

Memorandum

Scope of amendment to the COVID-19 Public Health Response (Vaccination Order) 2021 to require certain healthcare roles to be undertaken by vaccinated individuals

Date due to MO: 15 Māhuru 2021 **Action required by:** 17 Māhuru 2021

Security level: IN CONFIDENCE **Health Report number:** HR 20212012

To: Vaccine Ministers

Contact for telephone discussion

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

Action for Private Secretaries

N/A

Date dispatched to MO:

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Scope of amendment to the COVID-19 Public Health Response (Vaccination Order) 2021 to require certain healthcare roles to be undertaken by vaccinated individuals

Purpose

1. This memo seeks Vaccine Ministers direction on the policy settings:
 - a. to require specified work in the health and disability care sector to be undertaken by vaccinated individuals and
 - b. to amend the COVID-19 Public Health Response (Vaccination Order) 2021 (the Order).
2. Following your direction, officials will formally consult with key stakeholders, including the unions, to refine advice to Ministers on the scope and timing for amending the Order.

Background and Context

3. On 4 August 2021, officials provided advice to Ministers on options to extend regulatory requirements to be vaccinated against COVID-19 to certain groups of healthcare workers. Officials were requested to undertake further work on the options presented including further consultation on the proposals [HR20211564 refers].
4. Over the last six months, the Ministry has continued to embed expectations and encourage uptake of vaccinations across the health and disability workforce. Vaccination helps reduce their exposure to COVID-19 and variant infections during community outbreaks and the transmission of the disease to their patients, colleagues and whānau.
5. The Ministry continues to seek ways to ensure the highest standards of care in Aotearoa New Zealand can be delivered. This supports public confidence and trust in the health and disability, system, including the workforce.
6. One way to increase the rates of vaccination within the health and disability sector is to amend the Order. Requiring certain roles to be undertaken by vaccinated individuals helps to reduce the risk of COVID-19 infection and transmission in New Zealand.
7. The Ministry has informally consulted on the proposal to extend the scope of the Order to all roles undertaken in the health and disability system.
8. District Health Boards (DHBs) have indicated their initial support for regulatory requirements to be introduced. The Immunisation Implementation Advisory Group (IIAG) has also noted their general support.
9. Amending the Order is likely to be supported by people accessing the health system from a patient's rights perspective. There is likely to be a reasonable expectation held by

members of the public that the workforce they are engaging with have taken all reasonable precautions to prevent the spread of disease, including vaccination.

10. More consultation is required, particularly with health sector unions, to firm up the scope of how the Order could be implemented effectively.

Internationally the COVID-19 pandemic remains a huge challenge and other countries have responded by requiring healthcare workers to be vaccinated

11. This has been particularly evident in the recent outbreaks and community transmission in Australia and the spread of the Delta variant across the world. In addition, there is international evidence that healthcare workers have contributed to the spread of COVID-19 in hospital settings because of the nature of their work. Healthcare workers have contracted COVID-19 from patients and in some cases spread the virus to other patients.
12. Many other countries have required healthcare workers to be vaccinated. These include Australia, Singapore, Canada, UK, France, Italy, Greece and Fiji. Internationally, the reasons for having healthcare workers vaccinated are:
 - a. **Scientific** – reducing the risk and spread of COVID-19 or variants can protect more of the population if healthcare workers are vaccinated
 - b. **Practical** – the healthcare system is able to operate and function and remain resilient when outbreaks of COVID-19 or variants strain the healthcare system when the healthcare workforce are vaccinated

Advice

The Government has taken a proportionate response to requiring specific work to be performed by vaccinated people

13. Everyone in New Zealand is strongly encouraged to receive the COVID-19 vaccine to protect themselves, their whānau and the wider community. The programme is focused on an educational approach to build trust and confidence in the COVID-19 vaccine through the sharing of regular, credible, and accessible information so individuals can make an informed decision.
14. Employers have specific obligations under the Health and Safety at Work Act 2011 to ensure a safe workplace and this may, in limited circumstances, require certain work to only be performed by those who have received appropriate vaccination(s) (including, but not limited to the COVID-19 vaccine).
15. Some workplaces are considering the health and safety risks of whether a specific role needs to be performed by a vaccinated person due to the nature of the work and the risk of exposure to a disease.

The proportionate response includes legislation to provide that some specified work can only be undertaken by workers if they have been vaccinated against COVID-19

16. There is a legislative vehicle to require vaccinations in other groups – Orders under the COVID-19 Public Health Response Act 2020 (the “COVID-19 Act”). The Act currently allows mandatory measures to be used to support the public health response against COVID-19.

17. The COVID-19 Public Health (Vaccinations) Order 2021 (the Order) came into force on 1 May 2021. It requires that certain work at border or MIQ facility only be performed by vaccinated people.
18. This was due to the very high risk of exposure to COVID-19 by these workers who play a critical role in the implementation of our COVID-19 Elimination Strategy. At that stage, the border was the primary source of COVID-19 infection in New Zealand.

Any further legislative measures need to be carefully considered against the right to refuse medical treatments and be demonstrably and proportionally justified

19. Before making an Order, the COVID-19 Act requires that the Minister for COVID-19 Response must be satisfied that the proposed Orders do not limit (or are a justified limit) on the rights and freedoms under the New Zealand Bill of Rights Act 1990 (BORA).

s 9(2)(h)

There is strong public health rationale to require certain healthcare roles to be undertaken by vaccinated people in response to the current pandemic

21. There is a risk that many healthcare workers may be exposed to, and infected by, COVID-19 during their employment and may transmit the disease to others. Several international studies have shown that vaccination leads to a significant reduction in the rate of transmission of COVID-19.
22. Many healthcare workers are providing care in close proximity to many patients, some of whom may be presenting because they have COVID-19 symptoms. If these healthcare workers become infected, there is a high risk of transmission of COVID-19 to patients and healthcare workers and the community. If infection becomes widespread in this group, it could impact on the functioning of the healthcare system.
23. Vaccines offer a high degree of protection for individuals who are vaccinated, alongside a range of other public health measures. A healthcare 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. Vaccination has a clinically relevant impact on reducing the risk of transmission. The risk of COVID-19 infection in New Zealand needs to be considered in light of the presence of the increasingly transmissible Delta variant in the community.

Determining the scope of the amendment to the Order is important

- 25.

s 9(2)(h)

It is also important to ensure workers and employers understand who is included and excluded from these regulatory requirements.

26. In August 2021, COVID-19 Ministers were provided with an overview of options for making the vaccine a requirement for specific groups of healthcare workers [H202111564] in the following roles and settings:
- in aged residential care facilities (ARC),
 - in Home and Community Care Services (HCSS),
 - in primary health care,
 - in settings with vulnerable patients (i.e. ICU),
 - with patient contact (including receptionists and hospital staff), and
 - in critical support services (medical laboratories, catering).
27. The Minister for COVID-19 Response indicated a preference for the scope of the Order to cover all healthcare roles outlined in **a – f** above.
28. In assessing the parameters to describe the scope of the policy settings for an Order the following considerations were used:
- ensuring employers and employees within the health and disability care workforce could interpret how a proposed Order would apply to them
 - balancing the support for a strong public health rationale to require certain healthcare roles to be undertaken by vaccinated people while carefully considering people's right to refuse medical treatment
 - how practical it would be to monitor and enforce an extension to the scope of the current vaccination order to include additional healthcare workers across many roles and settings.

We recommend a broad s 9(2)(g)(i) approach based on well understood definitions in existing legislation and practice

29. The Ministry does not have an agreed and consistently applied definition of the health and disability workforce nor a record of all health and disability workers. It is important to determine a definition to assist in providing clarity for the scope of the policy settings for an Order to go as broadly as to include all healthcare workers.
30. The definition of health care services under the Health Practitioners Competence Assurance Act 2003 is the preferred definition as it is wide and states that health care services means services provided for the purpose of assessing, improving, protecting, or managing the physical or mental health of individuals or groups of individuals.
31. More work is needed to consider how best to broaden the scope of the policy settings to all healthcare workers. A set of parameters have been the basis of these considered namely:
- to whom the obligation to be vaccinated is applied, i.e. to ensure employees and employers are able to determine if they are included or excluded under the obligation
 - the definition of health care services as defined by the Health Practitioners Competence Assurance Act 2003
 - whether the role is patient or public facing

- whether the setting is patient or public facing
- the risk of exposure to COVID-19 (variant) is high risk to be transmissible
- the risk of exposure to COVID-19 (variant) is high risk to be fatal.

32. DHBs have developed COVID-19 pathways¹ to support all those working within the pathways to be vaccinated. This approach has been recently developed as part of the response to ensuring an operational and functioning healthcare system is able to deliver essential health care services while at the same time protecting their workforce.

s 9(2)(g)(i)

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Exemptions

¹ COVID-19 pathways are where the DHBs have determined the pathway for a high-risk patient with COVID-19 alongside any identified roles to ensure all those working within this pathway are vaccinated. This approach has been recently developed as part of their response to ensuring an operational and functioning healthcare system is able to deliver essential health care services

37. Since August 2021, applications for an exemption from the COVID-19 Public Health Response (Vaccination) Order (clause 12A) can be approved where a border worker who is not vaccinated and where removing the worker from that role would result in significant disruption to essential supply chains.
38. These exemptions are decided and granted by the Minister for COVID-19 Response. Applications can be applied on behalf of the worker (with agreement) by the Person Conducting a Business or Undertaking (PCBU) if the criteria for exemption is met.
39. Work is required to determine the details in this context but an exemption process is necessary for natural justice reasons. We would continue to recommend that exemptions are decided and granted by the Minister for COVID-19 Response. The reasons for seeking an exemption are likely to be very limited and relate to having a significant impact on the effective and continued functioning of the healthcare system.

Equity

40. If workers, subject to the Order, are not vaccinated, their employers may choose to redeploy them; or (following appropriate HR processes) may choose to terminate their employment. This may impact on a number of Māori and Pacific Peoples in certain healthcare roles.
41. Māori have traditionally lower vaccination rates than non-Māori. This may mean that Māori are more likely to be negatively impacted by the Order.
42. We also know from historical examples that Māori and Pacific peoples 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 are no limitations on rights, or that any limitation on rights is justified, to minimise the potential risk to the community from COVID-19.
43. Disabled people who directly employ carers may also be disadvantaged as the requirement for vaccination through an employer may place additional responsibilities on them.

Next steps

44. Unions representing health workers are largely very supportive of voluntary workforce vaccination. ^{s 9(2)(g)(i)} [REDACTED]
45. Consultation with Unions, Office for Disabilities Issues, Privacy Commissioner and Māori representatives on the scope of an Order is expected to be completed by the end of September. Home and Community Care Services and private sector healthcare employers, which may involve disabled consumers who are also employers of healthcare workers, ^{s 9(2)(g)(i)} [REDACTED]
46. There will be significant operational, technological and communication and engagement activity required to support the implementation of the Order. This includes monitoring and reporting, standards of proof of vaccination and clear guidance to ensure good faith employment and health and safety practices continue.
47. Officials will report back to you in October with an update following consultation and seeking final decisions on the amendments to the Order. This will include a detailed

implementation and communications plan. That advice will also set out the process and timing for drafting, consulting, and making the amendment to the Vaccination Order.

Recommendations

It is recommended that you:

1.	note	there is a strong public health rationale to require certain roles to be undertaken in the health system to be undertaken by vaccinated individuals	
2.	agree	s 9(2)(g)(i) [REDACTED]	Yes/No
3.	note	the Ministry will continue to consult, particularly with health sector Unions, to support advice on how and when to implement the change to the COVID-19 Public Health Response (Vaccination Order) 2021	
4.	note	officials will report back to you in early October following consultation to seek final decisions on amending the COVID-19 Public Health Response (Vaccination Order) 2021	

Please note, Appendix 1 is withheld in full under section 9(2)(g)(i) of the Act.

Briefing

COVID-19 Public Health Response (Vaccinations) Amendment (No 3) Order 2021: Health Workers, Prison Staff, Educators – for signature

Date due to MO: 22 October 2021 **Action required by:** 22 October 2021

Security level: IN CONFIDENCE **Health Report number:** 20212209

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

Contact for telephone discussion

Name	Position	Telephone
Dr Ashley Bloomfield	Director-General of Health	s 9(2)(a)
Jolanda Meijer	Policy Director, System Strategy and Policy	s 9(2)(a)

Minister's office to complete:

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

Comment:

COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021: Health workers, Prison Staff, and Educators – for signature

Security level: IN CONFIDENCE **Date:** 22 October 2021

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

Purpose of report

1. This report recommends that you sign the attached COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 (the Amendment Order). The Amendment Order requires work in the health and disability sector, prisons, and education services, be undertaken by vaccinated workers.

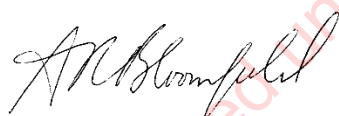
Summary

2. On 1 May 2021, the COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order) entered into force and required that certain work only be undertaken by vaccinated workers.
3. Cabinet has since agreed to expand the types of work requiring vaccinated workers, to the **health and disability sector, education sector** and at **prisons** [CAB-21-MIN-0413 and CAB-21-MIN-0422 refer]. The Amendment Order would give effect to those decisions.
4. Officials recommend that you sign the final Amendment Order no later than midday on Friday 22 October 2021, so that it can be published in the *New Zealand Gazette* that day. This will allow officials to meet the statutory obligation to provide at least 48 hours' notice between gazetting and the Amendment Order coming into effect. The Amendment Order will then come into effect at 11:59pm on Monday 25 October 2021.
5. The deadline for workers to have received their first dose and second doses of the vaccine vary depending on the group of workers, but 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. **Noted**
- b) **Note** that Cabinet agreed to extend the requirement to be vaccinated to include workers in the health and disability sector, education sector, and at prisons [CAB-21-MIN-0413 and CAB-21-MIN-0422 refer]. **Noted**
- c) **Note** that officials advise that the COVID-19 Public Health Response (Vaccinations) Amendment Order 2021, which gives effect to Cabinet's decision, is in line with the purposes of the COVID-19 Public Health Response Act 2020 (the Act), to prevent and limit the risk of, the outbreak or spread, of COVID-19. **Noted**
- d) **Note** that these measures engage rights protected by the New Zealand Bill of Rights Act 1990 (NZBORA). **Noted**
- e) **Note** that you must be satisfied that the Amendment Order does not limit, or is a justified limit, on the rights and freedoms in the NZBORA, as part of issuing the Amendment Order. **Noted**
- f) **Note** that, as Cabinet's agreement to extend the vaccination requirement fulfils your obligation to consult under section 9(1)(c) of the Act, the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 has been finalised for your approval. **Noted**
- g) **Sign** the attached COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021 on Friday 22 October 2021. **Yes/No**



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

Date: 22 October 2021



Hon Chris Hipkins
Minister for COVID-19 Response

Date: 22/10/21

COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021: Health workers, Prison Staff, and Educators – for signature

Background

6. On 1 May 2021, the COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order) entered into force and required that certain work only be undertaken by vaccinated workers.
7. On 15 July 2021, the Order was amended to extend the groups required to be vaccinated, and now includes workers:
 - a. at managed isolation and quarantine facilities (MIQFs)
 - b. at airside area of affected airports and some other high-risk areas at airports
 - c. at affected ports
 - d. at accommodation services where specified aircrew members are self-isolating
 - e. who handle items removed from the affected places listed above, and touch affected items while undertaking work for a relevant Person Conducting a Business or Undertaking (PCBU).
8. On 11 October 2021, Cabinet agreed to amend the COVID-19 Public Health Response (Vaccinations) Order 2021 to require high risk work in the health and disability sector, and in the education sector, to be undertaken by vaccinated workers [CAB-21-MIN-0413, CAB-21-MIN-0414 refer].
9. On 18 October 2021, Cabinet agreed to require work in correction facilities to be undertaken by vaccinated staff [CAB-21-MIN-0422 refers].

Contents of the amendment order

Health workers

10. The amendment order requires the following workers in the health and disability sector to be vaccinated:
 - a. health practitioners
 - b. workers who work at a workplace where health services are provided by 1 or more health practitioners, and whose role involves being within 2 meters or less of a health practitioner or any member of the public for a period of 15 minutes or more
 - c. workers employed or engaged by certified providers

- d. care and support workers.

Corrections staff

11. The Amendment Order requires that any worker of a prison who is required to undergo a security screening process before being allowed entry into prison be vaccinated. This excludes workers who are specified visitors or statutory visitors.
12. Given that the announcement for workers in prisons was made one week after the announcement for health and disability workers, it is fair to provide an extension to the deadline for workers in prisons to be vaccinated.
13. Corrections has liaised with the Public Service Association (PSA) and the Corrections Association of New Zealand (CANZ) on the timeframes for Corrections staff to get their mandatory vaccines. Corrections consider that it is equitable to provide a one-week extension to the deadline for non-health and disability workers in prisons to be vaccinated. This would give these affected workers the same length of time to be vaccinated as workers in the health and disability sector.

Education services

14. The Amendment Order requires the following people in the education sector to be vaccinated:
 - a. workers over the age of 12 year who carry out work at or for an affected education service (including as a volunteer worker or an unpaid worker) and who:
 - i. May have contact with children or students in the course of carrying out the work; or
 - ii. Will be present at the affected education services at a time when children or students are also present
 - b. providers of a home-based education and care service.

Transitional provision

15. Anyone in the following groups who has not been fully vaccinated when the Amendment Order comes into effect will have until the following dates to get their two doses:

	1 st dose	2 nd dose
Prison workers	6 November 2021	8 December 2021
Health and disability workers	15 November 2021	1 January 2022
Education service workers	15 November 2021	1 January 2022

16. Until 1 January 2022, educators who are not fully vaccinated are required to undergo weekly testing. The requirement of a PCBU to not allow an affected

person to carry out work at an education service applies from 2 January 2022. This obligation is not delayed for PCBUs of other workforces.

Exemption from duty

17. If a health practitioner believes they require an exemption from the requirement to be vaccinated, another health practitioner must undertake an examination to determine whether vaccination would be inappropriate.

Additional duties of relevant education workforce PCBUs in relation to vaccination

18. The Amendment Order states that a PCBUs must not allow an affected person who provides a home-based education and care service to carry out certain work unless satisfied that every person over the age of 12 years in the home based education and care service is provided is vaccinated.

Chief Executive authorisation

19. Unlike the other groups within the Order, a chief executive cannot authorise healthcare workers who have not been vaccinated to carry out certain work.

Power of Minister to grant exemptions

20. The Amendment Order expands the Minister's power to grant exemptions where if necessary, or desirable, to prevent significant disruption to health services and the essential operations of a prison. This will mitigate any harm that may occur due to the potential disruption of those services.

Duties of relevant PCBUs employing or engaging health care workers and corrections staff

21. The Amendment Order requires a relevant PCBU to keep and maintain a written record of information of the person's vaccination status.

Process for amending a section 11 Order

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

Consultation

- 26. As above, under section 9(1)(c) of the COVID-19 Act you are required to consult with the Prime Minister, Minister of Justice and Minister of Health before making or amending a COVID-19 order.
- 27. As these Ministers form part of Cabinet, their decision to amend the order meets consultation requirements.
- 28. The Ministry of Education and the Department of Corrections were consulted throughout the development of the Order.
- 29. There has been very broad support for the intent of the requirement, but wide concern in the health and disability sector about the short timeframes for implementation. There is concern that this does not give people enough time to get vaccinated before they have to stand down from work, but the principal concern is that it creates challenges for staffing services and could leave significant gaps in rosters. On the basis of this feedback, we have advised pushing out the dates for health sector compliance to match those of the Education sector.

Public health rationale

- 30. You have previously been provided with advice on the rationale for requiring work in the health and disability sectors, education sector, and at corrections facilities, be undertaken by vaccinated workers only [CAB-21-MIN-0413 and CAB-21-MIN-0422 refer].
- 31. Workers in the health and disability sector provide critical health and support services to all New Zealanders particularly our most vulnerable population. This population is likely to be at a higher risk of exposure to COVID-19, particularly in the event of an outbreak and/or work with people who are more likely to experience serious illness if infected by COVID-19.
- 32. Vaccination helps protect the vulnerable who are at greater risk of being hospitalised due to COVID-19 and reduces impacts on staffing within the health and disability sector if COVID-19 circulates, ensuring the system is more resilient in the event of an outbreak.
- 33. If a worker at a corrections facility becomes infected with COVID-19, they could become a vector for transmission into a prison. Due to their confined living conditions, prisoners generally are conspicuously vulnerable to COVID-19.

New Zealand Bill of Rights Act 1990

34. Crown Law Office advice is attached in Annex 1.

Equity

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

Health work force

39. As Māori and Pacific populations have lower vaccination rates, those people working in the health and disability sector are more likely to be required to take action under the Amendment Order.
40. There is likely to be employment implications for those non-regulated Māori and Pacific workers within health service settings and environments leading to termination of their employment with significant loss of income impacting on many households. Although we do not have official figures, we note that there will be a potential impact.

Correction staff

41. Prisoners are disproportionately likely to have other compromising health conditions, including (but not solely) because of Māori over-representation in prison populations. An additional risk that a vaccination mandate for workers in prisons may guard against is the healthcare system becoming overburdened by an increase in vulnerable people becoming infected.

Education workers

42. As Māori and Pacific peoples are likely to be disproportionately affected by a widespread epidemic and prolonged disconnection from education services, the Amendment Order is likely to have a positive effect on reducing their exposure to COVID-19 and related socio-economic impacts.
43. However, as Māori and Pacific peoples also have traditionally lower vaccination rates, Māori and Pacific people working in the education workforce may be disproportionately affected. The Ministry of Education will address this through a bespoke communications campaign aiming at this part of the education workforce, and targeted vaccination measures that will be developed in

conjunction with Māori and Pacific Education Peak Bodies and Social Service providers.

Te Tiriti o Waitangi implications

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

Implementation

49. The Border Workforce Testing Register (BWTR) is the most comprehensive database of the border and MIQF and MIF workforce. The principal Order allows the Ministry to pre-populate the BWTR with data from the COVID-19 Immunisation Register to proactively identify who should be vaccinated.
50. The Amendment Order does not mandate the use of a register by workers or PCBUs. This means that there will not be a single centralised record of vaccination status – the use of the register could be mandated in future through a future amendment.
51. Instead, the Amendment Order requires PCBUs/employers to keep records of vaccinations and requires workers to provide vaccination details to their PCBU/employer.
52. The Ministry is developing a register that PCBUs will be required to use to keep a record of the vaccine status for all workers added by the Amendment Order, and, for secondary schools, eligible students. We expect that the register could be operational from early December 2021. Consideration can be given to mandating the use of this register closer to that time

Next steps

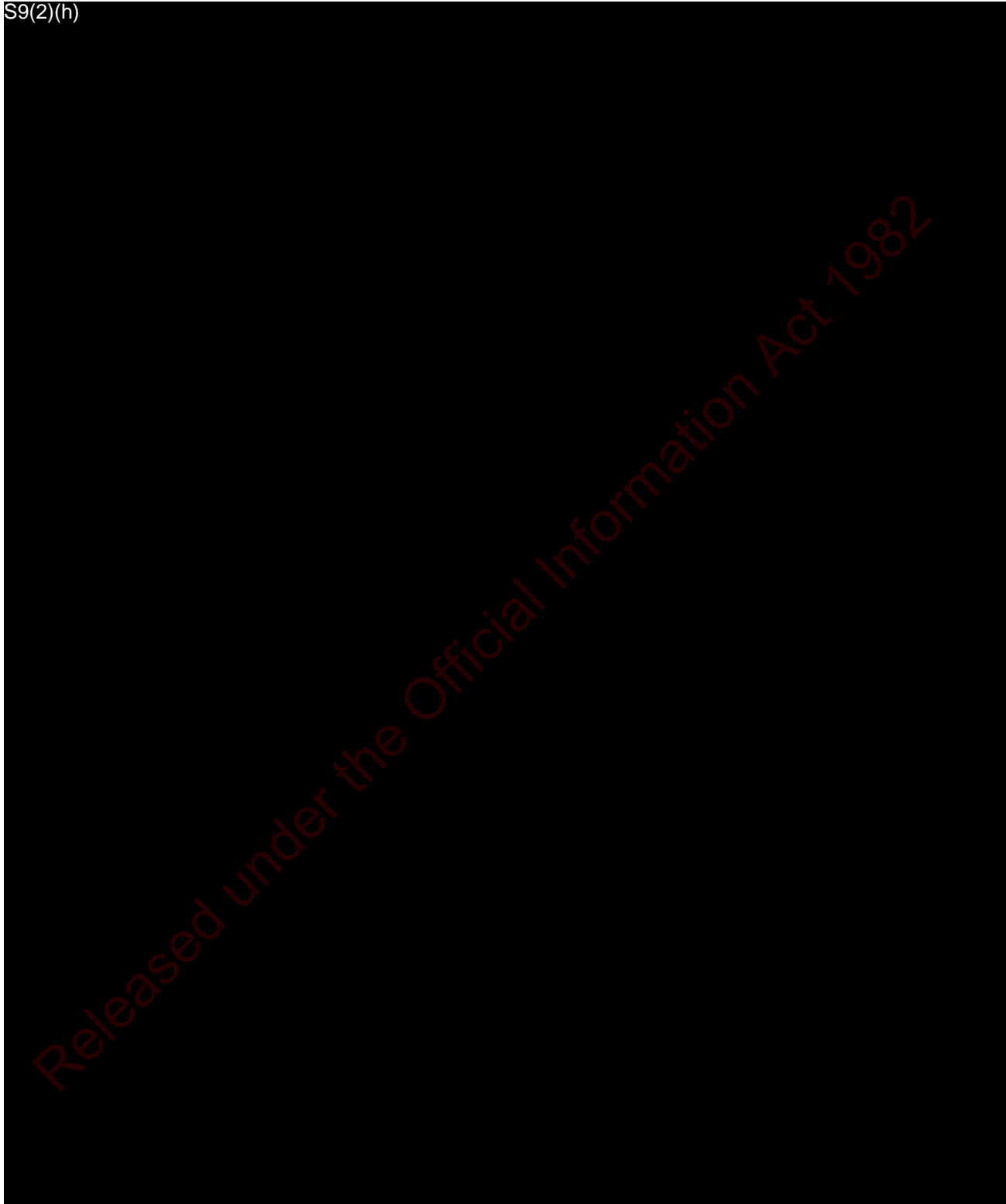
53. Officials recommend that you sign the final Amendment Order no later than the midday on Friday 22 October 2021, so that it can be published in the *New Zealand Gazette* that day. This will allow officials to meet the statutory obligation to provide at least 48 hours' notice between gazetting and the Amendment Order coming into effect.
54. Once signed the Amendment Order will come into effect at 11:59pm on Monday 25 October 2021.

ENDS.

Released under the Official Information Act 1982

Annex 1: Crown Law Office Advice

S9(2)(h)



Released under the Official Information Act 1982