

Briefing

COVID-19 Public Health Response (COVID-19 Vaccinations Certificate) Order 2021 – for signature

Date due to MO: 26 November 2021 **Action required by:** 26 November 2021

Security level: IN CONFIDENCE **Health Report number:** 20212541

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)
Steve Waldegrave	Group Manager, COVID-19 Policy Response	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 Withdrawn | |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:

COVID-19 Public Health Response (COVID-19 Vaccination Certificate) Order 2021 – for signature

Security level: IN CONFIDENCE **Date:** 26 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 (COVID-19 Vaccinations Certificate) Order 2021.

Summary

2. In October 2021, Cabinet agreed to a range of measures in relation to vaccine mandates and the COVID-19 Vaccination Certificate (CVC). The attached Order gives effect to those decisions and sets out the:
 - a. eligibility criteria for a CVC
 - b. eligibility criteria and process for applying for a vaccination exemption
 - c. process for applying for a CVC
 - d. how a CVC must be issued.
3. The proposed Order is in line with the purposes of the COVID-19 Public Health Response Act 2020.
4. You have consulted with the Prime Minister, the Minister of Justice, Minister of Health, and a final Order has been prepared for your signature.
5. Once signed, the Order will come into effect at 11:59pm on Sunday 28 November 2021.

Recommendations

We recommend you:

- a) **Note** that on 11 and 18 October 2021, Cabinet agreed to a range of provisions to enable eligible persons to obtain and use COVID-19 vaccination certificates [CAB-21-MIN-0413 and CAB-21-MIN-0422 refer]. **Noted**
- b) **Note** that the attached COVID-19 Public Health Response (COVID-19 Vaccination Certificate) Order 2021 gives effect to those decisions. **Noted**

- c) **Note** that officials advise that the attached draft 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**
- d) **Sign** the attached COVID-19 Public Health Response (COVID-19 Vaccination Certificate) Order 2021 on Friday 26 November 2021. **Yes/No**



Dr Ashley Bloomfield
Te Tumu Whakarae mō te Hauora
Director-General of Health
Date: 26 November 2021



Hon Chris Hipkins
Minister for COVID-19 Response
Date: 26/11/2021

PROACTIVELY RELEASED

COVID-19 Public Health Response (COVID-19 Vaccination Certificate) Order 2021 – for signature

Background

6. In October 2021, Cabinet agreed settings for obtaining and using COVID-19 Vaccination Certificates (CVCs) as part of a revised COVID-19 Protection Framework [CAB-21-MIN-0413 and CAB-21-MIN-0422 refer].
7. The attached COVID-19 Public Health Response (COVID-19 Vaccination Certificate) Order 2021 (the Order) gives effect to those decisions.

Contents of the Order

Eligibility to apply for a CVC

8. The Order sets out the eligibility criteria for a CVC. A person is eligible for a CVC if they:
 - a. have been vaccinated, or
 - b. have a COVID-19 vaccination exemption.

The Director-General of Health may grant a COVID-19 vaccination exemption

9. The Director-General of Health (Director-General) may grant a COVID-19 vaccination exemption for a period of up to six months to a person to who satisfies the vaccination exemption criteria. The exemption criteria will be published in the *Gazette*.
10. The application process for a COVID-19 vaccination exemption will be the same as that for certain affected workers applying for an exemption under the COVID-19 Public Health Response (Vaccinations) Order 2021.
11. An application must be made on behalf of the person by a medical practitioner or nurse practitioner who must certify that they have reasonable grounds for believing that the person meets the specified exemption criteria.

How to apply for a CVC

12. The Order sets out the application process for eligible persons to apply to the Director-General for a CVC. This process includes a description of the required information that must be provided, such as the person's full name and address, National Health Identification number, and type of vaccine they have received.

Issuing a CVC

13. The Director-General must issue a CVC to any eligible person who makes an application.
14. The CVC may be issued in any form that the Director-General decides, may contain any information other than personal information, and may contain any code or any symbol that the Director-General decides.

Misuse of CVCs

15. The COVID-19 Response (Vaccinations) Legislation Act makes it an offence to hold, store, use or disclose personal information from CVCs through the verification process, except for law enforcement provisions.
16. A person must not
 - a. produce or pass off:
 - i. a CVC as their own when it has been issued to someone else
 - ii. a CVC that is forged, altered, or obtained fraudulently.
 - b. facilitate the use of a fraudulent CVC.

Director-General of Health power to gazette list of acceptable vaccines

17. The list of acceptable vaccines that an individual must have to be considered 'vaccinated' will be gazetted via a notice made by the Director-General,
18. This will be the same vaccines as listed in the COVID-19 Public Health Response (Vaccinations) Order 2021.

Process for making a section 11 Order

19. 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.
20. There is currently an epidemic notice in place, which allows orders to be made under section 11 of the Act.
21. As Minister for COVID-19 Response, you may make orders under section 11 of the Act.
22. 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 the New Zealand Bill of Rights Act (1990)
 - 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.
23. 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

24. The public health benefit of using CVCs in high-risk events and venues depends on the level of vaccination coverage, if an outbreak is occurring, and the number of COVID-19 cases. CVCs could mitigate the risk of COVID-19 outbreaks in some settings and protect vulnerable populations by reducing the risk of COVID-19 transmission.
25. Secondary benefits could be to incentivise vaccination and provide reassurance to event organisers that their event is unlikely to be cancelled if COVID-19 Protection Framework settings change. It is unclear to what extent the use of CVCs will drive higher vaccination rates as this depends on the scope of the requirement and social license of the need for vaccination.

New Zealand Bill of Rights Act 1990

26. You have been previously advised of New Zealand Bill of Rights Act 1990 implications in relation to CVCs and vaccine requirements for entry to certain places. Such requirements impose a restriction on freedom of movement and potentially freedom of religion for individuals who consider their religious beliefs prevent them from being vaccinated.
27. However, health advice previously provided to Cabinet shows that CVCs can be a justified limit on that right to limit the potentially very serious health impacts of COVID-19 in the community due to the increased risk presented by unvaccinated people. The limit is no more than necessary given that those without a CVC will still be able to access life-preserving services like supermarkets. The potential for discrimination against those who medically cannot be vaccinated is alleviated by ensuring that those who are vaccinated, and those who medically cannot be, can obtain the same kind of CVC.

Equity

28. It is preferable that all eligible people in New Zealand would have sufficient opportunity to be vaccinated before a CVC requirement is introduced, to avoid inequitable prevention of access to events to those who have not had the opportunity to be vaccinated due to the staged eligibility of the roll out. Given the progress of the vaccination programme to date, there has been a sufficiently reasonable time from when the eligibility of vaccines was broadened to when the measures proposed in this paper would be implemented [CAB-21-MIN-0421 refers].
29. While there has been a considerable lift in vaccinations for Māori, there is significant concern over the remaining number of vaccinations needed in the 12-40 year old age groups to achieve equity. The recently established \$120 million fund to accelerate Māori vaccination rates and support communities to prepare for the implementation of the new COVID-19 Protection Framework will seek to address this.

Next steps

30. Officials recommend that you sign the Order on Friday 26 November 2021, so that it can be published in the *New Zealand Gazette* that day. This will allow officials to meet the statutory obligation to provide at least 48 hours' notice between gazetting and the Order coming into effect at 11:59pm on Sunday 28 November 2021.

ENDS.

COVID-19 Public Health Response (COVID-19 Vaccination Certificate) Order 2021

This order is made by the Minister for COVID-19 Response under section 11 of the COVID-19 Public Health Response Act 2020 in accordance with section 9 of that Act.

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Order

1 Title

This order is the COVID-19 Public Health Response (COVID-19 Vaccination Certificate) Order 2021.

2 Commencement

This order comes into force at 11.59 pm on 28 November 2021.

3 Purpose

The purpose of this order is to prevent, and limit the risk of, the outbreak or spread of COVID-19 by enabling eligible persons to be issued with a COVID-19 vaccination certificate that they may produce when proof of vaccination status is required (for example, to be able to enter certain areas, places, or premises, or to receive certain services).

4 Interpretation

In this order, unless the context otherwise requires,—

Act means the COVID-19 Public Health Response Act 2020

AES means an automated electronic system

COVID-19 vaccination record, in relation to a person, means the record held by the Ministry of Health of COVID-19 vaccines received by the person

CVC means a COVID-19 vaccination certificate issued under clause 8 or 9

eligible person means a person who is eligible to apply for a COVID-19 vaccination certificate

exempt person has the same meaning as in section 5(1) of the Act

identifying information, in relation to a person, means information that confirms the person's identity

medical practitioner means a health practitioner who—

- (a) is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine; and
- (b) holds a current practising certificate

nurse practitioner means a health practitioner who—

- (a) is, or is deemed to be, registered with the Nursing Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of nursing and whose scope of practice permits the performance of nurse practitioner functions; and
- (b) holds a current practising certificate

specified COVID-19 vaccination exemption criteria has the same meaning as in section 5(1) of the Act

vaccinated has the same meaning as in section 5(1) of the Act.

5 Who is eligible to apply for CVC

A person is eligible to apply for a CVC if the person—

- (a) has been vaccinated; or
- (b) is an exempt person.

6 Director-General may grant COVID-19 vaccination exemption

- (1) A suitably qualified medical practitioner or nurse practitioner (an **applicant**) may apply to the Director-General for a COVID-19 vaccination exemption on behalf of a person specified in the application who is not vaccinated against COVID-19.

- (2) An application must be made in the form required by the Director-General and may be made only on the ground that the person on whose behalf the application is made (the **person**) meets the specified COVID-19 vaccination exemption criteria.
- (3) The person must—
 - (a) certify that the information that they have provided to the applicant for the purposes of making the application is accurate; and
 - (b) sign the application.
- (4) An application must be accompanied by a certificate signed by the applicant certifying that they—
 - (a) have reviewed the person’s medical history and assessed the person’s state of health; and
 - (b) have reasonable grounds for believing that the person meets the specified COVID-19 vaccination exemption criteria.
- (5) The applicant must state their grounds for believing that the person meets the specified COVID-19 vaccination exemption criteria.
- (6) On receiving an application, the Director-General may ask the applicant or person to provide any evidence or further information that the Director-General reasonably requires for the purposes of deciding whether to grant the application.
- (7) The Director-General may grant the application if the Director-General is satisfied, on the basis of the evidence or other information provided, that the person meets the specified COVID-19 vaccination exemption criteria.
- (8) A COVID-19 vaccination exemption is valid for the period that the Director-General determines, which must be no longer than 6 months.
- (9) The Director-General must notify the applicant and the person of the outcome of the application.
- (10) If the application is granted, the Director-General must—
 - (a) enter the COVID-19 vaccination exemption in the COVID-19 vaccination record of the person; and
 - (b) provide a copy of the COVID-19 vaccination exemption in written or electronic form to the applicant and person that states the date on which the exemption expires.
- (11) At any time before or after a COVID-19 vaccination exemption expires, a new application for a further exemption may be made under this clause by any medical practitioner or nurse practitioner on behalf of the person in respect of whom an exemption was granted.

7 How to apply for CVC

- (1) An eligible person may apply for a CVC—

- (a) using an AES; or
 - (b) to the Director-General by any means that the Director-General specifies.
- (2) An application must contain the following information:
 - (a) the person's name and address; and
 - (b) the person's date of birth; and
 - (c) the person's contact details (for example, the person's email address); and
 - (d) whether the person is an exempt person.
- (3) An application must be supported by any identifying information that may be specified.
- (4) If the person has been vaccinated in New Zealand, the person may be required to advise the date or dates on which they received their first and, if applicable, second dose of a COVID-19 vaccine.
- (5) If the person has been vaccinated overseas, the person may be required to advise in the specified form—
 - (a) the name or names of the COVID-19 vaccine or vaccines they have received; and
 - (b) the date or dates on which they received a dose of that vaccine or those vaccines; and
 - (c) the country in which each of the doses was received.
- (6) For the purposes of subclauses (3) and (5), **specified** means specified by the AES or the Director-General (as the case may be).

8 Issue of CVC using AES

- (1) This clause applies if an application for a CVC is made using an AES.
- (2) The AES must grant an application and issue the applicant with a CVC if—
 - (a) the applicant is an eligible person; and
 - (b) the information provided by the applicant is complete and correct.
- (3) If an error is made in the issue of a CVC by an AES, the Director-General may amend or cancel the CVC.

9 Issue of CVC by Director-General

- (1) This clause applies if an application for a CVC is made to the Director-General.
- (2) On receiving the application, the Director-General may ask the applicant to provide any evidence or further information that the Director-General reasonably requires for the purpose of determining whether to grant the application.

- (3) The Director-General must grant an application and issue the applicant with a CVC if the Director-General is satisfied that—
- (a) the applicant is an eligible person; and
 - (b) the application contains all of the required information; and
 - (c) the information provided by the applicant is correct.
- (4) A CVC may be issued to a person under an assumed name if, having regard to the person's circumstances, the Director-General thinks it is appropriate to do so.

10 Form and content of CVC

- (1) A CVC may be issued in any form that the Director-General decides and contain any code (for example, a QR code) or any symbol that the Director-General decides.
- (2) A CVC must show the following information:
- (a) the person's name and date of birth, but no other personal information; and
 - (b) its date of issue; and
 - (c) its expiry date.

11 Misuse of CVCs

A person must not—

- (a) produce or pass off a CVC—
 - (i) as relating to the person when in fact the CVC relates to some other person; or
 - (ii) that is forged or altered, or that has been obtained fraudulently; or
- (b) facilitate the use of a CVC relating to the person by another person.

Dated at *Wellington* this *26th* day of *Nov* 2021.



Minister for COVID-19 Response.

Explanatory note

This note is not part of the order; but is intended to indicate its general effect.

This order, which comes into force at 11.59 pm on 28 November 2021, provides for the issue of COVID-19 vaccination certificates (CVCs).

**COVID-19 Public Health Response (COVID-19
Vaccination Certificate) Order 2021**

Explanatory note

A CVC may be issued to a person who is vaccinated against COVID-19, or to a person who has been granted a COVID-19 vaccination exemption under this order or any other order (for example, under clause 9B of the COVID-19 Public Health Response (Vaccinations) Order 2021). A CVC may be used by a person as evidence when proof of vaccination status is required, for example, to enter certain areas, places, or premises, or to receive certain services. The form and content of a CVC are decided by the Director-General of Health (the **Director-General**).

Clause 5 sets out who is eligible to apply for a CVC.

Clause 6 provides for the Director-General to grant a COVID-19 vaccination exemption for a period of no more than 6 months to a person who satisfies the COVID-19 vaccination exemption criteria specified by the Director-General in a notice published in the *Gazette*. The process for the application and issue of a COVID-19 vaccination exemption is the same as that for certain affected workers under the COVID-19 Public Health Response (Vaccinations) Order 2021. An application must be made on behalf of the person by a medical practitioner or nurse practitioner, who must certify that they have reasonable grounds for believing that the person meets the COVID-19 specified vaccination exemption criteria.

Clause 7 sets out how to apply for a CVC.

Clause 8 provides for the issue of a CVC using an automated electronic system.

Clause 9 provides for the issue of a CVC by the Director-General.

Clause 10 provides for the form and content of a CVC.

Clause 11 provides that a person must not—

- use another person's CVC;
- use a CVC that is forged or altered, or that has been fraudulently obtained;
- facilitate the use of their CVC by another person.

An individual who intentionally does any of those things commits an offence for the purposes of section 26(1) of the COVID-19 Public Health Response Act 2020 (the **Act**), and on conviction is liable to imprisonment for a term not exceeding 6 months or a fine not exceeding \$12,000 (a person who is not an individual is liable on conviction to a fine not exceeding \$15,000).

This order must be approved by a resolution of the House of Representatives before the expiry of the period described in section 16(2) of the Act. If this does not happen, the order is revoked on the expiry of that period.

Issued under the authority of the Legislation Act 2019.
Date of notification in *Gazette*:
This order is administered by the Ministry of Health.