.nz/system/files/documents/pages/science_updates_7_may_2021.pdf.

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 Manatū Hauora website at: www.health.govt.nz/about-ministry/information-releases/responses-official-information-act-requests.

Nāku noa, nā

Steve Waldegrave
Associate Deputy Director-General
Strategy, Policy and Legislation | Te Pou Rautaki

Appendix 1: List of documents for release

#	Date	Document details	Decision on release
1	8 July 2021	Briefing: COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 for signing (HR20211520)	Some information withheld under the following sections of the Act: • Section 9(2)(a) - to protect the privacy of natural persons, and • Section 9(2)(h) - to maintain legal professional privilege.
2	3 August 2021	Briefing: Proof of COVID-19 vaccination in the context of border reopening: scientific and public health considerations (HR20211448)	Some information withheld under section 9(2)(a) of the Act.
3	29 August 2022	Briefing: Review of the COVID-19 Public Health Response (Vaccinations) Order 2021 (HR20221210)	Some information withheld under the following sections of the Act: • Section 9(2)(a), and • Section 9(2)(h)

Document 1

MINISTRY OF HEALTH
MANATŪ HAUORA

Briefing

COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 for signing

Date due to MO:	8 July 2021	**Action required by:**	11 July 2021
Security level:	IN CONFIDENCE	**Health Report number:**	20211520
To:	Hon Chris Hipkins, Minister for COVID-19 Response		

Contact for telephone discussion

Name	Position	Telephone
Dr Ashley Bloomfield	Director-General of Health	s 9(2)(a)
Steve Waldegrave	Group Manager, COVID-19 Policy Response	s 9(2)(a)

Minister's office to complete:

☐ Approved ☐ Decline ☐ Noted

☐ Needs change ☐ Seen ☐ Overtaken by events

☐ See Minister's Notes ☐ Withdrawn

Comment:

COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 for signing

Security level:	IN CONFIDENCE	**Date:**	8 July 2021
To:	Hon Chris Hipkins, Minister for COVID-19 Response		

Purpose of report

1. This report recommends that you sign the attached COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 (the Amendment Order). The Amendment Order expands the groups of workers required to be vaccinated to include all government workers and private workers who undertake specified work at the border.

2. This report discloses all known relevant information and implications.

Summary

3. The Ministry of Health (the Ministry) considers there is a public health rationale for requiring that specified roles only be undertaken by vaccinated people, in response to the current pandemic. This is due to the risk that these individuals may be exposed to, and infected by, COVID-19 during their work. Vaccines provide another layer of individual protection and, in doing so, may also be effective in preventing transmission in the community.

4. On 17 May 2021, you agreed to amend the COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order) to require additional groups of workers to be vaccinated to work at certain higher-risk workplaces [OC210396 refers].

5. These measures engage rights protected by the New Zealand Bill of Rights Act (NZBORA). Limits on NZBORA rights can be justified if the measure serves an important and significant objective, and there is a rational and proportionate connection between that objective and the measure. If a court decided the Order, or actions of an employer under the Order, was not justified, then all, or part of, the Order may be successfully challenged in court and found to be ultra vires.

6. You undertook Ministerial consultation, and this was completed on 5 July 2021.

7. We recommend that you sign the attached Amendment Order by 11 July 2021. This will allow the Amendment Order to be gazetted on or before 12 July 2021 to ensure we meet our statutory obligation to provide at least 48 hours' notice between gazetting and the Amendment Order coming into effect.

8. The Amendment Order will then come into effect at 11:59pm on Wednesday 14 July 2021. This will enable persons conducting a business or undertaking (PCBU)s to access the vaccination status of their employees from the Border Workforce Testing Register from this date.

9. The requirement for the new groups of workers to have received at least one dose of the vaccine will commence on:

   a. 11:59pm Thursday 26 August 2021 for government workers not already captured by the Order

   b. 11:59pm Thursday 30 September 2021 for all other groups brought under the Order.

10. All workers will need to have received two doses of the vaccine within 35 days of the commencement date for their group.

Recommendations

We recommend you:

a) **Note** that the Ministry considers there is a public health rationale for requiring specified roles be performed by vaccinated individuals only, in response to the current pandemic.

b) **Note** that officials advise that the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 is in line with the purposes of the COVID-19 Public Health Response Act 2020, to prevent and limit the risk of, the outbreak or spread, of COVID-19.

c) **Note** that these measures engage rights protected by the New Zealand Bill of Rights Act 1990 (NZBORA).

d) **Note** that you must be satisfied that the Order does not limit, or is a justified limit, on the rights and freedoms in the New Zealand Bill of Rights Act 1990, as part of issuing the Order.

e) **Note** that following Ministerial consultation, the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 has been finalised for your approval.

f) **Sign** the attached COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 by 11 July 2021. **Yes/No**

Dr Ashley Bloomfield
Director-General of Health
Te Tumu Whakarae mō te Hauora
Date: 08/07/2021

Hon Chris Hipkins
Minister for COVID-19 Response
Date:

COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 for signing

Background

1. The COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order) came into force on 1 May 2021. It requires that specified work at the border only be performed by workers who have been vaccinated.

2. The Order currently applies to:

   a. all work undertaken in the context of managed isolation and quarantine facilities (MIQFs) (MIFs) - including transportation to and from these facilities, and

   b. work undertaken by certain government officials in affected workplaces (airports and aircraft, ports and ships).

3. On 17 May 2021, you agreed to amend the Order to require additional groups of workers be vaccinated to work at certain workplaces [OC210396 refers].

4. On 9 June 2021, you agreed that certain workers who handle "affected items" removed from MIQFs, MIFs, aircraft and ships would be included in the Order if those workers routinely 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 Order [HR20211235].

Contents of the Amendment Order

The Amendment Order expands the requirement to be vaccinated to additional groups

5. The Amendment Order expands the groups of persons required to be vaccinated to perform certain kinds of work at specified workplaces. The impact of this will be that persons must be vaccinated to perform the following:

   a. all work at MIQFs and MIFs

   b. all work in airside areas of affected airports, and some other higher risk work at airports

   c. certain higher risk work at affected ports

   d. work conducted at accommodation services where specified aircrew members are self-isolating

   e. work that involves handling affected items removed from ships, aircraft or MIQFs or MIFs, where the worker works for a PCBU routinely engaged to provide services for an aircraft, ship, MIQF or MIF, and 'has contact with' persons who belong to different groups in the Order.

Exemptions

6. In addition to the exceptions that are already under the Order, the Amendment Order provides two conditions that allow for an exemption from the vaccination requirement: an exemption under medical grounds; and an exemption if it is necessary to avoid significant negative economic impacts arising from the disruption of the supply chain.

Medical grounds

7. A person who handles affected items is not subject to the Order if a suitably qualified health professional determines that it would be inappropriate for that person to be vaccinated.

Avoiding significant negative economic impacts arising from the disruption of the supply chain

8. The Amendment Order provides the Minister with the power to grant an exemption for specified workers from the vaccination requirement if satisfied that it is necessary to avoid significant negative economic impacts arising from the disruption of the supply chain.

    a. To ensure this provision is consistent with the underlying public health rationale for the Order, this provision does not come into force until 28 days after the commencement of the Amendment Order (11:59pm Wednesday 11 August 2021).

    b. This will ensure that PCBUs do not apply for the economic exemption before they have had the opportunity to genuinely engage with their obligations under the Amendment Order.

    c. This commencement date allows seven weeks for PCBUs to make their exemption applications and for officials to process them before the commencement of the vaccination obligations.

Process for amending a section 11 Order

9. Under the COVID-19 Public Health Response Act 2020 (the Act) an order may be made if either:

    a. an epidemic notice is in force (under the Epidemic Preparedness Act 2006);

    b. a state of emergency has been declared (under the Civil Defence Emergency Management Act 2002); or

    c. it has been authorised by the Prime Minister.

10. There is currently an epidemic notice in place, which allows orders to be made under section 11 of the Act.

11. As the Minister for COVID-19 Response, you may make orders under section 11 of the Act.

12. To make or amend an order under section 11 you must:

    a. have received advice from the Director-General about:

        i. the risks of the outbreak or spread of COVID-19

        ii. the nature and extent of measures that are appropriate to address those risks

b. be satisfied that the proposed Amendment Order does not limit or is a justified limit on the rights and freedoms as specified in NZBORA

c. consult with the Prime Minister, the Minister of Justice, Minister of Health, and any other Ministers you think necessary, and

d. be satisfied that the order is appropriate to achieve the purposes of the Act.

13. Public health advice about the risks of the outbreak or spread of COVID-19 and the nature and extent of measures that are appropriate to manage those risks was previously provided [HR20210994 refers] and is also set out below.

The Vaccinations Order 2021 will be reviewed in the first quarter of 2022

14. You and the Director-General of Health have obligations under the Act to review the Order on an ongoing basis. A review would ensure that the Order is fit for purpose, especially given that most of the New Zealand population 16 years of age or older are expected to have been offered a COVID-19 vaccine by the end of the year.

15. The Ministry will review the Order on an ongoing basis and advise you on any changes that may be required. Additionally, as agreed, officials will provide you detailed advice by the end of the first quarter of 2022 after undertaking a cross-agency policy review. This approach takes into consideration your obligations under the Act and will provide a timely opportunity to consider how the COVID-19 vaccine rollout has impacted on settings. It also has a greater potential to support compliance within the sector, as it does not signal that compliance requirements are time-limited.

Consultation

16. You undertook Ministerial consultation, and this was completed on Monday 5 July 2021.

17. During consultation, the Ministry of Justice suggested that consideration could be given to including an exemption for religious beliefs, should the Minister wish to reduce risk further in relation to the discrimination issue arising from the exemption on medical grounds.

18. As per previous advice to you [HR20211235], we do not propose an exemption for individuals with an ethical or religious objection to vaccination.

19. Crown Law Advice on this matter is contained in Annex One.

Public health rationale

20. You have previously been provided with detailed public health rationale for the Amendment Order [OC210396 and HR20210994 refers].

21. The Ministry has advised that there is a public health rationale for requiring that specified roles only be undertaken by vaccinated people, in response to the current pandemic. This is because there is a risk that these individuals may be exposed to, and infected by, COVID-19 during their work and may transmit the disease to others. However, this may not be required indefinitely into the future, as information about disease transmission and population immunity may change.

22. A number of international studies have shown that vaccination leads to a significant reduction in the rate of transmission of COVID-19.[1]

23. Vaccines offer a high degree of protection for individuals who are vaccinated, alongside a range of other public health measures. A worker who has been vaccinated will have a very high likelihood that they will be protected from serious illness or death and are more likely to be asymptomatic if infected.

24. Therefore, while vaccination does not prevent all possible episodes of transmission, it has a clinically relevant impact on reducing the risk of transmission. The risk of COVID-19 infection in New Zealand is currently highest amongst those in high-risk roles at the border. Ensuring that such workers are vaccinated will therefore greatly protect the wider community.

Border Workers

25. It is important to note that not all border work carries the same level of public health risk. Factors that influence the risk of being exposed to COVID-19 include the following:

    a. the number of international travellers (potentially infected people) the border worker may come in contact with (the more travellers, the higher the risk)

    b. the ability of the border worker to maintain physical distancing from international travellers (the less physical distancing, the higher the risk)

    c. the length of interactions the border worker may have with international travellers (the longer the interaction, the higher the risk)

    d. whether the interaction is inside or outside (inside is higher risk).

26. MIQF and MIF workers are likely to be higher-risk when assessed against the above criteria. However, a person that handles affected items, and does not have any contact with international travellers is at lower risk.

27. The risk of exposure for border workers is recognised in the COVID-19 Public Health Public Health Response (Required Testing) Order 2020 (RTO). The RTO focusses on high-risk workers at the border and, even within this group, not all workers are tested to the same frequency. Some border workers are not required to be tested at all because of the low-risk nature of their work.

New Zealand Bill of Rights Act 1990

28. A summary of Crown Law's advice is attached as Annex One.

Te Tiriti o Waitangi

29. Requiring specified work to be undertaken by workers who have been vaccinated could potentially undermine equity and may have Te Tiriti o Waitangi implications. This is because Māori traditionally have lower vaccination rates than non-Māori. This may mean that Māori are more likely to be negatively impacted by the Amendment Order.

[1] https://www.health.govt.nz/system/files/documents/pages/science_updates_7_may_2021.pdf

30. However, we know from historical examples that Māori are likely to be disproportionality affected by a widespread epidemic. This means that there is an equity imperative to do everything possible, within the requirement that the Minister must be satisfied that there is no limitations on rights, or that any limitation on rights is justified, to minimise the potential risk to the community from COVID-19.

Equity

31. There is potential for the Amendment Order to discriminate against workers on the grounds of sex, disability and religion. We are also aware that many of the affected workers are in low paying jobs and are carried out by ethnic minorities and women, who would potentially be more impacted.

32. 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.

33. We also 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, or exemptions of the Order. This language barrier could lead to their employment being terminated inappropriately.

34. Given that the vaccination is available to all groups, we do not consider the equity concerns above are sufficient to prohibit the requirement that specified high-risk roles only be undertaken by vaccinated people.

Implementation

35. The Border Workforce Testing Register (BWTR) is the most comprehensive database of the border and MIQF and MIF workforce. The Order allows the Ministry to pre-populate the BWTR with data from the COVID-19 Immunisation Register to proactively identify who should be vaccinated.

36. The Order authorises the sharing of vaccination status of workers (subject to the Order) with their PCBUs/employers. This provides PCBUs/employers with an accurate record of the vaccination status of their workforce and assists them to manage their obligations, under the Order, in a more efficient way.

37. Work is underway to ensure that PCBUs and workers are appropriately supported to meet their obligations under the Amendment Order.

38. The interagency engagement group will communicate the new requirements with key stakeholders. This will enable us to circulate key messages and address any misinformed speculation.

Next steps

39. We recommend that you sign the attached Amendment Order by 11 July 2021. This will allow the Amendment Order to be published and gazetted on 12 July 2021 to ensure we meet our statutory obligation to provide at least 48 hours' notice between gazetting and the Amendment Order coming into effect.

40. The Amendment Order and will come into force at 11:59pm 14 July 2021. This will enable all PCBUs to access the vaccination status of their employees from the BWTR from this date.

41. The requirement for the new groups of workers to have received their vaccines are as follows:

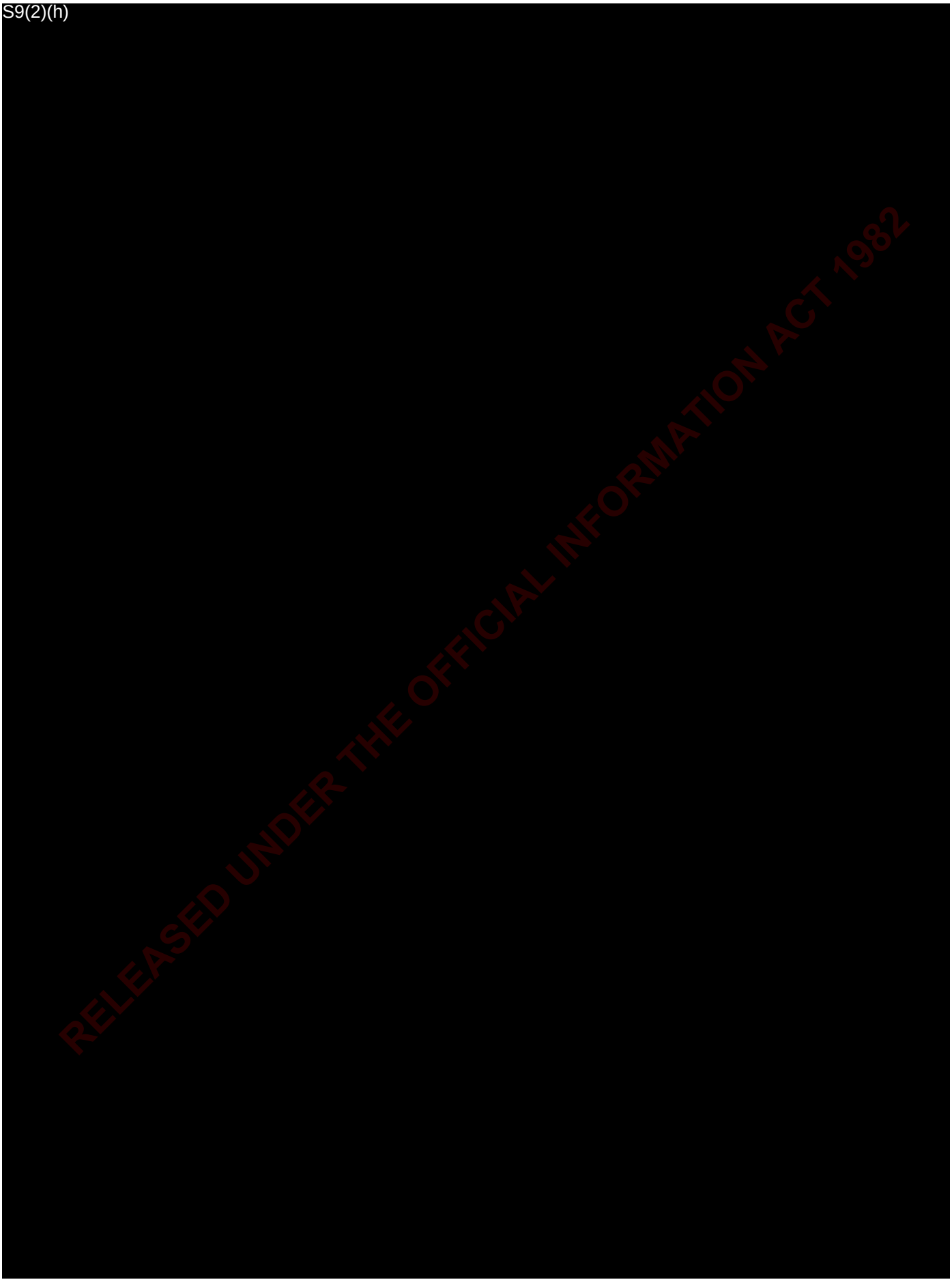
Groups	**1st dose**	**2nd dose**
All other government workers	11:59pm 26 August 2021	11:59pm 30 September 2021
All other groups	11:59pm 30 September 2021	11:59pm 4 November 2021

42. There is no change to requirements for workers already subject to the Order.

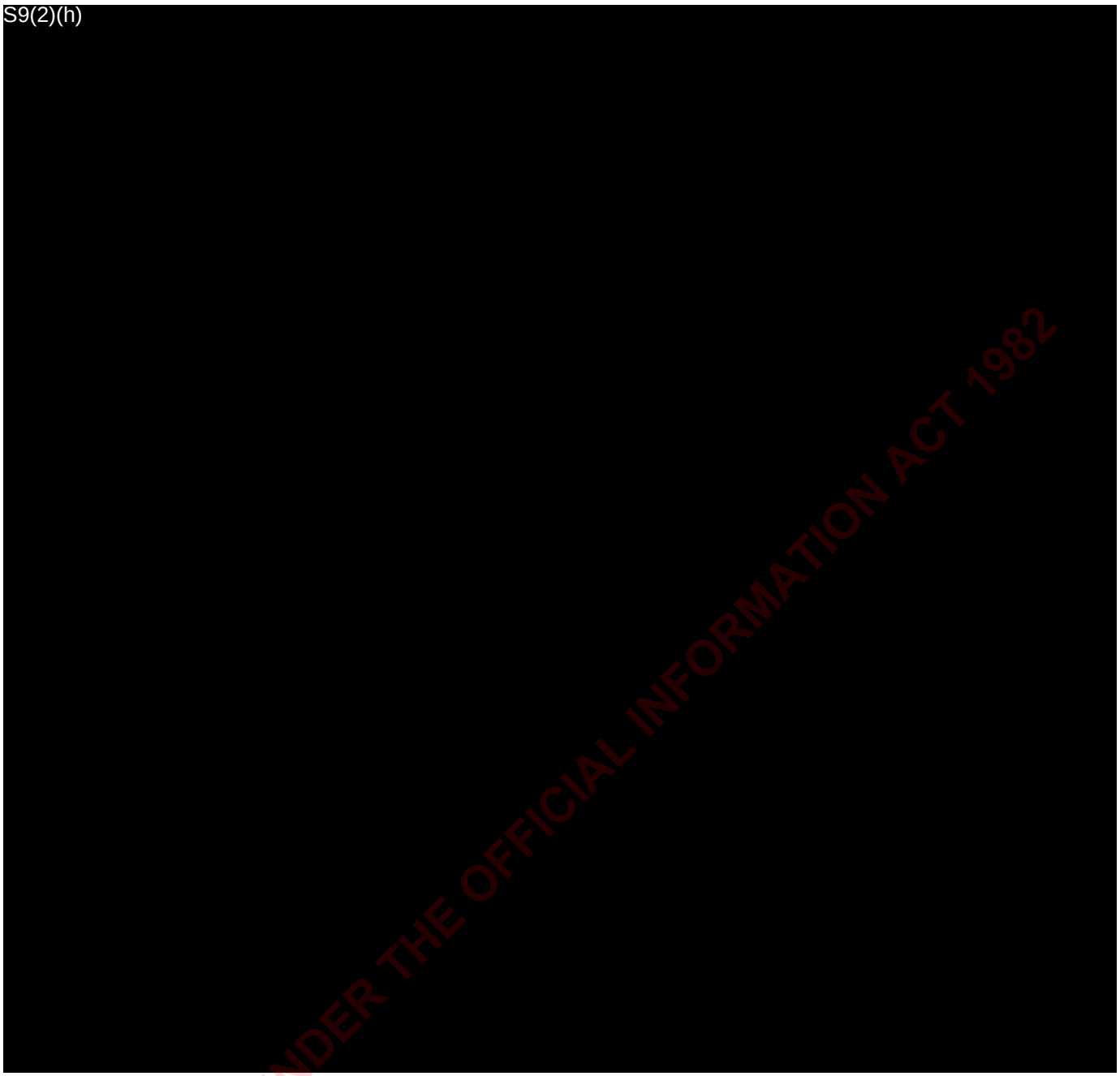
ENDS

Annex 1 – Crown Law advice (Legally Privileged)

S9(2)(h)



S9(2)(h)



Document 2

MINISTRY OF HEALTH
MANATŪ HAUORA

Briefing

Proof of COVID-19 vaccination in the context of border reopening: scientific and public health considerations

Date due to MO:	3 August 2021	**Action required by:**	N/A
Security level:	IN CONFIDENCE	**Health Report number:**	HR20211448
To:	Hon Chris Hipkins, Minister for COVID-19 Response		
Copy to:	Hon Ayesha Verrall, Associate Minister of Health		

Contact for telephone discussion

Name	Position	Telephone
Dr Ashley Bloomfield	Director-General of Health	s 9(2)(a)
Maree Roberts	Deputy Director-General, System Strategy & Policy	s 9(2)(a)

Minister's office to complete:

☐ Approved ☐ Decline ☐ Noted

☐ Needs change ☐ Seen ☐ Overtaken by events

☐ See Minister's Notes ☐ Withdrawn

Comment:

Proof of COVID-19 vaccination in the context of border reopening: scientific and public health considerations

Security level:	IN CONFIDENCE	**Date:**	30 July 2021
To:	Hon Chris Hipkins, Minister for COVID-19 Response		

Purpose of report

1. This report provides you with advice on the scientific and public health considerations for how COVID-19 vaccination status can assist risk stratification of inbound travellers to reduce the risk of COVID-19 from entering New Zealand.

2. This report is an item in the *Reconnecting New Zealanders with the World* work programme that was considered by Cabinet on 5 July 2021 [CAB-21-MIN-0263 refers]. The focus for this briefing is primarily on vaccination status for **inbound** travellers to New Zealand. It does not cover the use of vaccination credentials for domestic use, i.e. to access venues, services or settings within New Zealand.

3. This briefing discloses all relevant information.

Summary

4. Used alongside country and travel route risk assessment ascertaining the vaccination status of inbound travellers can assist with individual risk stratification. It can also support more tailored mitigation measures such as testing and isolation/quarantine based on the risk an individual might present.

5. No vaccine is 100 percent effective against transmission however, and the evidence is still evolving. Uncertainties remain in key areas such as real-world vaccine effectiveness, duration/type of immunity, and the changing nature of these variables as new variants emerge.

6. COVID-19 control measures, including border rules around vaccination status, will need to be flexible and responsive to accommodate this dynamic scientific and epidemiological situation

7. Vaccination certificates are health records that can confirm a person has received a vaccination, however they cannot prove immunity or guarantee the bearer presents low or no risk of importing or transmitting COVID-19.

8. Where there may be significant benefits of having a vaccination certificate (such being granted an entry visa to another country or being exempt from managed isolation and quarantine), the credential itself can become a valuable commodity.

9. Currently, there are numerous vaccination certificate formats being issued internationally. A growing black market in fake COVID-19 vaccination and test certificates is reinforcing the need for global standards for COVID-19 credentials that have security features that provide authenticity and are able to be digitally verified.

10. Until international standards are adopted more widely, the variability in formats will present significant challenges for verifying vaccination status of inbound travellers to New Zealand. Key considerations for easing the border rules for vaccinated travellers should include our degree of confidence:

    a. in the authenticity of the vaccination certificate

    b. that the bearer of the certificate was the person who received the vaccination

    c. that the vaccine the person received meets our standards of efficacy.

11. The rigor around what New Zealand accepts as a valid proof of vaccination needs to reflect the Governments strategy to keep COVID-19 out of the New Zealand community.

12. Systems to transact and verify COVID-19 health credentials for inbound travellers to New Zealand, using a travel health declaration, are in development, led by Customs. The Ministry of Health is providing advice on health conditions and risk mitigation measures as part of the Reconnecting New Zealanders work programme.

13. Part of this work includes establishing New Zealand 'vaccination standards' for inbound travellers, such as:

    a. which vaccines would be accepted?

    b. what "fully vaccinated" means (i.e. number doses, dose intervals, and time before travel)?

    c. what form of proof we might accept?

14. The Ministry of Health is progressing the development of a digital COVID-19 vaccination certificate for people vaccinated in New Zealand, using a format aligned with the European Union standard. This will be widely available towards the end of 2021.

15. The Ministry of Health will continue to engage with other global standards including the International Civil Aviation Organisation Visible Digital Seal and World Health Organization Digital Documentation of COVID-19 Certificates to ensure we are able to create certificates that meet requirements of different jurisdictions. Officials are also working through the process for seeking country-to country or regional mutual recognition of vaccination certificates.

Recommendations

We recommend you:

a) **Note** that confidence in the vaccination status of people wishing to travel to New Zealand can assist with assessment and mitigation of risk at the border.

b) **Note** that no vaccine is 100 percent effective against transmission and evidence is still evolving around real world vaccine effectiveness, duration/type of immunity and the impact of variants on these variables.

c) **Note** that COVID-19 control measures, including border rules around vaccination status will need to be flexible to response to the dynamic scientific and epidemiological situation.

d) **Note** a growing black market of fake vaccination certificates is emerging internationally.

e) **Note** that until international standards are adopted more widely, the variability of formats will present significant challenges for verifying vaccination status of inbound travellers to New Zealand.

f) **Note** that key considerations for assessing traveller risk based on vaccination status include the level of confidence in the authenticity of the certificate; that the bearer of the certificate was the person who received the vaccination; and that the vaccine meets our standards for efficacy.

Dr Ashley Bloomfield
Te Tumu Whakarae mō te Hauora
Director-General of Health
Date: 3/8/2021

Hon Chris Hipkins
Minister for COVID-19 Response
Date: 10/8/2021

Proof of COVID-19 vaccination in the context of border reopening: scientific and public health considerations

Proof of vaccination as a tool for managing the pandemic

16. Globally, the rollout of effective COVID-19 vaccines is seen as offering the best pathway to manage the pandemic, enabling the safer reopening of international borders and the resumption of most previously enjoyed freedoms. In New Zealand, vaccines are expected to help shape the phased approach for easing our border restrictions, supported by science, research and evidence.

17. The need for a high level of confidence about a person's vaccination status is driving the push towards trusted credentials that can prove to a third party that a person has been vaccinated against COVID-19. Knowing a person's vaccination status can enable decisions about the level of risk an individual might present and what mitigations might be needed in order to manage the risk. In the context of inbound travellers to New Zealand, the risk an individual traveller presents is also dependent on the numbers of people vaccinated domestically.

Technological solutions can assist with verifying COVID-19 health status

18. On 31 May 2021, the joint statement from Prime Ministers Rt Hon Jacinda Ardern and the Hon Scott Morrison for the annual Australia New Zealand Leaders' Meeting, noted that they had "tasked officials to explore technological solutions to verify vaccination status to enable Australians and New Zealanders to reconnect with the wider world…"

19. Internationally, countries are issuing a wide variety of vaccination certificates using variable formats. A growing black market in fake COVID-19 vaccination and test certificates is reinforcing the need to for countries to adopt global standards for COVID-19 credentials that have security features for authenticity and that are able to be digitally verified.

20. Where there are significant benefits of having a vaccination certificate (such as being granted an entry visa or being exempt from managed isolation and quarantine), the credential itself can become a valuable commodity.

21. As paper documents can be subject to fraud or falsification and can be easily lost or damaged, digital certificates can provide greater confidence that the person presenting the certificate is indeed the person who received the vaccination.

22. Work is progressing to develop a New Zealand issued verifiable digital COVID-19 health certificate for people vaccinated or tested in New Zealand. This is being developed alongside work for an accessible digital mechanism for people to be able to store and view their own COVID-19 vaccination and testing records. The ability for users to be able to request and upload a vaccination certificate as part of this functionality is expected to be widely available by the end of the year.

23. Recognising the importance of international interoperability, the Ministry of Health is designing the New Zealand issued vaccination certificate to be aligned with the emerging international standards. Initially the New Zealand credential will use the European Union Digital COVID-19 Certificate (EUDCC) standard. The Ministry of Health will continue to engage with other global standards including the International Civil Aviation Organisation Visible Digital Seal (ICAO VDS) and World Health Organization Digital Documentation of COVID-19 Certificates (WHO DDCC) to ensure we are able to create certificates that meet requirements of different jurisdictions.

24. This work sits within the Travel Health Pass work programme and is closely aligned with Reconnecting New Zealanders policy decisions. You recently received a briefing from the Ministry of Transport that provided an update on the Travel Health Pass Work Programme (OC210425,16 June 2021).

25. The Travel Health Pass work programme has two component parts - departures, and arrivals:

    a. **departures:** to ensure that people vaccinated in New Zealand can access a digital COVID-19 health credential (e.g. vaccination and test certificate) that can be used to facilitate international travel (led by the Ministry of Health)

    b. **arrivals:** a travel health declaration system that can check and verify a travellers COVID-19 health credentials to ensure travellers are in the correct entry pathway for their risk (led by Customs).

26. This briefing does not repeat the issues covered in that briefing, but rather provides an overview of how assessing the vaccination status of inbound travellers can be as a tool to reduce the risk of COVID-19 from entering the New Zealand community.

Internationally, many countries are introducing proof of vaccination for inbound travellers

27. An increasing number of countries have introduced varying isolation and test exemptions for travellers from low risk countries and who can provide proof of having been vaccinated against COVID-19.

28. At this stage very few countries are requiring vaccination as a *mandatory condition* of entry, with the exceptions to date being Papua New Guinea, Indonesia, Samoa, Grenada, Azerbaijan, Equatorial Guinea and Palau.

29. The scope and extent of exemptions for vaccinated travellers vary based on risk-benefit trade-offs such as geographical proximity, epidemiological factors, response capacities, and socio-economic factors.

WHO position

The World Health Organization advises against proof of vaccination being a mandatory condition of entry

30. The World Health Organisation (WHO) advises against Members States requiring proof of vaccination as a condition of entry or departure across international borders. Their main concern is the limited evidence about the performance of vaccines in reducing transmission and the persistent inequity in the global vaccine distribution.

31. They also cite equity concerns in that preferential vaccination of travellers could result in inadequate supplies of vaccines for priority populations considered at high risk of severe COVID-19 disease.

Instead the WHO recommends a risk-based approach to international travel

32. While recognising the diverse epidemiological situation and that countries have varying response capacities, the WHO recommends Member States adopt a risk-based approach to international travel which considers:

    a. the risk posed by travel for the importation and exportation of cases in the context of the evolving epidemiology, including the emergence and circulation of virus variants of concern

    b. the expansion of the COVID-19 vaccination roll-out

    c. lessons learned while responding to the pandemic, including on the early detection and management of cases and the application of public health and social measures.

33. Key among the WHO recommendations are that Member States:

    a. not require proof of COVD-19 vaccination as a *mandatory* condition for entry to or exit from a country.

    b. consider a risk-based approach to the facilitation of international travel by lifting measures, such as testing and/or quarantine requirements, to individual travellers who:

        - were fully vaccinated, at least two weeks prior to travelling, with COVID-19 vaccines listed by WHO for emergency use or approved by a stringent regulatory authority, or
        - have had previous SARS-CoV-2 infection as confirmed by real time RT-PCR (rRT-PCR) within the six months prior to travelling and are no longer infectious as per WHO's criteria for releasing COVID-19 patients from isolation.

    c. if testing and/or quarantine requirements are lifted for travellers who meet the above-mentioned criteria, offer alternatives to travel for individuals who are unvaccinated or do not have proof of past infection, such as through the use of negative rRT-PCR tests, or antigen detection rapid diagnostic tests (Ag-RDTs).

    d. consider recording proof of COVID-19 vaccination in the International Certificate of Vaccination or Prophylaxis (ICVP) ("Yellow booklet") or in digital formats, as recommended by regional or global intergovernmental bodies. Where digital certificates of "COVID-19 status" are used, interoperable solutions should be sought to allow for cross-border verification.

Assumptions

Assumptions behind COVID-19 vaccination certificates

34. The assumption underlying the use of COVID-19 vaccination certificates domestically or for international travel is that vaccination not only protects the vaccinated individual from being infected and becoming severely ill from the disease, but it also reduces their risk of spreading it to others.

35. In the context of international travel, this assumption implies that vaccinated travellers:
    a. pose *less risk* of importing or exporting the virus
    b. pose *less risk* of transmitting the virus to others if they are infected
    c. are *less likely* to get severely unwell (personal protection)
    d. are *less likely* to place a burden on the health care system.

36. Requiring proof of vaccination allows the stratification of people by the risk they present, and enables a more nuanced approach to testing, and isolation/quarantine requirements based on that risk.

37. It is important, however, to understand just how much risk is mitigated through vaccination, and what risk a vaccination certificate bearer might present to others.

Science

What does the science say?

38. While no COVID-19 vaccine can block transmission of the virus 100 percent, it is clear that vaccines, particularly the Pfizer vaccine, can substantially reduce transmission of the virus. Evidence on the magnitude of the reduction in transmissibility is still emerging.

39. In order for a person to transmit the virus to another person (infectiousness), they must first become infected, which depends on their 'susceptibility' and degree of protection. The Pfizer vaccine has approximately 90% vaccine effectiveness against the first of these steps - viral infection - relative to unvaccinated individuals.

40. As an absolute measure of risk, once vaccinated, approximately <0.5% of Pfizer-vaccinated individuals become infected ('breakthrough' infections). While it is possible for these individuals to infect others, the rate at which a vaccinated infected person can transmit the virus is unknown. However, there is emerging evidence that people vaccinated with Pfizer are less infectious and that vaccinated cases tend to be more asymptomatic, have lower viral loads, and a shorter duration of infection.

Vaccine standards

41. There is variability in the efficacy of different COVID-19 vaccines currently in use internationally. Effectiveness against transmission can vary depending on the type of vaccine and the dominant variant in circulation. While most vaccines offer protection against severe disease, some do not appear to offer the same level of protection against transmission.

42. Prevalent variants and the type of vaccine are important considerations for New Zealand when implementing proof of vaccination for inbound travellers, if the goal is to prevent the importation of the virus.

Not everyone develops the same immune response

43. Vaccination certificates are not immunity certificates. Not everyone will mount the same immune response to the vaccination - the same vaccine may be very effective in protecting one recipient and less so in another. So, while vaccination certificates are a record of a vaccination event they do not prove that a person is immune to the disease.

And some people cannot be vaccinated or may not have had the opportunity to be vaccinated

44. Should requiring proof of vaccination be introduced as a requirement for inbound travellers, consideration needs to be given to people who cannot be vaccinated, such as children or people with particular health conditions. Currently there are a variety of approaches in place for children seeking to travel internationally. Some countries require full testing and managed isolation and quarantine; some require 14 days self-isolation; and others waive all testing and isolation requirements if children are travelling with fully vaccinated family members or caregivers.

45. Whether or not inbound travellers have had the opportunity to be vaccinated may also be a consideration. This may be an issue for maritime crew for example.

Vaccine standards for international travel

The core vaccination standards are relatively consistent

46. Countries that have introduced vaccination status as a consideration at the border tend to have common criteria such as confirmation the required doses have been administered with the correct intervals, and that the last dose was received at least 14 days prior to travel. As the evidence is still emerging on the duration of vaccine induced immunity, some are also specifying that the last vaccination is received within six months prior to entry.

But some vaccines are more widely accepted than others

47. There is more variability in which vaccine a country recognises for cross-border travel. Not all vaccines are accepted consistently across jurisdictions. Some countries refer to the full set of WHO approved vaccines, while others specify a narrower list.

48. The WHO recommends that countries recognise all COVID-19 vaccines validated by the WHO Emergency Use Listing (EUL) or those approved by a Stringent Regulatory Authority (SRA). On 1 July 2021, COVAX issued a statement urging all regional, national and local government authorities to recognise as fully vaccinated all people who have received COVID-19 vaccines that have been deemed safe and effective by the WHO and/or the 11 Stringent Regulatory Authorities approved for COVID-19 vaccines when making decisions as to who is able to travel or attend events.

49. The COVAX statement noted that any measure that allow only people protected by a subset of WHO-approved vaccines to benefit from the re-opening of travel into and with that region would effectively create a two-tier system. It stated this risks further widening the global vaccine divide and exacerbating the inequities we have already seen in the distribution of COVID-19 vaccines. The COVAX statement also noted that moves to prioritise one vaccine over another for international travel were already undermining the confidence in life-saving vaccines already shown to be safe and effective, affecting uptake of vaccines and potentially putting lives at risk.

Unintended risks

Vaccination certificate schemes could have unintended consequences that risk public health

50. In assessing the benefits of ascertaining the vaccination status of inbound travellers, any potential unintended public health consequences also need to be considered.

51. Where vaccination certificates are a condition of certain entitlements, such as being granted an entry visa or being exempt from testing or MIQ requirements, the credential itself can become a valuable commodity. This may increase the risk of falsification or fraud. Depending on what other measures are wrapped around an inbound traveller (such as pre-departure testing or testing on arrival), there is the potential that a non-vaccinated person using a falsified credential could unwittingly import the virus and transmit COVID-19 to unvaccinated or vulnerable people.

52. While on one hand, benefits associated with a vaccination certificate could incentivise more people to receive a vaccine, it could also mean that some individuals may be less willing to disclose their medical history and (potential) contraindications which could increase the risk of adverse events.

53. Further, if the scope and use of vaccination certificates are not clearly defined, there is a risk that they could be used for purposes other than those originally intended, such as by third parties (e.g. commercial entities, insurance companies), which could lead to a distrust in the health system, the government's COVID-19 response or to vaccine hesitancy.

There is a need to be clear about the intended uses for a vaccination certificate

54. The WHO recommends that members states set out clear and specific policies, and laws if needed, on the limits to legitimate uses of a vaccination certificate. It states that use of vaccination certificates to restrict the right to freedom to movement and other human rights is only justified when it supports the pursuit of a legitimate aim during a public health emergency and is provided for by law, is proportionate, of limited duration, based on scientific evidence, and not imposed in an arbitrary, unreasonable or discriminatory manner.

55. Separate to international travel, some jurisdictions have introduced policies to require proof of vaccination to enter specified public venues and settings, such as museums, cinemas, and indoor events. There are significant ethical, legal, equity and public health considerations regarding limiting access to public settings based on vaccination status that are not covered in this briefing.

A disproportionate focus on individual vaccination status could underplay the importance of collective effort

56. A further concern that has been raised is that a focus on individual proof of vaccination may underemphasise the collective nature of the challenge. It risks treating a collective problem as an individual one, and inadvertently suggests a binary certainty whereby holders of trusted certificates are 'safe', and those without are 'risky'. Ultimately it will be national and international vaccination population coverage that will offer greater protection.

Trust in the credential

How can we have confidence in the authenticity of a vaccination certificates

57. At present there are numerous formats being issued internationally, many of which are paper based, have no security features and are not able to be digitally verified. Until international standards are adopted more widely, this variability will present significant challenges for verifying vaccination status of international travellers into New Zealand.

58. The authenticity of a vaccination certificate may be less imperative for countries where the incidence of community transmission is still relatively high. For countries that have a low level of risk tolerance for COVID-19 entering across the border the need for confidence in the vaccination credential is much greater.

59. Key considerations for easing the border rules for vaccinated travellers should include our degree of confidence:

    a. in the authenticity of the vaccination certificate

    b. that the bearer of the certificate was the person who received the vaccination

    c. that the vaccine the person received meets our standards of efficacy.

60. Customs officials are working on a system that will include a pre-travel health declaration to collect information necessary for border agencies to process arriving travellers according to the level of COVID-19 risk.

61. Ideally, COVID-19 health credentials (such as vaccination or test certificates) would be verified digitally prior to travel, as the manual assessment of vaccination credentials is not only resource intensive but slows passenger flow through airports. Manual assessment also relies on subjective verification that is open to variability.

62. Digital verification of a test or vaccination certificate would involve scanning the QR code. This would reveal who the certificate is issued to, details around the test result or vaccine doses administered, along with a cryptographic digital signature confirming that the certificate was issued by a trusted entity. This ensures the information remains secure and provides confidence that the credential is authentic and has not been tampered with.

Setting vaccination standards for inbound travellers

63. In parallel to the policy work on future health settings for Reconnecting New Zealanders, officials are working through a process to determine:

    a. which vaccines might we recognise for inbound travellers?

    b. what "fully vaccinated" means (i.e. number doses, dose intervals, and period of time before travel)?

    c. what form of proof we might accept?

64. The Ministry of Health has commenced work with Medsafe and the COVID-19 Vaccine Science and Technical Advisory Group (CV-TAG) on vaccination standards for inbound travellers. Given the evolving evidence, technology and epidemiological situation, any standards New Zealand adopted would need regular review.

65. Once minimum standards are agreed, a process for agreeing which certificates are recognised need to be progressed. It is likely this will involve country-to-country mutual recognition agreements as well as broader reciprocity agreements through international bodies like ICAO or the EU.

66. New Zealand is in discussions with the EU (along with other 30 non-EU countries) about joining the EUDCC scheme. Being accepted as a 'third country' to the EUDCC scheme would allow us to recognise and have high confidence in the vaccination certificates issued by countries in the EUDCC scheme and, in turn New Zealand-issued certificates would be recognised by those countries who have joined the scheme.

67. We envisage mutual recognition agreements wouldn't require reciprocity of border settings. It is likely that New Zealand will require higher standards of entry from some mutual recognition agreement partner countries than would be required for New Zealanders to travel there.

68. New Zealand officials are in regular discussion with Australian counterparts on COVID-19 vaccination certificates. Australia is also developing a digital vaccination certificate which we understand is expected to be available to people vaccinated in Australia around October this year. We will continue to engage with Australia with the aim of mutual recognition of each other's digital COVID-19 certificates.

Equity

69. Criteria to guide the approach to COVID-19 vaccination certification in New Zealand includes the following equity considerations:

    a. vaccination certification will not increase health or other inequities, either domestically or globally

    b. everyone has the right to obtain and hold an authentic credential that documents their vaccination status.

70. While requiring inbound travellers to provide valid proof of their vaccination status may support efforts to reduce the risk of COVID-19 being introduced through the border, this requirement could risk exacerbating health inequities in the following ways:

    a. some populations may be disproportionately less likely to have an opportunity to be vaccinated and obtain a valid vaccination certificate

    b. vaccinated individuals with geographical, financial or disability barriers may also be excluded from obtaining and using a digital vaccination certificate depending on the administration process, cost and design

    c. vaccinated individuals from countries without the infrastructure to issue suitable vaccination certificates may be disproportionately impacted.

Next steps

71. The Reconnecting New Zealanders work programme is considering matters related to proof of vaccination as part of a risk-based approach to reconnection. Further public health advice on settings for entry pathways is being prepared for the Reconnecting New Zealand Ministerial Group for late August 2021.

END

Document 3

MINISTRY OF HEALTH
MANATŪ HAUORA

Briefing

Review of the COVID-19 Public Health Response (Vaccinations) Order 2021

Date due to MO:	29 August 2022	**Action required by:**	N/A
Security level:	IN CONFIDENCE	**Health Report number:**	20221210
To:	Hon Dr Ayesha Verrall, Minister for COVID-19 Response		

Contact for telephone discussion

Name	Position	Telephone
Stephen Glover	Group Manager, COVID-19 Policy	S9(2)(a)
Dr Diana Sarfati	Director-General of Health	S9(2)(a)

Minister's office to complete:

☐ Approved	☐ Decline	☐ Noted
☐ Needs change	☐ Seen	☐ Overtaken by events
☐ See Minister's Notes	☐ Withdrawn	

Comment:

Document 3

Review of the COVID-19 Public Health Response (Vaccinations) Order 2021

Security level:	IN CONFIDENCE	**Date:**	29 August 2022
To:	Hon Dr Ayesha Verrall, Minister for COVID-19 Response		

Purpose of report

1 This report provides advice on whether the maintenance of the vaccine mandates for health and disability sector workers under the COVID-19 Public Health Response (Vaccinations) Order 2021 (Vaccinations Order) remains justified.

2 Your agreement is sought to instruct Parliamentary Counsel Office (PCO) to draft a Notice to give effect to the recommendations in this report.

3 This report discloses all relevant information and implications.

Summary

4 The purpose of the Vaccinations 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 against COVID-19 and have received a COVID-19 booster dose.

5 The Vaccinations Order has helped to ensure high vaccination and booster levels among specified categories of health and disability workers covered by the vaccination mandate in the Order.

6 The high vaccination rates among those workers still covered by the mandate as well as among the general population, offers protection to vulnerable patients who may be at greater risk if they contract COVID-19. Public health advice is that there is no longer a rationale for continued vaccine mandates for any categories of worker under the Vaccinations Order.

7 In the current environment, maintaining the vaccine mandates in the Vaccinations Order[1] creates New Zealand Bill of Rights Act 1990 (NZBORA)-related legal risk if challenged. Manatū Hauora therefore recommends that the Order be revoked.

8 Once the Order is revoked there would need to be a lead-in period of at least a fortnight to allow and disability support and care providers time to prepare. Government agencies such as Manatū Hauora, Whaikaha and the Ministry of Business Innovation and Employment will need to update websites and resources and advise stakeholders of the changes. Likewise, providers will need to provide the revised vaccination messaging to their workforce.

9 If you agree with the recommendations in this report, your agreement is also sought for Manatū Hauora to issue drafting instructions to the Parliamentary Counsel Office.

[1] Vaccination requirements under the COVID-19 Public Health Response (Air Border) Order 2021 are outside the scope of this report.

10 At the request of the Minister for Disability Issues, a consultation was held with the disability sector. The consultation ran between 4 and 8 August with a hui for affected communities and a meeting with peak and care providers. Each of these groups was in favour of revoking the Vaccinations Order as allowing workers to return to the sector would help relieve pressure on the workforce. Noting that disability advocates were concerned for individuals to maintain control in decision-making in who provides their care.

Recommendations

We recommend you:

a)	**Note** that vaccine mandates in the COVID-19 Public Health Response (Vaccinations) Order 2021 (Vaccinations Order) were enacted with a clear public health rationale to provide personal protection against COVID-19 to workers in high-risk settings, 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.	**Noted**
b)	**Note** that the Vaccinations Order is reviewed regularly to ensure that our approach to COVID-19 remains proportionate, responsive and effective.	**Noted**
c)	**Note** that the Vaccinations Order was last amended on 30 June 2022 and that the vaccine mandate is now restricted to health and disability sector workers in public-facing roles.	**Noted**
d)	**Note** that new workers could be covered by employer/Person Conducting a Business or Undertaking (PCBU)-based vaccination requirements rather than through a vaccine mandate.	**Noted**
e)	S9(2)(h) [redacted]	**Noted**
f)	**Agree** to Manatū Hauora issuing drafting instructions to the Parliamentary Counsel Office to revoke the COVID-19 Public Health Response (Vaccinations) Order 2021.	**Yes/No**
g)	**Note** that revoking the Vaccinations Order will include the removal of: • the vaccine mandate for the remaining health and disability sector workers • vaccination exemption provisions • the obligation for PCBUs to keep vaccination records for employees • schedules specifying vaccinations and boosters.	**Noted**
h)	**Note** employer requirements and workforce knowledge may help to sustain the vaccination rates amongst health care workers after the Order has been revoked.	**Noted**
i)	**Note** that the disability sector has been consulted on the preparation of this report.	**Noted**

j) **Agree** to circulate this report to the Prime Minister, the Minister of Justice, the Minister of Health, the Minister for Disability Issues, and any other Ministers you consider should be consulted, to fulfil the requirements for making orders under section 11AA of the COVID-19 Public Health Response Act (2020). **Yes/No**

Dr Diana Sarfati
Te Tumu Whakarae mō te Hauora
Director-General of Health
Date: 26/8/22

Hon Dr Ayesha Verrall
Minister for COVID-19 Response
Date:

Review of the COVID-19 Public Health Response (Vaccinations) Order 2021

Background

1 Vaccine mandates under the COVID-19 Public Health Response (Vaccinations) Order 2021 (Vaccinations Order) were enacted to provide personal protection against COVID-19 to workers in high-risk settings, 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 The stated purpose of the Vaccinations 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 against COVID-19 and have received a COVID-19 booster dose.

3 The vaccination requirements in the Vaccinations Order represent a limitation on the rights and freedoms affirmed by the New Zealand Bill of Rights Act 1990 (NZBORA), including the right to refuse medical treatment. These requirements need to be kept under review to ensure they remain reasonable, justified and proportionate, particularly when circumstances have changed.

Current scope of the Vaccinations Order

4 The Vaccinations Order stipulates that certain health and disability workers (as defined in Schedule 2 of the Order – see Appendix 1) can only carry out their work if they are vaccinated and have received a booster dose.

5 The Vaccinations Order further contains several provisions relating to the following:

- duties of Person(s) Conducting a Business (PCBU) in relation to vaccinations - Duties include reminding workers that they need to be vaccinated and boosted to carry out work. They must also not allow people to work if they are not vaccinated/exempted.
- exemptions – The Director-General may grant temporary exemptions to allow people who are not fully vaccinated to work provided certain criteria stipulated in the relevant clause are met. The Director-General may also grant medical exemptions. In addition, the Minister for COVID-19 Response may also grant exemptions under specified circumstances.
- vaccinations records – Affected workers must allow the relevant PCBU to access any COVID-19 vaccination record Manatū Hauora may have for him/her. PCBUs must keep and maintain vaccination records for affected workers containing information such as: the affected person's date of birth, address, telephone number, vaccination status and the name of the vaccine(s)/booster administered.
- infringement offences (for non-compliance with the relevant provisions of the Vaccinations Order).
- vaccination specifications (list of names of permitted vaccines and administration requirements).
- booster dose specifications (list of names of permitted vaccines and administration requirements).

Only "frontline" health and disability workers are now covered by the Vaccinations Order

6 Since 7 July 2022, when the latest changes to the Vaccinations Order came into force, the vaccine mandate has been restricted to a limited number of health and disability sector workers who are more likely to come into contact with people who are at greater risk of serious harm should they be infected with COVID-19.

7 The vaccine mandate now applies to the following categories of workers listed in Schedule 2 of the Vaccinations Order (see Appendix 1):

- health practitioners[2] providing health services to patients in person (such as doctors, nurses, and dentists).
- workers in medical centres/GP practices and pharmacies (such as receptionists and assistants) whose role involves being within 2 metres or less of a health practitioner or member of the public for 15 minutes or more.
- workers who are employed or engaged by certified providers (such as hospitals, rest homes and residential disability care settings) who, as part of their ordinary duties, have face-to-face contact with people to whom healthcare services are provided.
- care and support workers who are employed or engaged to carry out work that includes going to the home or place of residence of another person to provide care and support services funded by the Ministry of Health, a Te Whatu Ora district or ACC.

8 Since the vaccine mandate covers many occupations and physical settings, it has proven difficult to obtain up-to-date data on the vaccination status for all health and disability sector workers currently covered by the Vaccinations Order. However, vaccination rates – two doses and first booster – are estimated to be ≥95%.

9 This is corroborated by data Manatū Hauora has obtained from TAS – Kāhui Tuitui Tāngata regarding the vaccination status of District Health Board (DHB) employees. As of 27 June 2022, 96.8 percent of the DHB workforce was fully vaccinated and boosted.

Assessment of Continued Need for Vaccinations Order

Public health rationale

1. Public health advice is that there is no convincing rationale for a continued vaccine mandate for health and disability sector workers because of:

- the high vaccination rates among this group of workers as well as among the general population - as of 19 July 2022, 95.2 per cent of the eligible general population (12+) have received at least two vaccine doses. Across the general population, 73.3 per cent had received at least one booster dose.
- the reduced effectiveness of vaccines at preventing Omicron transmission.
- the reduced risk of reinfection for those who have recently recovered from COVID-19.

[2] As defined in the Health Practitioners Competence Assurance Act 2003

- the declining number of active Omicron cases in the community reduces the risk of transmission meaning there is less emphasis for a vaccination mandate to protect those most vulnerable.

Workforce issues

2. A range of other factors have been raised in support of the revocation of the Vaccinations Order. Chief amongst these is the potential to relieve staffing issues in the healthcare sector. Lifting the vaccine mandate will enable a small number of unvaccinated/not fully vaccinated workers to return to work. Within the current context of severe staff shortages due to winter illnesses and COVID-19, the potential reengagement of these workers may alleviate some pressure on the sector.

3. However, this needs to be balanced against the health system's ability to cope with these challenges to date and the recent decline in cases numbers.

4. In addition, a recent court decision in favour of an unvaccinated employee of the Royal District Nursing Service (RDNS) could have significant implications. The court found that the RDNS employee did not need to be vaccinated in order to be a paid home carer for a member of their own household. Our initial assessment is that this decision should have limited implications for the vaccination mandate for public-facing health and disability workers more broadly.

Are mandates necessary to maintain already high vaccination rates

5. Health legal opines that the vaccination requirements for health and disability sector workers are no longer justified. This reflects the current public health advice regarding high vaccination rates among the general public and the health and disability sector and reduced effectiveness of vaccines at preventing transmission and given that COVID-19 has become an established disease in New Zealand.

6. While public health advice is that there is no longer a clear public health rationale for a continued vaccine mandate, clearly vaccination remains highly recommended for all workers and indeed for all New Zealanders.

7. There is a risk that removing the vaccine mandate may lead to lower vaccination rates among health and disability workers in future. However, health and disability sector workers are assumed to have an increased awareness of infectious disease control and this will inform individual vaccination choices (including whether to get a second booster). As such, it is anticipated that the health and disability workforce vaccination rate will likely mirror, and possibly exceed, the rates for the general population aged 12 years and over.

8. Further, PCBUs may still require their workers to be up to date with their vaccinations. This is discussed further below.

Managing uncertainty

9. Circumstances can change/have changed in the past, and the emergence of new COVID-19 variants or findings that would suggest that current vaccines are losing their effectiveness over time will likely lead to different public health advice regarding vaccinations (and vaccine mandates).

10. As part of this future proofing, it may be necessary to retain a mandate to be able to manage these potential uncertainties. This is anticipated in the Post-winter strategy and

the move to baseline and reserve measures. However, this approach does not preclude these reserve measures being in place once we move to the new framework for managing COVID-19 in the future.

Duty of care

11. While the focus has been on vaccination to protect health and disability workers, consideration also needs to be given to the impact on patients or others receiving services from health and disability providers.

12. High risk, vulnerable or marginal populations may have a limited ability to manage any risks they face from COVID-19. This includes their ability to being treated by a vaccinated worker. In such circumstances, it may be necessary to retain the mandate for certain sectors that may be deemed 'riskier' than others (e.g., disability services – people with disabilities often have other conditions which put them at extra risk).

13. However, there are other settings in which a patient is (at least) equally vulnerable to COVID-19 infection and the consequent effects as people in certain disability settings.[3]

14. Under the 'Health and Safety At Work (HSWA) Act PCBUs must ensure the health and safety of their workers and other people on their premises (including visitors and clients). If the mandate were to be revoked, employers could introduce requirements for their workers be vaccinated to help protect both the worker and to reduce the risk of transmission to their vulnerable patients, as part of their overall approach to managing health and safety risks. Manatū Hauora will work with Te Whatu Ora and the Ministry of Business, Innovation and Employment to provide guidance to support this.

Broader equity considerations

15. The COVID-19 pandemic has disproportionately affected Māori, Pacific, and disabled peoples. Vaccination rates for Māori continue to lag behind the general population. On 19 July 2022, 56.4. per cent of Māori were fully vaccinated and had received a booster dose compared to 73.3 per cent of the overall population. The equivalent vaccination rate for Pacific peoples on 19 July 2022 was 60.8 per cent.

16. According to data obtained from Whaikaha/Ministry of Disabled People, 93 per cent of disabled people aged 18 years and over who receive Disability Support Services funding have been double vaccinated. In total 84 per cent of disabled people over 18 years of age have received a booster shot. Vaccination rates amongst 5–17-year-olds with disabilities is relatively low, with only 51 per cent double vaccinated and a further 16 per cent with a single booster shot.

17. Considering the vaccination rates, Māori and Pacific peoples are at higher risk of infection and are likely to experience more severe COVID-19 symptoms than other population groups. However, the overall risk of infection is lower. With high vaccination rates and falling case numbers, PCBUs can manage these risks in particular healthcare settings e.g., through ventilation, masks, IPCs and potentially their own vaccination requirements for staff. Hence the mandate is no longer necessary to maintain the level of protection being provided.

[3] e.g. a person who is immune comprised following radiation treatment.

18. Disabled people and tāngata whaikaha Māori are also more likely to get infected and experience more severe COVID-19 symptoms than other population groups. This is due to underlying medical conditions, congregate living settings or systemic health and social inequities. Any reduction in COVID-19 protections to date have resulted in disabled people feeling unsafe, choosing self-isolation as their safest option.

19. Reliance on a combination of other public health measures such as mask wearing does not necessarily reduce the risk of becoming infected for disabled people. This is particularly so people who may have trouble understanding information or practicing preventative measures such as hand hygiene and social distancing.

20. There may however be positive employment implications associated with the removal of the Vaccinations Order for Māori, Pacific and disabled peoples. As stated previously, lifting the vaccine mandate will enable a small number of unvaccinated/not fully vaccinated health and disability workers to return to work or gain employment.

S9(2)(h)

S9(2)(h) [redacted]

Options

Option 1: Status quo: Retain the current mandate for health care workers to be vaccinated to work in the sector.

27. Vaccination is seen as a protective measure for the most vulnerable and marginalised groups in society. Vaccination mandates for the disability and health workforce would continue to provide the most vulnerable with an added layer of protection.

Option 2: Further refine the application of the mandate

28. Retain the vaccination mandate for the wider health care workforce, but remove whānau and family carers living in the same household from the Order to allow them to resume paid care duties and relieve financial pressures. Losing paid carer roles has caused significant financial strain particularly for Māori and Pacific peoples.

Option 3: Revoke the Order

29. Revoke the vaccination mandates for health workers, given the high rates of vaccination among both workers and the elderly and disabled populations they care for. The provision of other protective measures such as ventilation, PPE, and mask wearing would help reduce the risk of infection transmission. Additionally, Crown Law advice is that the ongoing use of vaccine mandates in their current form for health workers could be subject to challenge. Note this is discussed further in the Workforce Issues section below.

Discussion

30. Taking public health and legal advice into account, there is limited value in maintaining the vaccine mandates for health and disability sector workers.

31. The current workforce is highly vaccinated, and the vaccine mandate may therefore be considered to have fulfilled its purpose. Any new employees entering the sector could be covered by employer-based vaccine requirements set out in employment agreements.

32. From a legal perspective, the vaccination requirements for health and disability sector workers are no longer justified based on the latest public health advice around vaccination rates, the limited effectiveness of vaccines at preventing transmission and the fact that COVID-19 has become an established disease in New Zealand.

33. Crown Law advises that maintenance of the vaccination requirements in the current environment exposes the Government to (NZBORA-related) legal risk if the Vaccinations Order were to be challenged.

34. Under HSWA (Health and Safety at Work Act), PCBUs are required to ensure the health and safety of people on their premises. In future, we would expect PCBUs to put in place their own role-specific requirements to ensure that their workers, visitors and patients/clients are protected from COVID-19 and this may include vaccination requirements for certain roles or settings.

35. We will ensure that PCBUs will have access to relevant information to make informed decisions around what kind of requirements might be appropriate for them (see under 'Communications' heading).

36. The Public Health Risk Assessment (PHRA) on 17 August considered the Vaccinations Order as part of a review of the five remaining mandated COVID-19 response measures. Given the public health rationale for the broader measures no longer exists the PHRA recommendation was to revoke the Vaccinations Order and remaining vaccination mandates for health and disability sector workers as soon as possible. The rationale was that this represents a step-down from mandatory measures largely designed for a pre-Omicron response context to a more voluntary/guidance-based measure more suited to our current outbreak context. The PHRA noted that it is important that any removal of this mandate be supported by strong communications.

37. Based on the above, Manatū Hauora proposes that the vaccine mandate for health and disability sector workers is no longer required and that the Vaccinations Order should be revoked.

Summary of what will happen to the functions of the Vaccinations Order if it is revoked

38. As noted above, the Vaccinations Order currently enables/performs several functions. If the Vaccinations Order is revoked, these functions will either become redundant or will be (partly) replaced. Further details are provided below.

Vaccine mandates

39. The vaccine mandates in the Vaccinations Order would be replaced by public health advice regarding the importance of vaccination as a measure to protect individuals in the community, and by arrangements between employers and employees.

40. Public health advice about the importance of vaccination is readily available on the Manatū Hauora and the Unite against Covid-19 websites.

41. Under HSWA, PCBUs (i.e., employers) are required to ensure, so far as is reasonably practicable, the health and safety of workers, and that other persons are not put at risk by its work. We do not have full information about the extent to which employers have considered the health and safety risk associated with COVID-19 and whether they have put appropriate protective measures in place. We are aware that some employers (for example, ex-DHBs) have done so.

42. As noted separately below, work is already under way to ensure that public health messaging about the importance of vaccinations is reinforced if/when you decide to revoke the Vaccinations Order.

Requirement on PCBUs to keep vaccination records of employees

43. This requirement would be replaced by individual arrangements regarding vaccination records between PCBUs and their employees. A PCBU may ask workers if they have been vaccinated if they can demonstrate a legitimate need to know the vaccination status of those workers. Once the Order is revoked the responsibility could fall back to employers under the Health and Safety at Work (HSWA) Act. Manatū Hauora, Whaikaha and other agencies will need to provide clear guidance on this as part of the transition.

Vaccination exemption schemes

44. The Government would no longer operate centralised exemption schemes. Any provisions regarding exemptions from vaccination requirements would be created and maintained by individual PCBUs.

Schedules currently in the Vaccinations Order specifying vaccinations and boosters for affected workers

45. Vaccines available in New Zealand are listed on the Manatū Hauora website. Listed vaccines have been provisionally approved by Medsafe after a thorough assessment.

Health and Safety at Work Act 2015 (HSWA) PCBU COVID-19 obligations

46. Once the Order is revoked responsibility would shift back to employers under the HSWA. Employers would need to be supported with clear guidance on this as part of the transition from the Order. An adequate lead-in period is necessary to support that transition to allow for education and appropriate messaging and communications to the sector.

47. Under the HSWA, PCBUs (i.e., employers) are required to ensure, so far as is reasonably practicable, the health and safety of workers, and that other persons are not put at risk by its work. This means that PCBUs will need to consider the risk their employees and patients/clients are facing from COVID-19 and have appropriate measures in place to mitigate this risk (this may include vaccinations).

48. When considering role-specific COVID-19 measures/requirements, such as requiring employees to be vaccinated, employers will need to consult with their employees, and they should base their decision-making on the latest public health advice.

Communications

49. Clear communications and public health messaging and alternative means of incentivising uptake could be used to support on-going up-to-date vaccination among health workers. Work is currently underway to ensure that this messaging will be available if/when you decide to revoke the Vaccinations Order.

50. The Ministry of Business, Innovation and Employment and WorkSafe New Zealand will continue to play an important role in providing COVID-19 vaccination guidance to employers and employees.

51. The Employment New Zealand website[4] already provides information on what employers not covered by a vaccine mandate can do to mitigate COVID-19 risk in the workplace. Following the removal of the Vaccinations Order, Manatū Hauora will work together with Te Whatu Ora to update guidance for the health and disability sector on potential vaccination requirements in the workplace (following a work health and safety risk assessment).

Disability sector consultation

52. As part of this review a consultation with the disability sector was conducted between 4 and 8 August 2022. Whaikaha Ministry for Disabled People facilitated a hui for

[4] https://www.employment.govt.nz/workplace-policies/coronavirus-workplace/covid-19-vaccination-and-employment/

representatives from affected communities and a meeting held with peak and disability support and aged care providers.

53. The consultation with disability support and care providers gave advocates and those working in the sector an opportunity to have a voice on an issue that has impacted some quite significantly.

54. There was strong support from care providers for removing the vaccination mandate for disability support and care workers. This is because not allowing family and whānau carers to undertake home care responsibilities has added to workforce pressures. The loss of family and whānau carers has also placed significant financial strain on those whānau. With generally lower vaccination rates for Māori and Pacific peoples, allowing family and whānau carers to resume paid carer duties would be beneficial. Guidance on the Manatū Hauora website has been updated to clarify that family and whānau carers providing care in their own home are not covered by the vaccination mandate[5].

55. There were equity concerns from whānau and disability support advocates over individual and/or whānau rights to maintain autonomy to decide on who provides care. For vulnerable individuals in receipt of home care if the mandate was lifted, they face losing their ability to decide who provides that care. A secondary consideration here is the privacy rights of workers and whether they can be compelled to declare their vaccination status.

56. The disability community has felt left out of previous COVID-19 response measures for example accessing second booster vaccinations. Other concerns included monitoring ventilation and air flow in schools particularly in winter and whether removing the vaccination mandate would leave families vulnerable.

57. Māori and other marginalised communities feel particularly vulnerable due to the lack of timely information required to make an informed decision. This may raise human rights or Treaty of Waitangi issues. If the mandate was rescinded employers may decide to retain vaccination requirements for staff raising time and financial resourcing issues. In addition, organisations would have to maintain their obligations under the HSWA.

58. Given the broad support expressed for revoking the vaccination mandate , Manatū Hauora's advice would be given the high rates of vaccination of health and disability workers, disabled people, and aged care residents the risk of infection is reduced. In tandem with other measures such as face mask wearing it would be reasonable to lift the mandate.

59. The consultation included representatives from the following groups:
    - Association of Blind Citizens New Zealand
    - Balance Aotearoa
    - Parents of Vision Impaired (NZ) Inc.
    - Deaf Aotearoa
    - Disabled Persons Assembly NZ
    - Kāpo Māori Aotearoa
    - Muscular Dystrophy of New Zealand Inc

[5] https://www.health.govt.nz/covid-19-novel-coronavirus/covid-19-response-planning/covid-19-mandatory-vaccinations#healthdis

- People First New Zealand
- I.Lead
- Tōfā Mamao Collective
- Carers Alliance/Carers New Zealand
- Te Roopu Waiora
- Disability Connect
- Autism New Zealand
- Te Ao Mārama
- Mana Pasefika
- New Zealand Human Rights Commission
- Visionwest
- Home and Community Health Association
- New Zealand Disability Support Network
- Whaikaha Ministry for Disabled People

Next steps

60. If you agree that the vaccine mandate for health and disability sector workers is no longer required, the Ministry will issue drafting instructions to the Parliamentary Counsel Office to revoke of the COVID-19 Public Health Response (Vaccinations) Order 2021.

ENDS.