



BRIEFING

COVID-19 vaccination: Matters to discuss at Cabinet on 15 November 2021

Date:	13 November 2021	Priority:	Urgent
Security classification:	In Confidence	Tracking number:	TBC

Action sought		
	Action sought	Deadline
Hon Michael Wood Minister for Workplace Relations and Safety	Seek the Attorney-General's approval to draft in advance of Cabinet decisions for any of the matters in this briefing.	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]				
[Redacted]				

The following departments/agencies have been consulted

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 Withdrawn |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: Matters to discuss at Cabinet on 15 November 2021

Date:	13 November 2021	Priority:	Urgent
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Purpose

To provide advice on matters to be covered in your paper for Cabinet on 22 November 2021, so that you can discuss these with your Cabinet colleagues on 15 November 2021.

Executive summary

Topic	Decision	Implications
<i>Vaccination mandates</i>	<p>Is there interest in mandating vaccination for the New Zealand Police and New Zealand Defence Force (NZDF)?</p> <p>If so, is there any feedback on whether this proposed mandate should apply to the entirety of Police and the NZDF?</p>	<p>Note some Police personnel will be covered by the existing COVID-19 Public Health Response (Vaccinations) Order 2021 from 29 November 2021. Juggling two deadlines for vaccination for overlapping workforces will be complicated.</p> <p>If any mandate is to apply to the entirety of Police and the NZDF, this would need to be advanced on a public interest basis, rather than public health.</p>
	<p>Is there interest in mandating vaccination for:</p> <ul style="list-style-type: none"> • Social and community services, • Emergency services, • Lifeline utilities, or • Transport and freight. <p>If so, is there any feedback on the below:</p> <ul style="list-style-type: none"> • Should all work in the above sectors be covered by the proposed mandate? • Should regular testing be an alternative to vaccination? 	<p>Further work would be required to define appropriate boundaries for the sectors covered. Including work for which vaccination cannot be justified in the public interest risks successful legal challenge.</p> <p>Our testing strategy and capacity would need to be able to support any alternative regular testing requirement for the types of work covered.</p>
	<p>Is there interest in mandating vaccination for:</p> <ul style="list-style-type: none"> • Building and construction work, or • Work in settings where businesses and services are prohibited from using CVCs? 	<p>Note [redacted] Ministry of Health advice suggests this would not be justified on public health or public interest grounds.</p>
<i>Vaccination assessment tool</i>	<p>Should the factors in the vaccination assessment tool include the following:</p> <ul style="list-style-type: none"> • What type of environment is the work performed in? • How many people does the worker come into contact with? • How close does the person work to other people? • How long is the worker in proximity to other people? 	<p>The measures and scores to be included as part of the tool will flow from decisions on which factors to include.</p>
<i>Other reasons for requiring vaccination</i>	<p>Should employers be allowed to require vaccination for reasons other than those already permitted?</p>	<p>If Cabinet wants to allow vaccination for a broader range of reasons, we would need to determine whether the COVID Act provides a suitable legislative framework for this (eg whether its purpose, even if broadened, could encompass this).</p>
<i>General</i>	<p>Will the Attorney-General authorise drafting in advance of Cabinet decisions, for example to include principles/factors to guide PCBUs' discretion on whether to follow the outcome of the vaccination assessment tool?</p>	<p>Cabinet decisions on these matters (on 22 November 2021) would come on the same day the COVID-19 Public Health Response Amendment Bill (No 3) is due to be introduced. This means any decisions on the matters in this briefing that require primary legislation, on 22 November 2021, may otherwise need to be advanced as an SOP to the Bill.</p>

Recommended action

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

- a **Note** you intend to take a paper to Cabinet on 22 November 2021 seeking decisions on additional vaccination mandates and a tool to help employers decide whether it is reasonable to require vaccination for work.

Noted

- b **Discuss** the matters in this briefing at Cabinet on 15 November 2021.

Discussed / Not discussed

- c **Seek** the Attorney-General's agreement to draft in advance of Cabinet decisions (which are expected on 22 November 2021) on the matters in this briefing.

Yes / No



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

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

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13 / 11 / 2021

Background

1. On 26 October, Cabinet agreed to amend the COVID-19 Public Health Response Act 2020 (COVID Act) to allow vaccination or testing to be required for work on public interest grounds [CAB-21-MIN-0436]. Cabinet invited the Minister for the Public Service, the Minister for Economic and Regional Development and the Minister for Workplace Relations and Safety to consider whether to mandate vaccination for any other types of work.
2. Cabinet also agreed to create a clear, simple, easy-to-use risk assessment process for employers [CAB-21-MIN-0436]. This would be available to PCBUs to use where their work is not covered by a Government vaccination mandate. It would help them decide whether it is reasonable to require vaccination or testing for work. You have been invited to report back to Cabinet on the proposed criteria for this risk assessment process as soon as possible.
3. You intend to take a paper to Cabinet on 22 November 2021 to confirm decisions on mandates and the risk assessment process.
4. Ahead of this, you intend to discuss several outstanding policy issues with your Cabinet colleagues on 15 November 2021. The outcomes of this discussion will inform preparation of your paper for Cabinet on 22 November 2021.
5. We have consulted extensively with agencies as part of this work (see engagement summary at Annex 1). However, due to timeframes, this briefing has been prepared without the benefit of consulting any other agencies. We have received draft Crown Law advice, which has informed this briefing. We have also had initial advice from the Ministry of Health.

Matters for discussion at Cabinet on 15 November 2021

6. There are a number of issues that you have indicated you will seek direction on from your Cabinet colleagues on 15 November 2021. These are set out in the table below, and the rest of this briefing provides additional information about each point.

Topic	Decision	Implications
<i>Vaccination mandates</i>	<p>Is there interest in mandating vaccination for the New Zealand Police and New Zealand Defence Force (NZDF)?</p> <p>If so, is there any feedback on whether this proposed mandate should apply to the entirety of Police and the NZDF?</p>	<p>Note some Police personnel will be covered by the existing COVID-19 Public Health Response (Vaccinations) Order 2021 from 29 November 2021. Juggling two deadlines for vaccination for overlapping workforces will be complicated.</p> <p>If any mandate is to apply to the entirety of Police and the NZDF, this would need to be advanced on a public interest basis, rather than public health.</p>
	<p>Is there interest in mandating vaccination for:</p> <ul style="list-style-type: none"> • Social and community services, • Emergency services, • Lifeline utilities, or • Transport and freight. <p>If so, is there any feedback on the below:</p> <ul style="list-style-type: none"> • Should all work in the above sectors be covered? • Should regular testing be an alternative to vaccination? 	<p>Further work would be required to define appropriate boundaries for the sectors covered. Including work for which vaccination cannot be justified in the public interest risks successful legal challenge.</p> <p>Our testing strategy and capacity would need to be able to support any alternative regular testing requirement for the types of work covered.</p>

Topic	Decision	Implications
	<p>Is there interest in mandating vaccination for:</p> <ul style="list-style-type: none"> • Building and construction work, or • Work in settings where businesses and services are prohibited from using CVCs? 	<p>Note [redacted] Ministry of Health advice suggests this would not be justified on public health or public interest grounds.</p>
<i>Vaccination assessment tool</i>	<p>Should the factors in the vaccination assessment tool include the following:</p> <ul style="list-style-type: none"> • What type of environment is the work performed in? • How many people does the worker come into contact with? • How close does the person work to other people? • How long is the worker in proximity to other people? 	<p>The measures and scores to be included as part of the tool will flow from decisions on which factors to include.</p>
<i>Other reasons for requiring vaccination</i>	<p>Should employers be allowed to require vaccination for reasons other than those already permitted?</p>	<p>If Cabinet wants to allow vaccination for a broader range of reasons, we would need to determine whether the COVID Act provides a suitable legislative framework for this (eg whether its purpose, even if broadened, could encompass this).</p>
<i>General</i>	<p>Will the Attorney-General authorise drafting in advance of Cabinet decisions, for example to include principles/factors to guide PCBU's discretion on whether to follow the outcome of the vaccination assessment tool?</p>	<p>Cabinet decisions on these matters (on 22 November 2021) would come on the same day the COVID-19 Public Health Response Amendment Bill (No 3) is due to be introduced. This means any decisions on the matters in this briefing that require primary legislation, on 22 November 2021, may otherwise need to be advanced as an SOP to the Bill.</p>

Mandating vaccination for work

7. Following your discussions with other Ministers, and our engagement with other agencies, we consider there are two groupings of work that Cabinet could consider mandating vaccination for:
 - a. New Zealand Police and the New Zealand Defence Force (NZDF).
 - b. Social and community services, emergency services, lifeline utilities and key parts of the transport and freight system.
8. Provisional public health advice is that there may only be a public health rationale to support mandates in some of these areas. Legal professional privilege [redacted]
9. Legal professional privilege [redacted] in the absence of a public health argument, reliance on the public interest ground must advance a pressing and substantial objective. This objective needs to be defined with sufficient clarity for Cabinet to consider whether any limitation of

rights and freedoms specified in the New Zealand Bill of Rights Act 1990 (NZBORA) is justified.

10. The table below summarises initial views about whether vaccination for each of the sectors discussed below can be justified on public interest or public health grounds:

Type of work	Public interest grounds (based on initial MBIE view)	Public health grounds (based on provisional Ministry of Health advice)
<i>New Zealand Police</i>	✓	✓ for frontline work
<i>New Zealand Defence Force</i>	✓	✓ for frontline work
<i>Social and community services</i>	x	✓ for frontline work
<i>Emergency services</i>	✓	✓ for frontline work
<i>Lifeline utilities</i>	✓ for some	x
<i>Transport and freight</i>	✓ for some	x
<i>Building and construction</i>	x	x
<i>Work in settings where businesses and services are prohibited from using CVCs</i>	x	x

Police and NZDF personnel

11. There is clear public interest in ensuring continuity of the services provided by Police and the NZDF, which are essential for public safety, defence and crisis response.
12. A key element of maintaining trust in the Police and the NZDF is ensuring the safety and wellbeing of people interacting with them. As we transition from elimination to managing COVID-19 in the community, the likelihood of transmission from daily interactions grows. In this context, it is essential to provide assurances to people interacting with the Police and NZDF, and who often cannot choose whether to have these interactions, that they will not pose a greater risk of COVID-19 infection or transmission.
13. The frontline work done by Police and the NZDF (eg in emergency situations) involves contact with members of the public. Workers often come into contact with many people in the course of their work, and will not always know their vaccination status, or the contact may not be traceable.

New Zealand Police

14. Police play a key role in maintaining public safety and enforcing laws. Their crime prevention and community support roles frequently involve working with communities and being in contact with vulnerable members of the public. In addition, Police are part of our national security architecture, and play a role in our emergency management and crisis responses.
15. The nature of the work done by Police means it is hard to anticipate and predict the level of COVID-19 risk involved in frontline work. For example, Police are often called on to respond when people leave places where they are isolating or quarantined without permission.
16. The Police Executive and the two Police unions (which represent 99% of Police's staff) support mandating vaccination for Police.

New Zealand Defence Force

17. The NZDF is a contingent force that responds to short-notice emergencies in New Zealand and overseas. Similar to Police, the level of COVID-19 risk these responses involve cannot be predicted or planned for in advance of an emergency.
18. An outbreak of COVID-19 on a NZDF Defence Area (ie camps or bases) has the potential to impact a range of capabilities crucial to our national defence and emergency response. These are complex workplaces, including international points of entry (a port and two airports) and include accommodation and dining in the same area as the workplace. Large numbers of NZDF personnel live and work in close proximity, in barracks, with shared bathroom and dining facilities. This creates a unique environment vulnerable to the spread of COVID-19.
19. The NZDF supports mandating vaccination for the entirety of the Defence Force.

Mandating vaccination for Police and the NZDF

20. It is in the public interest that frontline staff of Police and the NZDF be vaccinated to do that work.
21. There is also a choice about whether to mandate vaccination for frontline personnel only, or all people working for Police and the NZDF. MBIE recommends mandating vaccination for all such work, rather than a subset. This would be consistent with the approach taken in relation to the health and education workforces in places like hospitals and schools.
 - a. Police's frontline workforce can be characterised as constabulary, recruits and authorised officers. However, there is significant interaction between frontline and other staff, who often work in the same premises.
 - b. The NZDF is a blended workforce, consisting of military personnel, civilian staff and contractors. It operates flexibly, with military personnel able to move quickly between support and frontline roles in response to an emergency, and with civilian staff backfilling in support. This means the concept of "frontline" is hard to define and could lead to significant confusion about what work is covered.
22. There is a timing issue to consider in relation to Police. Some of the frontline Police workforce is covered by recent changes to the COVID-19 Public Health Response (Vaccinations) Order 2021. This is through being at a school or hospital in the course of their work. From 29 November 2021, these Police staff will need to have had at least one dose to continue working.
23. For operational certainty, any mandate applying to additional Police personnel should come into effect at the same time as those already covered. Whether this is 29 November 2021, or a later amended date, can be discussed. Communicating two different dates, for two different (and potentially overlapping) workforces, will create confusion and undermine the Government's COVID-19 response.

Social and community services, lifeline utilities and emergency services

24. It could also be in the public interest to mandate vaccination for the following types of work.

Social and community services

25. There are often limited opportunities for these types of work to be delivered in a remote or non-contact way, and users of these services can't always choose whether to access them. Preliminary IDI analysis shows that people interacting with the social and justice sector workforces have relatively high rates of non-vaccination.
26. There may be a public health reason for requiring vaccination for some social and community services, but not a public interest reason for requiring vaccination for this work. This may

mean that any vaccination mandate for social and community services needs to be advanced as an amendment to the existing COVID-19 Public Health Response (Vaccinations) Order 2021, rather than in any you may make after the COVID-19 Public Health Response Amendment Bill (No 3) is passed (because these Orders must be in the public interest).

Emergency services

27. First responders (eg fire and emergency responses services, surf lifesaving, search and rescue and frontline civil defence work) work in close contact with the public, and in situations where the public cannot choose to refuse these services.

Lifeline utilities

28. These include services to produce and supply gas, electricity, water and fuel. They also involve disposal of sewage, water and wastewater. Telecommunications networks are another key utility. It may be appropriate to bolster these services by requiring vaccination for work in lifeline utilities. This would recognise the disproportionate consequences of service interruption or workplace COVID-19 transmission, including on activities necessary to preserve life.

Transport and freight

29. Some parts of our transport and freight networks are critical, such as international airports and ports, and key road and rail links. Disruption to these could have flow-on effects for a range of other sectors, industries and livelihoods more generally.

Approach to mandates

30. The Ministry of Health has provided an initial indication that for some of the work above, there may be public health grounds for requiring vaccination (eg frontline social services). However, while there is an arguable public interest reason, there is unlikely to be a public health basis for requiring vaccination for work in lifeline utilities, transport and freight.
31. Given this, we would recommend constraining any mandate, for example by limiting it to frontline social services, or work in utilities where a disruption to a lifeline utility cannot be mitigated by business continuity processes.
32. Cabinet could also consider requiring regular testing as an alternative to vaccination for these types of work, in recognition that public health reasons may not be the overriding reason for vaccination being in the public interest. This could potentially help avoid workforce shortages as an unintended consequence, which could threaten the objective of wanting to shore up critical services.
33. Officials can provide further advice on the above types of work and potential workforce implications.

Work for which we do not recommend mandating vaccination

34. The following sectors have previously been raised as potential areas for mandates. We do not recommend vaccination mandates for them for the reasons provided.

Building and construction

35. ██████████ this work is not an essential, lifeline service. While it may be possible to argue that some building and construction work (on the basis that it may significantly impact the ability of lifeline utilities to operate effectively, for example), this is not a strong argument for requiring vaccination in the public interest.
36. While the construction sector would support an all-encompassing mandate, this may not be the case for a constrained one. Alternatively, there may be other mechanisms, such as industry discussions, to achieve a desirable outcome, given the strong industry leadership

mechanisms that exist (eg the Construction Sector Accord). The CTU has indicated a willingness to support industry discussions on vaccination.

Work in places where CVCs are prohibited

- 37. Businesses and services will be prohibited from requiring COVID-19 vaccination certificates (CVCs) from the public in supermarkets, dairies, petrol stations, public transport, housing services and emergency housing. CVCs will also be prohibited in some places where work will already require vaccination, such as education and healthcare settings.
- 38. We considered whether work should require vaccination in places where CVCs cannot be required. The Ministry of Health has provided an initial view that there is no public health basis for requiring vaccination in these settings because they do not pose any additional risk compared to interacting with the general public. [REDACTED] any vaccination requirement for this work would need to be supported by public health advice. Therefore, we do not recommend mandating vaccination for work in these settings.

Vaccination assessment tool

- 39. On 26 October 2021, Cabinet agreed to create a simple and understandable vaccination assessment tool to be contained in regulations under the COVID Act [CAB-21-MIN-0436]. The tool is intended to help provide certainty to workplaces about whether it is reasonable to require vaccination.
- 40. The decision to create a simplified tool was made in response to concerns from PCBUs about not having access to the public health knowledge and health and safety expertise to be able to carry out a risk assessment where they could be confident that the outcome (and therefore the actions they take as a result) meets legal requirements, and properly manages the risk to their staff and customers of contracting COVID-19. PCBUs are also concerned that any vaccination requirement they impose after undertaking a risk assessment may be subject to legal challenge.
- 41. The tool will include four factors relevant to workplaces where the Ministry of Health considers that there is strong evidence of an increased risk of exposure and transmission of COVID-19. Cabinet agreement will be sought on the inclusion of these factors in the tool.
- 42. There are two options for how the tool can operate. Option 1 is a non-binary points-based option that includes scores for each factor depending on the level of risk of each measure. Option 2 is a binary option.

Option 1: Non-binary factors (higher-risk factors on the right)

What type of environment is the work performed in?		
0	1	2
Outside	100m ² indoor space or greater	Less than 100m ² indoor space
How many people does the worker come into contact with?		
0	1	2
None	20 or less	More than 20
How close does the person work to other people?		
0	1	2
Outside	At least 1 metre apart	Less than 1 metre apart
How long is the worker in proximity to other people?		
0	1	2
No time	15 minutes or less	More than 15 minutes

Option 2: Binary factors (higher-risk factors on the right)

What type of environment is the work performed in?	
100m ² indoor space or greater, or outside	Less than 100m ² indoor space
How many people does the worker come into contact with?	
20 or less	More than 20
How close does the person work to other people?	
At least 1 metre apart	Less than 1 metre apart
How long is the worker in proximity to other people?	
15 minutes or less	More than 15 minutes

43. Overall, the stakeholders we consulted preferred option 1 as they considered that a points-based option had more detail and granularity. The Ministry of Health prefers option 2 as they consider that it would be easier to use.
44. We are in the process of engaging with the Ministry of Health, WorkSafe and health and safety risk assessment practitioners to test the options. We are also testing a potential scoring threshold with particular types of work to ensure that the outcomes of the tool produce expected and consistent outcomes and to help inform which option and threshold to recommend.
45. For your paper to Cabinet on 22 November 2021, we intend to include an indicative list of types of work and their potential score under both options of the vaccination assessment tool. We expect that we will have done enough testing to recommend an option and a scoring threshold in that Cabinet paper.

The relationship between the vaccination assessment tool and the Health and Safety at Work Act 2015

46. While the vaccination assessment tool is designed to be accessible for all businesses, there will be businesses that have the resources and the desire to undertake a full risk assessment process. We consider they should be able to continue to do this and do not recommend that it should be mandatory for PCBUs to use the vaccination assessment tool when they are deciding whether to require vaccination. This would constrain PCBUs' ability to use alternative risk assessment methods under the Health and Safety at Work Act 2015 (HSWA), which may be more comprehensive and better tailored to the characteristics of their workplace. The vaccination assessment tool will be useful for smaller businesses, in particular, where they may not have the resources or expertise to run a more comprehensive process, but they would like a clear result.
47. A PCBU's general obligations under HSWA will continue to apply. Legal professional privilege
48. Legal professional privilege

49. We are in the process of discussing this issue with PCO. If these factors are required to be in the Bill to make the tool workable, we will need decisions from you on Monday, 15 November 2021 (when we intend to provide you with a briefing on this issue). PCO would also need to draft in advance of Cabinet decisions as they will be sought on 22 November, the same day the Bill will be introduced to the House.

Other reasons for requiring vaccination

Avoiding undue disruption

50. Legal professional privilege employers can require vaccination for work if relying on the following:
- a. The COVID-19 Public Health Response (Vaccinations) Order 2021.
 - b. HSWA:
 - i. When assessed as a reasonably practicable step to ensure the health and safety of workers.
 - ii. As a PCBU in control of a workplace, managing who can visit the workplace.
 - c. Contractual requirements with supplier employers.
 - d. A third-party requirement that provides genuine business reasons for certain work to only be done by vaccinated workers.
 - e. Pending confirmation: as an occupier of premises who can remove an implied license to enter the premises.
51. This does not allow an employer to require vaccination as a tool to prevent undue disruption to their business or ceasing of operations. For example, a factory wanting to avoid having to shut down manufacturing because all or a significant proportion of their workforce have to isolate following exposure to COVID-19.
52. Currently, there is no difference between recommended self-isolation times for vaccinated and unvaccinated people following exposure. However, this is likely to change in the near future, and people who are vaccinated may be able to spend less time in self-isolation than those who are unvaccinated.
53. Allowing employers to require vaccination to prevent undue disruption would provide greater flexibility to businesses in allowing them to plan for a wider range of business circumstances and pre-empt any potential disruption. Conversely, this category will have very broad application, as most businesses will have concerns about the impact of workers self-isolating from a business continuity and economic perspective. There is a risk this category would become a de facto “no job, no job” policy. This will in turn increase the likelihood of decisions made on these grounds being challenged (eg decisions to terminate unvaccinated employees’ employment agreements).
54. We do not recommend allowing employers to require vaccination for work for any reasons other than in the list at paragraph 50 above.
55. Legal professional privilege if we want to permit PCBUs to require vaccination for reasons outside of those above, those reasons must be included expressly in the primary legislation.

56. If Cabinet wants to enable PCBUs to require workers be vaccinated to avoid undue disruption, this will need to be agreed at Cabinet on Monday (15 November 2021). The Attorney-General will also need to approve PCO drafting the necessary amendments to the COVID Act in advance of final Cabinet decisions on 22 November 2021.

Overseas market access

57. MPI has advised us that they no longer seek for any work relating to primary products to be covered by an order mandating vaccination, for the purpose of maintaining overseas market access. MPI has instead suggested that this be a reason for which employers can require vaccination, and be integrated into the vaccination assessment tool.

58. 9(2)(f)(iv)

[Redacted]

[Redacted]

[Redacted]

59. Legal professional privilege [Redacted] At this stage, we offer no recommendations in relation to mandating vaccination for work to maintain overseas market access. We note that allowing employers to require vaccination for this reason, other than by means of a vaccination mandate where it is in the public interest, would need to be done through primary legislation.

Timeframes for secondary legislation

60. The table below shows timeframes for the Bill and secondary legislation for additional mandates and the vaccination assessment tool.
61. Note PCO have not been able to confirm how long it will take to draft secondary legislation after Cabinet decisions on 22 November 2021. They have said there will be real risks because of the proximity to the end of the year, and attendant resourcing issues. You may wish to discuss this with the Attorney General.

	Bill	Order for additional mandates	Regulations for vaccination assessment tool
12 Nov 2021	Consultation version ready		
15 Nov 2021		Oral item at Cabinet	
19 Nov 2021	Bill lodged for Cabinet	Paper lodged for Cabinet	
22 Nov 2021	Bill introduced	Cabinet decisions made	
25 Nov 2021	Enactment (TBC)	Drafting instructions provided to PCO	

	Bill	Order for additional mandates	Regulations for vaccination assessment tool
<i>29 Nov 2021</i>	Orders for COVID-19 Protection Framework made		
<i>13 Dec 2021</i>		Order discussed at Cabinet (TBC)	
<i>15 Dec 2021</i>		Order comes into force (TBC)	
<i>20 Dec 2021</i>			Regulations discussed at Cabinet (TBC)
<i>21 Dec 2021</i>			Regulations come into force (TBC)

Next steps

62. Officials will prepare a Cabinet paper for 22 November 2021 on the basis of your discussion at Cabinet on 15 November 2021.

Annexes

Annex 1: Summary of engagement

Annex 1: Summary of engagement

	Like	Wish	Worry
<p><i>Vaccination mandates and CVCs</i></p> <p><i>(note this includes general feedback about CVCs)</i></p>	<ul style="list-style-type: none"> Broad support for a mandate where work in places where CVCs must be used, citing practical difficulties of having to navigate employment issues otherwise. There is a preference for mandating vaccination for work in CVC areas at the Green level, recognising that some businesses and services may choose not to require CVCs from customers. Mandating vaccination for work is accepted as it is the “simplest” approach. 	<ul style="list-style-type: none"> Definitions need to be really clear for certainty and simplicity. Accommodation sector needs to be included in the COVID Protection Framework (generally viewed as connected to Hospitality). Clarity is needed on the approach where a premise contains a mix of CVC required areas, CVC prohibited areas and CVC optional areas. There was protection against litigation by unvaccinated customers who want full access to facilities and/or services. 	<ul style="list-style-type: none"> How will business manage angry customers who want access but can't as they're unvaccinated. How to practically sight and scan identification and CVCs – will IDs (eg Drivers Licences) need to be sighted, is point of entry verification needed.
<p><i>Further Government vaccination mandates</i></p>	<ul style="list-style-type: none"> Mandates provide certainty for employers/PCBUs. They are the easiest way to require vaccination in the workplace. They remove the need for difficult workplace discussions, and take pressure off union delegates and health and safety representatives. 	<ul style="list-style-type: none"> Broad support for mandates and broad business/PCBU views about what is in the public interest (much wider than public health considerations). Different view on principles for Government mandates: <ul style="list-style-type: none"> Where there is a public health risk and relying on PCBU risk assessments could create inconsistencies. Where large workforces are interacting with varied/uncontrolled members of the public. Based on public health science. Mandates will need a fair and thorough implementation process, featuring tripartite conversations at an industry level to smooth implementation. Mandates should extend to contractors as well as employees. 	<ul style="list-style-type: none"> Concerns about social licence if mandates go too far or are not based on clear principles. Need to keep mandates under regular review to ensure they remain appropriate amidst changes in our overall context. Difficulties in limiting vaccination mandates to particular groups/parts of the workforce - where do you draw the line? How will mandates be enforced? How to record and store vaccination data safely.
<p><i>Mandates for overseas market access</i></p>	<ul style="list-style-type: none"> Support vaccination for market access reasons. Like the process being managed by the Director-General of the Ministry of Primary Industries. Like an “opt in” process. 	<ul style="list-style-type: none"> There shouldn't be a threshold to qualify as an “exporter”. Trade volumes can vary and volume doesn't always equal high value. It must be clear and easy for our trading partners to understand. The mandate should go all the way down the supply chain. Mandate should extend to all persons entering a site. 	<ul style="list-style-type: none"> Mandates exacerbating current labour force issues. An “opt in” process could be confusing for trade partners.
<p><i>Vaccination assessment tool</i></p>	<ul style="list-style-type: none"> Overall the balance of preference is for the points-based option as it has more detail and granularity. The points-based option is a simple and “good starting point”; businesses would find it useful. The check box option is easy to use and simple. Consultation with employees, health and safety representatives and unions as part of the assessment process was supported. 	<ul style="list-style-type: none"> The tool needs to be based on public health advice and science. Language in the tool needs to be clear and unambiguous. The tool needs guidance to support it. The tool should align to ISO standards for risk assessments, including consideration of risk and consequence, controlled and uncontrolled. The assessment should be across an entire workplace/workforce, rather than by role or types of work. Make it clear that this tool only relates to the decision about whether work requires vaccination. PCBUs also need to follow their normal health and safety processes for other controls. Consider factors such as ventilation, high touch points, more detail on work environment, humidity, worker intermingling, contact with vulnerable people, contact with colleagues where a vaccination mandate applies. Worker engagement should be wider than just with health and safety representatives. 	<ul style="list-style-type: none"> The options aren't sufficient for large organisations – not enough nuance. The check box option is too blunt, black-and-white or oversimplified and not dynamic. Health and safety representatives and union delegates could become the meat in the sandwich between employers and anti-vax colleagues during the assessment process. The tool doesn't include consequence or distinguish between controlled and uncontrolled risk. The only control that minimises the consequence of contracting COVID-19 is vaccination, and this should be included. The process isn't static and the requirement for vaccination should be assessed regularly.
<p><i>Third party access and undue disruption</i></p>	<ul style="list-style-type: none"> Acknowledgement that third party private property rights should be respected. 	<ul style="list-style-type: none"> Where there are multiple PCBUs on site, there needs to be clarity about whose risk assessment takes precedent. 	<ul style="list-style-type: none"> Requiring vaccination for business disruption conflates health and safety with economic reasons.