

Briefing

Policy decisions required for a further amendment to the COVID-19

Public Health Response (Vaccinations) Order 2021

Date due to MO: 11 November 2021 **Action required by:** 11 November 2021

Security level: IN CONFIDENCE **Health Report number:** H20212479

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

Copy to: Hon Andrew Little, Minister of Health

Contact for telephone discussion

Name	Position	Telephone
Maree Roberts	Deputy Director-General, System Strategy and Policy	s 9(2)(a)
Alison Cossar	Manager, Public Health Policy, System Strategy and Policy	s 9(2)(a)

Minister's office to complete:

- | | | |
|---|------------------------------------|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Decline | <input type="checkbox"/> Noted |
| <input type="checkbox"/> Needs change | <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn | |

Comment:

Policy decisions required for a further amendment to the COVID-19 Public Health Response (Vaccinations) Order 2021

Security level: IN CONFIDENCE **Date:** 11 November 2021

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

Purpose of report

1. This report provides advice on further amendments to the COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order) to provide an extension of the dates for the vaccination for Fire and Emergency New Zealand personnel. It seeks your agreement to issue drafting instructions for the amendments.
2. This report discloses all relevant information and implications known at this time.

Summary

3. On 25 October 2021 the COVID-19 Public Health (Vaccinations) Amendment Order (No 3) 2021 came into force, extending mandatory vaccination to all healthcare workers undertaking high risk work in the health and disability care sector, as well as all workers in affected education services who may have contact with children or students, and all workers who will enter a prison, either as staff or to provide prison services.
4. Further amendments are now required to address practical issues that have been identified in the lead up to the dates specified for mandatory vaccinations.
5. FENZ have requested the dates are extended by four weeks, i.e. first dose before the close of 13 December 2021 and second dose before the close of 29 January 2022. The Ministry recommends that the dates be aligned with the Police, rather than extend further.
6. Amendments to the Order are needed urgently before the first dose requirement comes into effect for FENZ personnel. This is due to the large number of volunteers. Therefore, the amendments will need to be signed and gazetted on Friday 12 November 2021.
7. If you agree to the Ministry issuing drafting instructions to the Parliamentary Counsel Office (PCO), the Ministry will provide you with a draft Amendment Order for Ministerial consultation by 12 November 2021. The Amendment Order is proposed to come into force on 14 November 2021 after being signed.

Recommendations

We recommend you:

a) **Note** that the amendments to the COVID-19 Public Health Response (Vaccinations) Order 2021 are required to ensure that the mandatory vaccinations are workable. The amendments will include changes from Fire and Emergency New Zealand.

b) **Agree** that an amendment is drafted that extends the dates for the vaccination for Fire and Emergency New Zealand personnel to 29 November for the first dose and 14 January for the second dose, aligned with the Police [**recommended**]

Yes/No

OR

Agree that an amendment is drafted that extends the dates for the vaccination for Fire and Emergency New Zealand personnel to 13 December for the first dose and 29 January for the second dose.

Yes/No

c) **Agree** the Ministry will issue drafting instructions to Parliamentary Counsel Office to draft the Order.

Yes/No

d) **Note** that under section 9(1)(c) of the COVID-19 Act you are required to consult with the Prime Minister, Minister of Justice and Minister of Health before making or amending a COVID-19 Order.



Maree Roberts
Deputy Director-General
System Strategy and Policy
Date:



Hon Chris Hipkins
Minister for Covid-19 Response
Date: 11/11/2021

Policy decisions required for further amendments to the COVID-19 Public Health Response (Vaccinations) Order 2021

Background

12. The COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order) came into force on 1 May 2021. It makes it mandatory for work at certain places to be carried out by affected persons who are vaccinated. This is due to the high risk of exposure to, and transmission of COVID-19 by these workers. In the originating Order this applied to specified work performed at the Border.
13. On 14 July 2021 the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021 came into force, extending the scope of the Order to cover additional work performed at the Border, and to create a public health exception for certain workers at the Border who have no interaction with travellers or crew.
14. On 17 October 2021 the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021 came into force, to make allowance for affected persons to be vaccinated with COVID-19 vaccines other than the Pfizer/BioNTech vaccine.
15. On 25 October 2021 the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 came into force, extending mandatory vaccination to all healthcare workers undertaking specific work in the health and disability care sector, all workers in affected education services who may have contact with children or students, and all workers who will enter a prison, either as staff or to provide prison services.
16. On 7 November 2021 the COVID-19 Public Health Response (Required Testing and Vaccinations) Amendment Order 2021 came into force, to address practical issues that had been identified in the lead up to the dates specified for mandatory vaccinations.
17. A further amendment is now required to address practical issues that have been identified in the lead up to the dates specified for mandatory vaccinations for Fire and Emergency New Zealand (FENZ) personnel.

Comment

Extension of dates for mandatory vaccination for Fire and Emergency New Zealand personnel

18. FENZ has requested an extension to the dates for their first and second mandatory vaccinations. This is due to the large number of volunteers (estimated to be in the thousands) with regard to this sector and the need to ensure they all understand the requirements and to undertake mitigations.
19. This extension is fairly straightforward, as FENZ personnel have a statutory definition in section 6 of the Fire and Emergency New Zealand Act 2017.
20. FENZ have requested the dates are extended by four weeks, i.e. first dose before the close of 13 December 2021 and second dose before the close of 29 January 2022. This is two weeks longer than all other groups, including the Police who have deadline dates of 29 November and 14 January.

21. The Ministry recommends that the dates be aligned with the Police, rather than extend further.

Human Rights

22. Previous Bill of Rights Act advice has been given on the policy of the recent amendments to the COVID-19 Public Health Response (Vaccinations) Order 2021. These new changes ensure the Order appropriately implements those decisions and no further BORA considerations apply.
23. The Ministry is seeking legal advice from Crown Law in relation to the proposed change. Any advice received will be provided prior to the final order being provided.

Equity

24. The relevant equity issues have been outlined in CAB-21-SUB-0413.
25. There is a risk to the continuity of fire and emergency services if large portions of the workforce are unavailable to provide this service. The safety and wellbeing of the community could be at risk and allowing more time for FENZ to liaise with their volunteers in particular is important.
26. 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.
27. Given that the vaccination is available to all 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.
28. 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.
29. 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

30. 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.
31. In the past, and particularly throughout the COVID-19 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.
32. The Ministry and other stakeholders (eg 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.

33. It will also be important to ensure clear, constant and consistent information is provided to Māori in English and Māori through appropriate channels.

Next steps

34. Officials recommend you sign this report by 10 am Friday 12 November 2021 to ensure that drafting of the amendments can be undertaken by Parliamentary Counsel Office.
35. The final Order will be provided to you on Friday 12 November for signature, so that it can be published in the *New Zealand Gazette* on that date. This will allow officials to meet the statutory obligation to provide at least 48 hours' notice between gazetting and the Amendment Order coming into effect.

ENDS.

PROACTIVELY RELEASED