

Briefing

COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021: Extending the types of recognised vaccines for affected workers – for signature

Date due to MO: 15 October 2021 **Action required by:** 15 October 2021

Security level: IN CONFIDENCE **Health Report number:** 20212269

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

Contact for telephone discussion

Name	Position	Telephone
Dr Ashley Bloomfield	Te Tumu Whakarae mō te Hauora Director-General of Health	s 9(2)(a)
Jolanda Meijer	Policy Director, COVID-19 Policy, System Strategy and 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 See Minister's Notes Withdrawn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:

COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021: Extending the types of recognised vaccines for affected workers – for signature

Security level: IN CONFIDENCE **Date:** 15 October 2021

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

Purpose of report

1. The report recommends that you signed the attached COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021 which expands the types of recognised vaccines that affected workers may receive under the COVID-19 Public Health Response (Vaccinations) Order 2021.

Summary

2. Currently, affected workers captured by the COVID-19 Public Health Response (Vaccination) Order 2021 (the Order) are required to have received two doses of the Pfizer/BioNTech COVID-19 vaccine. Affected workers include:
 - a. at managed isolation and quarantine facilities (MIQFs)
 - b. at airside area of affected airports and some other high-risk areas at airports
 - c. at affected ports
 - d. at accommodation services where specified aircrew members are self-isolating
 - e. who handle items removed from the affected places listed above, and touch affected items while undertaking work for a relevant PCBU that is contracted to provide regular services for MIQFs, an affected aircraft, or an affected ship (for example, cleaning, laundering, or refuse disposal services).
3. The Order does not accommodate affected workers who have been fully, or partially, vaccinated overseas with a COVID-19 vaccine other than the Pfizer/BioNTech vaccine. This is increasing staffing pressures at managed isolation and quarantine facilities and has impacts on an individual's employment.

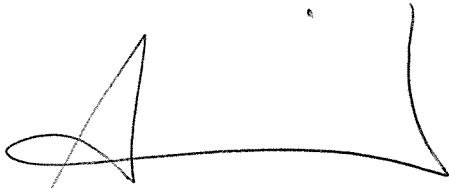
4. To address this issue, on 2 October 2021, you agreed to amend the Order so that affected workers may be vaccinated with the **AstraZeneca, Moderna, or Janssen** vaccines to fulfil their vaccination obligations.
5. The COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021 (the Amendment Order) enables the Director-General of Health to authorise an affected person who has not been vaccinated to carry out certain work if they have received at least one dose of a COVID-19 vaccine. This is particularly important for affected persons who have not received a COVID-19 vaccine recognised in New Zealand (e.g. Sinovac or Sinopharm) after the commencement of the Amendment Order to enable a pathway for them to become “vaccinated” under the Vaccinations Order.
6. The Amendment Order includes minor and technical amendments, including inserting the definition of ‘international layover’, and revoking a clause that requires Persons Conducting a Business or Undertaking to make its records available to an enforcement officer upon request for investigation and enforcement purposes.
7. On Wednesday 13 October 2021 you undertook Ministerial consultation on the draft Amendment Order and received no comments.
8. Officials recommend that you sign the final Amendment Order no later than 2pm on Friday 15 October 2021 (today), so that it can be published in the *Gazette* that afternoon. This will meet the statutory obligation to provide at least 48 hours’ notice between gazetting and the Amendment Order coming into effect.
9. Once signed the Amendment Order will then come into effect at 11:59pm on Sunday 17 October 2021.

Recommendations

We recommend you:

- a) **Note** that on 2 October 2021 you agreed to a range of amendments to the COVID-19 Public Health Response (Vaccinations) Order 2021 [HR20212018 refers]. **Noted**
- b) **Note** that officials advise that the draft COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021 (Amendment Order) 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. **Noted**
- c) **Note** that you must be satisfied that the Amendment 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 in the Amendment Order. **Noted**
- d) **Sign** the attached COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 on Friday 15 October 2021 (today). **Yes/No**

- e) **Note** that if you sign the attached amendment order, it will be gazetted by **Noted**
5pm Friday 15 October 2021 (today) and come into force at 11:59pm Sunday
17 October 2021.



Dr Ashley Bloomfield
Director-General of Health
Te Tumu Whakarae mō te Hauora

Date:

14/10/21

Hon Chris Hipkins
Minister for COVID-19 Response

Date:

PROACTIVELY RELEASED

COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021: Extending the types of recognised vaccines for affected workers – for signature

Background

10. On 1 May 2021, the COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order) came into force. It requires that certain work at the border be undertaken only by workers vaccinated with the Pfizer/BioNTech vaccine, due to the risk that they may be exposed to and transmit COVID-19.
11. On 15 July 2021, the Order was amended to extend the groups required to be vaccinated, and now includes workers:
 - a. at managed isolation and quarantine facilities (MIQFs)
 - b. at airside area of affected airports and some other high-risk areas at airports
 - c. at affected ports
 - d. at accommodation services where specified aircrew members are self-isolating
 - e. who handle items removed from the affected places listed above, and touch affected items while undertaking work for a relevant PCBU that is contracted to provide regular services for MIQFs, an affected aircraft, or an affected ship (for example, cleaning, laundering, or refuse disposal services).
12. Cabinet has also recently agreed to extend the requirement to be vaccinated to include education and healthcare workers.
13. Currently, workers who have been vaccinated overseas with a vaccine other than the Pfizer/BioNTech vaccine do not meet the Vaccination Order requirements. This is increasing pressure on staffing of managed isolation and quarantine facilities and has impacts on an individual's employment.
14. On 2 October 2021, you agreed to amend the Order [HR20212018 refers] to expand the types of recognised vaccines an affected person may have received.

Contents of the Amendment Order

Expanding the types of recognised vaccines for affected workers

15. The amendment proposes a change to the definition of "vaccinated" to extend the types of recognised vaccines to include AstraZeneca, Moderna, and Janssen. The below table outlines the proposed vaccination requirements for affected workers.

Vaccine types and doses	Administration requirements
2 doses of Pfizer/BioNTech	Either: a) both doses received prior to becoming an affected person b) 1 dose received prior to becoming an affected person and the second dose received within 35 days after becoming an affected person
2 doses of AstraZeneca	Both doses received prior to becoming an affected person
2 doses of Moderna	Both doses received prior to becoming an affected person
1 dose of Janssen	Dose received prior to becoming an affected person
1 of AstraZeneca and 1 dose of Pfizer/BioNTech	1 dose of AstraZeneca received prior to becoming an affected person 1 dose of Pfizer/BioNTech received within 35 days after becoming an affected person
1 dose of Moderna and 1 dose of Pfizer/BioNTech	1 dose of Moderna received prior to becoming an affected person 1 dose of Pfizer/BioNTech received within 35 days after becoming an affected person

Director-General of Health's power to authorise

16. To reflect the range of vaccination options emerging overseas and the frequently changing nature of scientific evidence, the amendment proposes a power for the Director-General of Health to authorise a person to perform work in an affected role.
17. Clause 9A of the Amendment Order specifies that on application by a PCBU, the Director-General of Health may authorise an affected person to perform work as an affected person if the person has received one dose of a COVID-19 vaccine and is awaiting their second dose.
18. Before granting the authorisation, the Director-General must be satisfied that the vaccination received by the person adequately prevents and limits the risk of the outbreak or spread of COVID-19, considering the risks associated with the affected person's specific role.

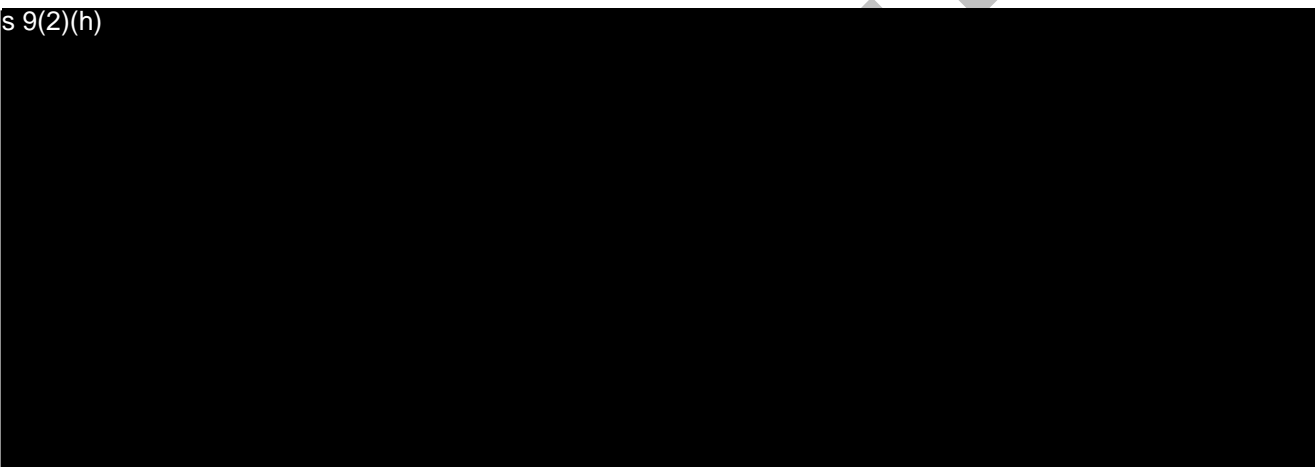
19. The Director-General may impose conditions on the authorisation including a condition on meeting the full vaccination requirement, such as receiving one or more doses of a vaccination approved for use in New Zealand.
20. If an authorisation is granted, the PCBU must provide the affected person with written notice of the authorisation, including any conditions.

Technical amendments

International Layover

21. The draft Amendment Order inserts the definition of 'international layover' to include a stay in accommodation provided by an accommodation service at a place outside New Zealand for a period of six hours or more.
22. This is proposed to reduce ambiguity regarding the coverage of the 'air crew member' definition and aligns with your previous decisions with respect to the air crew members who are to be subject to this Order. If you agree to this change, this amendment will be mirrored in an upcoming amendment to the COVID-19 Public Health Response (Required Testing) Order 2020.

s 9(2)(h)



Process for amending a section 11 Order

25. 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.
26. There is currently an epidemic notice in place, which allows orders to be made under section 11 of the Act.
27. As the Minister for COVID-19 Response, you may make orders under section 11 of the Act.
28. To make or amend an order under section 11 you must:
 - a. have received advice from the Director-General of Health 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.
29. 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 [HR20212018 refers] and is also set out below.

Public health rationale

30. You have previously been provided with advice from myself on the rationale for the increasing the range of vaccines suitable for border workers [HR20212018 refers].
31. COVID-19 Vaccine Technical Advisory Group (CV-TAG) advises that mixing vaccine doses is unlikely to result in adverse effects and could provide an improved immune response. A further dose of Pfizer/BioNTech would ensure workers who have not received a full course of a recognised COVID-19 vaccine have a sufficient level of immunity for high-risk work at the border.

New Zealand Bill of Rights Act 1990

32. We do not consider that the proposed amendments will have any implications under the New Zealand Bill of Rights Act 1990, as they do not change the coverage of workers captured by the Order or otherwise impose additional obligations that impact on individual rights.

Equity

33. If workers who are subject to the Order are not vaccinated, their employers may choose to redeploy them or (following appropriate human resources process) may choose to terminate their employment.
34. Expanding the approved types of vaccines for workers captured by the Vaccination Amendment Order will potentially increase uptake of the vaccination overall, particularly for those workers who are hesitant to receive the Pfizer/BioNTech vaccine but are willing to receive the Janssen vaccine.
35. This impact may lower the risk of infection for these workers and the risk of transmission to communities of people that these workers ordinarily interact with including place, ethnicity, faith, and age-based communities.

Next steps

36. Officials recommend that you sign the final Amendment Order no later than 2pm on Friday 15 October 2021 (today), so that it can be published in the *Gazette* that afternoon. 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.

37. Once signed the Amendment Order will then come into effect at 11:59pm on Sunday 17 October 2021.

ENDS.

PROACTIVELY RELEASED