



## BRIEFING

### COVID-19 vaccination: Mandating vaccination for work at the Green level and exemptions

<b>Date:</b>	12 November 2021	<b>Priority:</b>	Urgent
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2122-1774

Action sought		
	Action sought	Deadline
Hon Michael Wood <b>Minister for Workplace Relations and Safety</b>	<p><b>Agree</b> to mandate vaccination for work at the Green level.</p> <p><b>Agree</b> the approach to exemptions for any Order you may make requiring vaccination for work, which will also apply to settings where CVCs must be used.</p>	15 November 2021

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Anna Clark	General Manager, Workplace Relations and Safety Policy		Privacy of Natural Persons ✓
[Redacted]			

The following departments/agencies have been consulted
Department of the Prime Minister and Cabinet and the Ministry of Health

Minister's office to complete:

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 Withdrawn           |

Comments



## BRIEFING

### COVID-19 vaccination: Mandating vaccination for work at the Green level and exemptions

Date:	12 November 2021	Priority:	Urgent
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#### Purpose

Seeks to confirm your preferred approach to mandating vaccination for work at the Green level of the COVID-19 Protection Framework where COVID-19 Vaccination Certificates (CVCs) are required and to exemptions for the broader scope of mandates.

#### Executive summary

To finalise the drafting instructions for the CVC work vaccination order, officials are seeking to confirm your preferred approach to vaccination mandates at the Green level.

Officials have engaged with key stakeholders from religious and faith-based organisations and sought legal advice on the implications of not mandating vaccination for work at the Green level. We continue to recommend mandating vaccination for work at the Green level as this would create the simplest and most clear approach to vaccination requirements in all settings where CVCs could be required.

Officials are also seeking your preferred approach to exemptions for any Order you may make once the COVID-19 Public Health Response Amendment (No 3) Bill passes. This includes seeking agreement to provide for *health exemptions* for the broader scope of mandates and confirming your preferred approach to *significant service disruption exemptions* or *other exemptions*.

Following decisions on this briefing, officials will finalise the drafting instructions for the CVC worker vaccination order.

#### Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

##### *Work at the Green level where CVCs must be required*

1. **Note** that you have previously received advice as to whether a vaccination mandate should apply for work at the Green level of the COVID-19 Protection Framework in settings where CVCs must be used.

Noted

2. **Note** that officials have subsequently engaged with stakeholders and sought legal advice on the implications of not mandating vaccination for work at the Green level.

Noted

3. **Note** that officials continue to recommend mandating vaccination for work at the Green level as this would create the simplest and most clear approach to vaccination requirements in all settings where CVCs could be required.

Noted

4. **Agree** that vaccination for work at the Green Level be mandated.

Agree / Disagree

*Exemptions for the order*

5. **Agree** to provide for *health exemptions*.

Agree / Disagree

6. **Agree** to (please choose one of the following three options):

a. Allow for *significant service disruption exemptions or other exemptions* administered by the Chief Executive of a specified government agency or agencies with responsibility for the sector(s) concerned (MBIE recommended).

Agree / Disagree

b. Allow for the Chief Executive (or equivalent) of a PCBU to authorise *significant service disruption exemptions or other exemptions* subject to specified criteria.

Agree / Disagree

c. Not provide any *significant service disruption exemptions or other exemptions*.

Agree / Disagree



Anna Clark  
**General Manager, Workplace Relations and  
Safety Policy**  
Labour, Science and Enterprise, MBIE

11/11/2021

Hon Michael Wood  
**Minister for Workplace Relations and  
Safety**

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## **Background**

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1. On 26 October 2021, Cabinet agreed to mandate vaccination for work in any setting where a CVC must be required under the COVID-19 Protection Framework. Cabinet also noted that you would consider whether the mandate should be expressed in a way so that it does not apply in situations under the Green level where a business decides not to use CVCs (CAB-21-MIN-0436 refers).
2. Subsequently you received advice (2122-1586 refers) as to whether a vaccination mandate should apply for work at the Green level of the COVID-19 Protection Framework in settings where CVCs must be used. Unlike the Red and Orange levels, businesses can still maintain some level of operation at Green without requiring CVCs, although the 100-person limit in most settings may mean it is not financially viable for most events and gatherings to proceed.
3. To finalise the drafting instructions for the CVC worker vaccination order, officials are now seeking to confirm your preferred approach to:
  - a. mandating vaccination for work at the Green Level
  - b. exemptions for CVC settings as well as any other types of work that may be included in the order you may make after the COVID-19 Public Health Response Amendment (No 3) Bill passes.

## **Mandating vaccination for work at the Green level**

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4. As indicated in previous advice, officials have engaged with key stakeholders and sought legal advice on mandating vaccination for work at the Green level. This is outlined below.

### **Stakeholder engagement on mandates at the Green Level**

5. Officials have engaged with a range of stakeholders on the proposal to mandate at the Green level, including:
  - a. whether work done in settings where CVCs must be used should be subject to a vaccination mandate at all levels, and
  - b. what practical issues would businesses and workers have to resolve if there was no vaccination mandate for work at the Green level.

### *Religious and faith-based organisations*

6. A large number of religious and faith-based organisations who have been engaged with during the development of CVC policy were contacted earlier this week to seek feedback. In the limited time available for consultation, a range of comments were received, which did not raise any significant issues with the proposal, but did note that comments were constrained by the tight timeframe for feedback.
7. All organisations were highly supportive of vaccination generally and almost all intend to operate with vaccinations required for congregations or other visitors, often noting that operating with restrictions would impose significant impacts on them due to the relatively small size of many religious and faith-based venues. Specific comments included the following:
  - a. The NZ Catholic Bishops indicated that it will offer both CVC and non-CVC services, and anticipated most services will be the former.
  - b. A selection of Anglican Church Bishops indicated that they are moving in the direction of requiring vaccination of Clergy and paid workers, and volunteers working with

children and vulnerable people, i.e. all workers as defined by the Health and Safety Act 2015. They are also looking to develop consistency of approach for workers across all three levels: Red, Orange, Green.

- c. The Wellington Islamic Centre indicated it is “not likely to require the worshippers who attend our Mosque/Islamic Centre to provide a vaccination certificate, though we strongly encourage them to get vaccinated. The worshippers attend the mosque 7 days a week and five times a day. It is a mandatory requirement for them to be clean and hygienic while they are on the premises. We have plenty of space to maintain a 1-metre distance and contactless services.”
  - d. The New Zealand Buddhist Council noted, “Some Buddhist centres are considering requesting vaccination as a condition of attending gatherings (of attendees and volunteers). However for many, a Government policy that would require them to enforce this at entrance points would be anathema.”
  - e. The Auckland Zen Centre noted that “for our 8 weekly gatherings we intend to require CVCs at Red and Orange but not at Green. For our events we will require CVCs at all 3 traffic light levels.”
8. Almost all organisations signalled that their employees (where present) and volunteers were vaccinated, so a requirement for workers to be vaccinated for events or gatherings to occur would not present any issues.
  9. A few identified that as voluntary organisations they did not expect their volunteers would need to be vaccinated, but they likely would be anyway. Questions were raised about activities that occur in venues run by religious and faith-based organisations, where the activities are hosted by community groups. This will be addressed in guidance on the CVC framework.
  10. The NZ Catholic Bishops regard the introduction of vaccine mandates and certificates as extreme short-term measures that are, on balance, justifiable only in terms of the current public health emergency situation we find ourselves in. They want to see these measures reviewed regularly and also hope for the availability and implementation of other sufficiently sensitive and reliable approaches to COVID-19 testing and detection that will provide different and less restrictive options within the employment, social, religious, hospitality and recreational sectors for those who are not vaccinated.

#### *Hospitality industry*

11. The Restaurant Association indicated that there are a minority of hospitality businesses that are considering operating without requiring customers to present vaccination certificates at the Green Level (with the additional restrictions in place).
12. However, the majority of their members still indicate that they think the mandatory vaccination requirement for employees should be in place at Green. While the population could be highly vaccinated and the risk to an unvaccinated employee would be low, from an operational perspective it would be difficult to manage different systems at different levels.

Legal professional privilege

### **Recommended approach**

19. Officials continue to recommend mandating vaccination for work at the Green level. This would create the simplest and most clear approach to vaccination requirements in all settings where CVCs could be required.
20. We recognise that this effectively expands worker vaccine mandates and reduces the flexibility available to employers in determining whom of their workers needs to be vaccinated. That said, as we are likely to see regions moving in and out of different levels of the COVID-19 Protection Framework there is risk of uncertainty for employers and employees. For example, there could be a challenge of having staff starting a role under the Green level setting (and not needing to be vaccinated), but then having to potentially be stood down when an area moves up to another level which requires vaccination.

### **Exemptions for the broader scope of mandates**

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21. Under the COVID-19 Public Health Response (Vaccinations) Order 2021, there are a range of exemptions for workers to carry out work without being vaccinated. These include:
  - a. **Health exemptions (clause 9B of the Order)**
    - i. If the Director-General (of Health) grants an exemption to an affected person, who has particular physical or other needs that a suitably qualified health practitioner or nurse practitioner determines would make it inappropriate for the person to be vaccinated, an application has been made and the Director-General is satisfied that the person meets the specified COVID-19 vaccination exemption criteria.

**b. Significant service disruption exemptions (clause 12A of the Order)**

- i. If the Minister grants an exemption to allow an unvaccinated worker to work if it is necessary to promote the purpose of the COVID-19 Public Health Response Act 2020 and prevent significant disruption to essential health services.

**c. Other exemptions (clauses 9 and 9A of the Order)**

- i. If a Chief Executive authorises an affected person who has not been vaccinated to carry out certain work if the work is unanticipated, necessary, and time-critical and cannot be carried out by a person who is vaccinated or must be carried out to prevent the ceasing of operations.
- ii. If the Director-General authorises an affected person who has had at least one dose of a vaccination to continue to perform certain work, where the Director-General is satisfied, taking into account the certain work to be carried out by the person, that the receipt of that vaccine adequately prevents, or limits the risk of an outbreak of COVID-19 or the spread of COVID-19.

22. In principle, officials consider that these exemptions should be carried over for any order you may make after the COVID-19 Public Health Response Amendment (No 3) Bill passes. This is because the same rationale for these exemptions applies in any situation where there is a mandate. Allowing these exemptions would be consistent with treating public and private sector employers and workers consistently. There are, however, practical considerations with a material increase in the scope of vaccination mandates, which may make it impracticable for agencies to administer these exemptions in a timely manner.
23. MBIE are discussing/confirming with the Ministry of Health whether the **health exemptions** process can be administered for a broader scope of mandates, based on the requirement that these be supported by an application from a suitably qualified medical practitioner or nurse practitioner, and the intended application to the very small number of individuals who cannot be vaccinated on medical grounds (estimated as 100 – 200 people).
24. If **significant service disruption exemptions** or **other exemptions** are provided for, as described above, under a broader scope of mandates, the power to grant these exemptions would need to be given to either:
  - a. the Chief Executive of a specified government agency with responsibility for the sector(s) concerned: this would be consistent with existing mandates and would be more likely to ensure consistent application of exemption criteria, but would require agencies to resource exemption applications processes, to reach timely decisions (MBIE recommended), or
  - b. the Chief Executive or equivalent of a PCBU: this would be a high-trust model, but may result in inconsistent practices in PCBUs self-assessing whether criteria are met.
25. We have recommended option (a) as under CVC mandates the affected sectors fall within MBIE's ambit of responsibility and MBIE will set up an exemptions process, similar to its current business exemptions function. Should broader mandates come in to effect in the private sector we will provide you with further advice on who should have the power to grant exemptions.
26. Alternatively, the exemptions available for the broader scope of mandates could be limited to **health exemptions** only on the basis that it is not practical to administer broader exemptions. This would likely raise concerns that there was inconsistency between the treatment of public and private sector employers and workers.
27. For all exemptions options above, additional compliance checks are likely to be required, and a compliance and enforcement approach will need to be developed.

## **Next steps**

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28. Following decisions on this briefing, officials will finalise the drafting instructions for the CVC worker vaccination order.