

Briefing

COVID-19 Public Health Response (Required Testing and Vaccinations) Amendment Order 2021

Date due to MO: 5 November 2021 **Action required by:** 5 November 2021

Security level: IN CONFIDENCE **Health Report number:** 20212386

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)
Jolanda Meijer	Director, COVID-19 Policy Response, 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 See Minister's Notes Withdrawn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 (Required Testing and Vaccinations) Amendment Order 2021

Security level: IN CONFIDENCE **Date:** 5 November 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 (Required Testing and Vaccinations) Amendment Order 2021, which amends the COVID-19 Public Health Response (Vaccinations) Order 2021 and the COVID-19 Public Health Response (Required Testing) Order 2020.

Summary

2. On Thursday 4 November 2021, you agreed to amend the COVID-19 Public Health Response (Vaccinations) Order 2021 (Vaccinations Order) and the COVID-19 Public Health Response (Required Testing) Order 2020 (Required Testing Order) to clarify issues and processes for relevant groups of workers prior to the deadline for mandatory vaccination [HR20212418 refers].
3. You also agreed to narrow the scope for grounds in which clinical exemptions for vaccinations may be granted.
4. Once consultation is complete, you must sign the COVID-19 Public Health Response (Required Testing and Vaccinations) Amendment Order 2021 (Amendment Order) on Friday 5 November 2021, so that it can be published in the *New Zealand Gazette* that day (today). 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.
5. However, the provisions relating to excluding workers at Police jails and Court cells will come into force within 24 hours' notice at 11:59pm on Saturday 6 November 2021. This is required as 'prison staff' captured by the Vaccinations Order are required to have had their first dose by Sunday 7 November 2021. As this amendment to the relevant provision does not impose further restrictions, 48 hours' notice is not required.
6. Once the Amendment Order is signed:
 - a. the provisions regarding workers at Police jails and Court cells in the Vaccinations Order will come into force at 11:59pm on Saturday 6 November 2021
 - b. all other provisions in the Required Testing and Vaccinations Orders will come into force at 11:59pm Sunday 7 November 2021.

Recommendations

We recommend you:

- a) **Note** that the Ministry of Health considers there is a public health rationale for requiring specified roles be performed by vaccinated individuals only, in response to the current COVID-19 pandemic. **Noted**
- b) **Note** that officials advise that the COVID-19 Public Health Response (Required Testing and Vaccinations) Amendment Order 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 these measures engage rights protected by the New Zealand Bill of Rights Act 1990. **Noted**
- d) **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 the Amendment Order. **Yes/No**
- e) **Note** that following your agreement [HR20212418 refers] the Amendment Order been finalised for your approval. **Noted**
- f) **Sign** the attached Amendment Order 2021 by Friday 5 November 2021. **Yes/No**



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

Date:



Hon Chris Hipkins
Minister for COVID-19 Response

Date: 5/11/2021

COVID-19 Public Health Response (Required Testing and Vaccinations) Amendment Order 2021

Background / context

1. On Saturday 1 May 2021, the COVID-19 Public Health Response (Vaccinations) Order 2021 (the Vaccination Order) entered into force and required that certain work be undertaken only by vaccinated workers.
2. On Thursday 15 July and Monday 25 October 2021, the Order was amended to extend the groups required to be vaccinated, and now includes workers:
 - a. at managed isolation and quarantine facilities
 - 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 Person Conducting a Business or Undertaking (PCBU)
 - f. who provide a health and disability service
 - g. who provide an education service
 - h. at prisons.
3. On Monday 18 October 2021, the COVID-19 Public Health Response (Required Testing) Order 2020 (Required Testing Order) was amended to outline testing requirements that apply to the education sector in Alert Level 3 areas, which included early learning staff [HR20212279 refers].
4. On Thursday 4 November 2021, you agreed to amend the Required Testing and Vaccinations Orders to address practical issues that have been identified in the lead up to the dates specified for mandatory vaccinations, as well as necessary changes to the clinical exemption process [HR20212418 refers].

Contents of the Amendment Order

Exemptions from the vaccination requirement

Clinical exemptions scope and process

5. Currently, to be granted an exemption, a suitably qualified health practitioner determines whether it would be inappropriate for that person to be vaccinated.

6. The Amendment Order narrows the criteria for which an exemption can be granted. The criteria will be specified by the Director-General of Health by notice in the *New Zealand Gazette*. Exemptions can only be granted for up to six months.
7. The Amendment Order will make exemptions obtained before Sunday 7 November 2021 void and people will have to re-submit via the new process. This will ensure that only genuine cases receive a clinical exemption.
8. To ensure that individuals who require an exemption have time to comply with the new process, a two-week transitional period is provided for affected prison workers and border workers who handle affected items only. This is because prison staff are required to have their first dose sooner than the other groups, and workers who handle affected items would have had their medical exemptions already. No exemptions are logged into the register and therefore this is unlikely to benefit workers in the handling affected items group in practice. This will allow those individuals to be treated as compliant for two weeks from commencement unless an exemption request for that individual is refused by the Ministry of Health before the expiry of that period.

New Ministerial power to grant exemptions

9. To provide employers more flexibility to manage education staff ahead of the Saturday 1 January 2022 deadline, and to ensure the continuity of learning for children and students, the Amendment Order enables the Minister for COVID-19 Response to grant exemptions to prevent the significant disruption to the operation of:
 - a. learning in registered schools or
 - b. to the essential operations of a hostel.
10. The early learning sector is excluded in this exemption as inclusion would create possible public health risks due to the diverse nature of arrangements that exist in the early learning context. Additionally, unlike compulsory schooling, attendance at early learning is not compulsory.
11. The power to provide such an exemption expires on Saturday 1 January 2022. After this date, only clinical exemptions will be allowed.

New sub-groups included in the vaccination mandate

Family carers

12. Currently, care and support workers who live in the same house as the person they are providing services to (usually family carers), are not required to be vaccinated.
13. The Amendment Order revokes the exemption for care and support workers who live in the same house as the person they provide services to. It includes them in the general definition of care and support workers, to ensure they are captured by the Vaccination Order.

Sub-groups excluded from the vaccinated mandate

Healthcare practitioners who conduct consultations via remote means

14. The Vaccination Order currently includes all health practitioners. This includes health practitioners who conduct consultations with patients solely by remote means, such as online or over the phone.
15. The Amendment Order clarifies the situation for these healthcare workers, so that they are not captured by the Order.

Unlicensed early childhood educators

16. As part of decisions made on Monday 11 October 2021, Cabinet agreed that the definition of 'education services' includes 'all early childhood education services, including homebased education and care services, but excluding playgroups' [CAB-21-MIN-0414 refers].
17. The Amendment Order changes the definition of 'early childhood services' in the Vaccinations and Required Testing Orders to clarify that only licensed early childhood services are captured.

Police jails and Court cells staff

18. To maintain consistency with Cabinet decisions [CAB-21-MIN-0422 refers], the Amendment Order clarifies that workers in Police jails and court cells are out of scope for mandatory vaccination requirements covering workers in prisons (refer B4249 provided to you by the Department of Corrections on Sunday 3 November 2021.)

Statutory and specified visitors to a prison

19. The Amendment Order clarifies that statutory and specified visitors are excluded from the vaccination requirement for prisons, in line with Cabinet decisions [CAB-21-MIN-0422 refers].

Extending vaccination deadlines

20. Police staff who enter schools during school hours or work closely alongside health practitioners providing health services are captured by the Vaccination Order. Given the nature of Police work in communities and their role in emergency response, this covers a considerable number of Police staff.
21. While Police support the Vaccination Order, logistically they need more time to notify affected staff and allow them to meet the vaccination mandate.
22. The Amendment Order extends the time for affected Police staff to get vaccinated.

	Current	Amendment
Dose one	Monday 15 November 2021	Monday 29 November 2021
Dose two	Saturday 1 January 2022	Friday 14 January 2022

Process for amending a section 11 Order

23. 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) or
 - 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.
24. There is currently an epidemic notice in place, which allows orders to be made under section 11 of the Act.
25. As the Minister for COVID-19 Response, you may make orders under section 11 of the Act.
26. To make or amend an order under section 11 of the Act 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 New Zealand Bill of Rights Act.
 - c. consult with the Prime Minister, the Minister of Justice, Minister of Health, and any other Ministers you think necessary
 - d. be satisfied that the order is appropriate to achieve the purposes of the Act.

Consultation

27. The Department of Corrections, the Ministry of Education, and the New Zealand Police were consulted throughout the development of the Amendment Order.
28. Ministerial consultation is yet to occur.

Public health rationale

29. You have previously been provided with advice on the rationale for requiring work in the health and disability sectors, education sector, and at corrections facilities, be undertaken by vaccinated workers only [CAB-21-MIN-0413 and CAB-21-MIN-0422 refer].
30. The attached Amendment Order address practical issues that have been identified in implementing the decision to require mandatory vaccinations, as well as necessary changes to the clinical exemption process.

New Zealand Bill of Rights Act 1990

31. Previous New Zealand Bill of Rights Act 1990 (NZBORA) advice has been given on the policy of the recent amendments to the Vaccination Order [HR20212291 refers]. These new changes ensure the Amendment Order appropriately implements those decisions and no further NZBORA considerations apply.

Equity

32. The relevant equity issues have been previously outlined [CAB-21-SUB-0413 refers].
33. If workers who are subject to the Amendment Order are not vaccinated, their employers may choose to redeploy them or (following appropriate human resource process) may choose to terminate their employment.
34. Given that vaccination is available to all affected groups, we do not consider the equity concerns above override the public health need for specified high-risk roles to only be undertaken by vaccinated people.
35. Requiring vaccination may lower the risk of transmission to communities of people that these workers ordinarily interact with including place, ethnicity, faith, and age-based communities. It is also important to reduce risks to the community through the overwhelming of health capacity.
36. Requiring vaccination 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.

Te Tiriti o Waitangi implications

37. The Government as Kāwanatanga and Ōritetanga has responsibilities to support health and socio-economic outcomes for Māori. While there continues to be a focus on increasing vaccination uptake for Māori, the Amendment Order may undermine the agency of iwi, hapū and whānau to protect their own wellbeing, afforded to them under the principle of tino rangatiratanga.
38. In the past, and particularly throughout the COVID-19 pandemic response, iwi, hapū, and whānau have exercised, and in many cases exceeded, good practice in line with Government guidelines to maintain the wellbeing of their own whānau.
39. The Ministry of Health and other stakeholders (eg the Immunisation Implementation Advisory Sector) will continue to work with Māori (and Pacific) providers to increase the number of kaimahi (staff) able to deliver the COVID-19 vaccination. This will remain a critical enabler for lifting Māori (and Pacific) vaccination rates, encouraging uptake and increasing trust and transparency.
40. It will also be important to ensure clear, constant, and consistent information is provided to Māori in English and Māori through appropriate channels.
41. The Amendment Order supports health system resilience, the minimisation of community outbreaks, and any associated increase in COVID-19 Alert Levels. This is critical to minimising and addressing existing inequities and is consistent with the active protection Te Tiriti principle.

Next steps

42. Officials recommend that you sign the final Amendment Order on Friday 5 November 2021, so that it can be published in the *New Zealand Gazette* that day (today). 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.

43. However, the provisions relating to excluding workers at Police jails and Court cells will come into force within 24 hours' notice at 11:59pm on Saturday 6 November 2021. This is required as 'prison staff' captured by the Vaccinations Order are required to have had their first dose by Sunday 7 November 2021. As this amendment to the relevant provision does not impose further restrictions, 48 hours' notice is not required.
44. Once the Amendment Order is signed:
- a. provisions regarding workers at Police jails and Court cells in the Vaccinations Order will come into force at 11:59pm on Saturday 6 November 2021
 - b. all other provisions in the Required Testing and Vaccinations Orders will come into force at 11:59pm on Sunday 7 November 2021.

ENDS.

The Amendment Order is publicly available at:
www.legislation.govt.nz/regulation/public/2021/0358/latest/LMS591965.html

PROACTIVELY RELEASED