

Hon Kris Faafoi, Minister of Justice
9 March 2021

Purpose

1. Social Wellbeing Committee (SWC) is considering the Minister for COVID-19 Response's paper *'Implementing the Covid-19 Vaccine Rollout to Border Workers'* on Wednesday 10 May.
2. This aide-memoire provides you with background information and talking points on this paper to support your discussion at SWC.

Context

3. This paper discusses requiring vaccination of Tier 1A border workers. The Ministry of Justice was not consulted on this paper.
4. Rollout of vaccinations for them began on 20 February. The vaccination numbers are tracking largely as expected and a high level of support for vaccination among border workers is expected. It is expected that a large majority of vaccinations will be completed within three weeks and at the end of eight weeks there would be a clear indication of numbers of staff who are not going to be vaccinated.
5. The paper provides no numbers or data about numbers of border workers that have refused or been unable to be vaccinated to date.
6. There is an expectation that notwithstanding the Government's current strategy (educate, expect, support), there will be some vaccine hesitant workers. The paper states there may be several reasons why some workers are vaccine hesitant and there are likely to also be people who may have medical reasons for not being vaccinated (e.g. pregnancy). The paper identifies there are challenges for government agencies to require contracting parties or the private sector to vaccinate their Tier 1A staff as this is ultimately the responsibility of the employer (or PCBU).

7. [REDACTED]

9(2)(g)(i) free and frank

8. The paper considers several options, including:
 - Applying existing employment levers
 - Strengthening levers through primary legislation
 - Strengthening levers through secondary legislation.

9. [REDACTED]

s 9(2)(g)(i) free and frank

10. The paper seeks agreement to direct officials to undertake the policy work required for primary and or secondary legislation and report back to the Minister for COVID-19 response by 12 March 2021. It is unclear what this policy work will entail. s9(2)(g)(i)

The paper raises significant human rights issues

11. The Cabinet paper raises some significant human rights issues that have not been canvassed in the paper. s9(2)(h)

However, there needs to be strong evidence to show that the limitation is demonstrably justified in a free and democratic society (including whether there are any alternatives).

12. Some of the human rights issues raised by the proposals include

- vaccinations constitute medical treatment which any person can refuse under section 11 of the BORA (subject to justified limits).
- it does not appear justified to compel a staff member to accept a vaccination to protect the staff member.
- it does also not appear to be justified to compel staff to do so in order to protect others if the government can take other measures to address the risk posed by an unvaccinated staff member.
- [REDACTED]
- a proposal may also breach the right to freedom from discrimination under the Human Rights Act 1993, for example where a person refuses to be vaccinated because they are pregnant or for religious reason.
- certain population groups would be affected more than others if a compulsory element were introduced to staff vaccinations. For example, many Māori and Pacific people work as border workers. This could also be seen as a discriminatory effect.
- human rights concerns also apply to the use of employment levers which may include redeployment and ultimately termination of employment.

9(2)(g)(i) free and frank

There are other significant risks associated with requiring vaccinations

s 9(2)(h)

13. As well as the human rights concerns associated with the proposals, [REDACTED]

maintain professional legal privilege

14. [REDACTED] There could be a concern that vaccinations might become mandatory for other workforces.

s (9)(2)(g)(i) free and frank

Policy work to introduce a compulsory element should not be rushed

15. We consider policy work to introduce a compulsory element should not be rushed.

16. The paper states that the first weeks of vaccinations will indicate uptake. We advise assessing the data on the uptake of vaccinations, and reasons for non-vaccinations, in order to determine whether there is an issue that needs to be addressed through legislation. This would be a more rights-consistent approach and ensure a proportionate response.

Proposed next steps

17. If Cabinet wishes to pursue any of the proposals regarding compulsory vaccinations, we strongly recommend that Justice officials be involved in the policy work to help find a solution that constitutes a justified and proportionate limitation of human rights.

Talking points: SWC 10 March 20201 – 'Implementing the Covid-19 Vaccine Rollout to Border Workers' Paper

- My officials at the Ministry of Justice have not been consulted on this paper.
- I strongly recommend that they be involved in the policy work to help find a solution that constitutes a justified and proportionate limitation of human rights. Any legislative change will be assessed against the Bill of Rights Act 1990.
- My officials provide advice to the Attorney-General on the consistency of proposals with the Bill of Rights Act and the Human Rights Act. If he has concerns, he will submit a public report to Parliament to that effect. If limits on rights cannot be justified, the legislation would be inconsistent with the Bill of Rights Act.
- There are significant human rights concerns about prohibiting border workers from working without a vaccination.
- [REDACTED] However, there needs to be strong evidence to show that the limitation is demonstrably justified in a free and democratic society (including whether there are any alternatives).
- Human rights concerns include:
 - vaccinations constitute medical treatment which any person can refuse under section 11 of the BORA (subject to justified limits).
 - it does not appear justified to compel a staff member to accept a vaccination to protect the staff member.
 - it does also not appear to be justified to compel staff to do so in order to protect others if the government can take other measures to address the risk posed by an unvaccinated staff member.
 - s9(2)(g)(i) [REDACTED]
 - a proposal may also breach the right to freedom from discrimination under the Human Rights Act 1993, for example where a person refuses to be vaccinated because they are pregnant or for religious reason.
 - certain population groups would be affected more than others if a compulsory element were introduced to staff vaccinations. For example, many Māori and Pacific people work as border workers. This could also be seen as a discriminatory effect.
 - human rights concerns also apply to the use of employment levers which may include redeployment and ultimately termination of employment.
- s9(2)(h) [REDACTED]
- s9(2)(g)(i) [REDACTED] There could be a concern that vaccinations might become mandatory for other workforces.
- I consider policy work to introduce a compulsory element should not be rushed.
- The paper states that the first weeks of vaccinations will indicate uptake.
- I consider it would be advisable to assess data on the uptake of vaccinations, and reasons for non-vaccinations, in order to determine whether there is an issue that needs to be addressed through legislation. This would be a more rights-consistent approach and ensure a proportionate response.

s 9(2)(h)
maintain
professional
legal
privilege

Vitasovich, Saskia

From: Jordan, Robert
Sent: Monday, 14 March 2022 12:53 pm
To: Ruth.Fairhall@dpmc.govt.nz; Ashlee.Bowles@dpmc.govt.nz; Megan.Stratford@dpmc.govt.nz; Kay.Baxter@dpmc.govt.nz
Cc: Justice COVID Policy; Sanders, Oliver
Subject: Post-Peak Cabinet paper

Kia ora koutou,

Thank you for sending this through and the opportunity for feedback. I apologise for the lateness.

We support the recommendations in the paper and have the following comments on where some points may be made a bit stronger.

Human Rights

- s 9(2)(h) maintain professional legal privilege
 - Using MVP with only a social exclusion focus rather than also having a justification on public health grounds: it's not clear whether this is justifiable (as already outlined in the HR section) [REDACTED]

Public Safety

out of scope

[REDACTED]

- s 9(2)(h) maintain professional privilege
 - [REDACTED] We would also add from a policy perspective, trading off on human rights to encourage behavioural change can impact the social license of the Government and should be carefully considered.
 - Para 14: In order to continue the vaccine requirements for the narrowly defined cohort there should be a stronger link between the requirement to be vaccinated and its effectiveness at preventing omicron infection. In addition, where explanation is given for health and corrections workers, there is no corresponding explanation for Border and MIQ workers. The justification for the first two are based on the risk of those they interact with. That may not be the same justification for MIQ and Border workers who's roles are not necessarily engaging with a vulnerable cohort.

Again, apologies for the late response. Happy to chat if you have any other questions.

Ngā mihi,



Robert Jordan ([he/him](#))
 Kaitātari Kaupapa | Senior Policy Advisor | Electoral & Constitutional Policy | Policy Group | National Office - Justice Centre, Wellington
 M s9(2)(a) | P +64 04 918 8960 | Ext 58960
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Chat with me in Teams

From: Justice COVID Policy
Sent: Monday, 15 March 2021 1:00 pm
To: Shane Kinley
Cc: Kerpen, Ursula
Subject: RE: Update post-SWC [UNCLASSIFIED]
Attachments: Document1.docx

Kia ora anō Shane

Apologies for the delay, our changes to the text below are **attached**.

Please keep up in the loop as to how this progresses.

Ngā mihi
Ellie

The rest of the email chain redacted under sections 9(2)(a) and 9(2)(g)(i), or as out of scope. The email attachment is Document 4 (page 6)

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Ministry of Justice comments on human rights issues

We support a border staff vaccination approach that is based on voluntary vaccinations. We currently do not see that a case is made for the necessity of legislation authorising secondary legislation to prescribe that only vaccinated persons can be border workers.

Based on the draft advice we were consulted on, we think there is significant policy work required before legislation can be progressed. The Ministry of Justice can work with relevant agencies to support this policy work to ensure that human rights implications are comprehensively assessed and limitations on people's human rights minimised.

Vaccinations constitute medical treatment which any person can refuse under section 11 of the Bill of Rights Act (subject to justified limits). Attaching negative consequences to a non-vaccination limits section 11 and, while it might be possible to justify a limitation on public health grounds, this requires a demonstration of the policy analysis.

We recommend the policy analysis articulate the policy problem that needs to be addressed, the extent of the problem, what the implications are of the proposals and why existing frameworks (such as employment regulations) are not sufficient to address the problem. The policy work would also assess how the proposals would work across all staff affected. This includes casual staff, like MIQ hotel cleaners, who have been working over the 12 months utilising existing health and safety precautions (such as PPE and compulsory tests). In particular, we note there is no data on non-vaccinations in the paper which would give an indication of the scale of the issue and whether it is significant enough to justify limiting fundamental human rights.

We consider it would also be beneficial to assess the effects of the proposal on the Government's wider vaccination programme.

The proposal that only vaccinated persons can work as border staff may breach the right to freedom from discrimination under the Human Rights Act 1993, for example where a person refuses to be vaccinated because they are pregnant or for religious reason. Certain population groups could be affected more than others if a compulsory element were introduced to staff vaccinations.

The Ministry advises that both the empowering provision and any orders under them will need to be assessed against the BORA and the HRA. Orders which include provisions that are not justified under the BORA and the HRA could be void (*ultra vires*). The human right implications would need to be revisited and assessed again through the BORA vetting process after a Bill is drafted. Justice officials would welcome the opportunity to work through these issues in more detail with border agencies if the proposals are progressed.

I've also included your comment re exemptions as follows:

The Ministry of Justice has suggested that, given the nature of human rights issues involved in requiring that specified high risk roles at the border can only be performed by vaccinated workers, MBIE might wish to consider including exemptions provisions in the enabling legislation, rather than an Order.

In the consultation session I have this:

The Ministry of Justice considers that significant human rights policy work would be required before legislation could be progressed. Details are discussed in paras...

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Vitasovich, Saskia

From: Weir, Jono
Sent: Tuesday, 20 April 2021 2:30 pm
To: Kibblewhite, Andrew
Cc: Chhana, Rajesh; Reid, Daniel; Alexander, Fiona; Mcllwraith, Corinne
Subject: RE: Proposed Order - COVID-19 Vaccination Requirement for High Risk Work

out of scope

Good afternoon Andrew,



Thanks,
Jono

Jono Weir Manager | Harm Reduction & Public Safety Policy | Ministry of Justice
DDI: +64 04 466 4043 | Ext. 54143 | Mobile [REDACTED] s 9(2)(a) privacy of natural persons

From: Kibblewhite, Andrew <Andrew.Kibblewhite@justice.govt.nz>
Sent: Tuesday, 20 April 2021 8:44 am
To: Weir, Jono <Jono.Weir@justice.govt.nz>
Cc: Chhana, Rajesh <Rajesh.Chhana@justice.govt.nz>; Reid, Daniel <Daniel.Reid@justice.govt.nz>; Alexander, Fiona <Fiona.Alexander@justice.govt.nz>; Mcllwraith, Corinne <Corinne.Mcllwraith@justice.govt.nz>
Subject: Re: Proposed Order - COVID-19 Vaccination Requirement for High Risk Work



out of scope



Many thanks.
Andrew

out of scope

Sent from my iPhone

On 19/04/2021, at 9:30 PM, Weir, Jono <Jono.Weir@justice.govt.nz> wrote:

Good evening Andrew,

out of scope

[Redacted]

out of scope

[Redacted]

[Redacted]

out of scope

There are significant human rights issues related to the proposal that certain roles may only be staffed by vaccinated border workers. Vaccinations constitute medical treatment which any person can refuse under section 11 of the Bill of Rights Act (subject to justified limits). Attaching negative consequences to a non-vaccination limits section 11 and, while it might be possible to justify a limitation on public health grounds, s9(2)(g)(i)

out of scope

s9(2)(g)(i)

[Redacted]

- [Redacted]

s 9(2)(g)(i) free and frank

Bill of Rights Act implications

- The current proposal raises issues of consistency with the right to refuse medical treatment (s 11 of the New Zealand Bill of Rights Act 1990) and right to be free from discrimination on the grounds of disability, sex (pregnancy) or religious beliefs (s 19 of the NZBORA).

Crown Law's advice

- [Redacted]

s 9(2)(h) legal privilege

Ministry of Justice advice

- [Redacted]

s 9(2)(g)(i) free and frank

- [Redacted]

s 9(2)(g)(i) free and frank

[Redacted]

- [Redacted]

s 9(2)(g)(i) free and frank

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Next steps

- [REDACTED]

out of scope

Please feel to get hold of me directly to discuss,

Thanks,
Jono

<image001.png>

Jono Weir

Policy Manager | Harm Reduction & Public Safety | Criminal Justice |
Policy Group

Ministry of Justice | Tāhū o te Ture

DDI: +64 04 466 4043 | Ext. 54143

Mobile: s9(2)(a) [REDACTED]

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COVID-19 Public Health Response (Border Worker Vaccination) Order 2021

Hon Kris Faafoi, Minister of Justice

23 April 2021

Purpose

1. As required by the COVID-19 Public Health Response Act, the Minister for COVID-19 Response, Minister Hipkins (the Minister), is consulting you on the draft COVID-19 Public Health Response (Border Worker Vaccination) Order 2021 (the Order).
2. This aide memoire provides you with:
 - information about the Order, and
 - matters that you may want to discuss with Minister Hipkins relevant to his determination as to whether the limits on human rights brought about by this Order are justified.

The Order requires high-risk work to be performed only by vaccinated people

3. The stated purpose of the Order is to prevent, and limit the risk of, the outbreak or spread of COVID-19.
4. The Order requires that, from 30 April 2021, high-risk work in Managed Isolation and Quarantine Facilities and by Public Service Agency workers at airports, ports and on ships, interacting with international passengers, crew and their belongings be performed only by workers who have been vaccinated.
5. The Order will impact:
 - existing workers, who will need to have received, at a minimum, their first vaccination by 30 April 2021 to continue performing in their role from 1 May 2021,
 - prospective workers, employed on or after 1 May 2021, who will have had to have received their first vaccination before they commence in the role.
6. The Order places a duty on persons conducting a business or undertaking (PCBUs) to be satisfied that vaccination requirements are met. PCBUs must keep a record of vaccinations for their employees/those engaged by them who are required to be vaccinated.

This Order raises issues of consistency with rights protected by the New Zealand Bill of Rights Act 1990

7. The requirement raises issues of consistency with the right to refuse medical treatment and right to be free from discrimination on the grounds of disability (if a medical condition has prevents an individual from being vaccinated), sex (refusal to be vaccinated on the grounds of pregnancy) or religious beliefs (where a person refuses to be vaccinated for religious or ethical reasons) (sections 11 and 19 of the NZBORA).
8. A limitation will 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.

9. This involves an assessment as to whether the objective may be achieved in another way which interferes less with the rights affected, as the Minister must also be satisfied that this public health benefit cannot be realised without introducing this proposal.

The public health rationale for requiring the vaccination of high-risk workers is that it offers protection for individuals and communities

10. The Ministry of Health advises this requirement will limit the risk of outbreak or spread of COVID-19 as:
- vaccines offer a high degree of protection for individuals who are vaccinated, and
 - evidence, although evolving, suggests that vaccines have a clinically relevant impact on reducing person-to-person transmission.

We consider that only beneficial public health outcomes can justify limiting the right to refuse medical treatment

11. We agree that preventing transmission from border workers to the wider community (thereby preventing and limiting the risk of an outbreak or spread of COVID-19) is an important and significant objective.
12. Health's paper discusses health outcomes to the individual (protection from serious illness or death) and to the wider public (in preventing person to person transmission).
13. While it is an important objective, we do not think that it is appropriate to use the protection of self to justify limiting individuals' right to refuse medical treatment. That right has, at its very purpose, protection of individuals' ability to refuse medical treatment even where it is against their best interests.

14. s9(2)(g)(i)
- [REDACTED]
- [REDACTED]
- [REDACTED]

Justice has not seen analysis of less rights-limiting options

15. As discussed above and recommended to both the ministries of Business, Innovation and Employment and Health, an analysis of limitations on rights should involve an assessment as to whether the objective may be achieved in another way which interferes less with the rights affected, as (in this case) the Minister must also be satisfied that this public health benefit cannot be realised without introducing this proposal.
16. In terms of the current proposal, it requires an explanation of why this is the only option to achieve the outcome of preventing transmission from border workers to the wider community.
17. We note for completeness that to date we have not seen a clear articulation of other, less rights-limiting, options that may achieve the stated objective or why these options have been abandoned in favour of the current proposal.

18. Given that we have not seen this analysis, you may wish to enquire with the Minister whether he is satisfied in this regard.

We consider that there is a clear route to decision making, but the matter is finely balanced

19. We consider that the evidence provided of the efficacy of vaccines at reducing transmission is relevant to the Minister's determination. The stated impact the vaccine has at reducing the risk of transmission can enable the Minister to determine that limiting the right by requiring vaccination is rationally connected to the objective of preventing and limiting the risk of an outbreak or spread of the virus.

20. However, limiting individuals' rights will only be justified if the public health benefit cannot be realised without introducing the proposal, and the proposal is proportionate to this benefit. We recommend that the following matters are considered in the exercise of judgment on this:

- the extent to which the proposed measure is expected to reduce the risk of community transmission over and above less rights-infringing alternatives, such as the current voluntary approach (which we understand has already led to high levels of uptake),
- why it is considered that the reduction in risk is sufficient to justify this level of intrusion into the rights of affected workers,
- why it is considered that this is the least rights interfering option.

21.



Next steps

s 9(2)(h) professional
legal privilege

22. You may wish to discuss the highlighted matters with Minister Hipkins that are relevant to his determination as to whether the limits on human rights brought about by this Order are justified.

23. We are available to discuss this advice and/or the implications of the Order with you if you wish.

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Vitasovich, Saskia

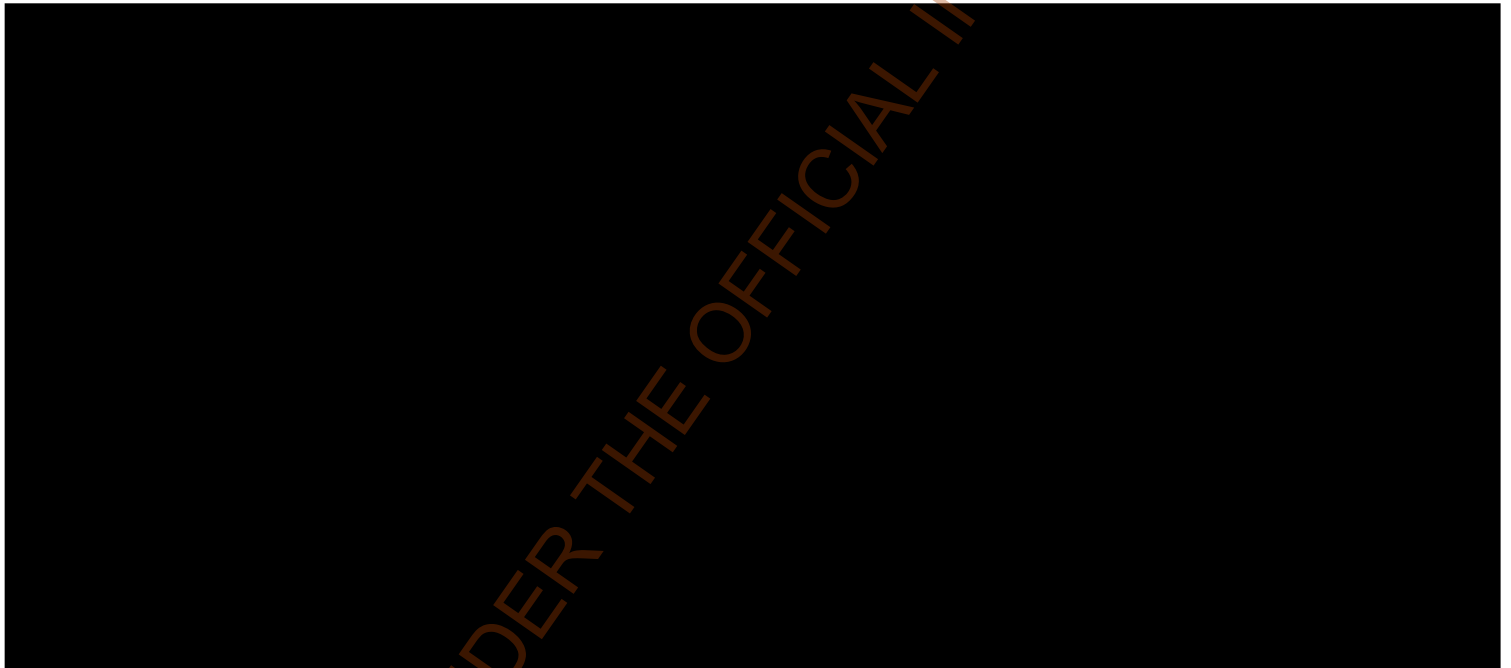
From: Justice COVID Policy
Sent: Thursday, 24 June 2021 6:16 pm
To: 'Allison.Bennett@health.govt.nz'
Cc: Greaney, Caroline; Knewstubb, Elspeth; 'Megan.Noyce@justice.govt.nz'; Rendell, Julia; Harvey, Keri; Frost, Kerry; Wheeler, Sally; Kunowski, Sam; Gage, Brendan; Weir, Jono; 'Kristian.Golding@health.govt.nz'; Johnston, Anna
Subject: Feedback on draft Cabinet paper: Pfizer recommendations for decision to extend use for people aged 12 to 15 years

Kia ora Allison

Thank you for taking the time to have a conversation with us about the context of this draft Cabinet paper earlier. Our feedback is set out below. Please note that this is in the form of suggestions, rather than fully formed text, and will likely require further development.

General comments:

out of scope



out of scope

- [REDACTED]
- Clear public messaging to children aged 12 -15 years old and their guardians will be needed so they know what their rights are in terms of consenting to vaccinations (including the right to be fully informed, etc.).
- Questions to help think about what else could be included in the CIA section can be found here: [Child Impact Assessment Tool - Ministry of Social Development \(msd.govt.nz\)](#)

Human rights section:

- The human rights implications section informs Ministers of the specific impact of a policy proposal on our domestic and international human rights framework and obligations. It needs to explain the justification.
- The current text about age discrimination is not appropriate in this instance, as the policy proposal applies to people under 16 years of age. If you identify other issues of discrimination specifically related to the policy proposal, it would be appropriate to set these out and explain whether they are justified.
- The child impact assessment would discuss the impact on children, though relatedly there could be some analysis about the right to refuse medical treatment in the New Zealand Bill of Rights Act 1990 and how children and parents would need to have complete information about a treatment in order to give their informed consent (right 6 of the Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996).

Please let us know if we can assist further.

Ngā mihi

Rebekka



Rebekka Rogers
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Rebekka.rogers@justice.govt.nz | www.justice.govt.nz

Vitasovich, Saskia

From: Justice COVID Policy
Sent: Monday, 5 July 2021 8:20 am
To: Hannah Cobb
Cc: Weir, Jono; Mike Gill; Pegasus Retimanu; Weir, Jono; Justice COVID Policy; Purple, Folder; correspondence, official
Subject: RE: [MINISTERIAL CONSULTATION] COVID-19 Public Health Response (Vaccinations) Amendment Order 2021

Kia ora Hannah

Thank you for sending through draft COVID-19 Public Health Response (Vaccinations) Amendment Order 2021. Below is some feedback for Minister Faafoi's consideration. Our feedback relates to human rights.

Key message

s 9(2)(h) maintain legal professional privilege

- [REDACTED], we consider that there are opportunities to create a more rights-informed Order and as a result lower the legal risk further. These opportunities include:
 - the provision of an exemption for religious beliefs (preferred option)
 - a commitment to monitor and review the policy if tangible impacts on a particular religious group emerge, or if evidence of other legitimate reasons to refuse vaccination emerge for other groups of people covered by prohibited grounds of discrimination, and/or
 - strengthen the justification for the discrimination at issue.

General background

- The COVID-19 Public Health Response (Vaccinations) Order 2021 (the existing Order) requires that specific work at the border is only performed by workers who have been vaccinated.
- The amendment Order extends the requirement to be vaccinated to a greater number of people who undertake specific work. For example, the amendment Order would cover workers who both handle affected items and 'have contact with' persons who belong to different groups in the Vaccination Order (the affected orders group). This could include caterers or drycleaners.
- The amendment Order also introduces a medical exemption for the affected items group.

Summary

- The exemption in the amendment order raises issues of discrimination. [REDACTED]
 [REDACTED]
 [REDACTED] s 9(2)(h) maintain legal professional privilege
- [REDACTED] we consider that there are opportunities to lower the risk further by creating a more rights-informed Order, including through the introduction of a stronger justification or extending the exemption to those who may refuse vaccinations of religious grounds.
- We also consider that a commitment to monitor and review the policy around exemptions to capture emerging evidence about the impact of the discrimination at issue would contribute to a more rights-informed order.

- You may wish to discuss these opportunities with the Minister for the COVID-19 Response as part of the consultation on this order.

Human rights implications

- The requirement to be vaccinated is relevant to the following rights in the NZ Bill of Rights Act 1990 (the Bill of Rights Act):
 - section 11 - the right to refuse medical treatment, and
 - section 19 - the right to be free from discrimination on the grounds of disability (if a medical condition prevents an individual from being vaccinated) or religious beliefs.
- Section 19 in the Bill of Rights Act guarantees the right to freedom from discrimination and refers to section 21 in the Human Rights Act 1993, where the full list of prohibited grounds of discrimination is outlined. In the context of this proposal, the relevant prohibited grounds identified are disability (under which relevant medical conditions are covered) and religious beliefs.
- The exemption for the affected items group would be rights enhancing for people in the in this group who have medical conditions, as it would enable them to refuse medical treatment on medical grounds.
- However, because the exemption is only afforded to people on medical grounds, and not to people who may have religious beliefs that prevents them from being vaccinated, this prioritises protected group of people over another – giving rise to an issue of discrimination.
- We note that have been unable to identify a religion or doctrine that requires their members to refuse vaccines.

[REDACTED]

s 9(2)(h) maintain professional legal privilege

- [REDACTED]
 - [REDACTED]
 - [REDACTED]

There are opportunities to create a more rights-informed Order

- [REDACTED] we consider that there are opportunities to create a more rights-informed Order, which include:
 - the provision of an exemption for religious beliefs (preferred option)
 - a commitment to monitor and review the policy if tangible impacts on a particular religious group emerge, or if evidence of other legitimate reasons to refuse vaccination emerge for other groups of people covered by prohibited grounds of discrimination, and/or
 - strengthen the justification for the discrimination at issue.

s 9(2)(h)
maintain
professional
legal
privilege

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- We raise this as, in our view, these may help reduce the residual risk with the justification provided arising from:
 - the need for an individual to potentially prove their religious beliefs to the Government, and the Government adjudicating what constitutes a genuine religious belief worthy of protection from discrimination, and
 - the utilisation of 'operational challenges' to justify discrimination.

Please let us know if we can assist further on this matter.

Ngā mihi

Rebekka



Rebekka Rogers

Policy Advisor | Harm Reduction and Public Safety | Criminal Justice
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Rebekka.rogers@justice.govt.nz | www.justice.govt.nz

From: s9(2)(a)

Sent: Monday, 28 June 2021 12:09 pm

To: Justice COVID Policy <covidpolicy@justice.govt.nz>

Cc: Alexander, Fiona <Fiona.Alexander@justice.govt.nz>; Weir, Jono <Jono.Weir@justice.govt.nz>; Mike Gill <mike.gill@parliament.govt.nz>; Pegasus Retimanu <Pegasus.Retimanu@parliament.govt.nz>

Subject: FW: [MINISTERIAL CONSULTATION] COVID-19 Public Health Response (Vaccinations) Amendment Order 2021

Kia ora crew

out of scope

[Redacted]

s9(2)(a)

[Redacted]

s 9(2)(a) privacy
of natural
persons

From: James Baigent

Sent: Monday, 28 June 2021 12:00 PM

To: s9(2)(a); Mike Gill <mike.gill@parliament.govt.nz>; Sian Roguski <Sian.Roguski@parliament.govt.nz>; Craig Pontifex <Craig.Pontifex@parliament.govt.nz>
Subject: FW: [MINISTERIAL CONSULTATION] COVID-19 Public Health Response (Vaccinations) Amendment Order 2021

From: Morehu Rei

Sent: Monday, 28 June 2021 11:57 AM

To: James Little <James.Little@parliament.govt.nz>; James Little <James.Little@parliament.govt.nz>; Rob Carr <Robert.Carr@parliament.govt.nz>; Ben Longhurst <Ben.Longhurst@parliament.govt.nz>; Lisa Petraschuk <Lisa.Petraschuk@parliament.govt.nz>; Alex Tarrant <Alex.Tarrant@parliament.govt.nz>; Katy Greco-Ainslie <Katy.Greco-Ainslie@parliament.govt.nz>; Corin Higgs <Corin.Higgs@parliament.govt.nz>; Julian Robins <Julian.Robins@parliament.govt.nz>; Patisepa Helu <Patisepa.Helu@parliament.govt.nz>; Chris McAvoy <Christopher.McAvoy@parliament.govt.nz>; Stephen Webb <Stephen.Webb@parliament.govt.nz>; James Baigent <James.Baigent@parliament.govt.nz>

Cc: Holly Donald <holly.donald@parliament.govt.nz>; Alexandra Marett <Alexandra.Marett@parliament.govt.nz>

Subject: [MINISTERIAL CONSULTATION] COVID-19 Public Health Response (Vaccinations) Amendment Order 2021

Kia ora koutou,

See attached for your Ministers consideration the draft amendment order titled '*COVID-19 Public Health Response (Vaccinations) Amendment Order 2021*' and corresponding health report. out of scope

Morehu Rei

Ministerial Advisor to Hon Chris Hipkins MP

Minister for COVID-19 Response | Minister of Education | Minister for the Public Service | Leader of the House

DDI +64 4 817 8322 | Mobile s9(2)(a) | Email morehu.rei@parliament.govt.nz

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Authorised by Hon Chris Hipkins MP, Parliament Buildings, Wellington

Vitasovich, Saskia

From: Harvey, Keri
Sent: Monday, 12 July 2021 4:09 pm
To: Kerpen, Ursula; Justice COVID Policy; Beckett, Jared; Guesgen, Marni
Subject: RE: Feedback on further policy decisions for COVID-19 Public Health Response Amendment Bill

Follow Up Flag: Follow up
Flag Status: Flagged

Hey team,

s 9(2)(g)(i) free
and frank

The criminal offences were quite important when evaluating whether limitations on rights are justified because the consequence could be a criminal offence / high fine. I distinctly remember this coming into play each time we did a BORA vet, and each time we assess whether an Order is *vires*.

Agree with Ursula this will be assessed at the BORA vetting stage, though they should keep in mind that they would need to justify increasing penalties and why there is more need for this now than last year when we had less of a defence at the border (MIQ) and in the community (vaccination).

KH



Keri Harvey (she/her)
 Policy Advisor | Bill of Rights Advisor
 Civil Law and Human Rights | Civil and Constitutional | Policy Group
 DDI: +64 4 918 8759 | Ext 58759 | www.justice.govt.nz

From: Kerpen, Ursula <Ursula.Kerpen@justice.govt.nz>
Sent: Monday, 12 July 2021 3:42 pm
To: Justice COVID Policy <covidpolicy@justice.govt.nz>
Cc: Harvey, Keri <Keri.Harvey@justice.govt.nz>
Subject: RE: Feedback on further policy decisions for COVID-19 Public Health Response Amendment Bill

out of scope

Kia ora,
 Out of scope

Regards
 Ursula



Ursula Kerpen
 Senior Policy Advisor | Civil Law and Human Rights
 Mob. [REDACTED]
 s 9(2)(a) privacy of natural persons

From: Justice COVID Policy <covidpolicy@justice.govt.nz>
Sent: Monday, 12 July 2021 3:36 pm

To: DL-COVID CONSULT <DL-COVIDCONSULT@justice.govt.nz>

Subject: FW: Feedback on further policy decisions for COVID-19 Public Health Response Amendment Bill

Kia ora koutou

out of scope



Ngā mihi,
Jacqui



s 9(2)(a) privacy of
natural persons

Jacqui Thomson

Senior Advisor | Sentencing and Rehabilitation
Policy Group

Ministry of Justice | Tāhū o te Ture

DDI 04 474 8546

Level 6, Justice Centre | 19 Aitken Street
DX Box SX10088 | Wellington

jacqui.thomson@justice.govt.nz | justice.govt.nz

My regular work days are Monday-Thursday.

From: Jessie McMath Price <Jessie.McMath-Price@health.govt.nz>

Sent: Monday, 12 July 2021 12:00 pm

To: Guesgen, Marni <Marni.Guesgen@justice.govt.nz>; Aeron.Corlett@police.govt.nz;
Mark.Bryant@crownlaw.govt.nz

Cc: Victoria Nicholson <Victoria.Nicholson@health.govt.nz>

Subject: Feedback on further policy decisions for COVID-19 Public Health Response Amendment Bill

Kia ora koutou



out of
scope

Please reach out with any questions.

Ngā mihi

Jessie

Jessie McMath Price (she/her)

Senior Policy Analyst, COVID-19 Policy Response, System Strategy & Policy
Ministry of Health
Jessie.McMath-Price@health.govt.nz



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Vitasovich, Saskia

From: Justice COVID Policy
Sent: Friday, 30 July 2021 9:27 am
To: s9(2)(a)
Cc: Justice COVID Policy; Mike Gill; Pegasus Retimanu; Purple, Folder; correspondence, official; Weir, Jono
Subject: Background points on the Reconnecting New Zealanders Cabinet paper

Kia ora s9(2)(a)

Out of scope

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

- We are comfortable with the paper and with the direction that this work is going in, however note that:
 - there will be human rights implications arising as the proposals are progressed and these will need to be assessed against the public health advice to ensure that any restrictions on individual freedoms continue to be justified under the New Zealand Bill of Rights Act 1990. Of particular note, there is a need to be aware of potential discrimination on the ground of disability or country of origin arising from vaccination status, and
 - there are a range of compliance and enforcement issues that will need to be worked through to ensure that these are proportionate to the public health risk.

• Out of scope

[Redacted]

Ngā mihi,
Jacqui



Jacqui Thomson
 Senior Advisor | Sentencing and Rehabilitation
 Policy Group
 Ministry of Justice | Tāhū o te Ture
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jacqui.thomson@justice.govt.nz | justice.govt.nz

s9(2)(a)

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Vitasovich, Saskia

From: Justice COVID Policy
Sent: Friday, 10 September 2021 8:57 am
To: Hocking, Elizabeth; Justice COVID Policy
Cc: Kerpen, Ursula
Subject: RE: Comments by 9am tomorrow please FW: Advice on requiring arrivals to be vaccinated

[REDACTED] out of scope

Corinne

From: Hocking, Elizabeth <Elizabeth.Hocking@justice.govt.nz>
Sent: Thursday, 9 September 2021 4:57 pm
To: Justice COVID Policy <covidpolicy@justice.govt.nz>
Cc: Kerpen, Ursula <Ursula.Kerpen@justice.govt.nz>
Subject: RE: Comments by 9am tomorrow please FW: Advice on requiring arrivals to be vaccinated

Hi Corinne,

**s 9(2)(h) maintain
 professional legal
 privilege**

I think this is fine from our perspective – the paper already notes possible equity issues [REDACTED] and as the proposal is time-limited, these restrictions on rights are likely justified due to the public health rationale.

One small thing is that para 52 notes that the exemption will cover NZ citizens plus dependents, whereas the previous draft said it would be citizens plus “immediate family”. Dependents is probably a slightly smaller subset than immediate family – might be worth checking if this is a deliberate change?

Cheers,
 Elizabeth

From: Justice COVID Policy <covidpolicy@justice.govt.nz>
Sent: Thursday, 9 September 2021 3:31 pm
To: Henry-Jones, Stephanie <Stephanie.Henry-Jones@justice.govt.nz>; Beckett, Jared <Jared.Beckett@justice.govt.nz>; Hocking, Elizabeth <Elizabeth.Hocking@justice.govt.nz>
Cc: Justice COVID Policy <covidpolicy@justice.govt.nz>
Subject: Comments by 9am tomorrow please FW: Advice on requiring arrivals to be vaccinated
Importance: High

Kia ora koutou

Please find attached a more fulsome, updated draft to the briefing you saw earlier in the week, *Advice on requiring arrivals to be vaccinated*. The options for implementation of this proposal are in Attachment A.

Appreciating you may not have many comments, it would still be very helpful if you could have one final look at this and share any thoughts you have on the wider human rights implications (outside of BORA), privacy implications of the options in Attachment A, and any general advice on offenses and penalties in the compliance and enforcement section.

DPMC have asked for specific wording suggestions due to their limited timeframe, so feel free to send these through to me or track change directly into the documents. I will also collate more general comments in an email response if you have any.

Any comments or thoughts by 9am tomorrow would be much appreciated.

Thanks heaps,
Corinne

Corinne McIlwrath Policy Advisor | Harm Reduction & Public Safety | Tāhū o te Ture
Corinne.McIlwrath@justice.govt.nz | www.justice.govt.nz

From: Allie Stedman [DPMC] <Allie.Stedman@dpmc.govt.nz>

Sent: Thursday, 9 September 2021 2:49 pm

To: Sonya Van De Geer <s.vandeger@transport.govt.nz>; Melanee Beatson <M.Beatson@transport.govt.nz>; WALKER Matthew <Matthew.Walker@customs.govt.nz>; Ross Wood <Ross.Wood@health.govt.nz>; Maria Cotter <Maria.Cotter@health.govt.nz>; Sara McFall <Sara.McFall@mbie.govt.nz>; Delia Cormack <Delia.Cormack@mbie.govt.nz>; Nora Burghart <Nora.Burghart@mbie.govt.nz>; Sian Roguski <Sian.Roguski@mbie.govt.nz>; SPENCER, Rachel (CPCD) <Rachel.Spencer@mfat.govt.nz>; MCLEAN, Rachel (CPCD) <Rachel.McLean@mfat.govt.nz>; Justice COVID Policy <covidpolicy@justice.govt.nz>; Shannon Tyler [TSY] <Shannon.Tyler@treasury.govt.nz>; debbie.veragos@mbie.govt.nz; DOHERTY Pauline <Pauline.Doherty@customs.govt.nz>; TAYLOR Nicole <Nicole.Taylor@customs.govt.nz>; STRICKSON Paula <Paula.Strickson@customs.govt.nz>; Christine Hyndman <Christine.Hyndman@mbie.govt.nz>; PROUDFOOT Fiona <Fiona.Proudfoot@customs.govt.nz>; Jeet Sheth <Jeet.Sheth@ethniccommunities.govt.nz>; Sally-Ann Spencer [DPMC] <Sally-Ann.Spencer@dpmc.govt.nz>; Megan Stratford [DPMC] <Megan.Stratford@dpmc.govt.nz>; Richard Schmidt [DPMC] <Richard.Schmidt@dpmc.govt.nz>; Tania Warburton [DPMC] <Tania.Warburton@dpmc.govt.nz>; Hayden Glass [DPMC] <Hayden.Glass@dpmc.govt.nz>; Jessica Gorman [DPMC] <Jessica.Gorman@dpmc.govt.nz>; Lauren Hancock <Lauren.Hancock@mbie.govt.nz>
Cc: Nita Sullivan [DPMC] <Nita.Sullivan@dpmc.govt.nz>; Alice Hume [DPMC] <Alice.Hume@dpmc.govt.nz>; Ruth Fairhall [DPMC] <Ruth.Fairhall@dpmc.govt.nz>; Cheryl Barnes [DPMC] <Cheryl.Barnes@dpmc.govt.nz>; George Whitworth [DPMC] <George.Whitworth@dpmc.govt.nz>
Subject: RE: Advice on requiring arrivals to be vaccinated

[IN-CONFIDENCE]

out of scope

Ngā mihi

Allie Stedman (she/her)
Senior Policy Advisor
Department of the Prime Minister and Cabinet
P +64 (4) 462 7815
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E allie.stedman@dpmc.govt.nz



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From: Nita Sullivan [DPMC] <Nita.Sullivan@dpmc.govt.nz>

Sent: Wednesday, 8 September 2021 5:11 PM

To: Sonya Van De Geer <s.vandeger@transport.govt.nz>; Melanee Beatson <M.Beatson@transport.govt.nz>; WALKER Matthew <Matthew.Walker@customs.govt.nz>; Ross Wood <Ross.Wood@health.govt.nz>; Maria Cotter <Maria.Cotter@health.govt.nz>; Sara McFall <Sara.McFall@mbie.govt.nz>; Delia Cormack <Delia.Cormack@mbie.govt.nz>; Nora Burghart <Nora.Burghart@mbie.govt.nz>; Sian Roguski <Sian.Roguski@mbie.govt.nz>; SPENCER, Rachel (CPCD) <Rachel.Spencer@mfat.govt.nz>; MCLEAN, Rachel (CPCD) <Rachel.McLean@mfat.govt.nz>; Justice COVID Policy <covidpolicy@justice.govt.nz>; Shannon Tyler [TSY] <Shannon.Tyler@treasury.govt.nz>; debbie.veragos@mbie.govt.nz; DOHERTY Pauline <Pauline.Doherty@customs.govt.nz>; TAYLOR Nicole <Nicole.Taylor@customs.govt.nz>; STRICKSON Paula <Paula.Strickson@customs.govt.nz>; Christine Hyndman <Christine.Hyndman@mbie.govt.nz>; PROUDFOOT Fiona <Fiona.Proudfoot@customs.govt.nz>
Cc: Allie Stedman [DPMC] <Allie.Stedman@dpmc.govt.nz>; Alice Hume [DPMC] <Alice.Hume@dpmc.govt.nz>; Ruth Fairhall [DPMC] <Ruth.Fairhall@dpmc.govt.nz>
Subject: Advice on requiring arrivals to be vaccinated

[IN-CONFIDENCE]

Kia ora koutou

out of scope

In terms of specific information requests, we can draw on a lot of the comments from the meeting, but we are seeking agency views as follows:

out of scope

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Do get in touch if any of the requests above are not clear, or just want to talk about this advice.

Thanks all

out of scope

Nita Sullivan

Senior Policy Advisor | Strategy and Policy
COVID-19 Group

s 9(2)(a) privacy of natural
persons



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Vitasovich, Saskia

From: Mcllwraith, Corinne
Sent: Monday, 27 September 2021 12:49 pm
To: s9(2)(a)
Cc: mike.gill@parliament.govt.nz; pegasus.retimanu@parliament.govt.nz; Justice COVID Policy; correspondence, official; Purple, Folder; Wheeler, Sally; Gage, Brendan
Subject: Comments on draft Cabinet paper: COVID-19 vaccination requirements for non-New Zealand citizens entering New Zealand

Kia ora s9(2)(a)

We understand that the draft Cabinet paper *COVID-19 vaccination requirements for non-New Zealand citizens entering New Zealand* will undergo ministerial consultation this week. We have been consulted on this paper, but have the following comments to share from a human rights perspective:

- The proposal to require vaccination for non-citizens arriving in New Zealand engages a number of human rights and equity issues, some which are discussed in the Cabinet paper, including:
 - The right to refuse medical treatment;
 - The right to manifest medical belief;
 - Discrimination on the basis of nationality or ethnicity if certain ethnic or national groups have difficulties in vaccine access, noting the proposed exemption to mitigate these concerns; and
 - Unreasonable search and seizure.
- While a justification is provided for the limitations proposed on these rights, we have concerns that the paper does not address all the possibilities of discrimination against non-citizens travelling to New Zealand.
- The proposal to require vaccination for permanent residents, and Australians who ordinarily reside in New Zealand, may give rise to prima facie discrimination on the basis of citizenship when a comparison is made to New Zealand citizens who will not be required to be vaccinated. This is because resident non-citizens, who have a strong connection to New Zealand as their home, will not be able to enter New Zealand without going through the additional step of being vaccinated.
- If prima facie discrimination is established, the proposal must be demonstrably justified under section 5 of the New Zealand Bill of Rights Act 1990. The paper does not address the possible discrimination or provide any justification.
- We understand that the paper does not consider the issue of discrimination based on citizenship alone because section 153(3)(b) of the Human Rights Act 1993, provides that “nothing in this Act shall affect any enactment or rule of law, or any policy or administrative practice of the Government of New Zealand, that distinguishes between New Zealand citizens and other persons, or between British subjects or Commonwealth citizens and aliens.” Crown Law advice is that this provides specific statutory authorisation for policies that distinguish based on New Zealand citizenship alone.
- We do not agree that section 153(3)(b) provides an adequate basis for limiting the rights of resident non-citizens in this way. Furthermore, even if section 153(3)(b) does prevent a finding of unlawful discrimination, the paper does not address the impact on the rights of resident non-citizens as a matter of policy, which still needs to be addressed.
- As such, we recommend that changes are made to the paper to provide Ministers with clear advice about the impact this proposal will have on the rights of resident non-citizens, including robust policy justification for the apparent discrimination as well as the other rights that are engaged.

We understand the paper is currently scheduled to go to Cabinet next Monday, 4 October. Please let me know if an aide memoire would be helpful ahead of this.

Ngā mihi,
 Corinne



Corinne McIlwrath

Policy Advisor | Harm Reduction & Public Safety

Criminal Justice | Policy Group

Ministry of Justice | Tāhū o te Ture

19 Aitken St | Wellington 6011

Corinne.Mcilwrath@justice.govt.nz | www.justice.govt.nz

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Vitasovich, Saskia

From: Justice COVID Policy
Sent: Thursday, 30 September 2021 10:41 am
To: s9(2)(a)
Cc: Pegasus Retimanu; Mike Gill; Gage, Brendan; Justice COVID Policy; Wheeler, Sally; Wadelan, Avril; Purple, Folder; correspondence, official
Subject: RE: [MINISTERIAL CONSULTATION] COVID-19 VACCINATION REQUIREMENTS FOR NON-NEW ZEALAND CITIZENS ENTERING NEW ZEALAND

Kia ora s9(2)(a)

Thank you for sending through the Cabinet paper on requiring COVID-19 vaccinations for non-New Zealand citizens entering New Zealand.

DPMC consulted us on this paper throughout its development. We had substantive comments relating to human rights, equity, and privacy. The paper was updated to reflect our comments on equity and privacy, however the breadth of our human rights comments with regard to discrimination against non-citizens have not been incorporated.

We would like to draw the Minister's attention to the human rights implications that have not been canvassed in the paper, to ensure he is fully informed of the relevant issues at play before making any decisions.

Background

The proposal to require vaccination for non-citizens arriving in New Zealand engages a number of human rights and equity issues, some of which are discussed in the Cabinet paper, including:

- The right to refuse medical treatment;
- The right to manifest religious belief;
- Discrimination on the basis of nationality or ethnicity if certain ethnic or national groups have difficulties in accessing the vaccine, noting the proposed exemptions to mitigate these concerns; and
- Unreasonable search and seizure.

Potential for discrimination

Our key concern is that the paper does not thoroughly address the possibility of discrimination on the basis of citizenship under section 19(1) of the New Zealand Bill of Rights Act 1990 (BORA), or discrimination more broadly as a policy issue.

At paragraph 48, the paper notes that *"although the policy is not considered inconsistent with BORA provisions, it may add to perceptions of discrimination against non-citizens, including resident non-citizens. Residents of this kind may have, for all intent and purposes, made their lives in New Zealand and have an indefinite right to live here under their residence class visa."*

The Minister may also have an interest in this rationale with regards to his immigration portfolio.

s 9(2)(h) maintain legal professional privilege

We discussed with DPMC expanding on this analysis, and ideally including more analysis in the human rights section of the paper on the issue of discrimination based on citizenship.

However, from a policy perspective it may be beneficial to include further discussion and rationale throughout the paper (for example at paragraph 48 and in the human rights section) to justify why New Zealand citizens should be

treated differently from permanent resident visa holders and Australians who are normally resident in New Zealand. In our view, citizens and resident non-citizens are essentially in the same position. Both have a right to enter and reside in New Zealand – the difference is only that the source of this right is found in different legislation (for citizens, section 18(2) of the BORA and in other legislation for permanent residents). Therefore, the proposal appears to give rise to discrimination on the basis of citizenship.

We assume the justification for this distinction between citizens and non-citizens is the public health rationale that this measure would assist in preventing an outbreak or the spread of COVID-19. We consider analysis of this justification (and/or any other justifications) for this distinction should have been canvassed more thoroughly in the paper to ensure Ministers are fully informed.

Action for the Minister

We appreciate the Cabinet Paper is unlikely to change now.

It would be useful for the Minister to be briefed on the issue of discrimination based on citizenship, and in particular on the impact this distinction will have on resident non-citizens and Australians normally resident in New Zealand, who have strong established connections to New Zealand as their home.

We are available to discuss this further or provide additional advice if that would be useful.

Ngā mihi,
Corinne



Corinne Mcllwraith

Policy Advisor | Harm Reduction & Public Safety

Criminal Justice | Policy Group

Ministry of Justice | Tāhū o te Ture

19 Aitken St | Wellington 6011

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Email

Corinne Mcllwraith/Hannah Doogan

Comments on draft Cabinet paper: COVID-19 vaccination requirements for non-New Zealand citizens entering New Zealand

CJ Unit

HR&PS

Minister Faafoi

30 September 2021

Document type:

Authors:

Document title:

Business unit:

Team:

Minister:

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From: s9(2)(a)

Sent: Tuesday, 28 September 2021 9:10 am

To: Justice COVID Policy <covidpolicy@justice.govt.nz>; Wheeler, Sally <Sally.Wheeler@justice.govt.nz>

Cc: Pegasus Retimanu <Pegasus.Retimanu@parliament.govt.nz>; Mike Gill <mike.gill@parliament.govt.nz>; Gage, Brendan <Brendan.Gage@justice.govt.nz>; McIlwrath, Corinne <Corinne.McIlwrath@justice.govt.nz>

Subject: FW: [MINISTERIAL CONSULTATION] COVID-19 VACCINATION REQUIREMENTS FOR NON-NEW ZEALAND CITIZENS ENTERING NEW ZEALAND

out of scope

s9(2)(a) s 9(2)(a) privacy of natural persons

From: Morehu Rei

Sent: Monday, 27 September 2021 2:05 PM

To: James Little <James.Little@parliament.govt.nz>; Alex Tarrant <Alex.Tarrant@parliament.govt.nz>; Toby Moore <Toby.Moore@parliament.govt.nz>; Katy Greco-Ainslie <Katy.Greco-Ainslie@parliament.govt.nz>; Kurt McLauchlan <Kurt.McLauchlan@parliament.govt.nz>; Alex Masters <Alexandra.Masters@parliament.govt.nz>; Ben Cunliffe <Ben.Cunliffe@parliament.govt.nz>; Matt Greer <Matt.Greer@parliament.govt.nz>; Beth Houston <Elizabeth.Houston@parliament.govt.nz>; David Choat <David.Choat@parliament.govt.nz>; Tele'a Andrews <Tele'a.Andrews@parliament.govt.nz>; Morgan Evans <Morgan.Evans@parliament.govt.nz>; Ben Longhurst <Ben.Longhurst@parliament.govt.nz>; Lisa Petraschuk <Lisa.Petraschuk@parliament.govt.nz>; Corin Higgs <Corin.Higgs@parliament.govt.nz>; John Blincoe <John.Blincoe@parliament.govt.nz>; Kurt McLauchlan <Kurt.McLauchlan@parliament.govt.nz>; Matt Swann <matthew.swann@parliament.govt.nz>; Andrea Black <Andrea.Black@parliament.govt.nz>; James Baigent <James.Baigent@parliament.govt.nz>; Patisepa Helu <Patisepa.Helu@parliament.govt.nz>; Mike Tukaki <Mike.Tukaki@parliament.govt.nz>; Esther Hercus <Esther.Hercus@parliament.govt.nz>; Rob Carr <Robert.Carr@parliament.govt.nz>; Ben McLachlan <Ben.McLachlan@parliament.govt.nz>; Jonathan Gee <Jonathan.Gee@parliament.govt.nz>; Julian Robins <Julian.Robins@parliament.govt.nz>

Cc: Holly Donald <holly.donald@parliament.govt.nz>; Raj Nahna <Rajesh.Nahna@parliament.govt.nz>; Charlie McLean <Charlie.Mclean@parliament.govt.nz>

Subject: [MINISTERIAL CONSULTATION] COVID-19 VACCINATION REQUIREMENTS FOR NON-NEW ZEALAND CITIZENS ENTERING NEW ZEALAND

Kia ora koutou,

Hon Hipkins intends on taking the attached paper on vaccination requirements for non-New Zealanders to Cabinet next Monday (4 October).

Generally the paper seeks Cabinet agreement to require non-New Zealand citizens travelling to New Zealand to be fully vaccinated against COVID-19 from 1 November. This will reduce the risk of COVID-19 entering via the border, and of subsequent transmission within and from managed isolation facilities (MIQ) into the community.

To achieve this, the paper proposes a series of 'light touch' interventions along the passenger journey to New Zealand, to ensure compliance with the new requirement. These include offshore prevention measures (travellers making a self-declaration of vaccine status supplied through the Managed Isolation and Allocation System (MIAS))

and airlines asking non-citizen passengers to present evidence of being vaccinated at check-in, coupled with a similar check by Customs officers upon arrival in New Zealand.

The paper currently proposes the following groups to be exempted from the requirement:

- children under 17;
- foreign diplomats;
- workers from Vanuatu, Tonga and Samoa travelling under one-way quarantine free travel arrangements for Recognised Seasonal Workers;
- those who are travelling to New Zealand as part of our Refugee Quota programme; and
- those who are not able to be vaccinated for medical reasons.

Individuals would also be able to apply for an exemption from the Director General of Health under humanitarian grounds.

Welcoming any feedback until 5pm Thursday (30 September).

Let me know if you have any questions.

Noho ora mai ra

Morehu Rei

Ministerial Advisor to Hon Chris Hipkins MP

Minister for COVID-19 Response | Minister of Education | Minister for the Public Service | Leader of the House

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Authorised by Hon Chris Hipkins MP, Parliament Buildings, Wellington

Vitasovich, Saskia

From: Justice COVID Policy
Sent: Thursday, 7 October 2021 12:18 pm
To: Kayleigh Wiltshire [DPMC]; Elizabeth Oxenham [DPMC]
Cc: Nita Sullivan [DPMC]; Megan Stratford [DPMC]; Justice COVID Policy
Subject: RE: Advice on domestic CVCs at high risk events and venues

Kia ora Kayleigh and Liz

Thank you for giving us the opportunity to provide feedback on the proposed settings and exemptions for the use of COVID-19 Vaccine Certificates. We would like to be involved in any further developments in this area, particularly the development of any enforcement regime that may sit alongside this. Our feedback as follows:

Human rights

In the *Proposed Settings* document:

- The use of COVID-19 Vaccine Certificates to prevent access to certain events and facilities will have human rights implications. This use of Vaccines Certificates engages the right to refuse to undergo medical treatment, and the proposed settings engage freedom of association and freedom of movement.
- Limitations on the rights and freedoms affirmed under the Bill of Rights may be justified if there is a sufficiently important objective and the proposal infringes on human rights no more than reasonably necessary to achieve that objective.

s 9(2)(g)(i)
free and
frank

- Building on this justification, we think it would be beneficial to see an explanation of how the Vaccine Certificate interfaces with the Alert Levels framework. Until now the Government has not allowed large high-risk events under Alert Level 2 or above. Is it intended that the Vaccine Certificate will allow large high-risk events to take place at Alert Level 2 and above, or would large high-risk events only take place at Alert Level 1 or below? If the latter, we understand the public health risk at Alert Level 1 is very low, and so therefore using this as a justification becomes more difficult.
- There is a potential risk to including marae and faith-based locations in Category C as this may enable organisers to discriminate against their members under grounds which would ordinarily be prohibited under section 21 of the Human Rights Act.
- We also think including air/ferry travel in Category B may turn out to be a large impairment on people's freedom to return home in the event of an outbreak. This may be something that needs to be weighed up. For people attempting to return home an exemption may be warranted.

out of scope

out of scope

Ngā mihi nui,

out of scope



Matthew McClennan

Policy Advisor | Harm Reduction and Public Safety Team

Criminal Justice Unit | Policy Group

Ministry of Justice | Tāhū o te Ture

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s 9(2)(a) privacy of natural persons

From: Kayleigh Wiltshire [DPMC] <Kayleigh.Wiltshire@dpmc.govt.nz>

Sent: Friday, 1 October 2021 12:26 pm

To: ^MFAT: David Taylor <David.Taylor@mfat.govt.nz>; Rachel.Spencer@mfat.govt.nz;
 Rachel.McLean@mfat.govt.nz; Sarah.Johal@mfat.govt.nz; Ara.TaiRakena@mfat.govt.nz; Alastair Cameron [TSY]
 <Alastair.Cameron@treasury.govt.nz>; liz.macpherson@privacy.org.nz; ^Customs: Richard Bargh
 <Richard.bargh@customs.govt.nz>; maria-laura.crespo001@msd.govt.nz; ^EXT: Emma Spooner
 <Emma.Spooner@mch.govt.nz>; antonia.reid@mpi.govt.nz; ^Transport: Shelley Tucker
 <s.tucker@transport.govt.nz>; ^Education: Tony Clark <Tony.Clark@education.govt.nz>; Fraser, Warren
 <Warren.Fraser@tearawhiti.govt.nz>; Broughton, Henry <Henry.Broughton@tearawhiti.govt.nz>;
 keene@tpk.govt.nz; olset@tpk.govt.nz; matthew.gileone@mpp.govt.nz; ^Police: Jeremy Wood
 <Jeremy.Wood@police.govt.nz>; Justine Smith <Justine.Smith@dia.govt.nz>; laura.sommer@dia.govt.nz; Jack
 Haddow <Jack.Haddow@health.govt.nz>; Maria Cotter <Maria.Cotter@health.govt.nz>; Sacha ODea [DPMC]
 <Sacha.ODea@dpmc.govt.nz>; Tania Warburton [DPMC] <Tania.Warburton@dpmc.govt.nz>; Jules Lovelock [DPMC]
 <Jules.Lovelock@dpmc.govt.nz>; Jessica Gorman [DPMC] <Jessica.Gorman@dpmc.govt.nz>; Paul Fenton
 <Paul.Fenton@education.govt.nz>; Graham MacLean [DPMC] <Graham.MacLean@dpmc.govt.nz>; Katie Anderson
 <Katie.Anderson@crownlaw.govt.nz>; ^MBIE: Paul Stocks <Paul.Stocks@mbie.govt.nz>; Shane Kinley
 <Shane.Kinley@mbie.govt.nz>; Gayathiri Ganeshan <Gayathiri.Ganeshan@mbie.govt.nz>; Anna Clark

<Anna.Clark2@mbie.govt.nz>; Val Sim <val.sim@mbie.govt.nz>; ^MBIE: Kara Isaac <Kara.Isaac@mbie.govt.nz>; sara.mcfall@mbie.govt.nz; nora.burghart@mbie.govt.nz; ^MBIE: Karl Woodhead <Karl.Woodhead@mbie.govt.nz>; bronwyn.donaldson@police.govt.nz; CHRISP, Sophie (CPCD) <Sophie.Chrisp@mfat.govt.nz>; Justice COVID Policy <covidpolicy@justice.govt.nz>; PTdutymanager@mpi.govt.nz; Jago, Rose <Rose.Jago@tearawhiti.govt.nz>; ^MBIE: Rebecca Heerdegen <Rebecca.Heerdegen@mbie.govt.nz>; Susan.Sawbridge@mbie.govt.nz; Dean.Ford@mbie.govt.nz; Matt.Freeland@mbie.govt.nz; Ema Hao'uli <Ema.Haouli@education.govt.nz>; alan.bell@dia.govt.nz

Cc: Elizabeth Oxenham [DPMC] <Elizabeth.Oxenham@dpmc.govt.nz>; Nita Sullivan [DPMC] <Nita.Sullivan@dpmc.govt.nz>; Megan Stratford [DPMC] <Megan.Stratford@dpmc.govt.nz>

Subject: RE: Advice on domestic CVCs at high risk events and venues

[IN-CONFIDENCE]

Kia ora koutou,

Thank you all for your engagement on this so far. We're providing some additional information below to help frame this work when considering your own agency feedback and for those engaging with external stakeholders. I have also attached an updated version of the draft categories framework and draft exemption framework, which you can share with external stakeholders in confidence, noting they are not final proposals and should be used as a basis for discussion.

We are continuing to focus on potentially requiring the use of vaccination status at high-risk events and venues in the immediate term – it might be helpful to flag this explicitly during your engagements.

We have provided the overall framework for CVCs (including in optional settings) to demonstrate how we are exploring setting distinctions between the types of events/venues where CVCs could be mandated, optional and prohibited.

We're keen to develop a clear set of criteria for these settings (as informed by public health advice). In doing so, we're hoping to be able to clearly articulate what types of events would fall into each category. Given likely time constraints, it would be most helpful if engagement could focus on the mandatory use of vaccination status requirements in high-risk settings, demonstrated by category A in the near-term and prohibiting the use at certain venues/events by Category D. In particular, any views from you and/or your stakeholders on what types of events and settings might fall into each category, and the key considerations when developing the mandatory and prohibited settings.

I hope this is helpful in setting out more of the context for this engagement and we really appreciate your support in this piece of work.

Ngā mihi

Kayleigh

Kayleigh Wiltshire (she/her)

Senior Policy Advisor

Strategy and Policy | COVID-19 Group

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From: Kayleigh Wiltshire [DPMC]

Sent: Wednesday, 29 September 2021 6:16 pm

To: ^MFAT: David Taylor <David.Taylor@mfat.govt.nz>; Rachel.Spencer@mfat.govt.nz; Rachel.McLean@mfat.govt.nz; Sarah.Johal@mfat.govt.nz; Ara.TaiRakena@mfat.govt.nz; Alastair Cameron [TSY] <Alastair.Cameron@treasury.govt.nz>; liz.macpherson@privacy.org.nz; ^Customs: Richard Bargh <Richard.bargh@customs.govt.nz>; maria-laura.crespo001@msd.govt.nz; ^EXT: Emma Spooner <Emma.Spooner@mch.govt.nz>; antonia.reid@mpi.govt.nz; ^Transport: Shelley Tucker <s.tucker@transport.govt.nz>; ^Education: Tony Clark <Tony.Clark@education.govt.nz>; ^TeArawhiti: Warren Fraser <Warren.Fraser@tearawhiti.govt.nz>; 'henry.broughton@tearawhiti.govt.nz' <henry.broughton@tearawhiti.govt.nz>; keene@tpk.govt.nz; olset@tpk.govt.nz; matthew.gileone@mpp.govt.nz; ^Police: Jeremy Wood <Jeremy.Wood@police.govt.nz>; 'Justine Smith' <Justine.Smith@dia.govt.nz>; 'laura.sommer@dia.govt.nz' <laura.sommer@dia.govt.nz>; Jack Haddow <Jack.Haddow@health.govt.nz>; Maria Cotter <Maria.Cotter@health.govt.nz>; Sacha ODea [DPMC] <Sacha.ODea@dpmc.govt.nz>; Tania Warburton [DPMC] <Tania.Warburton@dpmc.govt.nz>; Jules Lovelock [DPMC] <Jules.Lovelock@dpmc.govt.nz>; Jessica Gorman [DPMC] <Jessica.Gorman@dpmc.govt.nz>; 'Paul Fenton' <Paul.Fenton@education.govt.nz>; Graham MacLean [DPMC] <Graham.MacLean@dpmc.govt.nz>; Katie Anderson <Katie.Anderson@crownlaw.govt.nz>; ^MBIE: Paul Stocks <Paul.Stocks@mbie.govt.nz>; Shane Kinley <Shane.Kinley@mbie.govt.nz>; Gayathiri Ganeshan <Gayathiri.Ganeshan@mbie.govt.nz>; Anna Clark <Anna.Clark2@mbie.govt.nz>; Val Sim <val.sim@mbie.govt.nz>; ^MBIE: Kara Isaac <Kara.Isaac@mbie.govt.nz>; sara.mcfall@mbie.govt.nz; nora.burghart@mbie.govt.nz; ^MBIE: Karl Woodhead <Karl.Woodhead@mbie.govt.nz>; 'bronwyn.donaldson@police.govt.nz' <bronwyn.donaldson@police.govt.nz>; 'CHRISP, Sophie (CPCD)' <Sophie.Chrisp@mfat.govt.nz>; Justice COVID Policy <covidpolicy@justice.govt.nz>; 'PTdutymanager@mpi.govt.nz' <PTdutymanager@mpi.govt.nz>; 'Jago, Rose' <Rose.Jago@tearawhiti.govt.nz>
Cc: Elizabeth Oxenham [DPMC] <Elizabeth.Oxenham@dpmc.govt.nz>; Nita Sullivan [DPMC] <Nita.Sullivan@dpmc.govt.nz>; Megan Stratford [DPMC] <Megan.Stratford@dpmc.govt.nz>
Subject: RE: Advice on domestic CVCs at high risk events and venues

[IN-CONFIDENCE]

Kia ora koutou,

out of scope

We are seeking agency feedback on the use of CVCs by midday Thursday 7 October please.

Ngā mihi

out of scope

Kayleigh

Kayleigh Wiltshire (she/her)

Senior Policy Advisor

Strategy and Policy | COVID-19 Group

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From: Megan Stratford [DPMC] <Megan.Stratford@dpmc.govt.nz>

Sent: Monday, 27 September 2021 9:19 am

To: Kayleigh Wiltshire [DPMC] <Kayleigh.Wiltshire@dpmc.govt.nz>; ^MFAT: David Taylor <David.Taylor@mfat.govt.nz>; Rachel.Spencer@mfat.govt.nz; Rachel.McLean@mfat.govt.nz; Sarah.Johal@mfat.govt.nz; Ara.TaiRakena@mfat.govt.nz; Alastair Cameron [TSY]

<Alastair.Cameron@treasury.govt.nz>; liz.macpherson@privacy.org.nz; ^Customs: Richard Bargh <Richard.bargh@customs.govt.nz>; maria-laura.crespo001@msd.govt.nz; emma.spooner@mch.govt.nz; antonia.reid@mpi.govt.nz; ^Transport: Shelley Tucker <s.tucker@transport.govt.nz>; ^Education: Tony Clark <Tony.Clark@education.govt.nz>; ^TeArawhiti: Warren Fraser <Warren.Fraser@tearawhiti.govt.nz>; keene@tpk.govt.nz; olset@tpk.govt.nz; matthew.gileone@mpp.govt.nz; ^DIA: Paul Barker <paul.barker@dia.govt.nz>; ^Police: Jeremy Wood <Jeremy.Wood@police.govt.nz>; Jack Haddow <Jack.Haddow@health.govt.nz>; Maria Cotter <Maria.Cotter@health.govt.nz>; Sacha ODea [DPMC] <Sacha.ODea@dpmc.govt.nz>; Tania Warburton [DPMC] <Tania.Warburton@dpmc.govt.nz>; Jules Lovelock [DPMC] <Jules.Lovelock@dpmc.govt.nz>; Jessica Gorman [DPMC] <Jessica.Gorman@dpmc.govt.nz>; Graham MacLean [DPMC] <Graham.MacLean@dpmc.govt.nz>; Katie Anderson <Katie.Anderson@crownlaw.govt.nz>; ^MBIE: Paul Stocks <Paul.Stocks@mbie.govt.nz>; Shane Kinley <Shane.Kinley@mbie.govt.nz>; Gayathiri Ganeshan <Gayathiri.Ganeshan@mbie.govt.nz>; Anna Clark <Anna.Clark2@mbie.govt.nz>; Val Sim <val.sim@mbie.govt.nz>; ^MBIE: Kara Isaac <Kara.Isaac@mbie.govt.nz>; sara.mcfall@mbie.govt.nz; nora.burghart@mbie.govt.nz; ^MBIE: Karl Woodhead <Karl.Woodhead@mbie.govt.nz>

Cc: Elizabeth Oxenham [DPMC] <Elizabeth.Oxenham@dpmc.govt.nz>; Nita Sullivan [DPMC] <Nita.Sullivan@dpmc.govt.nz>

Subject: Advice on domestic CVCs at high risk events and venues

[IN-CONFIDENCE]

Kia ora tatou,

Thanks for your input to last week's follow up briefing on domestic CVCs at high risk events and venues. The advice that was sent across on Friday night is attached.

Thanks,

Megan.

Megan Stratford

Principal Policy Advisor

Strategy and Policy

COVID-19 Group

Department of the Prime Minister and Cabinet

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E Megan.Stratford@dpmc.govt.nz



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Vitasovich, Saskia

From: Justice COVID Policy
Sent: Thursday, 7 October 2021 9:59 am
To: Alison Cossar
Cc: Justice COVID Policy
Subject: RE: [FOR ACTION]: Urgent Cabinet paper: Required vaccination for healthcare workers

Kia ora Alison

Thank you for the opportunity to comment on this urgent Cabinet paper. In the time available, we have the following comments to make, relating to human rights and the definition of 'high risk':

- The paper refers to 'high risk' work in the health and disability sector without really defining the term and it still appears that a wide range of workers who may have different risk profiles in terms of contact with patients etc are likely to be within scope of the order.
- Requiring someone who has no contact or only limited contact with patients to be vaccinated is less likely to be justified by the objective re preventing/limiting spread.
- If possible, 'high-risk' work should be defined further in the order (noting that clarity of coverage is important when rights are engaged, so there may be limits to this approach).

We hope that's helpful. Please let us know if you have any questions about this.

Ngā mihi

Rebekka



Rebekka Rogers
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From: Alison Cossar <Alison.Cossar@health.govt.nz>
Sent: Thursday, 7 October 2021 9:08 am
To: Caroline McElnay <Caroline.McElnay@health.govt.nz>; Harriette Carr <Harriette.Carr@health.govt.nz>; Fiona Michel <Fiona.Michel@health.govt.nz>; Luke Fieldes <Luke.Fieldes@health.govt.nz>; Caroline Greaney <Caroline.Greaney@health.govt.nz>; Laura O'Sullivan <Laura.O'Sullivan@health.govt.nz>; Fiona Allen <Fiona.Allen@health.govt.nz>; Jess Hewat [TSY] <Jess.Hewat@treasury.govt.nz>; Hannah Lobb [TSY] <Hannah.Lobb@treasury.govt.nz>; Olivia Payne <Olivia.Payne@health.govt.nz>; Phil Knipe <Phil.Knipe@health.govt.nz>; Katie Anderson <Katie.Anderson@crownlaw.govt.nz>; Justice COVID Policy <covidpolicy@justice.govt.nz>; Knewstubb, Elspeth <Elspeth.Knewstubb@justice.govt.nz>; Lorraine Hetaraka <Lorraine.Hetaraka@health.govt.nz>; To'a Fereti <To'a.Fereti@health.govt.nz>; Lorraine Hetaraka <Lorraine.Hetaraka@health.govt.nz>; Anna McNaughton <Anna.McNaughton@health.govt.nz>; Hannah Kerr <Hannah.Kerr@health.govt.nz>
Subject: [FOR ACTION]: Urgent Cabinet paper: Required vaccination for healthcare workers

Kia ora koutou

Out of scope

Ngā mihi
Alison

Alison Cossar ([she/her](#)) | Manager, Public Health Policy | System Strategy & Policy | Ministry of Health | (04) 819 6883 | alison.cossar@health.govt.nz | [REDACTED]

Please note that I am no longer with Medsafe.

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Vitasovich, Saskia

From: Justice COVID Policy
Sent: Friday, 8 October 2021 9:21 am
To: Elizabeth Oxenham [DPMC]; Kayleigh Wiltshire [DPMC]
Cc: Noyce, Megan; Megan Stratford [DPMC]; Nita Sullivan [DPMC]; Justice COVID Policy
Subject: RE: Vaccine certificates - prohibited venues

Kia ora Liz and Kayleigh,

Apologies, just a small edit to our email below – highlighted in yellow.

Ngā mihi nui,
 Matt

From: Justice COVID Policy <covidpolicy@justice.govt.nz>
Sent: Friday, 8 October 2021 9:03 am
To: Elizabeth Oxenham [DPMC] <Elizabeth.Oxenham@dpmc.govt.nz>; Kayleigh Wiltshire [DPMC] <Kayleigh.Wiltshire@dpmc.govt.nz>
Cc: Noyce, Megan <Megan.Noyce@justice.govt.nz>; Megan Stratford [DPMC] <Megan.Stratford@dpmc.govt.nz>; Nita Sullivan [DPMC] <Nita.Sullivan@dpmc.govt.nz>; Justice COVID Policy <covidpolicy@justice.govt.nz>; Wheeler, Sally <Sally.Wheeler@justice.govt.nz>; Gage, Brendan <Brendan.Gage@justice.govt.nz>; Kunowski, Sam <Sam.Kunowski@justice.govt.nz>
Subject: RE: Vaccine certificates - prohibited venues

Mōrena Liz and Kayleigh,

Further to our feedback yesterday:

Courts

We are discussing with the judiciary whether courts should be Category C (requirement to provide CVCs optional) or Category D (requirement to provide CVCs is prohibited). This discussion has raised some constitutional separation of powers questions which we've unfortunately been unable to land within your timeframes. Your email below indicated that there will be an opportunity to provide feedback on the draft Cabinet paper on Monday, so we will aim to have finalised our position in order to feed it back to you in our response to that round of consultation. We hope that this isn't too inconvenient – it shouldn't impact the structure of the framework you are proposing, it is just a question of what category the courts should be in.

Services funded by the Ministry of Justice

Could we please add:

- Services that people are referred to or directed to attend by court or tribunal or other judicial institution – to Category D (prohibited). Please note that this *doesn't* include courts or tribunals or judicial institutions themselves – as noted above, we are still having this discussion and will get back to you on Monday.
- Access to justice services such as Community Law Centres – to Category D (prohibited)
- We may need to add to Category D (prohibited) services that are currently defined as Category A social services in the Covid Alert Level Orders (essentially those that had an exemption to deliver face to face services in AL4 and exempt from 2m distancing in other levels) – appreciate the multiple references to category here is confusing so will need to consider another way to describe these services!
- Other MOJ-funded services where attendance is voluntary, not court-ordered could be Category C (optional) but we would be keen to ensure we are being consistent with the expectations of other agencies that fund such services, such as MSD. There are some fish-hooks/longer-term implications if people can't receive services if the provider chooses to adopt the CVC. This topic may benefit from discussion with other agencies in a similar position.

We appreciate your patience and flexibility in this matter.

Ngā mihi nui,



Matthew McClennan

Policy Advisor | Harm Reduction and Public Safety Team

Criminal Justice Unit | Policy Group

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From: Elizabeth Oxenham [DPMC] <Elizabeth.Oxenham@dpmc.govt.nz>

Sent: Wednesday, 6 October 2021 3:06 pm

To: Justice COVID Policy <covidpolicy@justice.govt.nz>

Cc: Noyce, Megan <Megan.Noyce@justice.govt.nz>; Kayleigh Wiltshire [DPMC] <Kayleigh.Wiltshire@dpmc.govt.nz>;

Megan Stratford [DPMC] <Megan.Stratford@dpmc.govt.nz>; Nita Sullivan [DPMC] <Nita.Sullivan@dpmc.govt.nz>

Subject: RE: Vaccine certificates - prohibited venues

[REDACTED]

[REDACTED]

Out of scope

[REDACTED]

[REDACTED]

[REDACTED]

Out of scope

[Redacted]



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[Redacted]

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[Redacted]

Out of scope

[Redacted]

[Redacted]

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Out of scope

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From: Elizabeth Oxenham [DPMC] <Elizabeth.Oxenham@dpmc.govt.nz>
Sent: Thursday, 30 September 2021 2:41 pm
To: Doogan, Hannah <Hannah.Doogan@justice.govt.nz>; Justice COVID Policy <covidpolicy@justice.govt.nz>; maria-laura.crespo001@msd.govt.nz
Cc: Kayleigh Wiltshire [DPMC] <Kayleigh.Wiltshire@dpmc.govt.nz>; Megan Stratford [DPMC]

<Megan.Stratford@dpmc.govt.nz>; Nita Sullivan [DPMC] <Nita.Sullivan@dpmc.govt.nz>

Subject: Vaccine certificates - prohibited venues

[UNCLASSIFIED]

Kia ora koutou,

You will have seen Kayleigh's email yesterday on the categories and exemptions framework for use of domestic vaccine certificates.

From this collateral and previous advice, you'll be aware that prohibiting proof of vaccine requirements is being considered in human-needs providing businesses and services, such as supermarkets and pharmacies.

We'd be keen to have a conversation with you on this, particularly from an equity and human rights perspective. There will likely need to be clear indicators and categorisations of these types of businesses and services, and we will need to understand what could/should fall into these categories. We're hoping to have this firmed up in the next week or so.

We're also keen to tease out some of the mechanisms required to do this – likely primary legislation, but keen to hear any views on this.

Would you be free to have a teams call on this either tomorrow or Monday? Happy to conduct mainly via email, but sometimes its useful to have an initial discussion.

Please pass on to any relevant colleagues.

Thanks,

Liz

Liz Oxenham

Senior Policy Advisor, Strategy and Policy | COVID-19 Group

E: elizabeth.oxenham@dpmc.govt.nz

P: [REDACTED] s 9(2)(a) privacy of natural persons



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- (2) do not act on this email in any other way.

Thank you.

Vitasovich, Saskia

From: s9(2)(a)
Sent: Saturday, 9 October 2021 3:07 pm
To: Justice COVID Policy
Cc: Pegasus Retimanu; Mike Gill; Gage, Brendan; Wheeler, Sally; Purple, Folder; correspondence, official; Justice COVID Policy
Subject: RE: Update on the Cabinet paper: Requiring high risk work in the health and disability sector to be undertaken by vaccinated workers

[Redacted]

out of scope

s9(2)(a)
[Redacted]

From: Justice COVID Policy <covidpolicy@justice.govt.nz>
Date: Saturday, 09 Oct 2021, 2:55 PM
To: s9(2)(a)
Cc: Pegasus Retimanu <Pegasus.Retimanu@parliament.govt.nz>, Mike Gill <mike.gill@parliament.govt.nz>, Gage, Brendan <Brendan.Gage@justice.govt.nz>, Wheeler, Sally <Sally.Wheeler@justice.govt.nz>, Purple, Folder <Folder.Purple@justice.govt.nz>, correspondence, official <official.correspondence@justice.govt.nz>, Justice COVID Policy <covidpolicy@justice.govt.nz>
Subject: Update on the Cabinet paper: Requiring high risk work in the health and disability sector to be undertaken by vaccinated workers

Kia ora Hannah

Following our email on Thursday, we have received an updated, post-Ministerial Consultation version of the Cabinet paper, *Requiring high risk work in the health and disability sector to be undertaken by vaccinated workers*. As this is the version that will be considered by Cabinet on Monday, we thought it was worth providing you with an update on our previous comments. The new version of the paper is attached, for your reference.

In our advice on Thursday, we raised two key issues relating to the proposal's consistency with human rights. We noted that:

- the paper did not discuss alternative, less rights-intrusive options and why they would be insufficient to meet the public health objective, and
- there was potential for the proposal to be interpreted broadly because the term 'high risk' was not adequately defined. We therefore recommended that the resulting Order should be as specific as possible about who it covers and that if the term 'high risk' was used, it should be defined.

The new version of the paper largely addresses both of the issues we raised, by:

- drawing attention to the requirement for the Minister for COVID-19 Response to consider whether health care workers' adherence to safety and prevention measures, alongside regular and rigorous testing, would be sufficient protection without requiring vaccination, and
- stating that the term 'high risk' will be defined in the drafting of the Order.

As a result of these changes, we are generally comfortable with the approach in this paper. While we still do not know how 'high risk' will be defined or which roles will be captured under the proposal, we are satisfied that that further work will be undertaken to define 'high risk', and that MOJ will have opportunities to input into the drafting of the Order to ensure that the proposal is as specific as possible.

Please let us know if you have any questions or if we can help in any other way.

Ngā mihi

Rebekka



Rebekka Rogers

Policy Advisor | Harm Reduction and Public Safety | Criminal Justice

Ministry of Justice | Tāhū o te Ture

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For Official Correspondence Records	
Document type:	Email
Drafter:	Rebekka Rogers
Title:	Update on the Cabinet paper Requiring high risk work in the health and disability sector to be undertaken by vaccinated workers
Unit:	Harm Reduction and Public Safety
Minister:	Hon Faafoi
Date sent:	09/10/2021

From: Justice COVID Policy

Sent: Thursday, 7 October 2021 5:07 pm

To: s9(2)(a)

Cc: 'Pegasus.Retimanu@parliament.govt.nz' <Pegasus.Retimanu@parliament.govt.nz>; 'mike.gill@parliament.govt.nz' <mike.gill@parliament.govt.nz>; Justice COVID Policy <covidpolicy@justice.govt.nz>; Gage, Brendan <Brendan.Gage@justice.govt.nz>; Wheeler, Sally <Sally.Wheeler@justice.govt.nz>; Purple, Folder <Folder.Purple@justice.govt.nz>; correspondence, official <official.correspondence@justice.govt.nz>

Subject: Cabinet paper for Ministerial Consultation: Requiring high risk work in the health and disability sector to be undertaken by vaccinated workers

Kia ora Hannah

We've had the attached Cabinet paper through for urgent consultation today and anticipate that you will receive it for Ministerial consultation in the next little while, as it is due to be lodged tomorrow and will be considered by Cabinet on Monday. Below are some notes from us to support Minister Faafoi in Ministerial consultation and/or discussion in Cabinet on Monday.

Background

- The paper seeks agreement to require that high risk work in the health and disability sector can only be undertaken by workers vaccinated against COVID-19.

- Despite pockets of high vaccine uptake in the sector (data from September shows at least 75 per cent of the total DHB workforce of around 80,000 clinical and non-clinical staff is fully vaccinated, with higher numbers for those who have had one vaccination), MOH considers it imperative that vaccination rates are higher across the wider health and disability sector.
- The proposal will amend COVID-19 Public Health Response (Vaccinations) Order 2021, which already requires that specified work at the Border and managed isolation quarantine facilities (MIQ) settings only be undertaken by workers who have been vaccinated.
- MOJ was urgently consulted on this paper on Thursday 07 Oct. We were also previously consulted on a draft briefing on this topic.

Human rights considerations

- The proposal raises issues of consistency with the right to refuse medical treatment (s11 of the Bill of Rights Act) and right to be free from discrimination on the grounds of disability, sex (pregnancy) or religious beliefs (s19 of NZBORA, s21 Human Rights Act 1993 or ss104 and 105 Employment Relations Act 2000).
- Section 9(ba) of the COVID-19 Public Health Response Act 2020 explicitly requires that Orders made under section 11 of the Act be made consistently with the Bill of Rights Act 1990. If an Order limits a right or freedom affirmed in the BORA, all or part of the order may be invalid unless the limitation can be demonstrably justified in a free and democratic society (section 5).

• s9(2)(g)(i)

We are available to discuss this further or provide additional advice if that would be useful.

Ngā mihi

Rebekka



Rebekka Rogers

Policy Advisor | Harm Reduction and Public Safety | Criminal Justice

Ministry of Justice | Tāhū o te Ture

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Vaccine requirements impacting social service programmes

Discussion with DPMC, Corrections, MSD and ACC

- Certain Government services are turning away clients if they don't have vaccine passes.
- DPMC believed services would not ask for vaccine passes if they were not required to by law, but many are choosing to due to lack of clarity.
- The group agreed NZers should / need to be able to access Government services regardless of vaccine status.
- The criteria for prohibiting the use of vaccine passes is deliberately very narrow to reflect the public health risk.
- It is not the preference of the group to expand the legislative criteria for prohibiting the use of vaccine passes.
- The group believes that access to Government services could be ensured by better guidance.
- The guidance needs to communicate that Government services should be accessible to all persons regardless of vaccine status.
- To ensure access, the delivery of services may need to adapt if face to face is too risky from a public health risk perspective. This may include the use of PPE, negative tests, rapid antigen testing etc.
- DPMC need agencies to define exactly what the services are that should be accessible to all people so we can communicate clearly to Minister's why we are issuing guidance to these Government services providers.
- MSD to take lead on creating new guidance. DPMC to review.
- No implications for judiciary i.e. courtrooms.

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Vitasovich, Saskia

From: Kerpen, Ursula
Sent: Monday, 11 October 2021 2:42 pm
To: Gayathiri Ganeshan
Cc: Justice COVID Policy; Reid, Jenna; Knewstubb, Elspeth
Subject: RE: Advice on vaccine legislation for feedback by 12 pm Monday [IN-CONFIDENCE]

Kia ora Gayathiri,
 Thank you for sending this advice through.

We have had a look at your paper from a NZBORA perspective however, obviously, the time has been very limited.

The proposals engage rights under the NZBORA, especially s 11 - freedom from medical treatment and s 21 – unreasonable search and seizure (if there are disclosure requirements).

We would like to see a NZBORA implications section in this advice. We note that any draft legislation will be vetted as to its consistency with the NZBORA. If the Attorney-General considers it appears to be inconsistent with NZBORA, they will table a report to this effect in Parliament (s 7 NZBORA).

The NZBORA analysis should explain why the measures are justified under the NZBORA, especially how they are linked in their breadth to the objective to be achieved.

To be a justified limitation of human rights under the NZBORA, it would be important to see the public health advice discussing whether the measure is necessary to achieve the public health rationale.

In addition, any legislation or measure must not have a discriminatory effect under s 19 NZBORA. Requiring persons in certain roles to be vaccinated will result in discrimination where someone is unable/unwilling to be vaccinated for reasons of religion, sex (pregnancy), disability. We consider that an exemption from vaccination on medical grounds should be available.

We share the concerns discussed in today's online meeting about giving employers the discretion to decide on vaccination requirements and that this decision potentially cannot be challenged. The last point is also concerning from a s 27 NZBORA (right to justice) point of view. In that regard, option 2 (page 5) is more concerning than option one, however similar concerns apply to the medium risk category in option one.

We are happy to review, and provide any comments on a BORA assessment if that would be helpful.

Finally, we'd be interested in hearing about the enforcement processes for this framework, especially any offences to be potentially created.

Kind regards,
 Ursula



Ursula Kerpen
 Senior Policy Advisor | Civil Law and Human Rights
 Mob. [REDACTED]

s 9(2)(a)
 privacy of
 natural
 persons

Out of scope

Vitasovich, Saskia

From: Justice COVID Policy
Sent: Tuesday, 12 October 2021 4:57 pm
To: Ruth.Fairhall@dpmc.govt.nz
Cc: Wheeler, Sally; Justice COVID Policy
Subject: RE: COVID-19 Policy Update and Working Paper for Comment
Attachments: Vaccination requirements.docx

Kia ora Ruth

Many thanks for giving us the opportunity to see this working note.

It's great to see this strategic thinking about the cumulative impact all these various policies and measures have on different parts of the community. We support your efforts here and are pleased to see you've noted that human rights, equity and social license are all complex issues at play that need to be balanced against public health risks.

We suggest a useful common principle to add, or at least to keep in mind, is that all of these policy settings should be regularly reviewed to assess whether equity concerns have eventuated and whether restrictions and limitations are still justified on public health grounds. We further suggest that a key criteria of such reviews should be considering whether inequities have arisen directly or indirectly from the combined/cumulative effect of the broader policy settings in this space.

We also note the paper does not mention the privacy implications of these policy settings. We suggest adding this in to the common principles section as another bullet point. If it's useful we suggest something along these lines:

- From a privacy perspective, limits on privacy rights need to be justified and proportionate and privacy rights should be limited no more than is necessary. The Privacy Act 2020 enables agencies to collect information where it is necessary for a lawful purpose. The Act is not a barrier for collection, use or disclosure of information where there is a proper basis, for example to lessen or prevent a serious threat to public health, but it is important privacy implications are considered especially where personal sensitive information is being collected (eg medical information).

Finally, we're not too sure if these two principles fit in the paper, however we did consider whether a line about:

- the enforcement regime is appropriate, particularly noting proportionality and equity concerns; and
- the need to respect existing constitutional arrangements. In particular, separation of powers between the Executive and the Judiciary, and here we're really thinking about maintaining judicial independence.

We hope this is helpful. Please let us know if you would like to discuss anything.

Ngā mihi
Hannah



Hannah Doogan (she/her)

Policy Advisor | Harm Reduction & Public Safety | Criminal Justice

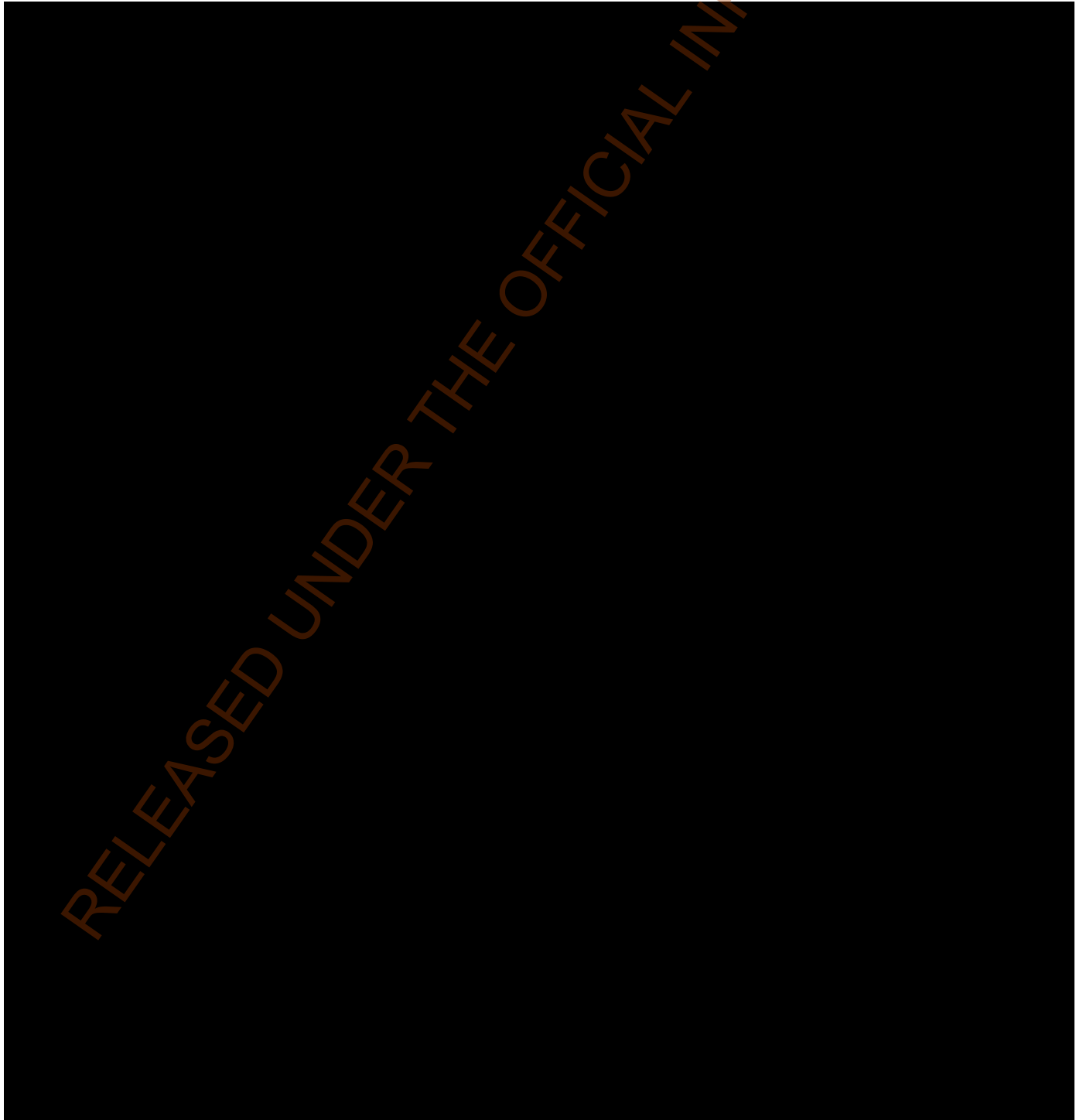
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Hannah.Doogan@justice.govt.nz | www.justice.govt.nz

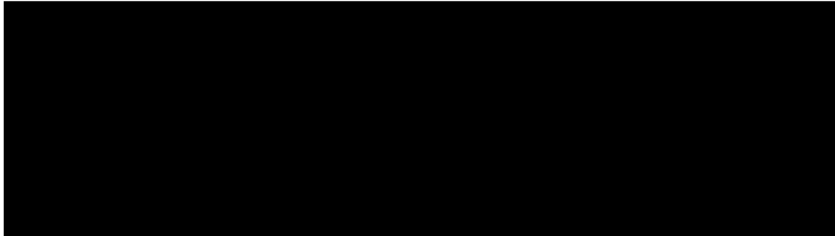
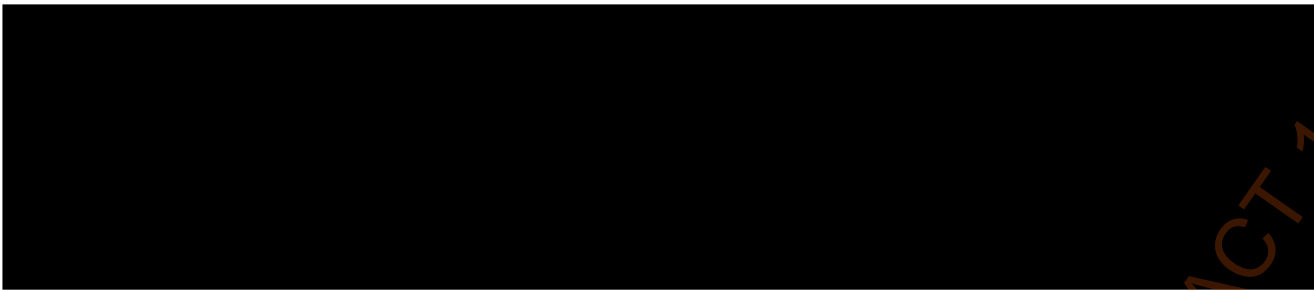
s9(2)(a)



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Vitasovich, Saskia

From: Justice COVID Policy
Sent: Thursday, 14 October 2021 4:50 pm
To: mike.gill@parliament.govt.nz
Cc: s9(2)(a) [REDACTED] Wheeler, Sally; Justice COVID Policy; Purple, Folder; correspondence, official
Subject: RE: [ORDER CONSULTATION] - COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021
Attachments: COVID_19 Public Health Response Vaccinations Ame-v5.0.pdf; HR2021177 COVID19 Public Health Response (Vaccinations) Amendment Orderpdf

Kia ora Mike

We note the amendment is allowing greater flexibility regarding which vaccines workers can have, not changing requirements about which workers must be vaccinated.

Therefore we don't see any new NZBORA implications in these amendments, noting the Order still mandates vaccination for certain people. We have no other comments or issues.

MoH also consulted us on the development of this amendment.

Ngā mihi
 Hannah

✓ ✓ ✓ ✓ ✓
Hannah Doogan (she/her)
 Policy Advisor | Harm Reduction & Public Safety | Criminal Justice
 Ministry of Justice | Tāhū o te Ture
Hannah.Doogan@justice.govt.nz | www.justice.govt.nz
 s9(2)(a) [REDACTED]



From: Mike Gill <mike.gill@parliament.govt.nz>
Sent: Wednesday, 13 October 2021 6:08 pm
To: Kunowski, Sam <Sam.Kunowski@justice.govt.nz>; Wheeler, Sally <Sally.Wheeler@justice.govt.nz>
Cc: Gage, Brendan <Brendan.Gage@justice.govt.nz>; s9(2)(a) [REDACTED]
Subject: FW: [ORDER CONSULTATION] - COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021

Ngā mihi

Mike Gill

Private Secretary – Justice | Office of Hon Kris Faafoi
DDI +64 4 817 9041 | Mobile [REDACTED] | Email mike.gill@parliament.govt.nz
Parliament Buildings | Wellington 6160 | New Zealand

s 9(2)(a) privacy of
natural persons

Authorised by Hon Kris Faafoi MP, Parliament Buildings, Wellington 6011

From: James Baigent

Sent: Wednesday, 13 October 2021 4:29 PM

To: s9(2)(a) [REDACTED] Mike Gill <mike.gill@parliament.govt.nz>

Subject: FW: [ORDER CONSULTATION] - COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021

From: Morehu Rei

Sent: Wednesday, 13 October 2021 4:16 PM

To: Holly Donald <holly.donald@parliament.govt.nz>; James Little <James.Little@parliament.govt.nz>; James Baigent <James.Baigent@parliament.govt.nz>; Lisa Petraschuk <Lisa.Petraschuk@parliament.govt.nz>; Alex Tarrant <Alex.Tarrant@parliament.govt.nz>; Rob Carr <Robert.Carr@parliament.govt.nz>; David Choat <David.Choat@parliament.govt.nz>; Toby Moore <Toby.Moore@parliament.govt.nz>; Beth Houston <Elizabeth.Houston@parliament.govt.nz>; Tom James <Tom.James@parliament.govt.nz>

Cc: Charlie McLean <Charlie.McLean@parliament.govt.nz>

Subject: [ORDER CONSULTATION] - COVID-19 Public Health Response (Vaccinations) Amendment Order (No 2) 2021

Kia ora koutou,

See attached the draft amendment order expanding the types of recognised vaccines that affected workers may receive under the Vaccination order.

Currently, affected workers captured by the COVID-19 Public Health Response (Vaccination) Order 2021 are required have received two doses of the Pfizer/BioNTech COVID-19 vaccine.

The Order does not accommodate affected workers who are fully, or partially, vaccinated overseas with a COVID-19 vaccine other than the Pfizer/BioNTech vaccine. This is increasing staffing pressures at managed isolation and quarantine facilities and has impacts on an individual's employment.

The Amendment Order enables the Director-General of Health to authorise an affected person who has not been vaccinated to carry out certain work if they have received at least one dose of a COVID-19 vaccine. This is particularly important for affected persons who have not received a COVID-19 vaccine recognised in New Zealand (e.g. Sinovac or Sinopharm) after the commencement of the Amendment Order to enable a pathway for them to become "vaccinated" under the Vaccinations Order.

The Amendment Order also proposes minor and technical amendments, including inserting the definition of 'international layover', and revoking a clause that requires PCBUs to make its records available to an enforcement officer upon request for investigation and enforcement purposes.

We are aiming to sign the order on Friday so are seeking any feedback on the order by **COP tomorrow (Thursday 14 October)**.

Let me know if you have any questions.

Noho ora mai ra

Morehu Rei

Ministerial Advisor to Hon Chris Hipkins MP

Minister for COVID-19 Response | Minister of Education | Minister for the Public Service | Leader of the House

DDI +64 4 817 8322 | Mobile s9(2)(a) | Email morehu.rei@parliament.govt.nz

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Vitasovich, Saskia

From: Justice COVID Policy
Sent: Friday, 22 October 2021 11:54 am
To: s9(2)(a) mike.gill@parliament.govt.nz
Cc: Wheeler, Sally; Justice COVID Policy
Subject: RE: [URGENT MINISTERIAL CONSULTATION]: Covid-19 Vaccine Certificates: Implementation in Domestic Settings

Categories: For Matt

Kia ora Mike and s9(2)(a)

Please find our advice regarding the Cabinet paper *COVID-19 Vaccine Certificate: Implementation in Domestic Settings*.

We were consulted on this Cabinet paper at the agency consultation phase earlier this week, and contributed to the policy development throughout the briefing stage. The main areas we provided advice on were enforcement, human rights, and the use of COVID-19 Vaccination Certificates (CVCs) in the Courts.

In this version of the Cabinet paper we note there is still some outstanding concerns which you should be aware of.

[REDACTED]

Out of scope

Human rights section

- We advised DPMC officials that the human rights section should discuss how requiring CVCs in society would engage the right to refuse to undergo medical treatment affirmed under section 11 of the Bill of Rights Act.
- We note the current paper has not included a discussion of the right to refuse to undergo medical treatment. We think this is concerning since people are being strongly compelled by the Government to take the vaccine, and will have a large number of freedoms limited by not taking the vaccine.

[REDACTED]

Hope this has been informative and useful. Happy to discuss anything further.

Out of scope

Ngā mihi nui,



Matthew McClennan

Policy Advisor | Harm Reduction and Public Safety Team

Criminal Justice Unit | Policy Group

Ministry of Justice | Tāhū o te Ture

P +64 4 439 4054 | M s9(2)(a)

Matthew.McClennan@justice.govt.nz | justice.govt.nz

From: s9(2)(a)

Sent: Thursday, 21 October 2021 6:24 pm

To: Wheeler, Sally <Sally.Wheeler@justice.govt.nz>; Kunowski, Sam <Sam.Kunowski@justice.govt.nz>; Gage, Brendan <Brendan.Gage@justice.govt.nz>

Cc: Mike Gill <mike.gill@parliament.govt.nz>

Subject: FW: [URGENT MINISTERIAL CONSULTATION]: Covid-19 Vaccine Certificates: Implementation in Domestic Settings

From: James Baigent

Sent: Thursday, 21 October 2021 5:59 PM

To: s9(2)(a) Mike Gill <mike.gill@parliament.govt.nz>

Subject: FW: [URGENT MINISTERIAL CONSULTATION]: Covid-19 Vaccine Certificates: Implementation in Domestic Settings

Sent with BlackBerry Work
(www.blackberry.com)

From: Morehu Rei <morehu.rei@parliament.govt.nz>

Date: Thursday, 21 Oct 2021, 5:58 PM

To: James Little <James.Little@parliament.govt.nz>, Alex Tarrant <Alex.Tarrant@parliament.govt.nz>, Toby Moore <Toby.Moore@parliament.govt.nz>, Katy Greco-Ainslie <Katy.Greco-Ainslie@parliament.govt.nz>, Kurt McLauchlan <Kurt.McLauchlan@parliament.govt.nz>, Alex Masters <Alexandra.Masters@parliament.govt.nz>, Ben Cunliffe <Ben.Cunliffe@parliament.govt.nz>, Matt Greer <Matt.Greer@parliament.govt.nz>, Beth Houston <Elizabeth.Houston@parliament.govt.nz>, David Choat <David.Choat@parliament.govt.nz>, Tele'a Andrews <Tele'a.Andrews@parliament.govt.nz>, Morgan Evans <Morgan.Evans@parliament.govt.nz>, Corin Higgs <Corin.Higgs@parliament.govt.nz>, John Blincoe <John.Blincoe@parliament.govt.nz>, Matt Swann <matthew.swann@parliament.govt.nz>, Andrea Black <Andrea.Black@parliament.govt.nz>, James Baigent <James.Baigent@parliament.govt.nz>, Patisepa Helu <Patisepa.Helu@parliament.govt.nz>, Mike Tukaki <Mike.Tukaki@parliament.govt.nz>, Esther Hercus <Esther.Hercus@parliament.govt.nz>, Rob Carr <Robert.Carr@parliament.govt.nz>, Ben McLachlan <Ben.McLachlan@parliament.govt.nz>, Jonathan Gee <Jonathan.Gee@parliament.govt.nz>, William Blackler <William.Blackler@parliament.govt.nz>, Sam Barry <Samuel.Barry@parliament.govt.nz>

Cc: Raj Nahna <Rajesh.Nahna@parliament.govt.nz>, Holly Donald <holly.donald@parliament.govt.nz>, Charlie McLean <Charlie.Mclean@parliament.govt.nz>

Subject: [URGENT MINISTERIAL CONSULTATION]: Covid-19 Vaccine Certificates: Implementation in Domestic Settings

Kia ora koutou,

Hon Hipkins intends to take the attached paper titled 'Covid-19 Vaccine Certificates: Implementation in Domestic Settings' directly to Cabinet this Tuesday.

This paper outlines advice relating to the operational consideration for the use of CVCs in various settings, specifically addressing:

- Exemptions from vaccine requirements in CVC settings;
- Implementation and operationalising CVCs; and
- Compliance and enforcement considerations.

COVID-19 Vaccine Certificates (CVCs) have been identified as a tool to help support the broader public health response to COVID-19 while vaccination rates are lower than optimal. CVCs can be used to as an additional measure to ensure people in certain settings can demonstrate that they are either fully vaccinated, or medically exempt from

vaccination. A requirement to show evidence of vaccination, such as CVCs, are likely to be most effective in settings where there is greater risk of community transmission, such as large and high-risk settings.

We're aiming to lodge the paper tomorrow afternoon, so are seeking any feedback until **12pm tomorrow**.

Let me know if you have any questions.

Noho ora mai ra

Morehu Rei

Ministerial Advisor to Hon Chris Hipkins MP

Minister for COVID-19 Response | Minister of Education | Minister for the Public Service | Leader of the House

DDI +64 4 817 8322 | Mobile **s9(2)(a)** | Email morehu.rei@parliament.govt.nz

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Authorised by Hon Chris Hipkins MP, Parliament Buildings, Wellington

Vitasovich, Saskia

From: McClennan, Matthew
Sent: Thursday, 28 October 2021 4:10 pm
To: Knewstubb, Elspeth; Justice COVID Policy
Subject: FW: CVC prohibited settings

FYI

From: McClennan, Matthew
Sent: Thursday, 28 October 2021 2:52 pm
To: 'Jessie Annett-Wood [DPMC]' <Jessie.Annett-Wood@dpmc.govt.nz>
Subject: RE: CVC prohibited settings

Kia ora Jessie,

Out of scope

s9(2)(g)(i)

For the principles, I think something like this could be useful:

- are necessary for the provision of fundamental human rights and freedoms as affirmed by the NZ Bill of Rights, Human Rights Act, Privacy Act and other human rights instruments unless the setting is subject to a justified limitation.

This principle would cover off:

- the right not to be deprived of life (s 8 NZBORA) which justifies supermarkets, pharmacies, healthcare, etc
- the electoral rights (s 13 NZBORA) which justifies voting places
- the manifestation of religion and belief (s 15 NZBORA) which justifies churches or other places of worship*
- the freedom of peaceful assembly (s 16 NZBORA) which justifies protests
- the freedom of movement (s 18(1) NZBORA) which justifies public transport, domestic travel*, road check points* etc
- the right to justice (s 27(3) NZBORA) which justifies access to civil proceedings etc

s9(2)(g)(i)

A second approach you could take would be to lift it higher again, and useful *principles* such as dignity, equity, equality, te Tiriti o Waitangi, justice.

If you are interested in this principle-based approach, we recommend you run it past your legal team to ensure any litigation risk is considered. We are considering this from a policy perspective rather than a legal risk perspective.

Ngā mihi nui,



Matthew McClennan

Policy Advisor | Harm Reduction and Public Safety Team

Criminal Justice Unit | Policy Group

Ministry of Justice | Tāhū o te Ture

P +64 4 439 4054 | M [REDACTED]

Matthew.McClennan@justice.govt.nz | justice.govt.nz

s 9(2)(a) privacy
of natural
persons

From: Jessie Annett-Wood [DPMC] <Jessie.Annett-Wood@dpmc.govt.nz>

Sent: Thursday, 28 October 2021 11:27 am

To: Megan Stratford [DPMC] <Megan.Stratford@dpmc.govt.nz>; meulca@transport.govt.nz; ^SSC: Sarah Borrell <Sarah.Borrell@publicservice.govt.nz>; ^SSC: David Fowler <David.Fowler@publicservice.govt.nz>; Dairne.Grant@publicservice.govt.nz; Thomson, Jacqui <Jacqui.Thomson@justice.govt.nz>; OMearaA@moe.govt.nz; JohnstonS@moe.govt.nz; Jack.Haddow@health.govt.nz; Maria-Laura.Crespo001@msd.govt.nz; AitkenP@moe.govt.nz; Fleur.Keys@hud.govt.nz; Jessie Annett-Wood [DPMC] <Jessie.Annett-Wood@dpmc.govt.nz>; Daniel.Anderson@dia.govt.nz; McClennan, Matthew <Matthew.McClennan@justice.govt.nz>; Laura.Sommer@dia.govt.nz; HaouliE@moe.govt.nz; BirdsallSmithJ@moe.govt.nz; Laura.Miller@health.govt.nz; Jessica Gorman [DPMC] <Jessica.Gorman@dpmc.govt.nz>; Tim.Ransom@dia.govt.nz

Subject: CVC prohibited settings

[IN-CONFIDENCE]

Kia ora koutou,

Thank you all for joining us this morning – really appreciate you sharing your thoughts with us. Based on your feedback, we're proposing:

Businesses and service providers should be prohibited from implementing a vaccine requirement when they are providing essential products or services that:

- are necessary for the preservation of life, namely – supermarkets, dairies, healthcare providers, pharmacies, public/social housing providers (including transitional and emergency housing), or
- are necessary to ensure access to these services – most transport

We then suggest that education is treated separately and has its own set of principles/guidance – it's a quite hard to capture the nuances necessary here. We'll pick up the conversation on this directly with education colleagues.

We also would like to talk further to really nail the scope of what we'd seek to capture on housing and transport – again, we'll pick that up directly with relevant agencies.

Let me know if you have any issues with the above ASAP – we're trying to get preliminary advice up today so we can start drafting. I've sent this to the people who MS teams tells me attended the meeting – do forward on to relevant colleagues if they weren't able to join us.

Ngā mihi,
Jessie

Jessie Annett-Wood

Senior Policy Advisor

Covid-19 Group

Department of the Prime Minister and Cabinet

M [REDACTED]
E jessie.annett-wood@dpmc.govt.nz s 9(2)(a) privacy
of natural persons



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Vitasovich, Saskia

From: Justice COVID Policy
Sent: Friday, 29 October 2021 4:08 pm
To: mike.gill@parliament.govt.nz
Cc: Argyle, Ellie; Gage, Brendan; Kunowski, Sam; s9(2)(a); Purple, Folder; correspondence, official; Justice COVID Policy
Subject: [MINISTERIAL CONSULTATION] Alert Level Review - 1 November

Kia ora Mike

Thank you for sending this through for feedback. In the time available, we have the following comments to make:

General

- The Ministry of Justice has not been consulted on the proposals in this paper previously.

Human rights

- The human rights section refers to an 'assumption' about public health advice regarding vaccination reducing transmission (para 134). As this relates to the justification for the new mandatory vaccination requirement and limitation on the right to refuse medical treatment (s11), we consider that Cabinet's decision should be based on current public health advice, not on assumptions about that advice.
- Public health advice re vaccination and transmission has been developed for other papers, and we recommend that this is included in this paper as well.

Privacy

- Para 99 sets out responsibilities in regards to carrying evidence of vaccination status and disclosure of vaccination status when crossing boundaries, and we note that this would need to occur in the most privacy-consistent way possible.

Please let us know if you have any questions or we can help in any other way.

out of scope

Ngā mihi

Rebekka



Rebekka Rogers

Policy Advisor | Harm Reduction and Public Safety | Criminal Justice

Ministry of Justice | Tāhū o te Ture

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For Official Correspondence Records	
Document type:	Email
Drafter:	Rebekka Rogers
Title:	[MINISTERIAL CONSULTATION] Alert Level Review - 1 November

Unit:	Harm Reduction and Public Safety
Minister:	Hon Faafoi
Date sent:	29/10/2021

From: Mike Gill <mike.gill@parliament.govt.nz>

Sent: Friday, 29 October 2021 2:33 pm

To: Wheeler, Sally <Sally.Wheeler@justice.govt.nz>; Argyle, Ellie <Ellie.Argyle@justice.govt.nz>

Cc: Gage, Brendan <Brendan.Gage@justice.govt.nz>; Kunowski, Sam <Sam.Kunowski@justice.govt.nz>; s9(2)(a)

Subject: FW: [MINISTERIAL CONSULTATION] Alert Level Review - 1 November

Ngā mihi

out of scope

Mike Gill

Private Secretary – Justice | Office of Hon Kris Faafoi

DDI +64 4 817 9041 | Mobile [REDACTED] | Email mike.gill@parliament.govt.nz

Parliament Buildings | Wellington 6160 | New Zealand

s 9 (2)(a) privacy
of natural persons

Authorised by Hon Kris Faafoi MP, Parliament Buildings, Wellington 6011

From: James Baigent

Sent: Friday, 29 October 2021 2:25 PM

To: s9(2)(a) [REDACTED]; Mike Gill <mike.gill@parliament.govt.nz>

Subject: FW: [MINISTERIAL CONSULTATION] Alert Level Review - 1 November

From: Charlie McLean

Sent: Friday, 29 October 2021 2:15 PM

To: James Little <James.Little@parliament.govt.nz>; Alex Tarrant <Alex.Tarrant@parliament.govt.nz>; Toby Moore <Toby.Moore@parliament.govt.nz>; Katy Greco-Ainslie <Katy.Greco-Ainslie@parliament.govt.nz>; Kurt McLauchlan <Kurt.McLauchlan@parliament.govt.nz>; Alex Masters <Alexandra.Masters@parliament.govt.nz>; Ben Cunliffe <Ben.Cunliffe@parliament.govt.nz>; Matt Greer <Matt.Greer@parliament.govt.nz>; Beth Houston <Elizabeth.Houston@parliament.govt.nz>; David Choat <David.Choat@parliament.govt.nz>; Tele'a Andrews <Tele'a.Andrews@parliament.govt.nz>; Morgan Evans <Morgan.Evans@parliament.govt.nz>; Corin Higgs <Corin.Higgs@parliament.govt.nz>; John Blincoe <John.Blincoe@parliament.govt.nz>; Kurt McLauchlan <Kurt.McLauchlan@parliament.govt.nz>; Matt Swann <matthew.swann@parliament.govt.nz>; Andrea Black <Andrea.Black@parliament.govt.nz>; James Baigent <James.Baigent@parliament.govt.nz>; Patisepa Helu <Patisepa.Helu@parliament.govt.nz>; Mike Tukaki <Mike.Tukaki@parliament.govt.nz>; Esther Hercus <Esther.Hercus@parliament.govt.nz>; Rob Carr <Robert.Carr@parliament.govt.nz>; Ben McLachlan <Ben.McLachlan@parliament.govt.nz>; Jonathan Gee <Jonathan.Gee@parliament.govt.nz>; William Blackler <William.Blackler@parliament.govt.nz>

Cc: Raj Nahna <Rajesh.Nahna@parliament.govt.nz>; Holly Donald <holly.donald@parliament.govt.nz>; James Little

<James.Little@parliament.govt.nz>; Morehu Rei <morehu.rei@parliament.govt.nz>

Subject: [MINISTERIAL CONSULTATION] Alert Level Review - 1 November



Charlie McLean | Ministerial Advisor

Office of the Hon Chris Hipkins

Parliament Buildings | Wellington | Office: +64 (0)4 817 9403 | Mobile **s9(2)(a)**

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Vitasovich, Saskia

From: Justice COVID Policy
Sent: Friday, 5 November 2021 4:06 pm
To: 'Olivia Payne'
Cc: 'Alison Cossar'; Wheeler, Sally
Subject: RE: Vaccinations order amendment now signed and publicly available

Kia ora Olivia

We appreciate the opportunity for agency consultation is limited and that you will not be able to action this, but we would like to set out MoJ's concerns about the expansion of the care and support worker group to include family carers who provide support services in family member's homes:

- As you are aware, section 9(1)(ba) of the COVID-19 Public Health Response Act 2020 explicitly requires that Orders made under section 11 of the Act be made consistently with the Bill of Rights Act 1990. If an Order limits a right or freedom affirmed in the Bill of Rights Act, all or part of the order may be invalid unless the limitation can be demonstrably justified in a free and democratic society (section 5 of the Bill of Rights Act). It is widely understood that the Vaccination Order raises issues of consistency with the right to refuse medical treatment (s11 of the Bill of Rights Act) and right to be free from discrimination on the grounds of sex (pregnancy) or religious beliefs (s19 of the Bill of Rights Act, s21 Human Rights Act 1993 or ss104 and 105 Employment Relations Act 2000).
- This amendment will capture a group that is not in a traditional employment arrangement. This appears to be a significant expansion of the definition of a the care and support worker group, as well as a shift in policy direction for the Vaccination Order. As agency consultation has been limited and we have not had the opportunity to see the policy proposals or rationales behind this amendment, we cannot comment on whether the rationale put forward for the amendment could justify the amendment under the Bill of Rights Act.
s 9(2)(h) legal privilege
- However, MoJ [REDACTED] have previously advised MOH that, to ensure consistency with the Bill of Rights Act, it is important that the Order does not inadvertently capture people who are at 'no' or 'fanciful' risk of exposure to COVID-19. As this amendment will capture family members, working in family member's homes, it appears unlikely that this group will have the same risk of exposure to COVID-19 as other health and disability workers who will have multiple clients in multiple locations. We therefore think there is risk that the Order will now capture people who are at 'no' or 'fanciful risk'.
- Further to this, we consider it is likely that this amendment will capture families who already experience hardship and disadvantage and that further disadvantage would result from the loss of income and the need for care to be performed by non-family member health and disability workers.
- We would be interested to know if Crown Law has assessed this amendment in respect of the legal risk.

Again, we appreciate that you are working under tight timeframes and that this likely not actionable in the time available but hope that you find the comments helpful.

Ngā mihi

Rebekka

Rebekka Rogers

Policy Advisor | Harm Reduction and Public Safety | Criminal Justice



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Rebekka.rogers@justice.govt.nz | www.justice.govt.nz

From: Olivia Payne <Olivia.Payne@health.govt.nz>
Sent: Friday, 5 November 2021 12:10 pm
To: Lauren Smith <Lauren.Smith041@msd.govt.nz>; Aaron.McIlroy001@msd.govt.nz; Justice COVID Policy <covidpolicy@justice.govt.nz>; Jessica Gorman [DPMC] <Jessica.Gorman@dpmc.govt.nz>; Katie Anderson <Katie.Anderson@crownlaw.govt.nz>; jennie.cassie@hud.govt.nz; Ben Martell <Ben.Martell@ot.govt.nz>; Claire Harmsworth <Claire.Harmsworth@ot.govt.nz>; Michael Wilkinson <m.wilkinson@transport.govt.nz>; TAYLOR Nicole <Nicole.Taylor@customs.govt.nz>; Val Sim <val.sim@mbie.govt.nz>
Cc: GOULTER, Laura (WELLHO) <Laura.Goulter@corrections.govt.nz>; MCCLELLAND, Harriette (WELLHO) <Harriette.McClelland@corrections.govt.nz>; Chris Owen <Chris.Owen@education.govt.nz>; scott.spackman@police.govt.nz
Subject: RE: Vaccinations order amendment now signed and publicly available

[IN CONFIDENCE]

Kia ora koutou

We are drafting an urgent amendment to the Vaccinations Order today to address some technical issues with the current order for police, education and corrections.

The main substantive change is that we are tightening up the medical exemption process to centralise this to the ministry.

No new agency groups are being added to the order, however, the care and support worker group is being expanded and will now include family carers who provide support services in family member's homes where the care is funded by Health, DHBs or ACC (not if self-funded or funded by other agencies).

Opportunities for agency review and comment are limited given we need to go from first draft to signature in a single day. If you have any concerns please contact me.

Thanks
Olivia

Olivia Payne
Principal solicitor
Health Legal
Corporate Services
Ministry of Health
DDI: 04 816 2333

<http://www.health.govt.nz>

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From: Olivia Payne
Sent: Friday, 22 October 2021 9:37 pm
To: Lauren Smith <Lauren.Smith041@msd.govt.nz>; Aaron.McIlroy001@msd.govt.nz; Justice COVID Policy <covidpolicy@justice.govt.nz>; Jessica Gorman [DPMC] <Jessica.Gorman@dpmc.govt.nz>; Katie Anderson <Katie.Anderson@crownlaw.govt.nz>; jennie.cassie@hud.govt.nz; Ben Martell <Ben.Martell@ot.govt.nz>; Claire Harmsworth <Claire.Harmsworth@ot.govt.nz>; Michael Wilkinson <m.wilkinson@transport.govt.nz>; TAYLOR Nicole

<Nicole.Taylor@customs.govt.nz>; Val Sim <val.sim@mbie.govt.nz>
Cc: GOULTER, Laura (WELLHO) <Laura.Goulter@corrections.govt.nz>; MCCLELLAND, Harriette (WELLHO) <Harriette.McClelland@corrections.govt.nz>; Chris Owen <Chris.Owen@education.govt.nz>
Subject: Vaccinations order amendment now signed and publicly available



out of scope

Olivia Payne
Principal solicitor
Health Legal
Corporate Services
Ministry of Health
DDI: 04 816 2333

<http://www.health.govt.nz>

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From: Olivia Payne
Sent: Thursday, 21 October 2021 10:11 pm
To: Lauren Smith <Lauren.Smith041@msd.govt.nz>; Aaron.McIlroy001@msd.govt.nz; Justice COVID Policy <covidpolicy@justice.govt.nz>; Jessica Gorman [DPMC] <Jessica.Gorman@dpmc.govt.nz>; Katie Anderson <Katie.Anderson@crownlaw.govt.nz>; jennie.cassie@hud.govt.nz; Ben Martell <Ben.Martell@ot.govt.nz>; Claire Harmsworth <Claire.Harmsworth@ot.govt.nz>; Michael Wilkinson <m.wilkinson@transport.govt.nz>; TAYLOR Nicole <Nicole.Taylor@customs.govt.nz>; Val Sim <val.sim@mbie.govt.nz>
Cc: GOULTER, Laura (WELLHO) <Laura.Goulter@corrections.govt.nz>; MCCLELLAND, Harriette (WELLHO) <Harriette.McClelland@corrections.govt.nz>; Chris Owen <Chris.Owen@education.govt.nz>; Alison Cossar <Alison.Cossar@health.govt.nz>; Mani Crawford <Mani.Crawford@health.govt.nz>
Subject: Draft amendment to the vaccinations order
Importance: High

Good evening everyone

Please find attached a draft COVID-19 order requiring certain health workers, corrections workers and education workers to be vaccinated.



out of scope

[REDACTED]

[REDACTED]

Proposals will need to be supported by appropriate BORA advice

[REDACTED]

[REDACTED]

[REDACTED] out of scope

Olivia

Olivia Payne
Principal solicitor
Health Legal
Corporate Services
Ministry of Health
DDI: 04 816 2333

<http://www.health.govt.nz>

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Vitasovich, Saskia

From: Kerpen, Ursula
Sent: Monday, 11 October 2021 2:42 pm
To: Gayathiri Ganeshan
Cc: Justice COVID Policy; Reid, Jenna; Knewstubb, Elspeth
Subject: RE: Advice on vaccine legislation for feedback by 12 pm Monday [IN-CONFIDENCE]

Kia ora Gayathiri,
 Thank you for sending this advice through.

We have had a look at your paper from a NZBORA perspective however, obviously, the time has been very limited.

The proposals engage rights under the NZBORA, especially s 11 - freedom from medical treatment and s 21 – unreasonable search and seizure (if there are disclosure requirements).

We would like to see a NZBORA implications section in this advice. We note that any draft legislation will be vetted as to its consistency with the NZBORA. If the Attorney-General considers it appears to be inconsistent with NZBORA, they will table a report to this effect in Parliament (s 7 NZBORA).

The NZBORA analysis should explain why the measures are justified under the NZBORA, especially how they are linked in their breadth to the objective to be achieved.

To be a justified limitation of human rights under the NZBORA, it would be important to see the public health advice discussing whether the measure is necessary to achieve the public health rationale.

In addition, any legislation or measure must not have a discriminatory effect under s 19 NZBORA. Requiring persons in certain roles to be vaccinated will result in discrimination where someone is unable/unwilling to be vaccinated for reasons of religion, sex (pregnancy), disability. We consider that an exemption from vaccination on medical grounds should be available.

We share the concerns discussed in today's online meeting about giving employers the discretion to decide on vaccination requirements and that this decision potentially cannot be challenged. The last point is also concerning from a s 27 NZBORA (right to justice) point of view. In that regard, option 2 (page 5) is more concerning than option one, however similar concerns apply to the medium risk category in option one.

We are happy to review, and provide any comments on a BORA assessment if that would be helpful.

Finally, we'd be interested in hearing about the enforcement processes for this framework, especially any offences to be potentially created.

Kind regards,
 Ursula



Ursula Kerpen
 Senior Policy Advisor | Civil Law and Human Rights
 Mob [REDACTED]

s 9(2)(a)
 privacy of
 natural
 persons

From: Gayathiri Ganeshan <Gayathiri.Ganeshan@mbie.govt.nz>
Sent: Monday, 11 October 2021 2:23 pm

To: Henry-Jones, Stephanie <Stephanie.Henry-Jones@justice.govt.nz>
Subject: FW: Advice on vaccine legislation for feedback by 12 pm Monday [IN-CONFIDENCE]

Hi Stephanie,

Cheers,

out of scope

Peter Mee (he/him)
Manager, Policy

Office of the Privacy Commissioner Te Mana Mātāpono Matatapu
PO Box 10094 | Wellington 6143 | New Zealand
Level 11 | Grant Thornton Building, 215 Lambton Quay | Wellington
E peter.mee@privacy.org.nz | E policy team inbox: policy@privacy.org.nz
DDI +64 4 494 7144 | privacy.org.nz



From: Gayathiri Ganeshan <Gayathiri.Ganeshan@mbie.govt.nz>
Sent: Friday, 8 October 2021 5:13 pm
To: Val Sim <val.sim@mbie.govt.nz>; Allison Bennett <Allison.Bennett@mbie.govt.nz>; Edward Butler <Edward.Butler@mbie.govt.nz>; Lisa Collins <Lisa.Collins3@mbie.govt.nz>; Charlotte Woolhouse <Charlotte.Woolhouse@mbie.govt.nz>; Susan Adams <Susan.Adams@mbie.govt.nz>; Ian Auld <Ian.Auld@crownlaw.govt.nz>; Mark Bryant <Mark.Bryant@crownlaw.govt.nz>; Jenny Catran <Jenny.Catran@crownlaw.govt.nz>; rebecca.thornley@crownlaw.govt.nz; Christy.Harcourt@pco.govt.nz; richard.wallace@pco.govt.nz; Kayleigh Wiltshire [DPMC] <Kayleigh.Wiltshire@dpmc.govt.nz>; Elizabeth Oxenham [DPMC] <Elizabeth.Oxenham@dpmc.govt.nz>; Arati Waldegrave <Arati.Waldegrave@dpmc.govt.nz>; Alison Cossar <Alison.Cossar@health.govt.nz>; Patrick Davis <Patrick.Davis@privacy.org.nz>; Peter Mee <Peter.Mee@privacy.org.nz>; Sarah Borrell <Sarah.Borrell@publicservice.govt.nz>; Dale Farrar <Dale.Farrar@publicservice.govt.nz>; David Fowler <David.Fowler@publicservice.govt.nz>; Kelly Hanson-White (WorkSafe) <Kelly.Hanson-White2@worksafe.govt.nz>; Braden.Sloper2 <Braden.Sloper2@worksafe.govt.nz>
Cc: Paul Stocks <Paul.Stocks@mbie.govt.nz>; Anna Clark <Anna.Clark2@mbie.govt.nz>; Shane Kinley <Shane.Kinley@mbie.govt.nz>
Subject: Advice on vaccine legislation for feedback by 12 pm Monday [IN-CONFIDENCE]

Kia ora koutou,

I've attached a rough draft of our advice to Ministers about COVID-19 vaccine legislation. This is a follow-up to their meeting yesterday (see Anna's email attached for context), seeking decisions for a Cabinet paper and then fast legislation.

[REDACTED]

[REDACTED]

[REDACTED]

out of scope

Gayathiri Ganeshan ([she/her](#))

Principal Policy Advisor

Employment Relations Policy | Labour, Science and Enterprise
Hikina Whakatutuki | Ministry of Business, Innovation & Employment

Īmera: gayathiri.ganeshan@mbie.govt.nz | Waea tōtika: (04) 901 8450 | Waea pūkoro: [REDACTED]

Kāore au e mahi i Rāmere. I don't work on Fridays.

s 9(2)(a) privacy of
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Withheld in full under s9(2)(f)(iv) and as out of scope

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Vitasovich, Saskia

From: Justice COVID Policy
Sent: Monday, 15 November 2021 5:01 pm
To: Jessica Gorman [DPMC]
Cc: Justice COVID Policy
Subject: RE: Agency feedback on the CPF; Vaccine Bill; and CVC Order 12.11.21
Attachments: RE: FOR REVIEW: CVCs - compliance and enforcement - comments due by 2 pm Monday

Kia ora Jess

Thank you for the opportunity to provide comments on the draft CVC Order, the draft COVID-19 Protection Framework Order and the draft Vaccines Bill. I've set out the Ministry's comments under each heading below.

Please let us know if it would be useful to discuss anything further.

Ngā mihi

Scott. **out of scope**



Please see below our comments in respect to cross-boundary travel.



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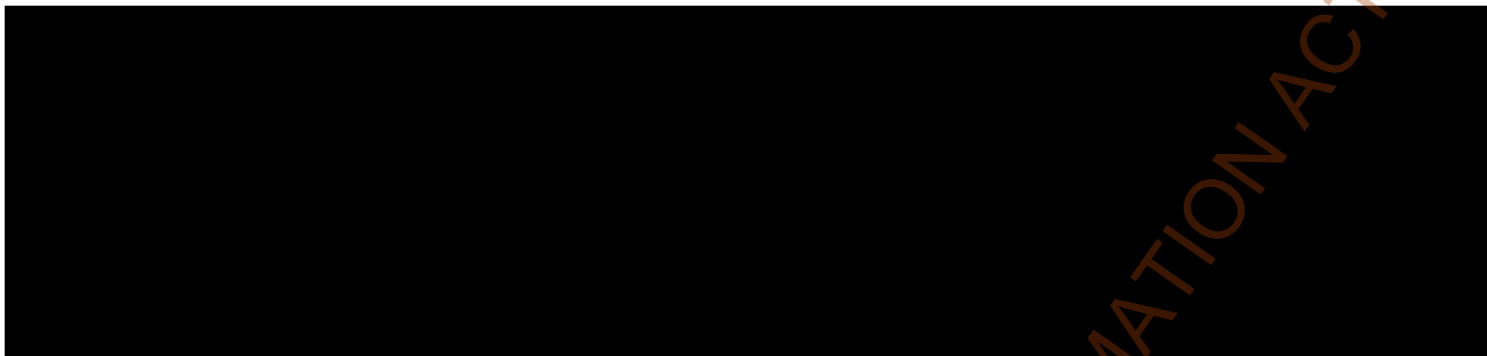
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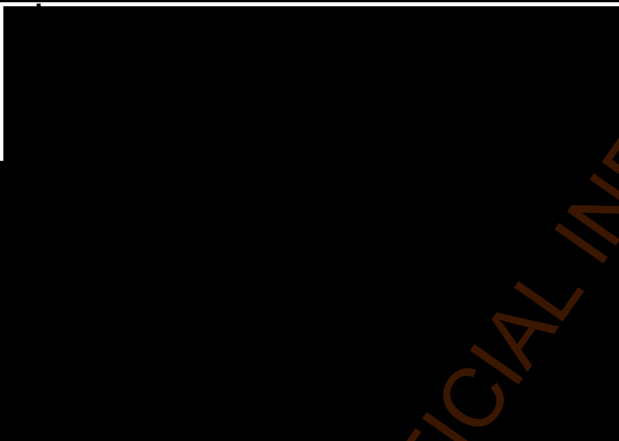
COVID-19 Response (Vaccinations) Legislation Bill

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The table below sets out our comments on the Vaccines Bill – the comments in black were provided earlier today, and the additional comments are in green.



Clause 7



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s 9(2)(g)(i) free and frank



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Kia ora rawa atu

out of scope

Scott.



Scott Ryland

Senior Policy Advisor – Harm Reduction and Public Safety
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Scott.Ryland@justice.govt.nz

Ministry of Justice | Tāhū o te Ture

Justice Centre | 19 Aitken Street | Wellington 6011

s 9(2)(a)
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persons

From: Jessica Gorman [DPMC] <Jessica.Gorman@dpmc.govt.nz>

Sent: Friday, 12 November 2021 5:05 pm

To: Ismail Demirci <Ismail.Demirci@mpi.govt.nz>; Emmett Geoghegan <emmett.geoghegan@stats.govt.nz>; Andrea Speir <Andrea.Speir@dia.govt.nz>; Ann Brennan <ann.brennan@mbie.govt.nz>; Anthea Williams [TSY] <Anthea.Williams@treasury.govt.nz>; penjb@tpk.govt.nz; Ben Martell <Ben.Martell@ot.govt.nz>; Amanda Rapley <amanda.rapley@ird.govt.nz>; b.booth@transport.govt.nz; EXT: Cassie Nicholson <Cassie.nicholson@pco.govt.nz>; legal.adviser@nzsis.govt.nz; David Soper <david.soper@customs.govt.nz>; Child, Edrick <Edrick.Child@justice.govt.nz>; Jan Breakwell <Jan.Breakwell@education.govt.nz>; Orr, Jeff <Jeff.Orr@justice.govt.nz>; jenny.cassie@hud.govt.nz; Jsomers@doc.govt.nz; Karen Whitiskie <karen.whitiskie@ird.govt.nz>; Kirsty Millard <Kirsty.Millard@mfe.govt.nz>; Lisa Ferris <lisa.ferris@nzdf.mil.nz>; Monica.Silverwood@gcsb.govt.nz; Andrews, Matthew <Matthew.Andrews@tearawhiti.govt.nz>; nerissa.barber@mch.govt.nz; Nicola Purvis <nicola.purvis@ssc.govt.nz>; Paul.Oneil@sfo.govt.nz; Peter McCarthy <Peter.McCarthy@mpi.govt.nz>; Katie Elkin <Katie.Elkin@crownlaw.govt.nz>; ^MBIE: Dean Ford <Dean.Ford@mbie.govt.nz>; Simon Espie <sespie@linz.govt.nz>; Shan Pather <shan.pather@ero.govt.nz>; aaron.lloyd@mch.govt.nz; Tania Warburton [DPMC] <Tania.Warburton@dpmc.govt.nz>; Victoria Hallum <victoria.hallum@mfat.govt.nz>; Seti Talamaivao <Seti.Talamaviao@mpp.govt.nz>; ^Crown Law: Mark Bryant <Mark.Bryant@crownlaw.govt.nz>; PETTIGREW, Leishia (WELLHO) <Leishia.Pettigrew@corrections.govt.nz>; Emily Hockly <Emily.Hockly@ot.govt.nz>; ^PCO: Richard Wallace <Richard.Wallace@pco.govt.nz>; 'Jeremy Salmond' <jeremy.salmond@mfat.govt.nz>; Laura Stanley <Laura.Stanley@crownlaw.govt.nz>; Aaron Martin <Aaron.Martin@crownlaw.govt.nz>; Justine Falconer <Justine.Falconer@crownlaw.govt.nz>; Michelle.Redington@ird.govt.nz; Justice COVID Policy <covidpolicy@justice.govt.nz>; REWI Grant <Grant.REWI@Customs.govt.nz>; Morris-Slack, Jamie LT <JAMIE.MORRIS-SLACK@nzdf.mil.nz>; SPACKMAN, Scott <scott.spackman@police.govt.nz>; timothy.wood@nzdf.mil.nz; John Sneyd <John.Sneyd@mbie.govt.nz>; Ailee Gray

<Ailee.Gray@health.govt.nz>; Lauren Smith <Lauren.Smith041@msd.govt.nz>; ^CrownLaw: Una Jagose <una.jagose@crownlaw.govt.nz>; Rebecca Summerill <R.Summerill@transport.govt.nz>; Jeremy.Ford@mfat.govt.nz; MACKENZIE, Christine <Christine.MacKenzie@Police.Govt.NZ>; Ian Auld <Ian.Auld@crownlaw.govt.nz>; Katie Anderson <Katie.Anderson@crownlaw.govt.nz>; Charlotte Brook <Charlotte.Brook@crownlaw.govt.nz>; Peter Marshall <Peter.Marshall@crownlaw.govt.nz>
Cc: @DPMC Corporate Legal Team <DPMCCorporateLegalTeam@dpmc.govt.nz>; Phil Blair Knipe <phil.knipe@health.govt.nz>; Olivia Payne <Olivia.Payne@health.govt.nz>; Noyce, Megan <Megan.Noyce@justice.govt.nz>; Ruth Fairhall [DPMC] <Ruth.Fairhall@dpmc.govt.nz>; Ben White [DPMC] <Ben.White@dpmc.govt.nz>

Subject: Agency feedback on the CPF; Vaccine Bill; and CVC Order 12.11.21





Jess

out of scope

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Vitasovich, Saskia

From: Wheeler, Sally
Sent: Wednesday, 24 November 2021 9:01 am
To: Mike Gill
Cc: Justice COVID Policy; Johnston, Anna; Hannah Cobb; Gage, Brendan
Subject: Bullets on mandates and faith leaders for SWC

Kia ora Mike

CLHR have prepared the following bullet points to support Minister Fafoi at SWC this morning:

- Considering whether religious leaders conducting services should be subject to a vaccine mandate. Possible mechanisms for such a requirement include:
 - a religious leader's employer could require that the work of conducting services can only be carried out by a vaccinated person, having done a risk assessment and consultation process
 - we understand that faith based gatherings will be included in the definition of "gathering" in the Covid Protection Framework. This would mean that both people attending such gatherings and religious leaders conducting them would either need to have Covid Vaccination Certificates or they would face additional restrictions, such as stricter number limits, depending on the level of the framework in the relevant geographical area
 - alternatively, a mandate could be imposed by Government (eg, as for teachers and high-risk workers in the health and disability sector).
- requirements for Covid Vaccination Certificates engage a number of rights such as:
 - section 11 (right to refuse to undergo medical treatment);
 - section 13 (freedom of thought, conscience, and religion)
 - section 14 (freedom of expression);
 - section 16 (freedom of peaceful assembly);
 - section 17 (freedom of association);
 - section 18 (freedom of movement);
 - section 19 (freedom from discrimination);
 - section 21 (right to be free from unreasonable search and seizure).
- In the case of religious leaders conducting services, and faith-based gatherings more generally, section 15 (manifestation of religion and belief) is also engaged. Section 15 affirms the right of every person to manifest their religion or belief in worship, observance, practice, or teaching, either individually or in community with others, and either in public or in private.
- As for the other rights and other requirements, the objective is to support the public health response to COVID-19, which is a sufficiently important objective to justify some kind of limitation on the rights in question. The key question is whether the limit on these rights is proportionate to the objective. In the case of requirements for faith-based gatherings, the gathering can adopt CVCs. If they do not adopt CVCs they can continue to conduct services but must do so in a different format (eg, online) or with reduced numbers. These tighter restrictions could be justified because larger gatherings of non-vaccinated individuals pose a greater risk to public health.
- In terms of mandating vaccination for religious leaders conducting services, employers would need to consider whether there is sufficient public health risk, that cannot be mitigated in another way. Although there is an additional limit on freedom of religion, given that such mandates already significantly limit peoples' rights, we would not have thought a substantially different process or exception would be required for religious leaders conducting services.

Hope that helps
Sally

Sally Wheeler

Manager – Harm Reduction and Public Safety | Policy Group



Ministry of Justice | Tāhū o te Ture
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s 9(2)(a) privacy of natural persons

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Vitasovich, Saskia

From: Justice COVID Policy
Sent: Monday, 6 December 2021 4:29 pm
To: Gayathiri Ganeshan
Cc: Justice COVID Policy
Subject: RE: For feedback: draft Cab paper on vaccination assessment tool regs and infringement offence regs [IN-CONFIDENCE]

Kia ora Gayathiri

Thanks for the opportunity to feedback on this draft paper. Below are some comments from Justice:

Infringement Offences:

- While we acknowledge that a fix is proposed, we have concerns about the interim period before any amendment regulations come into force, where any breach of the new infringement offences could attract a disproportionately high penalty.
- Infringement offences engage the presumption of innocence (s 25 c of the NZBORA) because they are strict liability offences.
- In showing that a particular infringement offence is a justified limitation on the right, and in particular, is proportionate, the penalty has to be considered.
- The BORA section of the paper needs to cover off the rights implications of this issue and explain why any limits on rights are justified.
- We'd also suggest outlining why this fix can't occur sooner, and if any measures are being taken to avoid people facing disproportionately high penalties/inconsistent outcomes in the interim – how will this play out in practice?

Vaccine Assessment Tool:

- Para 32 of the rights section acknowledges that the regulations may limit a person's rights if they encourage, incentivise or facilitate PCBUs to make decisions that could limit their rights.
- Para 33 goes on to say that the regulations will themselves not limit rights as the tool will not lead to decisions that PCBUs are not already authorised by primary legislation to make.
- These statements seem slightly at odds – while the decisions remain the PCBUs' own under the HSWA, the regulations will facilitate those decisions and place a limit on rights.
- We suggest going into a bit more detail as to why any such limitation is necessary and proportionate to achieve the aims of ensuring workplace safety.

Privacy:

I hope these comments are helpful. Please let me know if we can be any further assistance, or if you'd like to chat any of the above through.

Ngā mihi,
Corinne



Corinne McIlwrath
Policy Advisor | Harm Reduction & Public Safety
Criminal Justice | Policy Group
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From: Gayathiri Ganeshan <Gayathiri.Ganeshan@mbie.govt.nz>

Sent: Friday, 3 December 2021 4:56 pm

To: jessie.mcmath-price@health.govt.nz; Bonnie Jones <Bonnie.Jones@health.govt.nz>; Alison Cossar <Alison.Cossar@health.govt.nz>; emily.black@health.govt.nz; emily.moxon@health.govt.nz; Megan Stratford [DPMC] <Megan.Stratford@dpmc.govt.nz>; Jessica Gorman [DPMC] <Jessica.Gorman@dpmc.govt.nz>; faline.zhao@treasury.govt.nz; Denny Kudrna [TSY] <Denny.Kudrna@treasury.govt.nz>; David Harrison <David.Harrison@treasury.govt.nz>; Ahmer Ranjha [TSY] <Ahmer.Ranjha@treasury.govt.nz>; Laura Berntsen <Laura.Berntsen@treasury.govt.nz>; ria.team@treasury.govt.nz; Justice COVID Policy <covidpolicy@justice.govt.nz>; Kelly Hanson-White (WorkSafe) <Kelly.Hanson-White2@worksafe.govt.nz>; Braden Sloper <Braden.Sloper2@worksafe.govt.nz>; Jack Porter <Jack.Porter@mbie.govt.nz>; Lucy McKenzie <Lucy.McKenzie@mbie.govt.nz>; Katherine MacNeill <Katherine.MacNeill@mbie.govt.nz>

Cc: Anna Clark (GM WRSP) <Anna.Clark2@mbie.govt.nz>; Shane Kinley <Shane.Kinley@mbie.govt.nz>; Charlotte de Feijter <Charlotte.deFeijter@mbie.govt.nz>

Subject: For feedback: draft Cab paper on vaccination assessment tool regs and infringement offence regs [IN-CONFIDENCE]

Kia ora koutou,

Please find attached a draft Cabinet paper seeking:

- Approval of the draft COVID-19 Public Health Response (Vaccination Assessment Tool) Regulations. A current draft of the regulations is also attached.
- Approval to amend the COVID-19 Public Health Response (Infringement Offences) Regulations. This is to assign new infringement offences created by the COVID-19 Response (Vaccinations) Legislation Act to classes corresponding to those in the regulations.

out of scope

Gayathiri Ganeshan ([she/her](#))

Principal Policy Advisor

Employment Relations Policy | Labour, Science and Enterprise
Hikina Whakatutuki | Ministry of Business, Innovation & Employment

Īmera: gayathiri.ganeshan@mbie.govt.nz | Waea tōtika: (04) 901 8450 | Waea pūkoro: [REDACTED]

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Vitasovich, Saskia

From: Justice COVID Policy
Sent: Friday, 17 December 2021 11:09 am
To: Amy Auld; Justice COVID Policy
Subject: RE: FOR REVIEW AND COMMENT by 11 am pls: Draft Cabinet paper: Decision to use the COVID-19 Pfizer paediatric vaccine for children aged 5 to 11 years

Kia ora koutou,

Thank you for the opportunity to provide feedback 😊

Out of scope

Our comments are as follows:

Human Rights

The human rights implications section informs Ministers of the specific impacts of a policy proposal on our domestic and international human rights framework and obligations. We consider more discussion in the human rights section would be appropriate.

Applying the child impact assessment would discuss the impact on children, though relatedly there could be some analysis about the right to refuse medical treatment in the New Zealand Bill of Rights Act 1990 and how children and parents would need to have complete information about a treatment in order to give their informed consent.

s9(2)(g)(i)

For example, it would be important to make it clear for the public that vaccine certificates should not/ must not be required for children. There is a risk that some businesses would be requiring vaccine certificates even when not required to under the law.

While limitations on age discrimination do not apply, other prohibited grounds of discrimination might be relevant (eg religion) and should be considered.

I appreciate this is all very quick turn around so please feel free to come back if you have additional questions.

Ngā mihi,

Robert Jordan ([he/him](#))



Kaitātari Kaupapa | Senior Policy Advisor | Sentencing and Rehabilitation | Policy Group
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From: Amy Auld <Amy.Auld@health.govt.nz>
Sent: Thursday, 16 December 2021 5:04 pm
To: Alexander, Fiona <Fiona.Alexander@justice.govt.nz>; Justice COVID Policy <covidpolicy@justice.govt.nz>
Subject: FW: FOR REVIEW AND COMMENT by 11 am pls: Draft Cabinet paper: Decision to use the COVID-19 Pfizer paediatric vaccine for children aged 5 to 11 years
Importance: High

Re-sending as bounced back

From: Amy Auld
Sent: Thursday, 16 December 2021 5:00 pm
To: Ben McBride [DPMC] <Ben.McBride@dpmc.govt.nz>; Kate Wevers <Kate.Wevers@crownlaw.govt.nz>; Hannah Lobb [TSY] <Hannah.Lobb@treasury.govt.nz>; tony.clark@moe.govt.nz; Alexander, Fiona <Fiona.Alexander@justice.govt.nz>; ROBINSON, Julia (CPCD) <Julia.Robinson@mfat.govt.nz>; BROCKIE, Frances (DEVPP) <Frances.Brockie@mfat.govt.nz>
Cc: Allison Bennett <Allison.Bennett@health.govt.nz>; Therese Egan <therese.egan@health.govt.nz>; Liam McConnell <Liam.McConnell@health.govt.nz>
Subject: FOR REVIEW AND COMMENT by 11 am pls: Draft Cabinet paper: Decision to use the COVID-19 Pfizer paediatric vaccine for children aged 5 to 11 years
Importance: High

Kia ora koutou,

Following Medsafe's approval of Pfizer's paediatric product for children aged 5-11 years olds, a decision to use Pfizer's paediatric product in the Immunisation Programme is now required.

To support this process, we have prepared a draft Cabinet paper *Decision to use the COVID-19 Pfizer paediatric vaccine for children aged 5 to 11 years* for your feedback. We are also consulting with Ministers in parallel. This paper seeks agreement from Cabinet on the use of the Pfizer paediatric vaccine for children aged 5 to 11 years, including donation to Polynesian countries.

Please note, this paper supersedes the paper you have previously reviewed and will be considered on Monday 20 December.

Can you please review and get back to me by **11 am tomorrow (17 December)** so we can incorporate your comments before we lodge the paper tomorrow (17 December).

It would be great if you could work to coordinate your feedback within your agency to ensure that we are able to accurately reflect your agency view.

He nui te mihi,

Amy

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Amy Auld | Senior Policy Analyst, System Enablers, System Strategy and Policy | Ministry of Health | [REDACTED]





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