



COVERSHEET

Minister	Hon Michael Wood	Portfolio	Workplace Relations and Safety
Title of Cabinet paper	Approval of COVID-19 Public Health Response (Vaccination Assessment Tool) Regulations 2021 and amendment of COVID-19 Public Health Response (Infringement Offences) Regulations 2021	Date to be published	1 April 2022

List of documents that have been proactively released

Date	Title	Author
December 2021	<i>Approval of COVID-19 Public Health Response (Vaccination Assessment Tool) Regulations 2021 and amendment of COVID-19 Public Health Response (Infringement Offences) Regulations 2021</i>	<i>Office of the Minister for Workplace Relations and Safety</i>
13 December 2021	<i>Approval of COVID-19 Public Health Response (Vaccination Assessment Tool) Regulations 2021 and amendment of COVID-19 Public Health Response (Infringement Offences) Regulations 2021</i> CAB-21-MIN-0533	<i>Cabinet Office</i>

Information redacted

YES

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Some information has been withheld for the reasons of Legal professional privilege.

In Confidence

Office of the Minister for Workplace Relations and Safety

Cabinet

Approval of COVID-19 Public Health Response (Vaccination Assessment Tool) Regulations 2021 and amendment of COVID-19 Public Health Response (Infringement Offences) Regulations 2021

Proposal

- 1 This paper seeks authorisation to submit the COVID-19 Public Health Response (Vaccination Assessment Tool) Regulations 2021 (“Vaccination Assessment Tool Regulations”) to the Executive Council.
- 2 This paper also seeks agreement to amend the COVID-19 Public Health Response (Infringement Offences) Regulations 2021 (“Infringement Offences Regulations”).

Executive Summary

- 3 On 26 October 2021, Cabinet agreed to amend the COVID-19 Public Health Response Act 2020 (COVID Act) to introduce regulation-making powers to prescribe a risk assessment process to determine when employers can require vaccination or testing [CAB-21-MIN-0436 refers]. This amendment has since come into force.
- 4 Recognising that persons conducting a business or undertaking (PCBUs) need certainty and guidance about when it is reasonable to require vaccination for work, this paper seeks authorisation to submit the Vaccination Assessment Tool Regulations to the Executive Council.
- 5 This paper also seeks to amend the Infringement Offences Regulations. This will ensure the classification of new infringement offences created by the COVID-19 Response (Vaccinations) Legislation Act 2021, in the COVID Act, align with similar offences in the COVID-19 Public Health Response (Vaccinations) Order 2021 (“Vaccinations Order”).

COVID-19 Public Health Response (Vaccination Assessment Tool) Regulations 2021

Background

- 6 Outside areas where the Government has mandated vaccination, there are strong and widespread requests from many sectors for the Government to take the lead in guiding decisions on what work requires vaccination. Despite

guidance having been available for several months, there is still significant concern from PCBUs that their decisions will be legally challenged. This is deterring them from taking the necessary actions to protect their workplaces from the virus.

- 7 In response, on 26 October 2021, Cabinet agreed to issue drafting instructions to amend the COVID Act. This now provides the Minister for Workplace Relations and Safety the power to make regulations prescribing tools which PCBUs can use to determine whether it is reasonable to require their workers to be vaccinated, tested or a combination of the two.

Proposed regulations

- 8 This paper seeks authorisation to submit regulations to the Executive Council under the regulation-making power outlined above. The regulations give effect to previous Cabinet decisions on the creation of a vaccination assessment tool [CAB-21-MIN-0436 and CAB-21-MIN-0495 refers], including agreement:
 - 8.1 To prescribe a risk assessment process (ie the vaccination assessment tool), with clear, simple, and easy to use criteria that employers and PCBUs can follow when determining whether certain work requires vaccination or testing;
 - 8.2 That employers and PCBUs must consult workers and their representatives when using the vaccination assessment tool;
 - 8.3 That the vaccination assessment tool specifies four key factors; three factors relating to risk of transmission of COVID-19 and a fourth factor relating to providing services to vulnerable people;
 - 8.4 That vulnerable people be defined as people who are under the minimum age to be vaccinated; medically exempt from being vaccinated; or at higher risk of severe illness from COVID-19;
 - 8.5 That the work must score as higher risk on at least three of the four factors before it would be reasonable for a PCBU to consider requiring vaccination;
 - 8.6 That the vaccination assessment tool is designed to be applied to particular roles rather than across an entire workforce.

9 The vaccination assessment tool is outlined below.

<i>Lower risk</i>	<i>Higher risk</i>
What type of environment does the worker work in?	
100m ² indoor space or greater, or outside	Less than 100m ² indoor space
Can the worker reasonably maintain 1 metre physical distancing from other people?	
Yes	No
How long is the worker in close proximity to any other person?	
15 minutes or less	More than 15 minutes
Does the worker provide services to people who are vulnerable to COVID-19?	
No	Yes

10 While the regulation-making power established under the COVID Act provides for tools to determine whether it is reasonable to require workers to be vaccinated, tested or a combination of the two, these regulations only apply to vaccination.

The operation of the factor relating to physical distancing has been clarified

- 11 The physical distancing factor relates to how close a person works to other people. The original wording of this factor meant that even incidental or fleeting interactions would meet the higher risk indicator – and could potentially apply to almost all work.
- 12 The operation of this factor has been clarified so that it now relates to whether a worker can reasonably maintain 1 metre physical distancing from other people. This means that:
- In some workplaces it can be considered reasonable for workers to maintain physical distancing of 1 metre even if they do not always choose to do so - in this situation, the lower risk indicator would apply;
 - In other workplaces, workers may have no choice but to be in closer proximity (ie less than 1 metre) with other people from time to time - in this situation, the higher risk indicator would apply.
- 13 BusinessNZ is comfortable with this clarification.

The addition of discretion factors

Legal professional privilege

- 15 On this basis, I have added a requirement that PCBUs must consider the following factors if they do not want to require vaccination, despite the tool indicating it would be reasonable to do so:
- 15.1 Whether there are any other measures that could reasonably be used to eliminate or minimise the risk associated with unvaccinated workers doing the work;
 - 15.2 The outcomes of consultation on the application of the assessment tool and control measures under section 33AB(3) of the COVID Act;
 - 15.3 Any other factors the PCBU considers relevant.
- 16 While this may introduce more complexity to decision-making in this situation, the discretion factors will help ensure that a PCBU's decision is reasonable and proportionate, and give practical effect to Crown Law's advice.

Amendment to the COVID-19 Public Health Response (Infringement Offences) Regulations 2021

- 17 This paper also seeks authorisation to amend the Infringement Offences Regulations.
- 18 The COVID-19 Public Health Response Amendment Act (No 2) 2021, among other changes, increased the maximum fees (\$4,000 and \$12,000 for a person or body corporate respectively) and fines (\$12,000 and \$15,000 for a person or body corporate respectively) for infringement offence breaches under the COVID Act.
- 19 The Amendment Act No 2 also contained the ability to prescribe classes of infringement offences through regulations. Subsequently, regulations have been made which set out three different classes of infringement offences for those contained in the COVID Act: low risk, medium risk and high risk. Classes for infringement offences created by Orders under the COVID Act are specified in the relevant Order.
- 20 The Infringement Offences Regulations came into effect on 4 December 2021. They were drafted partway through the Cabinet approval process when the COVID-19 Response (Vaccinations) Legislation Act 2021 (which amended the COVID Act) was introduced and passed. This Act created new infringement offences under the COVID Act.
- 21 This means that these new infringement offences in the COVID Act have not been assigned an infringement class in the Infringement Offences Regulations. Any breach of these new infringement offences could therefore attract the highest level of infringement fee or fine.
- 22 The new infringement offences in the COVID Act relate to vaccination mandates for work that are made on public interest grounds under section 11AB. These offences are in the COVID Act, but will only be "triggered" when

an order mandating vaccination is made under section 11AB and a PCBU or individual is non-compliant with their duties in the Act.

- 23 I will be making the first such order today, to reflect the decision to mandate vaccination for some workers of the New Zealand Police and the whole New Zealand Defence Force [CAB-21-MIN-0495]. The COVID-19 Public Health Response (Specified Work Vaccinations) Order 2021 (“Specified Work Vaccinations Order”) is due to commence at 11.59 pm on 15 December 2021. By 17 January 2022, all affected workers covered by the Order will be required to have received their first dose to continue working, and must receive their second dose by 1 March 2022 to continue working.
- 24 If the Infringement Offences Regulations are not amended to assign a class for the new infringement offences in the COVID Act, the infringement fees and maximum fines for certain breaches of the Specified Work Vaccinations Order will be significantly higher than for corresponding breaches of duties in the Vaccinations Order:

<i>Duty</i>	<i>Specified Work Vaccinations Order (ie Police and NZDF)</i>		<i>Vaccinations Order (ie all other sectors)</i>	
	<i>Infringement fee</i>	<i>Maximum court-imposed fine</i>	<i>Infringement fee</i>	<i>Maximum court-imposed fine</i>
PCBU must not allow unvaccinated worker to do work	\$12,000	\$15,000	\$12,000 (clause 8)	\$15,000 (clause 8)
PCBU must keep records relating to workers' vaccination status	\$12,000	\$15,000	\$1,500 (clause 11A)	\$4,500 (clause 11A)
Worker must not do work without being vaccinated	\$4,000	\$12,000	\$4,000 (clause 7)	\$12,000 (clause 7)
Worker must provide and update information about vaccination status	N/A	N/A	\$500 (clause 11A)	\$1,500 (clause 11A)

- 25 The discrepancy relates to breaches of record-keeping duties. A breach of the Vaccinations Order’s record-keeping provisions by a PCBU would mean an infringement fee of \$1,500 because it is considered low risk. However, a similar breach of the Specified Work Vaccinations Order would mean an infringement fee of \$12,000 (which corresponds to the high risk level in the Infringement Offences Regulations), unless a lower infringement class is specified. While an enforcement officer will need to be rational in the exercise of their discretion, there is the potential for similar breaches to result in inconsistent outcomes.
- 26 To avoid Police and the NZDF being subject to higher fees and fines than comparable PCBUs, the Infringement Offences Regulations need to be

amended. This will ensure the new infringement offences in the COVID Act are classified in accordance with similar offences in the Vaccinations Order.

27 Under section 33(2) of the COVID Act, before prescribing different penalties for different infringement offences or classes of infringement offences, the Minister for COVID-19 Response must consider the following, if relevant:

- 27.1 The severity and impact of the breaches specified as infringement offences or classes of infringement offences;
- 27.2 The appropriateness of the penalty for any group likely to be affected by the specified offences or specified classes of offences, including equity considerations;
- 27.3 Penalties for comparable offences or classes of offences in legislation (if any).

28 The overall framework of low risk, medium risk and high risk offence classes in the Infringement Offences Regulations is based on the definition of “public health risk” in the Health Act 1956. These classes distinguish severity of behaviour based on the risk of harm to others created. Harm is considered the possibility of contracting COVID-19 or being subject to stricter requirements due to risk not being managed.

	Individual		Any other person	
	<i>Infringement fee</i>	<i>Maximum court-imposed fine</i>	<i>Infringement fee</i>	<i>Maximum court-imposed fine</i>
Low risk	\$500	\$1,500	\$1,500	\$4,500
Medium risk	\$1,000	\$4,000	\$4,000	\$12,000
High risk	\$4,000	\$12,000	\$12,000	\$15,000

29 The table below sets out further the section 33(2) considerations for the unclassified infringement offences:

Section 17B: Duty on PCBU to keep vaccination records	
<i>Severity and impact of breaches</i>	A breach would be administrative and has low likelihood of resulting in transmission and spread of COVID-19, because this provision relates to record-keeping.
<i>Appropriateness of penalty</i>	Given the lower risk of harm to others, a lower penalty is appropriate.
<i>Comparable penalties</i>	A breach of clause 11A of the COVID-19 Public Health Response (Vaccinations) Order, which contains the similar substantive requirement, is classified as low risk.
<i>Recommended class</i>	Low risk

Section 17C: Duty on PCBU to prevent affected worker from carrying out specified work unless vaccinated	
<i>Severity and impact of breaches</i>	This provision requires vaccination for certain work on public interest grounds. A breach would mean risk of transmitting or spreading COVID-19 is not managed. A breach would also pose risks to our overall public health response to COVID-19, which is part of the rationale for mandating vaccination for this work.
<i>Appropriateness of penalty</i>	Given the higher risk of harm to others, a penalty at the higher end of the range is appropriate.
<i>Comparable penalties</i>	A breach of clause 8 of the COVID-19 Public Health Response (Vaccinations) Order, which contains the similar substantive requirement, is classified as high risk.
<i>Recommended class</i>	High risk

Section 17D: Duty on affected worker not to carry out specified work unless vaccinated, exempt or authorised	
<i>Severity and impact of breaches</i>	This provision requires vaccination for certain work on public interest grounds. A breach would mean risk of transmitting or spreading COVID-19 is not managed. A breach would also pose risks to our overall public health response to COVID-19, which is part of the rationale for mandating vaccination for this work.
<i>Appropriateness of penalty</i>	Given the higher risk of harm to others of unvaccinated workers, a penalty at the higher end of the range is appropriate. This could disproportionately impact Māori, who have a lower vaccination status (currently 73%, compared to 88% nationally). For example, within the New Zealand Police, as at 29 October 2021, Māori staff were more likely to not have any doses listed (15.6%) compared to all staff (12.6%).
<i>Comparable penalties</i>	A breach of clause 7 of the COVID-19 Public Health Response (Vaccinations) Order, which contains the similar substantive requirement, is classified as high risk.
<i>Recommended class</i>	High risk

- 30 Therefore, I seek agreement from Cabinet to amend the Infringement Offences Regulations to classify breaches of the following provisions of the COVID Act accordingly:
- 30.1 Section 17B (duty on PCBUs to keep vaccination records): low risk, matching the approach taken in the Vaccinations Order;
 - 30.2 Section 17C (duty on PCBUs to prevent worker from carrying out work unless vaccinated): high risk, matching the approach taken in the Vaccinations Order;
 - 30.3 Section 17D (duty on workers not to do work without vaccination): high risk, matching the approach taken in the Vaccinations Order.
- 31 I seek approval to issue drafting instructions to Parliamentary Counsel Office (PCO) giving effect to the policy outlined above, with the intent to seek

Cabinet agreement to submit these regulations to the Executive Council on 20 December 2021. I also seek Power to Act to authorise the submission of these regulations to Executive Council on 20 December 2021, if Cabinet does not meet as scheduled on 20 December 2021.

Timing and 28-day rule

COVID-19 Public Health Response (Vaccination Assessment Tool) Regulations

- 32 I propose the 28-day rule be waived in relation to the Vaccination Assessment Tool Regulations, and that they take effect from 15 December 2021.
- 33 This accords with Cabinet Manual principle 7.97(b), which states that in instances where the regulations are made in response to an emergency it is appropriate to seek a waiver.
- 34 I consider this exemption to be justified because PCBUs urgently need certainty and guidance. Many PCBUs have indicated they lack the public health knowledge or resources to be able to carry out a risk assessment and be confident that the resulting actions taken meet legal requirements, and properly manage COVID-19 risk in the workplace.
- 35 The regulations also will not disadvantage any PCBU or worker, given that they will provide an optional risk assessment tool, and parties can continue using other risk assessment processes. This is consistent with principle 7.97(a) of the Cabinet Manual.

Amendment to COVID-19 Public Health Response (Infringement Offences) Regulations 2021

- 36 If the Power to Act is used for the proposed amendments to the Infringement Offences Regulations, I consider it appropriate to waive the 28-day rule. This will minimise, to the extent possible, the period of time in which similar breaches attract differing penalties under the different Orders (the Specified Work Vaccinations Order and the Vaccinations Order). This is consistent with principle 7.97(e) in the Cabinet Manual, which relates to validating irregularities.
- 37 The changes will also benefit the PCBUs or workers covered by the Specified Work Vaccinations Order, who would otherwise be subject to higher fees or fines for behaviour that would attract a lower fee or fine under the Vaccinations Order. This is consistent with principle 7.97(a) of the Cabinet Manual, which relates to amendments that will confer only benefits on the public, or which will have little or no effect on the public.

Compliance

- 38 I consider that the COVID-19 Public Health Response (Vaccination Assessment Tool) Regulations comply with:

- 38.1 The principles of the Treaty of Waitangi;
- 38.2 The rights and freedoms contained in the New Zealand Bill of Rights Act 1990 (BORA) or the Human Rights Act 1993 (HRA);
- 38.3 The principles and guidelines set out in the Privacy Act 2020;
- 38.4 Relevant international standards and obligations;
- 38.5 The Legislation Guidelines (2018 edition).

BORA and HRA implications

- 39 Section 11 of BORA provides for the right to be refuse medical treatment. Section 19 provides for the right to be free from discrimination on prescribed grounds contained in section 21 of the HRA. The regulations may limit a person's rights under sections 11 and 19 of BORA if they encourage, incentivise or facilitate private PCBUs to make decisions that could limit those rights. This is because these decisions have the same impact on individuals as they would if Government were to make them directly. While only the Government is subject to BORA, PCBUs are subject to the discrimination provisions of the HRA themselves. They will be under HRA obligations not to discriminate in their employment, most relevantly on the ground of disability if their employees have medical exemptions from vaccination.
- 40 The purpose of the vaccination assessment tool will simply be to assist PCBUs in making decisions in relation to vaccination that they are already authorised to make under the HSWA. Therefore, the Regulations that introduce the tool will not lead to decisions being made by PCBUs that they are not already authorised by primary legislation to make. Accordingly, the introduction of the Regulation themselves would not limit rights under the BORA as the decisions that PCBUs may subsequently make in reliance on the tool that is introduced through regulations would remain the PCBUs' own under the HSWA.
- 41 To the extent the regulations may limit sections 11 and 19, I consider they are a justified limit on those rights under section 5 of BORA. The limit would be prescribed by law, and necessary and proportionate to achieve the important aims of ensuring workplace safety and appropriately mitigating the adverse effects of COVID-19
- 42 The purpose of the tool is to provide PCBUs with greater legal certainty in relation to deciding whether vaccination is required – employment law and HSWA obligations will continue to apply. The COVID Act is clear that use of the tool will assist in meeting a PCBU's primary duty of care under section 36 of HSWA.
- 43 Employment law obligations will continue to apply. Cabinet has have agreed safeguards to protect employees who lose their job as a consequence of their employers' decision to restrict certain work to vaccinated workers [CAB-21-MIN-0436]. This includes a requirement for employers to provide paid notice,

and potentially also compensation. Employers will also be able to set exemptions for people who cannot be vaccinated for medical reasons and exceptions for workers who do not need to be subject to a vaccination requirement.

- 44 The tool will not give all PCBUs a basis to require vaccination for all work in New Zealand.

Regulations Review Committee

- 45 There are no anticipated grounds for the Regulations Review Committee to draw the Vaccination Assessment Tool Regulations to the attention of the House under Standing Order 327.

Certification by Parliamentary Counsel

- 46 PCO has certified the Vaccination Assessment Tool Regulations as being in order for submission to Cabinet, subject to a waiver of the 28-day rule.

Impact Analysis

- 47 The Regulatory Impact Analysis (RIA) Team at the Treasury determined that the policy proposals for the 26 October 2021 Cabinet paper “Supporting COVID-19 vaccination requirements in the workplace” [CAB-MIN-0436] and the 22 November 2021 Cabinet paper “Requiring COVID-19 vaccination for work through Government mandates and employer decisions” [CAB-21-MIN-0495] were exempt from the requirement to provide a Regulatory Impact Statement (RIS). Those papers noted that the Ministry of Business, Innovation and Employment (MBIE) would review the proposals to assess their impact.
- 48 The RIA Team at the Treasury has determined that the Vaccination Assessment Tool Regulations and amendments to the COVID-19 Public Health Response (Infringement Offences) Regulations 2021 are exempt from the requirement to provide a RIS. The exemption is granted on the grounds that the proposals are intended to manage, mitigate or alleviate the short-term impacts of the declared emergency event of the COVID-19 pandemic, and implementation of the policy is required urgently to be effective (making complete, robust and timely RIS unfeasible).
- 49 The RIA Team strongly supports MBIE’s proposed testing of the assessment tool and the review of the proposals after their implementation, given the significance of potential impacts.

Publicity

- 50 MBIE will continue to communicate information about the vaccination assessment tool and provide guidance on how the tool can be applied.
- 51 MBIE will inform Police and the NZDF about the timing of changes to infringement fees and fines under the Infringement Offences Regulations.

Proactive release

52 I intend to proactively release this paper following Cabinet consideration.

Consultation

53 This paper was prepared by MBIE.

54 The following agencies were consulted on this paper: Crown Law, Department of the Prime Minister and Cabinet, Ministry of Health, Ministry of Justice, New Zealand Defence Force, New Zealand Police, PCO, Treasury and WorkSafe.

External consultation on the vaccination assessment tool

55 There has been extensive engagement with a range of external stakeholders on the development of the vaccination assessment tool. There has also been targeted engagement on the regulations with BusinessNZ, New Zealand Council of Trade Unions, Employers and Manufacturers Association, and the Business Leaders' Health and Safety Forum.

56 An overarching theme from industry groups and businesses is that they want the Government to facilitate vaccination requirements for their workers either via a government mandate or through a low threshold for the vaccination assessment tool.

57 Some stakeholders were also concerned that employees would draw comparison to the vaccination assessment tool if their employer chose to impose a vaccination requirement following a different risk assessment process. If the tool would have produced a 'no' outcome, stakeholders were worried this might provide grounds for challenging a contrary decision reached through an alternative process. Officials advised stakeholders that businesses are free to use different risk assessment processes, particularly if they consider them more appropriate for their work or sector. Workers also cannot challenge a business' decision to use (or not use) the vaccination assessment tool.

Recommendations

The Minister for Workplace Relations and Safety recommends that Cabinet:

COVID-19 Public Health Response (Vaccination Assessment Tool) Regulations 2021

1 note that on 26 October 2021, Cabinet agreed to amend the COVID-19 Public Health Response Act 2020 to allow for a risk assessment process to be prescribed, which PCBUs could then use to determine whether it is reasonable to require vaccination or testing for work [CAB-21-MIN-0436 refers].

2 note that on 22 November 2021, Cabinet agreed the detail of a risk assessment tool [CAB-21-MIN-0495 refers], including:

- 2.1 that the vaccination assessment tool specifies four key factors including three factors relating to transmission of COVID-19 and one relating to providing services to vulnerable people;
 - 2.2 that vulnerable people be defined as people who are under the minimum age to be vaccinated; medically exempt from being vaccinated; or at higher risk of severe illness from COVID-19;
 - 2.3 that the work must score a higher risk on at least three of the four factors before it would be reasonable for a PCBU to consider requiring vaccination;
 - 2.4 that the vaccination assessment tool is designed to be applied to particular roles rather than to an entire workforce;
- 3 note that on 22 November 2021, Cabinet also authorised the Minister for Workplace Relations and Safety to make decisions on any issues that arose during the drafting process [CAB-21-MIN-0495 refers];
- 4 note that under the authorisation referred to in paragraph 3, the Minister for Workplace Relations and Safety has added a requirement that PCBUs must consider the following factors in a situation where the outcome of the tool was that a vaccination requirement would be reasonable and a PCBU intends to decide not to require vaccination:
 - 4.1 whether there are any other measures that could reasonably be used to eliminate or minimise the risk associated with unvaccinated workers doing the work;
 - 4.2 the outcomes of the consultation process on the application of the assessment tool and control measures under section 33AB(3) of the COVID Act;
 - 4.3 any other factors the PCBU considers relevant;
- 5 note that that under the authorisation referred to in paragraph 3, the Minister for Workplace Relations and Safety has clarified that the operation of the physical distancing factor in the vaccination assessment tool now relates to whether a worker can reasonably maintain one metre physical distancing from other people
- 6 note that the COVID-19 Public Health Response (Vaccination Assessment Tool) Regulations 2021 will give effect to the decisions referred to in paragraphs 2, 4 and 5 above;
- 7 authorise the submission of the COVID-19 Public Health Response (Vaccination Assessment Tool) Regulations 2021 to the Executive Council;
- 8 note that a waiver of the 28-day rule is sought:

- 8.1 so that the COVID-19 Public Health Response (Vaccination Assessment Tool) Regulations 2021 can come into force on 15 December 2021;
 - 8.2 on the grounds that they are made in response to an emergency, and will not disadvantage any PCBU or worker;
- 9 agree to waive the 28-day rule so that the COVID-19 Public Health Response (Vaccination Assessment Tool) Regulations can come into force on 15 December 2021;

Amendment to the COVID-19 Public Health Response (Infringement Offences) Regulations 2021

- 10 note that the COVID-19 Public Health Response (Infringement Offences) Regulations 2021 were drafted and partway through the Cabinet approval process when the COVID-19 Response (Vaccinations) Legislation Act 2021 was introduced and passed, resulting in new infringement offences in the COVID-19 Public Health Response Act 2020 not being assigned a class in the regulations;
- 11 note that an amendment is now needed to the COVID-19 Public Health Response (Infringement Offences) Regulations 2021 to ensure the new infringement offences in the COVID-19 Public Health Response Act 2020 align with similar offences in the COVID-19 Public Health Response (Vaccinations) Order 2021;
- 12 agree to amend the COVID-19 Public Health Response (Infringement Offences) Regulations 2021 to classify breaches of the following provisions of the COVID-19 Public Health Response Act 2020 accordingly:
 - 12.1 section 17B (duty on PCBUs to keep vaccination records): low risk, matching the approach taken in the COVID-19 Public Health Response (Vaccinations) Order 2021;
 - 12.2 section 17C (duty on PCBUs to prevent workers from carrying out work unless vaccinated): high risk, matching the approach taken in the COVID-19 Public Health Response (Vaccinations) Order 2021;
 - 12.3 section 17D (duty on workers not to do work without vaccination): high risk, matching the approach taken in the COVID-19 Public Health Response (Vaccinations) Order 2021;
- 13 invite the Minister for Workplace Relations and Safety to issue drafting instructions to Parliamentary Counsel Office giving effect to the policy decisions under recommendation 12;
- 14 authorise the Minister for Workplace Relations and Safety to make decisions on any issues that arise during the drafting process;

- 15 agree to give Power to Act to the Minister for Workplace Relations and Safety to submit the regulations, once drafted, to the Executive Council on 20 December 2021;
- 16 note the Power to Act in recommendation 15 above will only be exercised if Cabinet does not meet as scheduled on 20 December 2021;
- 17 note that if the Power to Act in recommendation 15 is exercised, the Minister for Workplace Relations and Safety considers it appropriate to waive the 28-day rule:
 - 17.1 so that amendments to the COVID-19 Public Health Response (Infringement Offences) Regulations can come into force on 21 December 2021;
 - 17.2 on the grounds that they validate irregularities, and will confer only benefits on the public.

Authorised for lodgement

Hon Michael Wood
Minister for Workplace Relations and Safety