

# Briefing

## Maximising uptake of COVID-19 vaccines in Tier 1

**Date due to MO:** 10 February 2021      **Action required by:** 12 February 2021

**Security level:** IN CONFIDENCE      **Health Report number:** HR 20210182

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

### Contact for telephone discussion

Name	Position	Telephone
<b>Maree Roberts</b>	Deputy Director-General, System Strategy and Policy	§ 9(2)(a)
<b>Dr Ashley Bloomfield</b>	Director-General of Health	§ 9(2)(a)

### Minister's office to complete:

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 See Minister's Notes       Withdrawn

Comment:

# Maximising uptake of COVID-19 vaccines in Tier 1

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**Security level:** IN CONFIDENCE      **Date:** 10 February 2020

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

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## Purpose of report

1. This report sets out advice on how to maximise uptake of COVID-19 vaccines by people included in Tier 1 under the COVID-19 Immunisation Sequencing Framework (Sequencing Framework) for who should receive COVID-19 vaccines first when supplies are limited. Tier 1 of the Sequencing Framework includes border and Managed Isolation and Quarantine (MIQ) workforces, and their household contacts (see Appendix One for further information).

## Summary

2. High uptake of the COVID-19 vaccines, particularly within the border and MIQ workforce is vital. Providing these workers and their household contacts with access to a COVID-19 vaccine as early as possible is another way we can help keep them safe while they continue their important work to keep New Zealand safe.
3. Given the risk that the border and MIQ workforce faces, we consider it likely that many will be motivated to receive COVID-19 vaccines. This will be consistent with the expectation that, in order to work in this high-risk workforce, these workers should be vaccinated.
4. Our strategic and multi-faceted approach will help to maximise vaccine uptake by border and MIQ workforces. This approach focuses on stakeholder engagement, communications and service design to reduce barriers to immunisation and get as many people vaccinated as possible, including options to address potential financial barriers to vaccine uptake.

s 9(2)(h)



6. This supports employers to undertake risk assessments about who may carry out higher-risk duties on the reasonable public health position that vaccination will reduce the risk of transmission and protect employees, in combination with other measures.

7. Statutory intervention is an additional lever to mandate vaccination but is not currently recommended for a variety of reasons. Mandating vaccination may also raise issues with the wider COVID-19 immunisation programme and have equity and Te Tiriti implications.

## Recommendations

We recommend you:

- a) **Agree** to the strategic and multi-faceted approach to maximise uptake of COVID-19 vaccines by border and MIQ workforces focused on: **Yes/No**
- stakeholder engagement and communication
  - service design and work to address barriers to uptake
  - reasonable application of levers under employment legislation
- b) **Note** border agencies are working constructively together and with employers to encourage uptake of the vaccine without cost (option one, Appendix 2) and set clear expectations of their workforces to be vaccinated
- c) **Note** the Border Executive Board is expected to confirm, in the next week, whether further leave support is needed to maximise vaccine uptake in their employed and contracted workforces in Tier 1
- d) **Indicate** which of the other options outlined in Appendix Two you want officials to progress further work on: **Yes/No**
- Option 2: Where Government is the employer or contractor of services, allow workers to access vaccination without cost/disadvantage **Yes/No**
- Option 3: Compensate employers for giving workers paid time off to access vaccination **Yes/No**
- Option 4: Compensate workers for taking unpaid time off to access vaccination **Yes/No**
- Option 5: Create a legislative entitlement to paid time off to receive COVID-19 vaccinations **Yes/No**
- Option 6: Create a legislative entitlement to paid time off in case of adverse reactions to COVID-19 vaccination **Yes/No**
- e) **Note** additional levers can be considered in the future if needed if the vaccine uptake in the border and MIQ workforces is not having the desired results
- f) **Agree** to discuss the proposed approach to maximising uptake of COVID-19 vaccines in Tier 1 with your Ministerial colleagues **Yes/No**
- g) **Note** that we will monitor and regularly report-back to you on uptake of COVID-19 vaccines by Tier 1, how well the adopted approach is working and whether any changes are needed.



Dr Ashley Bloomfield

**Director-General of Health**

Date: 10/02/2021

Hon Chris Hipkins

**Minister for COVID-19 Response**

Date:

# Advice on maximising uptake of COVID-19 vaccines in Tier 1

## Context

1. The rollout of COVID-19 vaccines in New Zealand is progressing quickly and more transmissible variants of the virus are circulating internationally. We are monitoring other countries' approaches to increasing COVID-19 vaccine uptake to apply lessons in the New Zealand context.
2. Aotearoa/New Zealand has an Elimination Strategy for COVID-19. This represents our current approach to preventing and minimising harm associated with COVID-19. It aims to eliminate transmission chains in Aotearoa/New Zealand and prevent the emergence of new transmission chains from cases that arrive from outside the country. The Elimination Strategy draws on an array of public health measures and has a strong focus on the border, where the risk of infection and transmission is greatest.

## COVID-19 vaccines will support our Elimination Strategy

3. COVID-19 vaccines are an important part of the Elimination strategy. They will protect an individual from more serious illness if they contract COVID-19, and may prevent people from becoming infected, and/or reduce COVID-19 transmission.
4. High vaccine uptake, in combination with other public health measures, will support the Elimination Strategy and ongoing economic, social and cultural recovery.

## COVID-19 vaccine supply will be constrained initially so rollout will be sequenced so that the right people get the right vaccine at the right time

5. The COVID-19 Immunisation Strategy aims to make the best use of any available vaccines. COVID-19 vaccine supply will be constrained initially so rollout needs to be sequenced so that the right people get the right vaccine at the right time. This means that while supplies are limited, those at greatest risk of infection will receive the vaccine first. Cabinet agreed in principle to a Sequencing Framework which identified who should receive COVID-19 vaccines first under three different transmission scenarios [CAB-21-MIN-0011].
6. While we do not yet know the extent to which the vaccines prevent COVID-19 transmission, vaccination is expected to reduce transmission through reducing the severity of disease and therefore the risk of onward transmission. Therefore, COVID-19 vaccination will support other public health measures to reduce the risk of these workforces contracting and spreading the virus. The use of Personal Protective Equipment (PPE), social distancing, and mandatory COVID-19 testing for border staff will still be needed to ensure that people continue to be safe.

7.

s 6(b)(i)

## **We have worked hard to protect our border and MIQ workforce**

8. Having a safe and effective border is a key pillar of the Elimination Strategy. As such, the Government has taken steps to ensure border and MIQ workers are as safe and supported as possible while they carry out this important work, while also taking measures to ensure they do not inadvertently spread COVID-19 to the wider community. These measures include infection prevention controls, provision of PPE, high cleaning standards, limiting contact with people in MIQ facilities, compulsory and voluntary border testing.
9. In the current low/no community transmission scenario, the goal of the COVID-19 Immunisation Strategy is to prevent transmission of the virus first. This means protecting border and MIQ workers, and their household contacts first. This is because in a low/no community transmission scenario, the border is the primary source of COVID-19 infection in New Zealand. Nearly all COVID-19 cases in New Zealand have been linked back to people returning from overseas.
10. Providing our border and MIQ workforce with access to a COVID-19 vaccine as early as possible is another way the Government is working to keep them safe while they continue their important work to keep New Zealand safe.

## **It is vital we have high vaccine uptake, particularly within the border and MIQ workforce**

11. There are discussions underway with border and MIQ agencies, employers and relevant unions on the best way to maximise uptake within their workforces. This includes exploration of specific workforce concerns or barriers to vaccination, and options to set clear expectations that their workforce, current and future, will be vaccinated.
12. Given the risk that the border and MIQ workforce face, we consider it likely that many will be motivated to receive COVID-19 vaccines. However, it is important to recognise that the COVID-19 vaccines are new and some of the border and MIQ workforce may be anxious about receiving them. Therefore, the approach we take to maximise uptake of COVID-19 vaccines by the border and MIQ workforce must respond appropriately to educate and inform people by providing access to high quality information through a range of communication channels.
13. The Ministry of Health is also drawing on experience from past influenza and measles immunisation campaigns, evidence reviews and international experience of COVID-19.

14. Appropriate supports are also needed for those who are unable to take a vaccine. For example, some vaccine candidates have not yet completed trials in certain population groups (eg, children, people who are pregnant or lactating). Certain co-morbidities may also preclude vaccination, at least initially. There will therefore be some people, including in Tier 1, who cannot be vaccinated in the early stages of immunisation roll-out due to their unique circumstances. Having appropriate supports in place is also part of meeting the Crown's obligations under Te Tiriti o Waitangi and will help address barriers to access and ensure equity in uptake and access to vaccines.

## **Our approach is a strategic and multi-faceted one to increase vaccine uptake**

15. As the barriers to vaccination uptake are multifaceted and the border and MIQ workforce is diverse, we are working on a number of areas to maximise uptake of COVID-19 vaccines.
16. In particular, the Ministry of Health continues to design the COVID-19 Immunisation Strategy and Programme to proactively support the border and MIQ workforce to be vaccinated through:
  - a. stakeholder engagement
  - b. communications
  - c. service design.
17. More detail about our approach is outlined below. We consider this approach can address the key barriers to immunisation and strongly encourage people to get vaccinated. It is likely to influence the approximately 20 percent of people who, according to recent surveying, are hesitant to take a COVID-19 vaccine. These approaches are however unlikely to impact the approximately 10 percent of people that state they would refuse any vaccination. This is common to all vaccination programmes.

## **Stakeholder engagement with the border and MIQ workforce to date provides a strong foundation**

18. We have been working with border and MIQ agencies and employers on the delivery of COVID-19 immunisation to their workforces, including the service design and getting more information on the make-up of their workforces. This has provided a strong foundation from which to support and encourage their workforces to be vaccinated. Agencies and employers will be a key partner in the delivery, and we will continue to work with them to identify strategies to maximise uptake.
19. This is alongside other stakeholder engagement underway as part of the COVID-19 Immunisation Programme, for example to co-design targeted communications approaches with Māori.
20. There will also be some opportunities for individuals to interact and discuss any questions they have about immunisation directly with local experts, such as health practitioners.

## **Communications will seek to encourage uptake among Tier 1 recipients**

21. As part of a broader public information campaign, we are working with a range of providers to design targeted approaches that will meet the information needs of New Zealand's diverse population, including border and MIQ workers.
22. We are engaging with border and MIQ operators, employers and unions to ensure that they have direct access to reliable information and support to address any key questions and concerns that might present barriers to the vaccination of border and MIQ workers and their household contacts.
23. We sent out key messages to workers in recent weeks on our approach to vaccination and why they should be vaccinated. We are continuing to build on this and expect to use a range of communications channels (including online, face-to-face and print collateral) to ensure the target workforces have access to high quality information that encourages uptake of the vaccine.
24. These targeted communications have a strong focus on encouraging the workforce to help protect themselves, their whānau and their community by getting vaccinated. This includes emphasising the safety and potential effectiveness of the Pfizer vaccine. We also need to be agile and will use ongoing research and sentiment monitoring to inform key messaging.
25. We know that the border and MIQ workforces do not all have the same communication needs. Therefore, in addition to the initial key messages, there will be targeted communications and education for some workers. For example, communications and education collateral will be produced in other languages (eg, Te Reo Māori and Pacific languages), and to address specific concerns about vaccination (eg, Māori have higher rates of vaccine hesitancy).
26. Border agencies are also planning to align their engagement with our phased approach to further educate and support uptake.

## **Our service design will make vaccination easy and accessible**

27. To provide this immunisation service, district health boards (DHBs) will contract providers in their region.
28. While communications can support people to be willing to be vaccinated, our service design is intended to make it easy for them to take it up. For Tier 1, this means offering on-site vaccination at workplaces where possible, and partnering with employers to contact staff and schedule appointments in advance. Additionally, we are engaging with employers to encourage them to pay employees throughout the vaccination appointment, including the waiting period after. There will also be a strong emphasis on following up people to receive their second dose.
29. We are urgently working with employers and DHBs, and through privacy issues, to be able to capture information of household contacts for border workers and are exploring how employees can be encouraged to provide information about their household contacts. This would enable us to proactively invite household contacts to immunisation appointments.

## **The Ministry of Health and Border Agencies will continue to monitor uptake, emerging evidence on vaccines and the transmission context and will advise if a shift in approach is recommended**

30. The Ministry of Health and Border Agencies will be monitoring daily COVID-19 vaccine uptake in border and MIQ workforces to enable us to see if our approach is working and whether additional levers should be considered.
31. Part of the role of the COVID-19 vaccine Technical Advisory Group is to continuously monitor emerging evidence about the vaccines, including emerging evidence on their effectiveness at preventing or reducing transmission of COVID-19. This evidence will be central to any decisions to change our approach to maximising vaccine uptake among border and MIQ workforces.
32. We will ensure you receive regular reports on COVID-19 vaccination uptake and will provide you with regular opportunities to make decisions about what (combination of) levers would best support the outcomes the COVID-19 Immunisation Programme.

## **We have learnt from the staged approach to testing of the border and MIQ workforce**

33. The staged approach to testing of the border and MIQ workforce suggests that good communications about how safe the vaccine is and how the vaccine will protect people and their whanau and their communities will likely be the most successful approach.
34. Before routine mandatory COVID-19 testing of border and MIQ workforces, some areas had high compliance and there was a general understanding of the need for testing to ensure health and safety. Following the introduction of the COVID-19 Public Health Response (Required Testing) Order 2020 (the Order), the vast majority of workforce who needed to be tested were being tested.
35. The Order required workers to get tested or get an exemption from a qualified health practitioner (in the course of carrying out work at a testing centre). A small amount of this workforce, according to a Ministry of Health survey, have since been redeployed to other duties if they cannot meet the testing requirements, however these opportunities are limited in some settings (eg, MIQ).

## **We can build a vaccination roll-out which is consistent with the Order but there are key differences**

36. We can align with the existing framework for the Order. We have already defined this workforce and can use the same definition for COVID-19 vaccination. A key difference is that vaccination, unlike testing, is a medical treatment, which everyone has a general right to refuse under Section 11 of the Bill of Rights Act 1990.



38. [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

**Indicative options to address potential financial barriers to vaccination uptake**

40. The more accessible vaccinations are the higher uptake will be. There may be a case for removing potential barriers or providing additional support to encourage the greatest possible vaccine uptake, given the importance of achieving our immunisation targets across the entire population. [Redacted]  
[Redacted]  
[Redacted]
41. The goal of the vaccination programme is to have uptake as high as possible in each tier of the roll-out. In addition to Tier 1a being the first line of defence at the border, the success of the overall vaccination campaign will be influenced by the progress of the Tier 1a (and 1b) rollout, so uptake should be maximised in these groups as far as possible. There may be value in signalling that the Government is committed to removing any potential barrier to vaccination.
42. Potential barriers to access could include opportunity cost-related barriers for workers and their household contacts, as well as work-related barriers.

**Opportunity cost-related barriers to vaccination uptake**

43. Opportunity-cost related barriers to vaccination uptake could include workers and their household contacts having to travel to be vaccinated and the cost of their time.
44. Providing an incentive such as a petrol voucher to cover the cost of travel, or a small token (eg, a sticker or a pen) to show people have been vaccinated, could provide further encouragement for people to be vaccinated.
45. [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

**Work-related barriers to vaccination uptake**

46. Generally, the more accessible vaccination is, the less likely work-related issues are to impede uptake. The COVID-19 Immunisation Programme and DHBs are working to provide workplace vaccination for Tier 1 wherever possible.

47. Work-related barriers to vaccination uptake could include workers not having paid leave to receive vaccination or having sick leave if they experience adverse reactions that require time off work.

*There are options to remove additional work-related barriers to vaccination from encouraging employers to be supportive of vaccination through to the introduction of leave schemes*

48. The table in Appendix Two was prepared by the Ministries of Business, Innovation and Employment; Social Development; and Health, and the Treasury.

49. s 9(2)(g)(i)  
[Redacted]  
[Redacted]  
[Redacted]

*Officials do not think that a payment scheme will be required for Tier 1*

50. It has been assumed that employers of border and MIQ workers are likely to provide paid time off to workers to receive vaccination, especially if vaccination is delivered at workplaces (reducing or eliminating travel time) and some workers are employed by government agencies.

51. The Border Executive Board is expected to confirm whether further financial support for people in Tier 1a is required in the coming days (eg, payment for the time it takes to be vaccinated). There are significant numbers of workers employed by private companies (eg, in MIQ facilities), meaning there could still be a benefit, in terms of encouraging uptake, from providing financial support to Tier 1a workers or their employers. This may particularly be the case where employers and workers are already facing tough conversations about whether vaccination is considered necessary for certain roles, and whether redeployment may be needed if people cannot or do not want to be vaccinated.

52. Financial support schemes or legislative change to create a right to paid time off are unlikely to be needed for Tier 1:

- a. if the Government can support its direct and indirect workforces in Tier 1a (border and MIQ workforces); and
- b. unless there are equity or other concerns about whether people in Tier 1a (eg, people who are indirectly or occasionally contracted to MIQ facilities) and Tier 1b (household contacts of border and MIQ workers) can access vaccination without further financial support.

53. s 9(2)(f)(iv)  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

54. More work will be required to develop the options in Appendix Two if Ministers wish to explore them further. Understanding the particular barriers that different people may experience in relation to vaccination, and how these may manifest in the workplace is key. These barriers will largely depend on logistical details of the immunisation programme and roll-out. Our understanding at this stage is any scheme would be most useful targeted towards people without good in-work or after-hours vaccine access, and who are unable to take time off work to get the vaccine.

*There are a range of leave support schemes you could consider to supplement the status quo for the wider programme*

55. A number of current leave support schemes for COVID-19 are delivered by the Ministry of Social Development (eg, the Leave Support Scheme (LSS), which provides support for people who test positive for COVID-19 and are unable to work, or the Short Term Absence Payment (STAP), for people who need to stay home following a COVID-19 test). While it may be possible to modify existing schemes such as the LSS or STAP, a vaccine leave scheme targeted at people who cannot get paid leave from work and who cannot access vaccination outside work hours, is likely to be more complex than the existing support schemes because they are targeted or applied at an individual level rather than an employer level.
56. For example, it may be necessary to consider whether the leave support scheme should allow payments to be made either to workers or employers:
- a. A scheme that made payments to employers would be more operationally feasible and could use the existing payment framework for Leave Support Scheme (LSS) and Short-term Absence Payment (STAP). A vaccine leave scheme that used the Ministry of Social Development delivery model would also need to be high-trust to be rolled-out in line with the immunisation strategy. This is to avoid jeopardising uptake through narrowly construed criteria that do not fully reflect and address barriers to vaccination. This means there would be limited verification of applications (ie, there would be no verification of whether someone had actually taken a vaccine). Integrity risks associated with a high-trust model, however, could be mitigated by targeting any scheme to types of recipients more likely to face work-related barriers to vaccination.
  - b. However, a scheme that would pay workers (rather than employers), would not be able to use the existing payment framework developed for the LSS, STAP and the Wage Subsidy Scheme (WSS) payments, which means that this option would be significantly more complex. Ministers considered, and discounted, a payment direct to employees for these schemes. Although technically possible, it would involve risks including difficulty assessing validity of applications (are people actually employed), implications with the welfare system and supports, and volume and administrative implications. Any payment to workers that involved confirming when someone has had a vaccination would need to involve an information sharing agreement between Ministry of Health, Inland Revenue and Ministry of Social Development. This is because standard upfront business verification checks done with Inland Revenue (under the LSS and STAP framework) would not be possible when payments are made directly to workers. Alternatively, another deliver agency other than the Ministry of Social Development could be considered.

57. Agencies also consider that there could be an argument for a leave support scheme that compensates for time off due to adverse reactions for up to a week, rather than time off to receive vaccinations. Severe adverse reactions are currently very rare, with current data suggesting severe adverse reactions is less than 1.1 percent.

*Support schemes have timing and cost implications*

58. The timing of when any of these options may need to be implemented by will also affect their level of granularity/complexity, and how well-targeted they are at potential barriers. For example, the trigger for existing payment support schemes is relatively straightforward (eg, having COVID-19 or needing to stay home following a COVID-19 test). By comparison, the trigger for any vaccine leave support scheme would either be an inability to access vaccination outside working hours, or an inability to use paid sick leave for adverse reactions. Creating a scheme that can differentiate between people who have met these conditions from those who have not, and potentially pay workers rather than employers, will take time. If a payment scheme needs to be implemented in the next month, it may end up having broader application than actually needed to achieve behaviour change (in terms of encouraging uptake).

59. In the time available, officials have been unable to calculate the potential cost and benefit of each option or obtain information about other countries' policies in this area. We would seek to do this as part of further work on any options.

60. Very indicative costings of a financial support scheme (excluding administration costs) to support vaccination of people in Tier 1 are as follows:

<i>Tier/number of people</i>	<i>Payments to support time off to receive vaccination</i>	<i>Payments to support time off in case of adverse reactions</i>
Tier 1a (MIQ/border workers) 12,600 people	<p><b>\$882,000 (excl. admin costs)</b></p> <p>Assumptions:</p> <ul style="list-style-type: none"> <li>• Half of the people in this tier need support to access vaccination during work hours</li> <li>• Four hours needed to travel to and from a regional hub, and to receive vaccination</li> <li>• Two doses needed</li> <li>• Payment rate of \$70 for four hours away from work (based on LSS and STAP rates)</li> </ul>	<p><b>\$48,650 (excl. admin costs)</b></p> <p>Assumptions:</p> <ul style="list-style-type: none"> <li>• 1.1% of people receiving vaccination experience serious reactions of any type</li> <li>• Two doses needed</li> <li>• Of those, half need time off work as a result of serious reactions</li> <li>• Up to a week needed off work (if more than a week, an ACC claim can be made)</li> <li>• Payment rate of \$350 (based on STAP rate)</li> </ul>
Tier 1b (household contacts of MIQ/border workers) 40,000 people	<p><b>\$1.4 million (excl. admin costs)</b></p> <p>Assumptions:</p> <ul style="list-style-type: none"> <li>• Half of the people in this tier are working</li> <li>• Of those, half need support to access vaccination during work hours</li> <li>• Four hours needed to travel to and from a regional hub, and to receive vaccination</li> <li>• Two doses needed</li> <li>• Payment rate of \$70 for four hours away from work (based on LSS and STAP rates)</li> </ul>	<p><b>\$77,000 (excl. admin costs)</b></p> <p>Assumptions:</p> <ul style="list-style-type: none"> <li>• Half of the people in this tier are working</li> <li>• 1.1% of people receiving vaccination experience serious reactions of any type</li> <li>• Two doses needed</li> <li>• Of those, half need time off work as a result of serious reactions</li> <li>• Up to a week needed off work (if more than a week, an ACC claim can be made)</li> <li>• Payment rate of \$350 (based on STAP rate)</li> </ul>

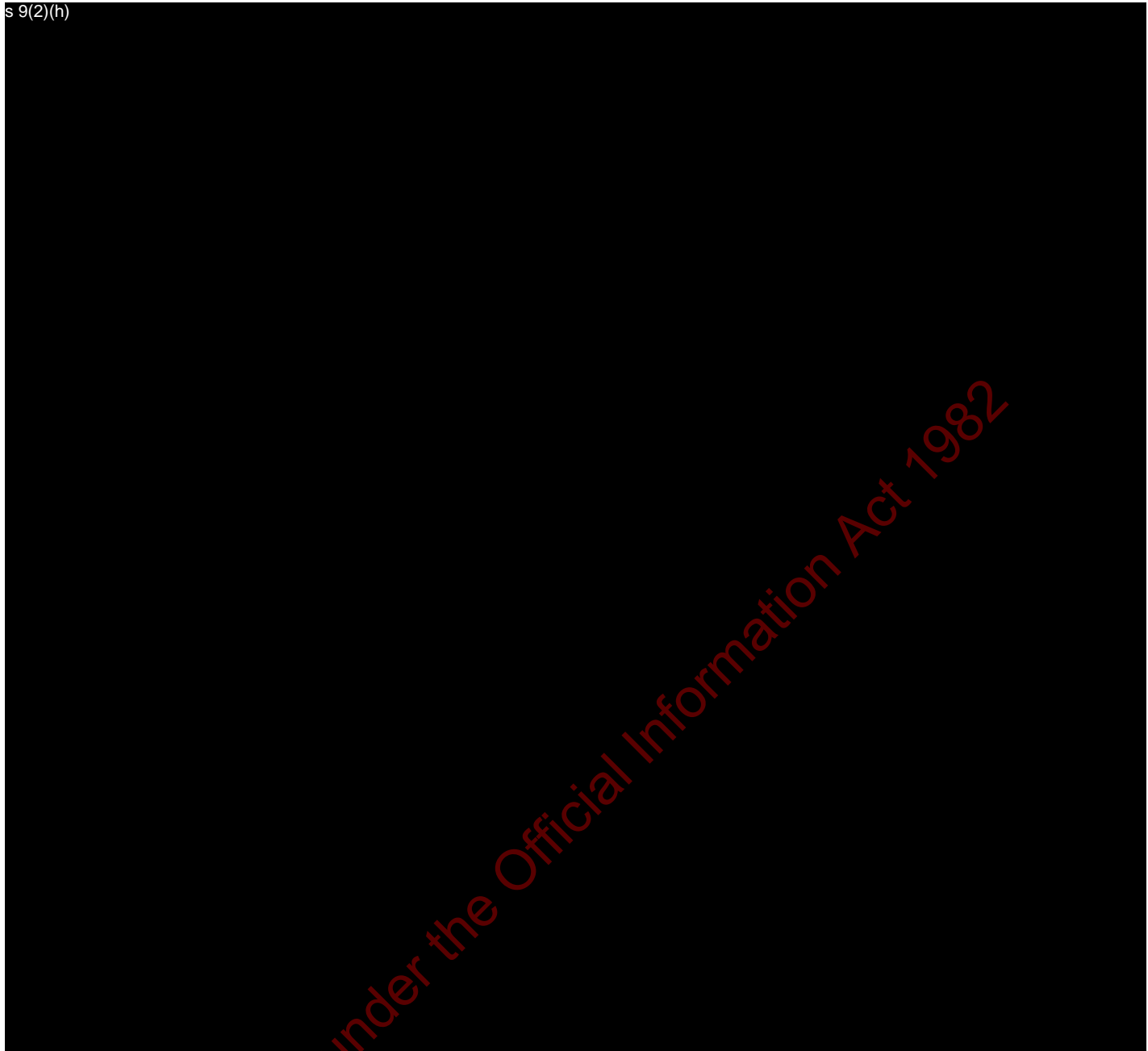
## Along with the approach set out above, there are options potentially available to strengthen the approach

61. We are working proactively with border and MIQ employers and unions as part of our stakeholder engagement, communications strategy and service design. Together, we will monitor trends and employee sentiment and, depending on trends, we will adjust and implement a tailored response. For example:
  - a. discussing with a particular employer whether there are other opportunities within the workforce for a worker to take-up different types of duties; or
  - b. options to consider tailored or a broader leave scheme.
62. We will continue to work with border agencies, employers and the relevant unions so that the COVID-19 Immunisation Programme can adjust quickly to the needs of particular cohorts.
63. However, if uptake is insufficient despite adjustments then there are further options available for employers and the Government, including:
  - a. Health and Safety at Work Act 2015 provisions for employers; and
  - b. the introduction of statutory instruments by the Government.

s 9(2)(h)

Released under the Official Information Act 1982

Released under the Official Information Act 1982



Released under the Official Information Act 1982

- 82. The Ministry of Health is ensuring that when border and MIQ staff give their consent for vaccination we will also get their consent to share their vaccination status with their employer. We will also make it clear in our Privacy Statements for the Covid-19 Immunisation Register. Other approaches to ensure we can share this information are



Released under the Official Information Act 1982





**There are broader implications of making COVID-19 vaccinations mandatory, including the precedent effect**

93. To date, the COVID-19 response has been built on clear, frequent communication; calling on people to do their part; and recognising their role in the team of five million. It has been a highly successful approach.

94. s 9(2)(f)(iv) [Redacted]

[Redacted]

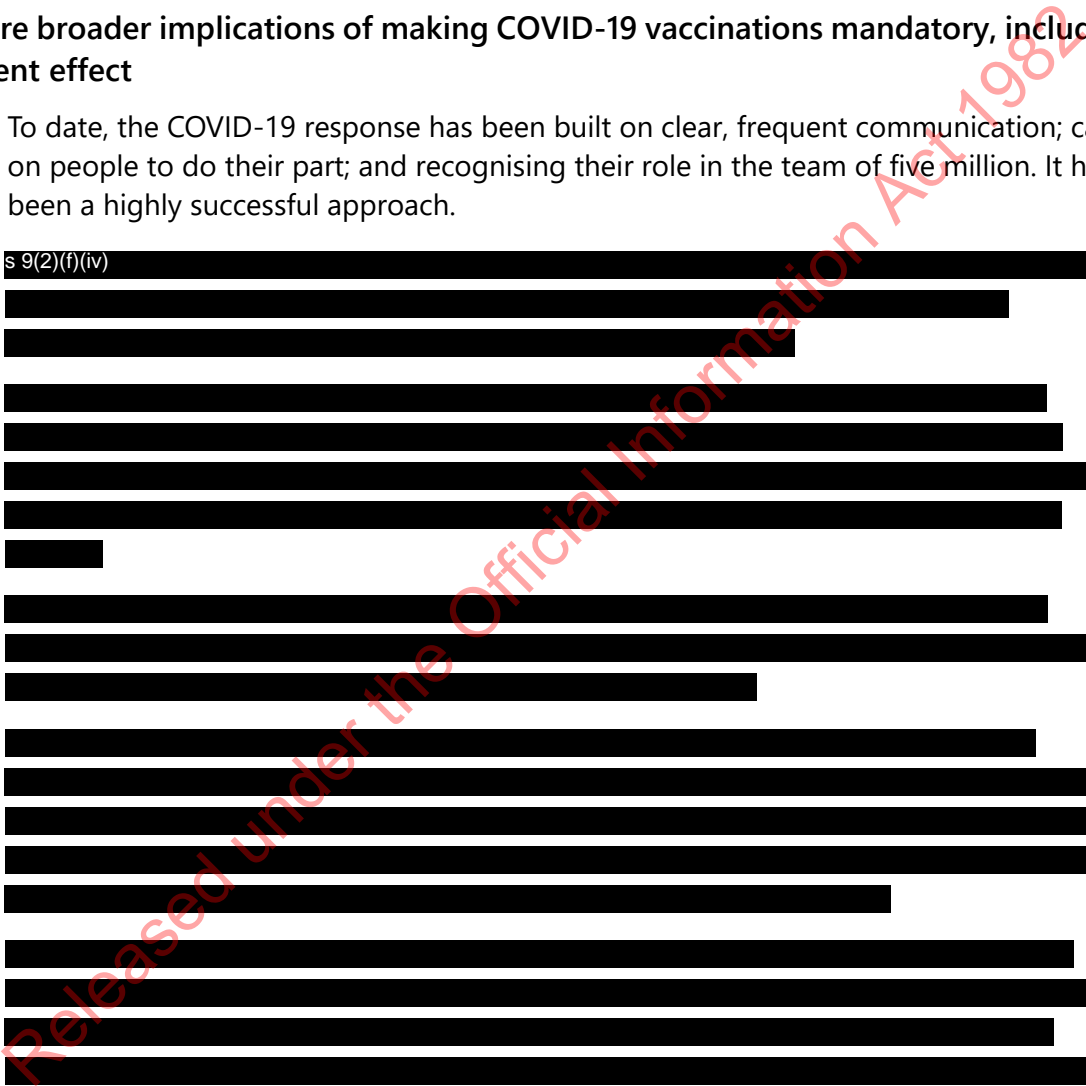
[Redacted]

[Redacted]

[Redacted]

**Equity**

99. The COVID-19 Immunisation Strategy and Programme aims to support the best use of COVID-19 vaccines, while upholding and honouring Te Tiriti o Waitangi obligations and promoting equity.



100. Our proposed approach to maximising uptake of the COVID-19 vaccine aims to achieve equity in uptake and access for Māori, Pacific peoples and other population groups by using different approaches to reach different groups, including:
- a. tailored and culturally appropriate, communications to actively promote equitable uptake among Māori, Pacific peoples, and other population groups,
  - b. service design to remove barriers and improve access to vaccination for all, with particular focus on Māori, Pacific peoples, and other population groups
  - c. engaging and partnering with key stakeholders to deliver the programme and communicate with target groups (eg, using Māori and Pacific service providers).
101. The approach will support Te Tiriti by maintaining tino rangatiratanga in the choice to be immunised, partnering with Māori and Pacific peoples in the delivery and design of services, and reduces barriers and improves access to immunisation for all, especially Māori.

102. [Redacted text block]

103. While we expect most people to be able to be immunised (other than people receiving certain medications), people with certain health conditions or who are pregnant may not be able to be vaccinated.

104. [Redacted text block]

### Consultation

106. The Crown Law Office, the Department of the Prime Minister and Cabinet, the Treasury, Ministry for Business Innovation and Employment; Ministry of Transport; the Public Service Commission; Ministry of Primary Industries; Customs; and Ministry of Foreign Affairs and Trade had a limited opportunity to review and provide comments on an earlier version of this briefing.

### Next steps

107. Officials will continue to prepare for implementation of the multi-phased approach and will report to you on how the approach is progressing approximately three-and-a-half weeks after vaccination commences.

108. In the coming week, the Border Executive Board will confirm whether further support (eg, in the form of financial support) is needed for their employed and contracted workforces. The Ministries of Business, Innovation and Employment, Health, Social Development and the Treasury will also assess if financial support or legislative change is needed to maximise vaccine uptake, including for the remainder of the population.
109. Officials will continue to keep you informed.

**ENDS.**

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## Appendix One: estimated constitution of Tier 1

It is estimated that Tier 1 of the Sequencing Framework consists of around 52,600 people (as at 2 February 2021). The estimate is subject to change as further engagements and data analysis is underway with the relevant agencies and stakeholder workforces to improve the accuracy of numbers.

This is made up of:

Workforce	Number of people
MIQ/MIF	4,885
Border/port	4,323
Border/airport	3,392
Household contacts (estimate only)	40,000
<b>Tier 1 estimated total</b>	<b>52,600</b>

**Please note, these numbers were based on early estimates and have since been superceded.**

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## Appendix Two: Early analysis of indicative options to address work-related barriers to vaccination

Notes:

- The options below are based on early analysis prepared by the Ministry of Business, Innovation and Employment, with limited engagement with the Treasury and Ministry of Health. They are indicative and can potentially be used in combination.
- In this table, "access vaccination" means both receiving vaccination (including during work hours) and being able to recover from adverse reactions (up to a week) without having to work.
- ACC claims can be made for vaccine injuries that require more than a week off work.

	<p><b>Option 1: Encourage all employers to support workers to access vaccination without cost/disadvantage</b></p> <p><i>This is the approach being taken.</i></p>	<p><b>Option 2: Where Government is employer or contractor of services, allow workers to access vaccination without cost/disadvantage</b></p> <p><i>Note: Border Executive Board to confirm whether this is feasible in coming week.</i></p>	<p>s 9(2)(f)(iv)</p>
<p><i>People whose vaccination this could most support</i></p>	<p>All tiers</p>	<p>All tiers; in particular/more immediately all Tier 1a workers</p>	
<p><i>Pathway to implementation</i></p>	<p>Communications and public information campaigns, which could be led through employment channels and supplemented by public health messages.</p>	<p>Employment and contracting levers. For contracting levers, a decision may need to be made about how many contracting layers through which this assurance should be provided/sought.</p>	

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<p><i>Specific barriers addressed</i></p>	<p>People foregoing income as a result of being vaccinated, or foregoing vaccination if it means losing income, due to:</p> <ul style="list-style-type: none"> <li>• Difficulty accessing vaccination outside working hours</li> <li>• Lack of annual leave (for vaccination)</li> <li>• Lack of sick leave (for adverse reactions)</li> <li>• Employer hesitation to allow workers to access vaccination (eg, not offering paid special leave)</li> </ul>	<p>s 9(2)(f)(iv)</p>	
<p><i>Assumptions</i></p>	<p>This will align with public health messages about the desirability of vaccination.</p> <p><u>For all options:</u></p> <p>On-site vaccinations will take about 40 minutes each.</p> <p>If travel to a separate site for vaccination is required, this will take around four hours at most.</p> <p>Severe reactions of all types may happen in 1.1% of cases (this figure is very approximate), but these will not all be so severe as to require time off work.</p>	<p>Government will be able to use employment or contracting levers to allow workers to access vaccination without cost/disadvantage, including sick leave in case of adverse reactions.</p>	<p>s 9(2)(f)(iv)</p>
<p><i>Benefits</i></p>	<p>Could prompt workplaces to support vaccine uptake.</p> <p>Support employers to do the right thing.</p>	<p>s 9(2)(f)(iv)</p>	

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<i>Drawbacks</i>	<p>Won't remove major barriers to access.</p> <p>Could fail to address equity implications based on people most likely to have work-related barriers to accessing vaccination (eg, people in precarious work).</p>	<p>May be complicated to achieve through contracting levers: may require contract variation, and examination of sub-contracting arrangements.</p>	<p>s 9(2)(f)(iv)</p> <p>Released under the Official Information Act 1982</p>
<i>Potential impact<sup>2</sup></i>	<p>Nil to low. Most large employers already offer paid time off (through the form of workplace vaccination) in the case of influenza vaccination.</p>	<p>Low. Uptake is likely to already be high particularly in Tier 1a workforces. This option is likely to be pursued in combination with other options with more general application.</p>	
<i>Potential cost</i>	<p>Low, and likely to be met through existing baselines.</p>	<p>Low in total but could be felt acutely by particular employers (eg, MIQ) where there are already funding constraints.</p>	

<sup>1</sup> This is the approach that has been taken for the WSS, LSS and STAP.

<sup>2</sup> Further work is required to better understand specific barriers to vaccination for people in each tier, and therefore what the potential impact of each option could be (in terms of uptake that would not otherwise be able to be achieved).

# Briefing

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

**Date due to MO:** 28 April 2021

**Action required by:** 28 April 2021

**Security level:** IN CONFIDENCE

**Health Report number:** 20210940

**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)
Maree Roberts	Deputy Director-General, System Strategy and Policy	

### 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:

Released under the Official Information Act 1982



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

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**Security level:** IN CONFIDENCE      **Date:** 28 April 2021

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

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## Purpose of report

1. This report recommends that you sign the attached COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order). The Order requires that work at certain places be carried out by affected persons who are vaccinated. The Order requires that work undertaken in Managed Isolation and Quarantine Facilities (MIQFs), and by government officials at affected airports and affected ports, be performed only by workers who have been vaccinated.

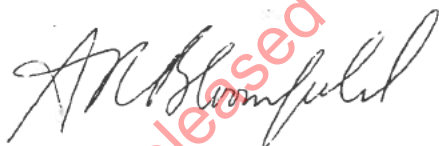
## Summary

2. On 20 April 2021, you agreed to make the COVID-19 Public Health Response (Vaccination) Order 2021 (the Order) requiring that work at certain places be carried out by affected persons who are vaccinated. The Order requires that work undertaken in Managed Isolation and Quarantine Facilities (MIQFs), and by government officials at affected airports and affected ports, be performed only by workers who have been vaccinated [Ministry of Business, Innovation and Employment (MBIE) paper 2021-3276 refers].
3. You undertook Ministerial consultation, and this was completed on 27 April 2021, with no amendments requested.
4. The Ministry of Health (the Ministry) considers there is a public health rationale for requiring that specified high-risk 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.
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. s 9(2)(h)  

6. We recommend that you sign the attached Order on 28 April 2021 (today) so that it can be gazetted by 5:00pm. This will ensure that the Order enters into force at 11:59pm on 30 April 2021.

## Recommendations

We recommend you:

- a) **Note** that officials advise the COVID-19 Public Health Response (Vaccinations) 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. **Noted**
- b) **Note** that the Ministry considers there is a public health rationale for requiring specified high-risk roles be performed by vaccinated individuals only, 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. Vaccines provide another layer of individual protection and, in doing so, may also be effective in preventing transmission in the community. **Noted**
- c) **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. **Noted**
- d) **Note** that these measures engage rights protected by the New Zealand Bill of Rights Act 1990 (NZBORA). **Noted**
- f) **Note** that further advice will be provided from the Border Executive Board agencies on the recommended approach to requiring high-risk work performed by other workforces at the border that can only be done by a vaccinated worker, including any proposed exemptions and other issues for Ministers to consider. **Noted**
- g) **Note** that following Ministerial consultation, the COVID-19 Public Health Response (Vaccinations) Order 2021 has been finalised for your approval. **Noted**
- h) **Agree** to sign the attached COVID-19 Public Health Response (Vaccinations) Order 2021 on 28 April 2021. **Yes/No**



Dr Ashley Bloomfield  
**Director-General of Health**  
Date: 28 April 2021



Hon Chris Hipkins  
**Minister for COVID-19 Response**  
Date:

AYESHA VERRALL  
ASSOC MIN OF HEALTH  
28/4/21

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

## Background

1. On 20 April 2021, you agreed to make the COVID-19 Public Health Response (Vaccination) Order 2021 that requires work at certain places to be carried out by affected persons who are vaccinated. The Order requires that work undertaken in Managed Isolation and Quarantine Facilities (MIQFs), and by government officials at affected airports and affected ports, be performed only by workers who have been vaccinated [MBIE paper 2021-5276 refers].

## Contents of the Vaccinations Order

2. The Order makes it mandatory for work at certain places to be carried out by affected persons who are vaccinated. It includes provisions on:
  - a. timings for when border workers are required to be fully vaccinated in order to carry out specified work
  - b. duties of persons conducting a business or undertaking (PCBUs) and employees in relation to vaccinations, including that a breach of any obligations will be an infringement offence
  - c. limited exceptions to the vaccination requirement, including in the case of necessary, unanticipated, time-critical work, and in order to protect a person's life, health or safety in an emergency
  - d. information sharing aimed at supporting effective implementation of the draft Order and the COVID-19 Immunisation Programme, by providing the government and employers/PCBUs a mechanism allowing them to know who has and has not been vaccinated, by:
    - i. requiring the relevant PCBU to request information from the Ministry of Health on the vaccination status of individuals that the PCBU has determined must be vaccinated to perform high risk work at the border
    - ii. requiring the Ministry of Health to provide an individual's relevant COVID-19 vaccination records to PCBUs, as requested
    - iii. requiring individuals who wish to perform work covered by the Order to allow the relevant PCBU to access any records that the Ministry of Health has regarding their COVID-19 vaccination status.

## Changes to the draft Order

3. Since Ministerial consultation, there have been amendments made to the draft Order based on further agency consultation. This includes:
  - a. In relation to Clause 11 "Duties regarding vaccination status", clarifying the roles and responsibilities of different stakeholders, including:

- i. that it is the PCBU, not the Ministry of Health, who determines who needs to be vaccinated in order to perform work at an MIQF, affected port, or affected airport
  - ii. that the Ministry of Health is responsible for checking the vaccination status of the individual, and reporting it back to the requesting PCBU
  - iii. adding a requirement that PCBUs must advise the Ministry of Health if an individual is no longer subject to the Order
4. These amendments do not change the substantive policy intent of the Order previously agreed [MBIE paper 2021-3276 refers].

## Process for making a section 11 Order

5. Under the COVID-19 Act, an Order may be made if either:
  - a. a state of emergency has been declared (under the Civil Defence Emergency Management Act 2002);
  - b. an Epidemic Notice is in force (under the Epidemic Preparedness Act 2006); or
  - c. it has been authorised by the Prime Minister.
6. There is currently an Epidemic Notice in place, which allows Orders to be made under section 11 of the COVID-19 Act.
7. As the Minister for COVID-19 Response, you may make Orders under section 11 of the COVID-19 Public Health Response Act 2020 (the Act).
8. To make 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; and
    - ii. the nature and extent of measures that are appropriate to address those risks; and
  - b. be satisfied that the proposed Order does not limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990 (NZBORA); and
  - 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 this Order is appropriate to achieve the purposes of the Act.
9. My 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 is set out below.

## Public health rationale

10. You have previously been provided with detailed public health rationale for the proposed draft Order [MBIE paper 2021-3276 refers].
11. The Ministry advises that there is a public health rationale for requiring specified high-risk roles only be undertaken by vaccinated individuals, 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.

12. Evidence of the efficacy of vaccines in preventing person-to-person transmission is still evolving. However, current evidence suggests that the vaccine is likely to be effective in preventing transmission. Real-world evidence suggests that people vaccinated with the Pfizer-BioNTech COVID-19 vaccine who develop COVID-19 have a four-fold lower viral load than unvaccinated people. This observation may indicate reduced transmissibility, as viral load and symptomatic infection has been identified as a key driver of transmission.<sup>1</sup>
13. 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.
14. Therefore, while vaccination does not prevent all possible episodes of transmission, vaccination 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 substantially protect the wider community.

s 9(2)(h)

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23. A summary of the Crown Law Office's advice is attached as **Appendix 2**.

### **Equity**

24. As discussed above, there is potential for the Order to discriminate against workers on the grounds of sex, disability or religion. We are also aware that many of the affected workers are in low paying jobs and are carried out my ethnic minorities and women, who would potentially be more greatly impacted.
25. However, we also know from historical examples that Māori and Pacific peoples are likely to be disproportionality affected by a widespread epidemic. Therefore, there is also an equity imperative to do everything possible, within the requirement that that 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.
26. Given that the vaccination is available to all groups, we do not consider the equity concerns above to be sufficient to prohibit taking this action.

### **Implementation**

27. The Border Worker Testing Register (BWTR), which became mandatory on 27 April 2021, is the most comprehensive database of the border and MIQF workforce. The Order will allow the Ministry to pre-populate data from the BWTR with the COVID-19 Immunisation Register to proactively identify who should be vaccinated.
28. The Order will also authorise the sharing of the vaccination status of workers (subject to the Order) with their PCUBs/employers. This will provide PCUBs/employers with an accurate record of the vaccination status of their workforce and assist them to manage their obligations under the draft Order in a more efficient way.
29. The implementation of the Order is dependent on PCBU's being able to access information on the COVID-19 vaccination status of their employees, as appropriate. The Ministry is developing an IT solution that will support the automated generation of this information,

on request. We anticipate this being operational from 11 May 2021. In the interim, the Ministry will support the implementation of the Order through a manual process. This means that there is likely to be a transition period, during which some PCBUs will not have immediate access to information on the vaccination status of their affected employees. While this may technically be in breach of the Order, there would need to be evidence of a breach for that to be enforced.

30. We will work with PCBUs to try and manage these requests for information so that information flows can work as effectively as possible in the circumstances. The key difficulty during this time is that we are still transitioning some PCBUs onto the BWTR. Until that is complete, it is not possible to automate the information sharing about vaccination status.
31. While consideration was given to making provision for this transition period in the Order, on the advice of the Ministry's legal team, we have determined that it is more effective to work alongside PCBUs to ensure that they operate in a manner consistent with the intent of the Order, and we support and enable PCBUs to meet their obligations under the Order, as soon as possible, to meet the Government's objectives.
32. MBIE will lead work on the development of the operational guidance to support the Order when it comes into effect. This will include updating guidance on employment.govt.nz; and working with the Public Service Commission and the Border Executive Board Chief Executives to ensure that appropriate guidance is provided to public sector employers.
33. We will update operational guidance (including the immunisation sequencing framework) to ensure that relevant provision is made for people required to be vaccinated under the Order.

### **Next steps**

34. Further advice will be provided from the Border Executive Board agencies on the recommended approach to requiring specified high-risk work performed by other workforces operating at the border that can only be done by a vaccinated worker, including any proposed exemptions and other issues for Ministers to consider, such as the scope of work and workers impacted at affected airports and affected ports.
35. Following this further advice, an Amendment to the Order could be made to bring additional groups into the Order.
36. We recommend that you sign the attached Order on 28 April 2021 (today) so that it can be gazetted by 5:00pm. This will ensure that the Order enters into force at 11:59pm on 30 April 2021.

**ENDS.**

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# Briefing

## Final policy decisions required to draft the amendments to the COVID-19 Public Health Response (Vaccinations) Order

**Date due to MO:** 4 June 2021                      **Action required by:** 8 June 2021

**Security level:** IN CONFIDENCE                      **Health Report number:** 20211235

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

**Copy to:** Rt Hon Jacinda Ardern, Prime Minister  
 Hon Andrew Little, Minister of Health  
 Hon Dr Ayesha Verrall, Associate Minister of Health  
 Hon Peeni Henare, Associate Minister of Health  
 Hon Aupito William Sio, Associate Minister of Health  
 Hon Michael Wood, Minister of Transport and Minister for Workplace Relations & Safety

### Contact for telephone discussion

Name	Position	Telephone
<b>Maree Roberts</b>	Deputy Director-General, System Strategy and Policy	s 9(2)(a)
<b>Dr Ashley Bloomfield</b>	Te Tumu Whakarae mō te Hauora Director-General of Health	s 9(2)(a)

### Minister's office to complete:

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

Comment:

# Final policy decisions required to draft the amendments to the COVID-19 Public Health Response (Vaccinations) Order

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**Security level:** IN CONFIDENCE                      **Date:** 4 June 2021

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

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## Purpose of report

1. This report provides you with advice on the Vaccinations Amendment Order (the Amended Order), including further opportunities to clarify the policy intent and to provide greater certainty to employers (Persons Conducting Businesses or Undertakings, or PCBUs) and affected workers.

## Executive summary

2. The COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order) came into force on 1 May 2021 and requires that specified work at the Border only be performed by workers who have been vaccinated.
3. The Order currently applies to:
  - a. all work undertaken in the context of Managed Isolation and Quarantine (MIQ) facilities (including transportation to and from MIQ facilities), and
  - b. work undertaken by government officials in affected workplaces (airports and aircraft, ports and ships).
4. Implementation of the Order requires employers (PCBUs) and their workers to anticipate whether they will undertake work which will require the worker to be vaccinated. This is different to the COVID-19 Public Health Response (Required Testing) Order 2020 (RTO), which only requires a person to be tested after they have been exposed to the relevant public health risk.
5. Ministers have recently made decisions [OC210396 refers] to:
  - a. extend the scope of the Order to cover additional work performed at the Border, including workers that handle items removed from a MIQF, Managed Isolation Facility (MIF) or affected aircraft or ship; and
  - b. create a public health exception so that people who have no interaction with international travellers or crew will not be subject to the requirement to be vaccinated.
6. Agencies (the Ministry of Health, Ministry of Transport, the Ministry for Business Innovation and Employment and New Zealand Customs) alongside the Crown Law Office

(CLO) have worked together to give practical effect to Government's policy intent. In doing so, we have identified some unexpected issues.

7. It is necessary to clarify the policy intent to ensure that amendments to the Order align and are lawful, and so employers and affected workers (particularly people handling affected items) understand their vaccination obligations. Appendix One provides an illustration of the current scope of the Order, impact of the Amended Order and options under consideration. Appendix Two provides CLO advice on matters.
8. We propose two main options in relation to workers who handle affected items to clarify the policy intent and provide greater certainty to employers and affected workers. Option Two is proposed as the recommended option, which would add a requirement that workers who 'handle affected items' must be limited to people who:
  - a. are 'routinely engaged (eg specifically contracted) to provide services in relation to a MIQF, MIF, affected aircraft or affected ship'; and
  - b. 'have contact with' persons who belong to different groups in the Amended Order (to align with definitions in the RTO).
9. This recommendation takes into consideration key policy, operational and legal risks. A summary of options analysed by agencies is provided in the table at Appendix Three.
10. We propose that workers who handle affected items is the only group of workers eligible to access the public health exception. The approach will ensure policy consistency between the Order and Amended Order and reduce legal risks.
11. We also propose you include an exemption for workers who handle affected items and cannot be vaccinated for health-related reasons. This proposal recognises that these workers are likely to have a lower risk of exposure to COVID-19 and that certain health conditions (eg anaphylactic reactions) may warrant exclusion from the requirement to be vaccinated.
12. The Ministry of Health will provide you with a draft Amended Order for Ministerial consultation within ten working days of receiving your decisions. The Amended Order is proposed to come into force seven weeks from being signed (for wider government workforces); and 12 weeks from being signed for other groups. We seek your permission to begin signalling the impact of the amendments to key stakeholders.

## Recommendations

We recommend you:

- a) **Note** that you made a series of decisions on amendments to the COVID-19 Public Health Response (Vaccinations) Order 2021 through a report submitted by the Ministry of Transport on 12 May 2021 [OC210396 refers] ✓
- b) **Note** that your decisions to include the following groups are sufficiently specific to provide certainty to employers and affected workers:
  1. other government border workers (Group A) undertaking specified work at affected airports, ports or ships ✓
  2. New Zealand domiciled aircrew (Group B) involved in operating international flights (excluding those involved only in quarantine-free travel) ✓

3. all other border workers (Group C) covered by 7 and 14-day testing requirements (under the Required Testing Order) ✓
- c) **Note** that people currently subject to the Required Testing Order (a subset across all groups) are well positioned to meet their obligations under an amendment to the Vaccinations Order because the employer (eg PCBU), the Ministry of Health and the individual are likely to understand that the obligation exists ✓
- d) **Note** we have identified issues related to the lack of specificity and certainty about the intended breadth of coverage for the Order as applied to workers who 'handle affected items' (Group D), which could undermine the policy intent and potentially result in the Amendment Order being deemed ultra vires ✓
- e) **Confirm** that the overarching policy intent for the Amendment Order is to capture workers across all groups whose roles will reasonably be anticipated to include activities which involve a risk of exposure to COVID-19  Yes/No
- f) **Confirm** that the policy intent of the inclusion of the 'people who handle affected items groups' is to EITHER:
- i. Include only people who are 'routinely engaged to provide services for a MIQF, MIF, affected aircraft or affected ship'  Yes/No
- OR**
- ii. Include people who are 'routinely engaged to 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 Vaccination Order (**recommended**)  Yes/No
- (g) **Confirm** that the Amendment Order include a public health exception to address situations where it is clear that an individual's specific role does not involve any form of interaction with, or close to, international travellers or crew, and that it applies to EITHER:
- i. all groups under the Order (potentially undermining policy intent with the existing Order)  Yes/No
- OR**
- ii. the new groups to be added through the Amended Order, being wider government, and private sector workforces at the Border and the workers who handle affected items group (meaning that workers at the Border with a similar risk profile have different opportunities to apply for an exception)  Yes/No
- OR**

- iii. only the workers who handle affected items group (meaning that workers like stevedores would not be able to access the exception) **(recommended)**  Yes/No
- (h) **Agree** that for workers who handle affected items the Amendment Order include an exemption to the requirement to be vaccinated in circumstances where a person has a particular physical or other need which a suitably qualified health professional determines would make it inappropriate for the person to be vaccinated  Yes/No
- (i) **Note** that the Minister for COVID-19 Response must consult with the Prime Minister, Minister of Justice and the Minister of Health prior to making the Amendment Order
- (j) **Agree** to forward a copy of this briefing to COVID-19 Vaccine Ministers, Border Ministers, and the Attorney-General  Yes/No
- (k) **Note** that officials will provide you with a draft amendment Order for Ministerial consultation within ten working days of receiving your decisions
- (l) **Confirm** the amendment Order is proposed to come into force seven weeks from being signed (for wider government workforces); and 12 weeks from being signed for other groups  Yes/No
- (m) **Permit** the interagency engagement group to communicate the high-level scope and timing of the proposed amended Order with key stakeholders.  Yes/No



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

Date: 4 June 2021



Hon Chris Hipkins  
**Minister for COVID-19 Response**

Date: 9/6/2021

# Final policy decisions required to draft the amendments to the COVID-19 Public Health Response (Vaccinations) Order

## Purpose

1. This paper seeks your decisions on a final set of policy issues that are required to inform the drafting of amendments to the COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order).
2. In particular, we seek to clarify the policy intent for the Amended Order as it applies to 'workers who handle affected items' and the intended application of exemptions and exceptions to the Order. We have identified a need to better define this group of workers to:
  - a. provide greater certainty to employers (eg PCBUs) and affected workers about their vaccination obligations
  - b. reduce the potential for the provision to be interpreted too broadly and significantly impact on the timeframes for rollout of the COVID-19 vaccine
  - c. ensure the Order fulfils requirements under the Bill of Rights Act 1990 (BORA).

## Background

3. The Order came into force on 1 May 2021, requiring that specified work at the Border only be performed by workers who have been vaccinated.
4. The Order currently applies to:
  - a. all work undertaken in the context of Managed Isolation and Quarantine (MIQ) facilities (including transportation to and from MIQ facilities), and
  - b. work undertaken by government officials in affected workplaces (airports and aircraft, ports and ships).
5. Ministers have recently made decisions to extend the scope of the Order to cover additional work performed at the Border and to include workers that regularly handle items removed from a MIQF, MIF, aircraft or ship [OC210396 refers].
6. We are working with the Parliamentary Counsel Office (PCO) to draft the Amended Order to give effect to Ministers' decisions. As part of this process, and as a result of our evolving understanding of the practical implications of the Amended Order, we have identified several key issues that need to be addressed to ensure that it is fit for purpose.
7. The lack of alignment between the retrospective nature of the RTO ('who has *been* exposed to COVID-19') and the anticipatory nature ('who is *likely to be* exposed to COVID-19') of the Order has notably broadened the class of workers that must be vaccinated, which has policy, operational and legal implications.
8. However, the primary concern is the need to clarify the intended scope of policy decisions made about workers who 'handle affected items' and to ensure that the

Amended Order provides sufficient certainty to PCBUs and others subject to it, while fulfilling the policy intent of Government.

## **Extension of the Order to a broader group of workers**

### **Ministers made decisions on the scope of the amended Order**

9. Ministers received advice on 14 May 2021 and agreed to extend the scope of the Order to incorporate:
  - a. other government border workers (Group A) undertaking specified work at affected airports, ports or ships
  - b. New Zealand domiciled aircrew (Group B) involved in operating international flights (excluding those involved only in quarantine-free travel or QFT)
  - c. all other border workers (Group C) covered by 7 and 14-day testing requirements (under the Required Testing Order)
  - d. all persons who handle items (Group D) removed from managed isolation or quarantine facilities (within 72 hours of removal from that facility), or removed from an affected aircraft (within 24 hours of removal from that aircraft), or from an affected ship (within 72 hours of removal from that facility) – regardless of whether they are subject to a testing order [OC210396 refers].
10. Ministers also agreed to include public health exception to address situations where it is clear that an individual's specific role does not (or would not) involve any form of interaction with, or close to, international travellers or crew.
11. Agencies (the Ministry of Health, Ministry of Transport, the Ministry for Business Innovation and Employment and New Zealand Customs) alongside the Crown Law Office (CLO) have worked together to give practical effect to Government's policy intent. In doing so, we have identified some unexpected issues.
12. Groups A and B are clearly identifiable and, as with the current Order, direct links are made to a place of work. As reported to Ministers on 14 May, the majority of government workers and aircrew in these positions are either already vaccinated or will be shortly<sup>1</sup>.
13. Group C includes a range of workforces who have varying rates of vaccination coverage. However, our analysis suggests that workforces currently subject to the RTO are well positioned to meet their obligations under an amendment to the Vaccinations Order because the employer (eg PCBU), the Ministry of Health and the worker will likely to understand obligations.
14. Group D appears to capture a very large group of people. However, when read in conjunction with the public health exception set out at paragraph [10] above it appears that a large group would be initially within scope under Group D, but would then be removed through the application of the public health exception.

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<sup>1</sup> The Ministry of Transport has previously advised that the Aviation and Security Service has a small but significant number of staff that have declined vaccination for non-medical reasons.

15. Appendix One illustrates the current scope of the Order and the impact of the Amended Order.

**It is likely that some workers handling affected items will be uncertain about their vaccination obligations under the amended Order**

s 9(2)(h)

17. To address the overall broadening of the policy intent, we propose clarifying that the policy intent for the Amended Order is to capture workers across all groups whose roles will reasonably be anticipated to include activities which involve a risk of exposure to COVID-19.
18. The addition of the public health exception for people who do not interact at all with international crew or overseas travellers seems to contradict the intended scope of the inclusion of workers who handle affected items and would likely render some unintended results. We consider that the combination of these issues contributes to a lack of certainty for employers and affected workers.
19. In considering these issues we have considered the scope of Group D first, then the application of the exception.
20. The sole basis for this group of workers (Group D) being included within the Amended Order is that they 'handle affected items'. The policy intent underpinning the inclusion of this group is to ensure that people who regularly come into contact with fomites<sup>2</sup> should be vaccinated, particularly if there is a risk of exposure to COVID-19. This is broadly supported by public health advice which notes that, while the risk of COVID-19 being transmitted through contact with an affected item is very low, it cannot be eliminated.

**Surface-based transmission from fomite is technically possible but very rare**

21. Evidence continues to emerge about pathways of transmission for the COVID-19 virus. Laboratory studies have identified that SARS-CoV-2 virus can survive on surfaces for many days in suitable environments and therefore are a potential source of infection. Although laboratory evidence suggests that surface or fomite transmission is possible, it appears to be very rare, based on real life studies of transmission events.
22. Investigation of transmission events identify that elements of airborne and surface transmission in addition to close contact transmission could have occurred – it is difficult at times to ascertain the exact source of transmission. However, the case investigations of transmission at the border, where fomite transmission was considered a possibility, indicated that airborne spread may have been the more likely method of transmission in the absence of close contact.

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<sup>2</sup> Objects that are likely to carry an infection (eg COVID-19)



## Targeting workers who handle affected items results in a very broad group being captured by the Order

23. As we have investigated the practical implications of this policy approach, it has become clear that reliance on this single-factor definition will likely result in a very broad group of people being captured by the Order. This lack of specificity within the definition extends the scope of the Order beyond the policy intent and consequently creates a lack of certainty for employers and affected workers. (Box 1 provides an example of the practical application of the approach, as currently expressed).

### **BOX 1: Example of application of the 'workers who handle affected items' rule**

A fumigator boards a ship and takes their tools and equipment on board. Most of the tools and equipment will be taken off the ship when the fumigator disembarks. The fumigating chemicals will be left on board, but the packaging of these products will be removed for disposal. The packaging goes to a refuse centre for disposal within 72 hours and is handled by a worker at the refuse centre.

The refuse worker is responsible for moving rubbish from one point to another within the refuse centre. Amongst the multitude of rubbish handled is the packaging (or other waste) removed from an affected ship within 72 hours.

In this scenario, the fact that the fumigator boards affected ships as a core part of their employment acts as a 'trigger' that would cause them and/or their employer to consider their vaccination obligations.

However, while the current policy proposal for 'workers who handle affected items' would place an obligation on the refuse worker to be vaccinated – there is no such 'trigger' to alert employers or workers - giving rise to issues of certainty for the employer and employee, particularly since the refuse worker is not required to undergo mandatory testing for COVID-19.

The employee would need to prove that they do not interact with international crew or travellers in the course of their work. This may be difficult to definitively prove for a refuse worker who collects rubbish from the wider community and may come into contact with international crew unknowingly.

s 9(2)(h)

**It is important that we can vaccinate all those affected by the Amended Order and can monitor compliance**

30. The practical effect of extending the scope of the Order is that the Ministry of Health and DHBs would need to take steps to ensure that this new class of workers were vaccinated (eg the refuse workers described above) and their household contacts.
31. It would be necessary to re-establish vaccination centres for workplaces which have already had border workers vaccinated as part of Group 1 of the COVID-19 Immunisation Programme.
32. Also, we would first draw on the Comirnaty (Pfizer/BioTech) COVID-19 vaccines allocated for the purpose of mandatory vaccinations. However, it is likely we will also have to draw on the supply of vaccines currently being delivered that were previously intended for Groups 3 and 4.
33. It may seem inequitable to require people at low or no risk of exposure to COVID-19 to be vaccinated prior to undertaking work, given Group 3 of the COVID-19 Immunisation Programme includes people who are at risk of getting very sick from COVID-19.

## Options to clarify the policy intent and to provide greater certainty to employers and affected workers

34. From your decisions on the 14 May 2021, Tranche 2 advice [OC210396 refers], we understand that:
- a. you aim to prevent, and limit the risk of, the outbreak or spread of COVID-19 by requiring work at certain places to be carried out by affected persons who are vaccinated
  - b. you would like to use the Amendment Order to require people who regularly 'handle affected items' to be vaccinated; and
  - c. you do not intend for the RTO to serve as a strict limit on who might be subject to the Order.
35. Since the Order covers people who are anticipated to undertake work in the future that would require them to be vaccinated, it captures a larger number of workers (ie any worker who potentially could be exposed to COVID-19) to ensure coverage of any worker that will actually undertake such work. This is particularly the case when the classes of work captured are not strictly linked to Border, MIQF or MIF settings.
36. Therefore, we recommend that consideration is given to defining this group in a different way, to provide greater certainty to PCBUs and workers about their vaccination obligations, reduce the potential for the provision to be interpreted too broadly, and minimise the risk of generating vires issues under BORA.
37. Agencies have worked together to develop solutions to address the identified issues. We have developed two main options, which involve introducing one or more additional descriptors (to the 'handling affected items' requirement as currently defined):
- a. add a requirement that workers who 'handle affected items' must be limited to only people who work for providers who are 'routinely engaged (eg contracted) to provide services for a MIQF, affected aircraft or affected ship'
  - b. **(recommended option)** add a requirement that workers who 'handle affected items' must be limited to people who:
    - i. are 'routinely engaged (eg specifically contracted) to provide services in relation to a MIQF, MIF, affected aircraft or affected ship'; and
    - ii. 'have contact with' persons who belong to different groups in the Order
38. We illustrate the coverage of the group in Appendix One. A summary of the analysis of all options agencies considered is provided in the table at Appendix Three.
39. Consideration was given to attempting to defining the term 'affected item', but it has not been pursued on the basis that it is not feasible to predict the range of potential items, nor does the scientific evidence base support such distinctions to be made.

### We recommend linking the handling of affected items with the routine engagement of services for certain places and contact with people

40. On balance, we recommend you limit the 'handling of affected items' group to include only people who work for PCBUs who are 'routinely engaged to provide services in

relation to a MIQF, MIF, affected aircraft or affected ship' and 'have contact with' persons who belong to groups in the Order. This provides the greatest amount of:

- a. Specificity: to ensure that we do not capture workers who are at no risk of coming into contact with COVID-19 and consequently to fulfil BORA requirements; and
- b. Certainty: to employers and affected workers as to their vaccination obligations.

41. We consider that this approach:

- a. achieves the policy intent while also reducing the risk that people who are at no risk of coming into contact with COVID-19 are captured by the Order
- b. provides a broader scope than the RTO
- c. is consistent with Ministers' previous decision to enable public health exception to address situations where there is no form of interaction with international travellers or crew that would expose the worker to COVID-19
- d. is likely to limit the impact of the Amended Order on the COVID-19 vaccine rollout, as there will be a clearer limitation on the number of different service providers captured by the Order.

42. The Ministry of Health will work with the Ministry of Transport and the Ministry for Business Innovation and Employment to ensure that the service providers who may be affected by the 'people who handle affected items' amendment to the Order understand and can fulfil their obligations.

43. Subject to your agreement, we will work with PCO to ensure that the wording of these provisions is fit for purpose.

## **Other drafting matters to clarify the intent of the Order**

### **The anticipatory nature of the Vaccination Order**

s 9(2)(h)

### **We are considering whether it might be appropriate to clarify the policy intent of the term 'interact' through the amended Order**

45. The Order currently sets out that it applies to Government officials who interact with international arriving or transiting passengers or people required to be in managed isolation or quarantine.

46. We are currently considering whether it is appropriate to use this opportunity to clarify that the policy intent underpinning the term 'interact' is to capture work activities that involve a degree of proximity which exposes the worker to a risk of exposure to COVID-19. The interpretation of this term is currently subject to litigation through the Employment Court. s 9(2)(h)

**We recommend you clarify the groups of workers under the Order who will be eligible for the public health exception**

- 47. At present, there are no public health exceptions to the requirement under the Order that all work undertaken at MIQFs or by government officials in affected workplaces (airports and aircraft, ports and ships) is undertaken by people who are vaccinated. This means that people undertaking this work must be vaccinated even if there is no form of interaction with, or close to, international travellers or crew.
- 48. Ministers have agreed through the Amended Order to a public health exception to address situations where it is clear that an individual's specific role does not involve any form of interaction with, or close to, international travellers or crew [OC210396 refers].
- 49. We understand that Ministers intend for the exception to apply to all groups of workers within the amended Order (i.e. other government border workers, New Zealand domiciled, non-QFT aircrew, all other border workers and all persons who handle affected items).

50. s 9(2)(h)

- 51. To address this risk, you can choose to clarify that the public health exception only applies to the group of workers who handle affected items because this group is less likely to undertake high risk work at the border in comparison to the other groups of workers.
- 52. In practice, this clarification would mean that no other people undertaking work at the border could access an exception under public health grounds. For example, stevedores would not be eligible to apply for this exception. We note that in certain cases where employers are not able to redeploy workers, this could negatively impact on the workers' employment situation (eg job loss).

**We recommend you include an exemption for workers who handle affected items and cannot be vaccinated for health-related reasons**

- 53. In the preparation of this advice, it became apparent that workers who handle affected items will be at lower risk of coming into contact with COVID-19 while they work, and that they may have certain health conditions which mean that a health professional does not recommend vaccination (eg anaphylactic reactions).
- 54. We seek your agreement that the Amended Order include an exemption to the requirement to be vaccinated to be available in such circumstances. The exemption could apply where a person has a particular physical or other need which a suitably qualified health professional determines it would be inappropriate for the person to be vaccinated. We recommend this exemption only applies to the group of workers who

handle affected items. The aim of this exemption would be to further protect the health and safety of these people as they undertake work close to the border.

55. As with the proposal for the public health exception, this approach would mean that no other people undertaking work at the border (eg stevedores) could access an exemption for health-related reasons. Again, we note that the lack of access to an exemption could negatively impact on some workers' employment situation.
56. We do not propose an exemption for people with an ethical or religious objection to vaccination. We are satisfied that different treatment of those with a medical reason for objection is justified. This is because those with a medical reason can provide objective proof of their inability to be vaccinated and their health risk can be accommodated without compromising the effectiveness of the Order. We do not consider there is a way that PCBUs or the Ministry of Health could objectively validate whether a person held an objection to vaccination on the basis of religious or ethical belief instead of or in comparison to a mere strongly held opinion.
57. There is further discussion in the summary of CLO's advice at Appendix Two.

## **Equity**

58. We do not have good information on the demographics of the groups who are likely to be impacted by the proposals in this paper. However, much of the affected work is expected to be low-wage.
59. 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.
60. It is important to note that Māori have traditionally lower vaccination rates than non-Māori. This may mean that Māori are more likely to be negatively impacted by the Amended Order.
61. We 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, exceptions or exemptions of the Order. This language barrier could lead to their employment being terminated inappropriately.
62. Some vulnerable workers who handle affected items may benefit from the ability to apply for the public health exception and/or exemption due to health-related reasons.

## **Consultation**

63. This advice has been prepared in consultation with the CLO, the Department of Prime Minister and Cabinet, Ministries of Justice, Transport and Business, Innovation and Employment, and New Zealand Customs.

## Next steps

64. The Order will come into effect for the first tranche of worker groups from 1 July 2021. The proposed tentative timeline for drafting and introduction of the Amended Order covering the second tranche of workers groups is set out below.

Stage	Indicative timeframe	Owner
2 <sup>nd</sup> Policy decisions signed	Tuesday 8 June	Minister's Office
Drafting instructions to PCO	Thursday 10 June (5 days to draft)	MOH Legal
PCO provide draft Order and undertake agency consultation on draft Order	Wednesday 16 June (3 days)	PCO/MoT/MOH
Advice to Minister's Office to support consultation	Tuesday 22 – Monday 28 June (5 days for consultation) (10 business days from decisions made)	Minister's Office
PCO finalise Order for Ministerial signing	Tuesday 29 June (2 days)	PCO
Final Order and HR sent to the Minister	Monday 5 July (as requested for beginning of week)	MOH Policy
Minister of COVID-19 Response signs Order	Tuesday 6 July	Minister's Office
PCO Gazette Order	Wednesday 7 July by 5pm (2 weeks delayed commencement)	PCO
Commencement	Seven weeks from being signed	

65. To prepare for implementation of tranche two changes, it will be necessary to communicate with key stakeholders about the requirements that will come into effect.
66. We seek your permission for the interagency engagement group to communicate tranche two requirements at a high-level with key stakeholders. This action will enable us to circulate key messages and address any misinformed speculation.

ENDS.

**Appendix One – Illustration of current Vaccination Order, impact of Amended Order and options for consideration**

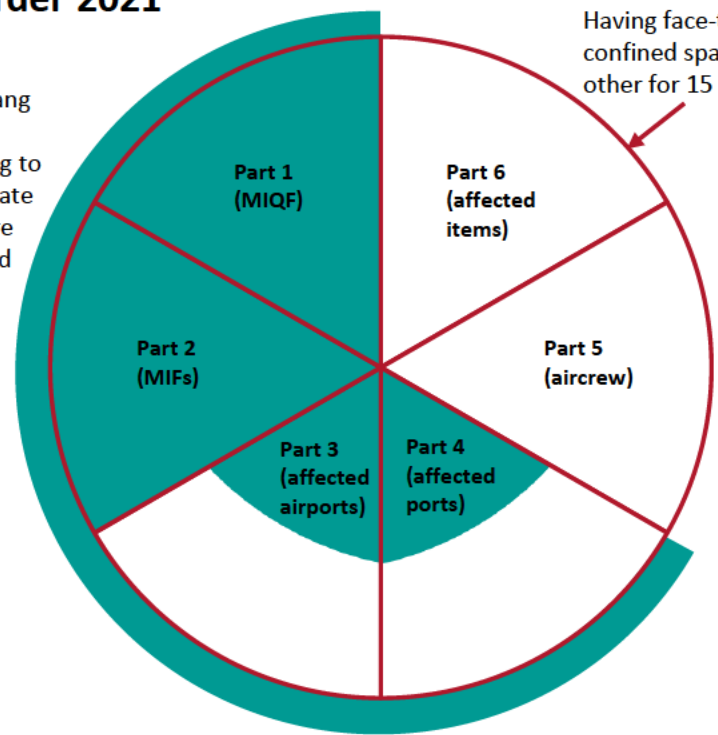
Released under the Official Information Act 1982







# Appendix One

## COVID-19 Public Health Response (Vaccinations) Order 2021

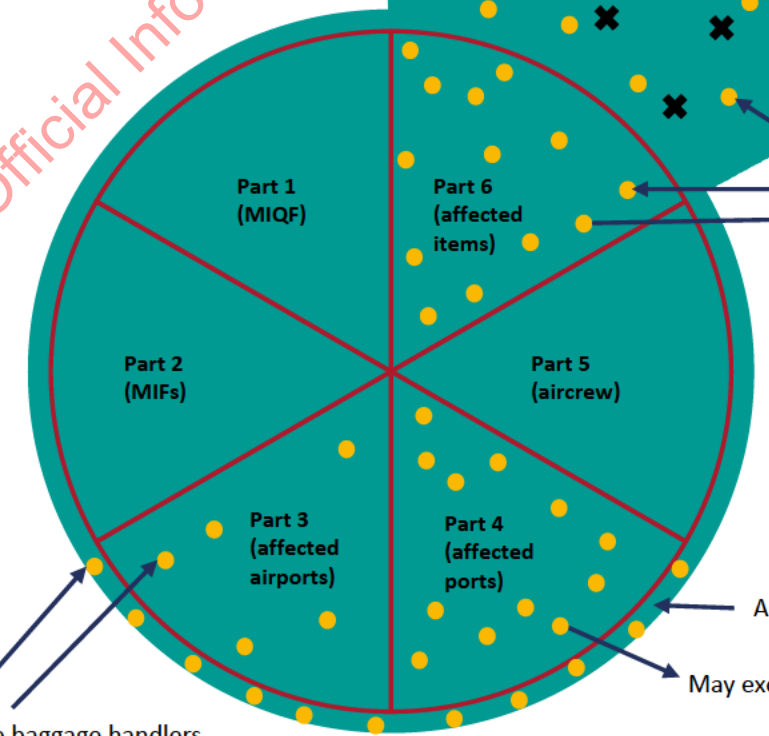
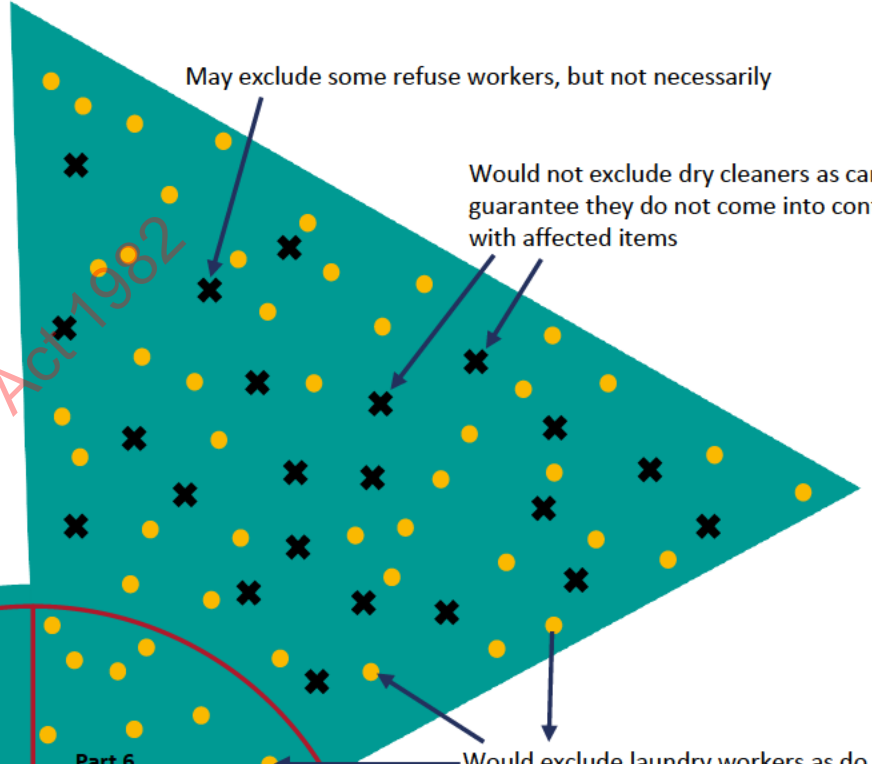
Overhang due to needing to anticipate who are covered



Having face-to-face contact or being in a confined space within 2 metres of each other for 15 minutes or more

- Key:**
-  Groups under the Border Workforce Testing Register (BWTR) as reflected in Schedule 2
  -  Vaccination Order
  -  Impact of public health exemption
  -  People subject to the Order who are at no/fanciful risk of contracting COVID-19 in the course of their roles subject to the Order

● Impact of the public health exemption is that handling items in a port is inadvertently treated more safe than handling items outside of a port



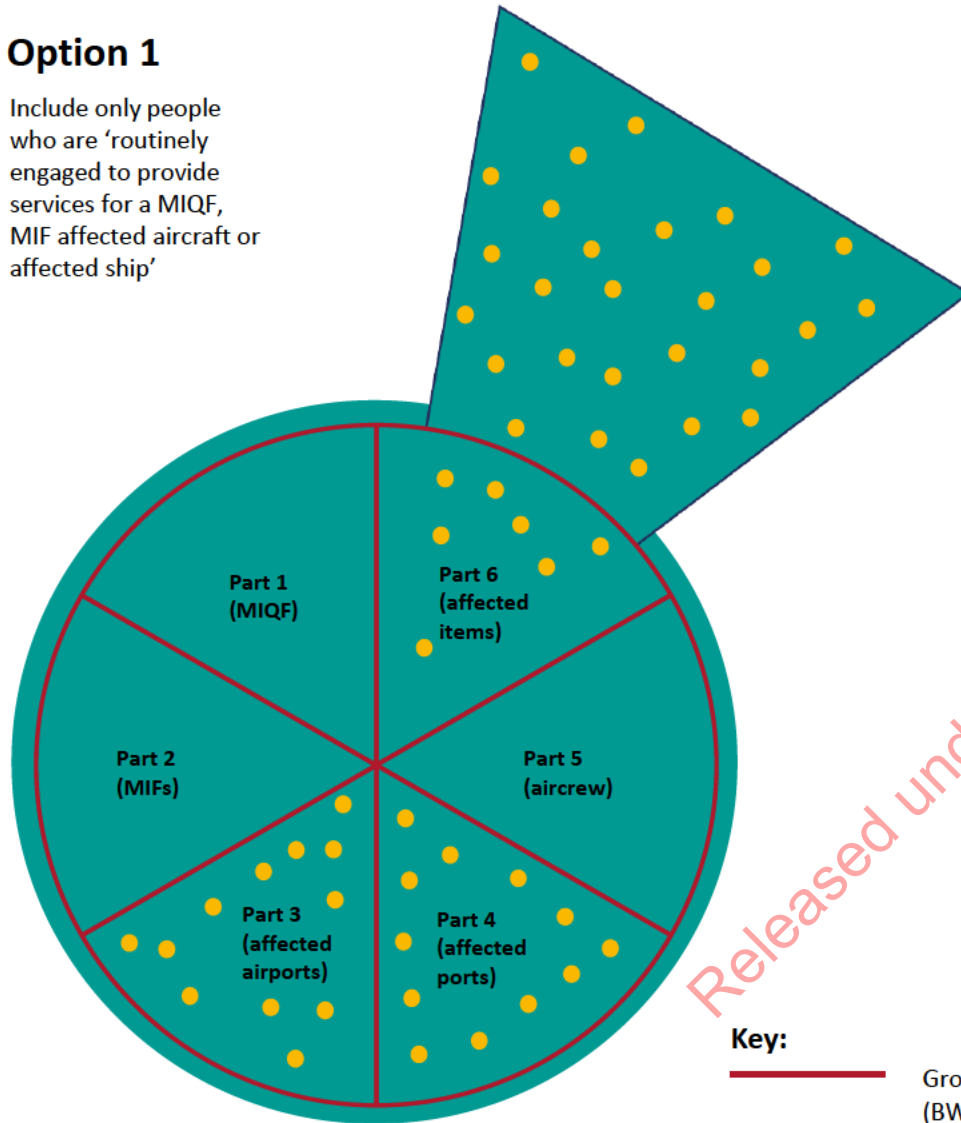
### Impact of decisions on 14 May advice for Amended Order

Released under the Official Information Act 1982

# Options to clarify the policy intent and to provide greater certainty to employers and affected workers

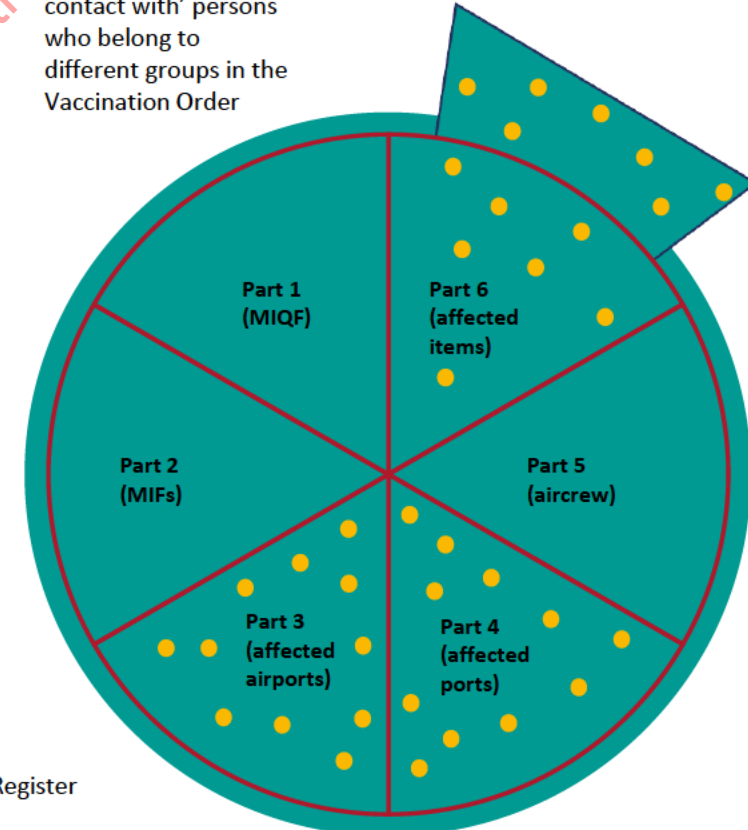
## Option 1

Include only people who are 'routinely engaged to provide services for a MIQF, MIF affected aircraft or affected ship'



## Option 2

Include people who are 'routinely engaged to 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 Vaccination Order



### Key:



Groups under the Border Workforce Testing Register (BWTR) as reflected in Schedule 2



Vaccination Order



Impact of public health exemption

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**Appendix Two – Summary of Crown Law advice**

s 9(2)(h)

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### Appendix Three - Summary of options analysis for the Amendment Order

Options	How this would work	Pros/cons	Assessment (based on CLO and public health considerations)
s 9(2)(g)(i)			s 9(2)(h)

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s 9(2)(g)(i)

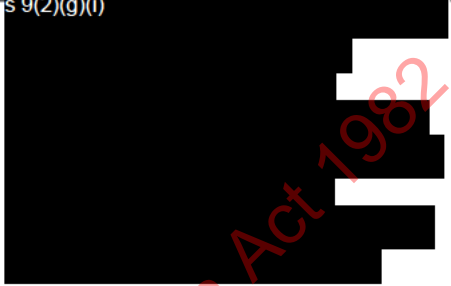
Released under the Official Information Act 1982

s 9(2)(h)

s 9(2)(g)(i)

Released under the Official Information Act 1982

s 9(2)(h)

		<p>s 9(2)(g)(i)</p> 	
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# Aide-Mémoire

**Further clarification on final policy decisions required to draft the amendments to the COVID-19 Public Health Response (Vaccinations) Order**

<b>Date due to MO:</b> 15 June 2021	<b>Action required by:</b> N/A
<b>Security level:</b> IN CONFIDENCE	<b>Health Report number:</b> HR20211390
<b>To:</b> Hon Chris Hipkins, Minister for COVID-19 Response	

## Contact for telephone discussion

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

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# Aide-Mémoire

## Further clarification on final policy decisions required to draft the amendments to the COVID-19 Public Health Response (Vaccinations) Order

**Date due:** 15 June 2021

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

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**Security level:** IN CONFIDENCE      **Health Report number:** HR20211390

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**Purpose:**

This paper provides you clarification about the Ministry's recommended option in relation to workers who handle affected items, including our responses to the Prime Minister's key points for clarification, to support your discussion with the Prime Minister.

**Background:**

Officials have prepared three briefings to seek decisions on the scope of the COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order) [MBIE 2021-3275, OC210396 and HR 20211235 refers]. The appropriate way to define 'persons who handle affected items' has been the subject of a number of discussions with Ministers and between officials. This issue is particularly complex because of the interaction between the policy intent of who is to be captured, the likely risk of exposure to COVID-19 and the anticipatory impact of the Order.

A copy of the briefing *Final policy decisions required to draft the amendments to the COVID-19 Public Health Response (Vaccinations) Order* (HR 20211235 refers) was provided to you and copied to the Prime Minister, other Health Ministers and the Minister of Transport and for Workplace Relations and Safety. One of the key decisions sought through this briefing was to confirm the policy intent of the persons who handle affected items group to enable the drafting of the Amendment Order (Amended Order) to commence.

To support your discussion with the Prime Minister, this aide-mémoire provides:

- background on how the Ministry has reached the recommended option in relation to workers who handle affected items
- additional information in relation to the Prime Minister's key points for clarification.

**Comment:**

The Ministry of Health's recommended option for the 'people who handle affected items groups'

In the April 2021 paper about the policy decisions necessary to create the Order (2021-3275 refers), you and other Ministers agreed that specified high-risk work would only be able to be undertaken by vaccinated people. For the first tranche, it was also agreed that this work would be performed by the regularly present workforce at Managed Isolation and Quarantine Facilities (MIQF) and Public Service Agency workers (as defined in Schedule 2 of the Public Service Act) interacting with international passengers, crew, their belongings, and affected items at an "affected airport", "affected port" or "affected ship".

In this paper, officials recommended that workers who handle affected items and are subject to the COVID-19 Public Health Response (Required Testing) Order 2020 (the RTO) should not be required to be vaccinated to perform work. The Prime Minister had indicated through feedback on the briefing that she wishes to include workers who regularly handle items removed from a MIQF, aircraft or ship. We understood that the Prime Minister aimed to capture a slightly different group of workers than those who are subject to the RTO.

s 9(2)(h)

[REDACTED] we have since recommended (HR 20211235 refers) you confirm that the policy intent for 'people who handle affected items groups' is to include people who are 'routinely engaged to provide services in relation to a MIQF, Managed Isolation Facilities (MIF), affected aircraft or affected ship and 'have contact with' persons who belong to different groups in the Order.

This recommendation primarily addresses issues arising from the anticipatory nature of the Order (ie people who will likely be exposed to COVID-19), which is different than the retrospective nature (ie who has been exposed to COVID-19) of the RTO.

On balance this recommendation provides the greatest likelihood that:

- a. the Order captures all the people intended by Government (ie people who handle affected items regularly and are at risk of contracting COVID-19)
- b. the 'affected items group' is deemed lawful by the Court; and
- c. the Court will conclude that persons covered by the Order is sufficiently certain that they must be vaccinated prior to undertaking work (ie affected workers "will likely" not "might" undertake such work).

As we developed the recommended approach, we considered a range of different situations that could be inadvertently captured by the definition of 'handling affected items'. For example, drycleaners may be requested to clean items that have recently been in an affected aircraft

(unknowingly), and they may also come into contact with people who are subject to the RTO in the course of their work.

This would mean that if we simply aligned the drafting of affected items to match the RTO there is a high chance that people who work at drycleaners nationwide may be deemed by their PCBU to be subject to the Order, despite the risk of exposure to COVID-19 being far-fetched. Therefore, by limiting the people who handle affected items to people who work for businesses 'routinely engaged to provide services in relation to a MIQF, Managed Isolation Facilities (MIF), affected aircraft or affected ship' means that only drycleaners who have a contractual (or similar) relationship with the border would be captured. For example, if an air carrier has contractual relationships with specific drycleaners for the cleaning of their uniforms.

s 9(2)(h)



Public health advice indicates that although laboratory evidence suggests that surface or fomite transmission is possible, it appears to be very rare, based on real life studies of transmission events. It has been identified in transmission events that elements of airborne and surface transmission in addition to close contact transmission could have occurred<sup>2</sup>.

The Order's anticipatory nature and the ambiguity around the pathway of transmission for COVID-19 in relation to fomite has created a risk that the Amended Order will capture a significant to moderate amount of people who are at fanciful risk of exposure to COVID-19 at work.

For these reasons, the Ministry has recommended that people in the affected items group must 'have contact with' persons who belong to different groups in the Order to ensure the Order does not capture people who are at no risk of exposure to COVID-19. This requirement is consistent with the requirements under the RTO, and also provides employers and affected workers already covered by the RTO certainty about who will need to be vaccinated prior to undertaking work.

In addition to the above requirement, the Ministry has recommended that people in the affected items group must also be 'routinely engaged to provide services in relation to a MIQF, MIF, affected aircraft or affected ship'. This requirement will provide sufficient specificity (eg

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<sup>1</sup> Section 11 relates to the right to refuse to undergo medical treatment.

<sup>2</sup> Since February 2021, another more probable source of transmission (a family member) has been identified in relation to New Zealand case involving a laundry worker.

a contracted service that removes items from affected aircrafts) that employers and affected workers will generally know they are covered by the Order and that the worker must be vaccinated prior to undertaking work.

s 9(2)(g)(i)

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s 9(2)(g)(i)

We have more fully explained these issues and the Ministry's proposed approach to address them earlier in the aide-mémoire.

pp Emily Richards

Maree Roberts

Deputy Director-General

**System Strategy and Policy**

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## Appendix One - Summary of Crown Law advice

s 9(2)(h)

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# 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

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**Security level:** IN CONFIDENCE                      **Health Report number:** 20211520

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

---

### Contact for telephone discussion

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

### 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

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**Security level:** IN CONFIDENCE      **Date:** 8 July 2021

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

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## 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.<sup>1</sup>
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.

<sup>1</sup> [https://www.health.govt.nz/system/files/documents/pages/science\\_updates\\_7\\_may\\_2021.pdf](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 disproportionately 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 PCBU/employers. This provides PCBU/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:

<b>Groups</b>	<b>1<sup>st</sup> dose</b>	<b>2<sup>nd</sup> dose</b>
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

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**Annex 1 – Crown Law advice (Legally Privileged)**

s 9(2)(h)

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# BORDER EXECUTIVE BOARD

# REPORT

19 February 2021

BEB RPT 21/002

**Minister for COVID-19 Response**

**Minister of Health  
Attorney-General  
Minister for Biosecurity  
Minister of Immigration  
Minister of Transport  
Minister of Customs  
Associate Minister of Health**

## IMPLEMENTING THE COVID-19 VACCINE ROLL OUT TO BORDER WORKERS

### Key points

- On 15 February 2021, Cabinet agreed a strategic and multi-faceted approach to maximise uptake of COVID-19 vaccines by border and Managed Isolation and Quarantine (MIQ) workforces, including reasonable application of levers under employment legislation.
- This paper provides an update on how public service border agencies are working to maximise uptake of the vaccine by border and MIQ workforces within current employment legislation.
- Public service border agencies are working alongside the Ministry of Health, Crown Law Office and the Public Service Commission to implement the vaccination strategy and maximise uptake.
- The approach to maximise vaccination of workers is based on an educate/expect/support approach. This includes provision of information and guidance, making it as easy as possible to receive the vaccination, and providing clear messages about expectations.
- Despite these steps, for a variety of reasons, it may be that some workers choose not to initially receive the vaccine.
- Allowing a sufficient period of time for workers (such as eight weeks) to receive the vaccine will enable workers to become more comfortable with vaccination and would maximise the outcomes being sought from the programme. Public service agencies will continue to work with any individuals who are not vaccinated within current employment settings.

- Further work is being done on the other options that Cabinet asked officials to progress. This includes:
  - Whether the current leave support schemes for COVID-19 could be modified to provide paid time off in case of adverse reactions to COVID-19 vaccination, led by the Ministry of Business, Innovation and Employment (MBIE); and
  - The legal framework that could be used to prevent non-vaccinated workers from working in Tier 1A roles.
- Cabinet noted that additional levers can be considered in the future if the vaccine uptake in border and MIQ workforces is not having the desired results. It is anticipated that the first two to three weeks of vaccination rollout will indicate whether additional levers could be required.

### Executive summary

- 1 This report summarises the work of public service border agencies, who have identified a number of issues to be worked through regarding the uptake of the COVID-19 vaccine.
- 2 Public service border chief executives expect their staff working at the front line to be immunised. Enquiries with staff and unions suggest that border workers are embracing the rollout of the COVID-19 vaccine. This report outlines the approach being taken to maximise vaccination uptake (within the current employment legislation framework), and the proposed approach towards hesitant employees.
- 3 This report includes guidance for border workers and public service agencies on the uptake of the vaccine.

### Recommendations

- 4 I recommend that you:
  - 1 **note** the public service border chief executives' expectation that all public service Tier 1A border workers will be vaccinated  
**Noted** Please Discuss
  2. **note** the steps outlined in this report intended to maximise the uptake of the COVID-19 vaccination  
**Noted** Please Discuss
  3. **note** that while initial indications from staff and union representatives are for a high level of support for vaccination, we expect some staff will be "vaccine hesitant" at least initially  
**Noted** Please Discuss
  4. **note** the nature of the levers to be used for non-vaccinated staff will vary according to the circumstances of each employer  
**Noted** Please Discuss

~~IN CONFIDENCE~~

5. **note** that public service border agencies will regularly update Ministers on vaccination uptake, and the adequacy of the levers available under current employment legislation

**Noted** *Please Discuss*

6. **agree** that public service agencies use an eight week period to use existing employment legislation levers to maximise uptake of the vaccination amongst public service workers, and to work with those workers who may initially not be vaccinated

**Agree** *Disagree/Please Discuss*

7. **note** that after the initial three week roll out of the first dose of the vaccine, officials anticipate being able to assess whether additional levers (beyond current employment legislation) may be required to maximise uptake

**Noted** *Please Discuss*

8. **refer** this report to the Minister of Health, Attorney-General, Minister for Biosecurity, Minister of Immigration, Minister of Transport, Minister of Customs and Associate Minister of Health for their information.

**Noted** *Please Discuss*



Christine Stevenson  
Chair, Border Executive Board



Minister for COVID-19 Response

Primary contacts:	David Soper, Chief Legal Advisor, NZ Customs Service	s 9(2)(a) OIA
	Jacinda Funnell, Deputy Chief Executive People and Capability, NZ Customs Service	s 9(2)(a) OIA

Ministers feedback on quality of briefing.	1	2	3	4	5
1 = Was not satisfactory 2 = Fell short of my expectations in some respects 3 = Met my expectations 4 = Met and sometimes exceeded my expectations 5 = Greatly exceeded my expectations					

## BACKGROUND AND ANALYSIS

### Maximising COVID-19 vaccine uptake in tier one

- 5 On Monday 15 February, Cabinet considered the paper *Maximising COVID-19 vaccine uptake in tier one*. The paper outlined the Government's approach to maximising the uptake of COVID-19 vaccines in the border and Managed Isolation and Quarantine (MIQ) workforces, who will be offered the vaccine first when supplies are limited (Tier 1A of the Sequencing Framework).
- 6 The paper also outlined the additional levers that may further increase vaccine uptake.
- 7 Cabinet agreed [CAB-21-MIN-0019] to a strategic and multi-faceted approach to maximise vaccination uptake by border and MIQ workers focussed on:
  - 7.1 Stakeholder engagement and communication
  - 7.2 Service design and work to maximise uptake; and
  - 7.3 Reasonable application of levers under employment legislation.
9. Cabinet also noted that border agencies are working together, and with employers, to encourage uptake of the vaccination without cost, and to set clear expectations of their workforces to be vaccinated.
10. To support vaccine uptake, Cabinet also agreed that officials progress further work on:
  - 9.1 Whether the current leave support schemes for COVID-19 could be modified to provide paid time off in case of adverse reactions to COVID-19 vaccination (Cabinet will be considering a paper on this on Monday 22 February); and
  - 9.2 The legal framework that could be used to prevent non-vaccinated workers from working in Tier 1A roles
- 10 This work is being progressed and will be reported to Ministers separately.
- 11 Public service border chief executives are working with the Ministry of Health to develop daily reporting on vaccine uptake of border workers. This data will be reviewed after two to three weeks of the vaccine being rolled out to inform whether harder levers are required if the vaccine uptake in border and MIQ workforces is not having the desired results.

### The Ministry of Health has advised that the vaccine will reduce risk to public health

- 12 Ministry of Health advice has concluded that the vaccine will limit the severity of the COVID-19 disease and therefore the risk of onward transmission. Therefore, the Border Executive Board (the Board) has determined that the vaccination, in conjunction with other measures used at the border, will reduce the risk to New Zealand.
- 13 Those workers most at risk of contracting COVID-19, and therefore transmitting it to the wider community, are those at the border and in MIQ who interact with people arriving in New Zealand.
- 14 Utilising the existing legislative framework, including the Health and Safety at Work Act 2015 and the Bill of Rights Act 1990, the Border Executive Board has undertaken an initial health and safety risk assessment to confirm that tier 1A border workers employed

by agencies represented by the Border Executive Board will be offered the vaccine over the next three weeks. This assessment has determined that the cohort is those covered by the Testing Order.

- 15 The Board will advise public service border sector employers to strongly encourage its workers to take up the vaccination, and to consider alternatives for public service workers who are not vaccinated. It is important to note that many border workers are employed by either Crown Entities, private sector employers, or are contractors. While public service chief executives will work very closely with these employers to maximise uptake of the vaccine, ultimately public service chief executives have very few levers with respect to these employers and their workforces.
- 16 The Board will continue to review the risk assessment outlined above, as further information comes to hand about the efficacy of the vaccine in reducing the risk to public health. This risk assessment will be used by public service border agencies and it will also be provided to private sector employers, including those who contract to public service border agencies.

### **Agencies will use an “Educate, Expect, Support” approach to maximise the uptake of the vaccine**

- 17 Officials are confident that many of these workers will be motivated to receive COVID-19 vaccines given the risk that the border and MIQ workforces face. There is also strong support from unions for vaccination.
- 18 Public service border agencies have developed an “Educate, Expect, Support” approach that focuses on educating all border workers (whether public service or not) on the importance of taking the vaccine and aims to address any concerns that workers have. Public service agencies expect their workers to consent to the vaccine to minimise the risk COVID-19 presents to themselves and their close contacts. This would also decrease the risk to all New Zealanders. If these workers are hesitant or initially don't agree to take the vaccine, agencies will support workers to address any key questions and concerns that might present barriers to vaccination.
- 19 Public service agencies will also be working with the contracted workforce to ensure that the overall approach to vaccination is aligned, while also acknowledging that employment arrangements will vary across these groups.
- 20 To maximise vaccine uptake, the following approach is being implemented.

#### **Educate**

- 21 *Educate* will ensure staff have quality and up to date information about vaccines and the vaccination programme. This information will be from the Ministry of Health on the benefits of vaccination to individuals and the community.
- 22 This stage of the approach will also remind staff of the need to continue to practice prevention control measures in line with Ministry of Health advice. This includes appropriate use of Personal Protective Equipment, practising good hygiene, maintaining physical distancing, keeping track of where workers have been, and staying home if workers are sick.

#### **Expect**

- 23 Public service chief executives will set a clear expectation that all Tier 1A border workers should be vaccinated, and this will be communicated to all border staff, whether or not they are public servants.



- 24 A considerable number of border workers are either contractors or work for private sector employers. While the public service chief executives will convey this expectation to these employers and agencies will work closely with contractors and third parties, it is ultimately up to these employers to set the expectations for their own workforces.

### **Support**

- 25 *Support* will ensure that vaccination is as easy as possible for workers, vaccines will be administered in the workplace where possible.
- 26 Employers will acknowledge that some staff may wish to gather further information before being vaccinated, so allowing staff sufficient time to make an informed decision will be important.
- 27 Public service agencies will support workers with paid leave. Similar to flu vaccinations, agencies would not expect direct employees to use their sick leave or annual leave to attend a vaccination appointment. If workers suffer adverse consequences or become unwell and unable to work following a vaccination, agencies will support them with special paid leave. For contracted suppliers that employ border staff, agencies will encourage them to take the same approach.

### **Guidance has been developed to support employers through these processes**

- 28 A range of guidance has been developed for public service agencies, noting that each agency will still have to consider its own circumstances (e.g. health and safety risk assessments) and employment arrangements. Guidance includes:
- 28.1 Ministry of Business, Innovation and Employment guidance for employers on vaccination of employees (this guidance is in development and will be provided to Ministers once complete);
- 28.2 Public Service Commission guidance on public service approach to vaccination rollout (this guidance is in development and will be provided to Ministers once complete); and
- 28.3 Employment relations framework and process (attached as **Appendix A**)

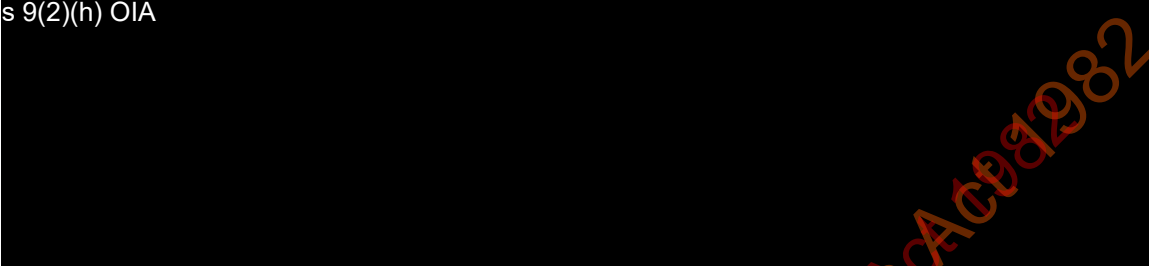
### **Notwithstanding the “educate, expect, support” approach we can expect a level of vaccination hesitancy amongst some workers, at least initially**

- 29 Vaccination of border and MIQ workers is scheduled to begin on 20 February 2021. It is anticipated that the rollout of the first dose of the vaccine, can be completed within three weeks. **Appendix A** illustrates the vaccination process for all Tier 1A workers.
- 30 For those workers who are vaccine hesitant, this is likely to reflect a range of concerns, from not having enough time to absorb the educational material provided to them, to those wanting to take a “wait and see” approach to see what emerges amongst their co-workers who get vaccinated early. It could also be as simple as they were unable to attend the appointment.
- 31 To maximise the voluntary take up of the vaccine, we consider that allowing a sufficient period of time (for example eight weeks) for workers to receive the vaccination will support informed choices, and build confidence about the vaccine, and therefore maximise the outcomes being sought from the programme. It will also take into account the reality of operational cycles that mean some staff don't spend all of their working time in high-risk workplaces or in roles covered by the testing order.


**Alternative employment options can be applied for employees who are not vaccinated**

32 There will likely be some staff who are not vaccinated following the *educate, expect and support* approach. In these instances, following a position-based health and safety risk assessment, if the employee is not able to continue to work in a Tier 1 position (i.e. there are no alternative measures available to mitigate non-vaccination) then alternative employment options will be applied.


33 s 9(2)(h) OIA




34 s 9(2)(g)(i) OIA



35 s 9(2)(g)(i) OIA



36 s 9(2)(h) OIA



**Crown entities, contracted and private sector staff**

37 For those staff that public service agencies do not directly employ, employers will need to use their existing levers under employment legislation in the first instance. Where public service agencies have a contractual relationship with the employer, we will work with them to support any potential redeployment. Agencies will also explore stronger contractual levers with the contracted parties, including requirements that new border workforce staff must be vaccinated.

**Public service agencies will regularly update Ministers on vaccination uptake, and the adequacy of the levers available under current employment legislation**

38 While we expect a high level of support for vaccination amongst border sector workers, there is some uncertainty about the level of uptake and in which parts of the sector (if any) that issues may arise. For this reason, public service chief executives are working with the Ministry of Health to develop detailed reporting arrangements for the uptake of the vaccine across both the sector as a whole, but also in individual workplaces/employers. Daily updates will be provided to Ministers on the progress of the vaccination programme, what and where any emerging issues are, and how chief executives are approaching such issues.

~~IN CONFIDENCE~~

- 39 This reporting will identify whether there is likely to be a need for enhanced measures, including Cabinet's request for legal options that could be used to prevent non-vaccinated workers from working in Tier 1A roles.

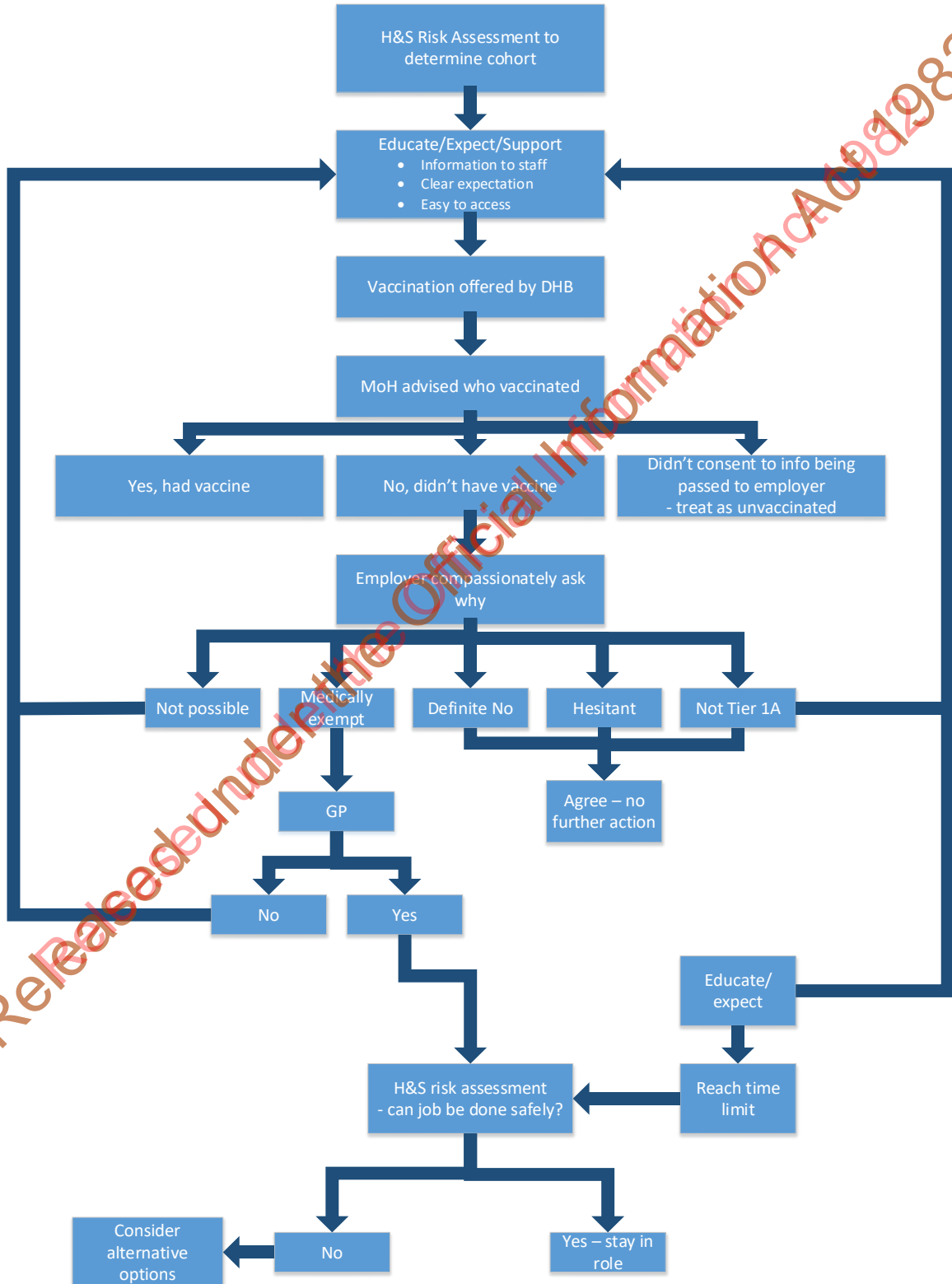
ENDS

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Appendix A - Vaccination process for all employers of Tier 1A workers

Vaccination process for all employers of Tier 1 Workers



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