



BRIEFING

Proposed approach to Ministerial exemptions under the COVID-19 Public Health Response (Specified Work Vaccinations) Order 2021

Date:	15 December 2021	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2021-1975

Action sought		
	Action sought	Deadline
Hon Michael Wood Minister for Workplace Relations and Safety	Agree to the approach for requests for Ministerial exemptions from Police or NZDF under the Specified Work Vaccinations Order.	22 December 2021

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

The following departments/agencies have been consulted
New Zealand Police, New Zealand Defence Force and 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 Withdrawn |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

Proposed approach to Ministerial exemptions under the COVID-19 Public Health Response (Specified Work Vaccinations) Order 2021

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Purpose

This paper seeks your agreement to a proposed approach for requests from the New Zealand Police (Police) or New Zealand Defence Force (NZDF) for Ministerial exemptions under the COVID-19 Public Health Order (Specified Work Vaccinations) Order 2021 (the Order).

Executive summary

The Order provides the Minister for Workplace Safety and Relations the power to grant exemptions to vaccine mandates to prevent significant disruption to the essential services of either Police or NZDF. This paper sets out an approach to considering applications for such exemptions, where on receipt of a written application:

- a. The Ministry of Business, Innovation and Employment (MBIE) would undertake a review of the application to ensure the request meets the requirements of the Order, and would seek public health advice from the Ministry of Health (MoH)
- b. an assessment briefing would be provided to you, setting out a recommendation, advice on any conditions and exemption expiry
- c. you would consider the decision, seek any further information, and undertake any consultations required
- d. your decision on the application would be communicated in writing to the applicant and affected worker.

In considering applications, MBIE will not second guess the operational decisions on the essential service's nature of applications. These organisations are government agencies with appropriate accountability mechanisms and are best placed to understand disruptions to their operations resulting from the absence of unvaccinated staff. To ensure that these organisations undertake robust consideration of potential applications, you are asked to agree that any applications be submitted to you by either the Chief of Defence Forces or the Commissioner of Police.

Recommended action

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

- a. **Note** that the COVID-19 Public Health Order (Specified Work Vaccinations) Order 2021 provides the Minister for Workplace Relations and Safety the power to grant an exemption from the Order's vaccination requirements to prevent significant disruption to the essential services of either the New Zealand Police or New Zealand Defence Force.

Noted

- b **Note** that under the Order, the Minister for Workplace Relations and Safety may grant exemptions to individual affected workers if satisfied that:
- a. the exemption is necessary or desirable –
 - i. to promote the purposes of the COVID-19 Public Health Response Act 2020 (*clause 11(4)(a)(i)*); and
 - ii. prevent significant disruption to the essential operations of the New Zealand Police or New Zealand Defence Force (*clauses 11(4)(a)(ii) (A) and (B) respectively*), and
 - b. the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption (*clause 11(4)(b)*).

Noted

- c **Note** that before granting an exemption, the Minister for Workplace Relations and Safety must take into account the extent to which the work is necessary, including whether:
- a. the work could reasonably be delayed to facilitate the vaccination of the affected workers needed to carry out the specified work (*clause 11(5)(a)*); and
 - b. whether the work could reasonably be performed by other persons who have been vaccinated (*clause 11(5)(b)*); and
 - c. the public health risk associated with the specified work (*clause 11(5)(c)*).

Noted

- d **Note** that if the Minister for Workplace Relations and Safety decides to grant an exemption, they may impose any conditions on the exemption considered necessary (*clause 11 (6)*), and must, in writing, inform the persons conducting a business or undertaking and affected worker of the outcome and when the exemption expires (*clauses 11(7) and (8)*).

Noted

- e **Agree** to the proposed assessment process for exemption applications which ensures requests meet the Order's requirements and that the information provided is sufficient to enable you to make an informed decision, but that does not seek to second-guess operational decisions made by Police or the Defence Force about how essential parts of their operations are.

Agreed / Disagree

- f **Agree** that to ensure appropriate organisational accountability for requests, any applications must be submitted to you as the responsible Minister by either the Chief of Defence Force or the Commissioner of Police.

Agreed / Disagree

- g **Note** that once finalised, MBIE will communicate the agreed process to Police and the Defence Force to support any future exemption applications, and work with your office on the process for transmitting these applications to MBIE when received.

Noted



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

15 / 12 / 2021

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

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Background

2. As part of the Government's COVID-19 strategy, Cabinet agreed to mandate vaccination for the following classes of work on public interest grounds [CAB-21-MIN-0495 refers]:
 - a. Work carried out by Police constables, Police recruits and authorised officers employed by Police; and
 - b. Work carried out by NZDF workers.
3. This decision was given effect through the Order, which was signed by you on 13 December 2021 and came into effect on 15 December 2021. It requires affected workers to:
 - a. have received their first dose of the COVID-19 vaccine before the close of 16 January 2022, and
 - b. have received their second dose of the COVID-19 vaccine before the before the close of 28 February 2022.
4. If an affected worker chooses to be vaccinated after the close of 16 January 2022, the affected worker must be treated as vaccinated from the date on which they receive their first dose until the close of 28 February 2022.
5. The Order provides exemption and authorisation provisions substantially similar to the COVID-19 Public Health Response (Vaccinations) Order 2021 (Vaccinations Order). These include that:
 - a. The relevant chief executive of a person conducting a business or undertaking (PCBU) may authorise an affected worker who is not vaccinated to carry out specified work if the work: is unanticipated, necessary, and time-critical and cannot be carried out by an affected worker who is vaccinated; and must be carried out to prevent the ceasing of operations. These decisions will be made by the Chief of Defence Force and the Police Commissioner. This decision-making authority may be delegated under the Defence Act 1990 and Policing Act 2008 respectively.
 - b. The Director-General of Health may authorise an affected worker who is not fully vaccinated to carry out specified work if they have received one dose of a COVID-19 vaccine. This will follow the same process as the Vaccinations Order.
 - c. The Director-General of Health may exempt a worker from vaccination requirements on medical grounds. This will follow the same process as the Vaccinations Order, and for people to obtain vaccine passes more generally.
 - d. The Minister for Workplace Relations and Safety (being you, as the responsible Minister) may grant an exemption to prevent significant disruption to the essential services of either Police or NZDF.
6. This paper sets out the proposed process for the exemptions referred to in paragraph 5d above.

Overview of Ministerial exemption provision

7. Clause 11 of the Order sets out the process for a Ministerial exemption from vaccination requirements (this clause is replicated in Annex 1). You, as the responsible Minister, may grant an exemption to an affected worker if satisfied, on the basis of the evidence or other information provided, that:
 - a. the exemption is necessary or desirable –

- I. to promote the purposes of the Act; and
 - II. prevent significant disruption to the essential operations of the Police or NZDF
 - b. the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.
8. You also must take into account the extent to which the work is necessary, including:
- a. whether the work could reasonably be delayed facilitating the vaccination of the affected workers needed to carry out the specified work, and
 - b. whether the work could reasonably be performed by other persons who have been vaccinated, and
 - c. the public health risk associated with the specified work.
9. If you decide to grant an exemption you may impose any conditions on the exemption you consider necessary. You must, in writing, inform the PCBU (ie Police or NZDF) and affected worker of the outcome of the application and when the exemption expires.
10. Assessing whether any application meets these requirements will require input from MoH (for advice on the public health risk of the work), and potentially from the applying organisation. A proposed approach to support your decision-making is set out in the next section.

Proposed approach to requests for exemptions

11. MBIE will provide advice to you on each request for an exemption made by Police or NZDF. Our process will focus on ensuring the request meets the requirements of the Order, and that the information provided is sufficient to enable you to make an informed decision on the application.
12. A proposed approach is set out in Annex 2. In summary, on receipt of a written application:
- a. MBIE would undertake a review of the application to ensure the request meets the requirements of the Order (and couldn't be more appropriately made through one of the other exemption and authorisation provisions in the Order), and would seek public health advice from MoH
 - b. an assessment briefing would be provided to you, setting out a recommendation, advice on any conditions, and exemption expiry
 - c. you would consider the request, seek any further information if required, and undertake any Ministerial consultation you considered necessary to make a decision
 - d. your decision on the application would be communicated in writing to the applicant (Police or the NZDF) and affected worker.
13. MBIE will not second-guess operational decisions made by Police or the NZDF about how essential parts of their operations are. However, MBIE will provide a view on the reasonableness of the request (eg an exemption request for a large group of workers doing a general type of work could be considered more unreasonable than a specific exemption request for an individual worker doing very specialised work).
14. This approach reflects that both Police and NZDF are:
- a. best placed to understand the potential disruption to essential operations that may result from the absence of individual unvaccinated staff, and

- b. government agencies have appropriate accountability mechanisms for the applications put forward.
- 15. To enhance oversight and accountability for exemption requests, we recommend that you require that the Chief of Defence Force or the Commissioner of Police submit applications. This will ensure robust consideration of potential applications is undertaken within Police and NZDF before requests are submitted.
- 16. To appropriately consider the public health risk associated with any application (and any relevant conditions to mitigate these), MBIE will also co-ordinate advice from MoH.
- 17. The timing for preparing advice, once an application is received, depends on the completeness and complexity of the application, and how long it takes to receive public health advice. There are no statutory timeframes for these applications. For comparison, a similar process run by the Ministry of Transport (MoT) for supply chain exemptions under the Vaccinations Order takes around two weeks per application.
- 18. We also expect that if your office receives any applications while you are on leave, the relevant Duty Minister will make decisions on them. w

Consideration of other exemption processes

- 19. In developing this approach, MBIE considered several other exemption processes being run by other agencies, including by MoT (as noted above), the Civil Aviation Authority, and Maritime New Zealand.
- 20. None of the approaches were directly comparable, with only the MoT supply chain exemption process set up to support Ministerial exemption decision-making.¹ The multi-stage, inter-agency review process implemented by the MoT, reflected the expected nature and volume of applications from the diverse range of private companies from across the supply chain. This is not applicable for this process.

Consultation

- 21. In developing this paper, MBIE consulted with the Police, NZDF, and MoH.
- 22. Specific comment was received from Police regarding the potential processing time for applications. They noted that while they do not expect to have to apply for an exemption, if one was needed they would likely need to be processed urgently (eg if they found close to 17 January that a specialist unit such as the Police dive team was unable to operate due to staff being stood down, they would need an application processed quickly to allow this service to remain available).
- 23. To address the potential for urgent requests, Police and NZDF will be provided with the mobile phone numbers of key contacts in the Workplace Relations and Safety Policy branch over the holiday period.

Next steps

- 24. Once finalised, MBIE will communicate the agreed process to Police and NZDF to support any future exemption applications. This includes informing Police and NZDF about what criteria will need to be satisfied, and therefore what information their applications should include.

¹ Clause 12A of the COVID-19 Public Health Response (Vaccinations) Order 2021.

25. We will also work with your office on arrangements for Duty Minister consideration of any urgent applications received over the holiday period.

Annexes

Annex 1: Ministerial exemption provisions under the COVID-19 Public Health Response (Specified Work Vaccinations) Order 2021

Annex 2: Proposed process for a Ministerial exemption application

Annex 1: Ministerial exemption provisions under the COVID-19 Public Health Response (Specified Work Vaccinations) Order 2021

Clause 11: Power of Minister to grant exemptions

1. *A PCBU may, by notice in writing to the Minister of Workplace Relations and Safety (the Minister), apply for an exemption for an affected worker specified in the application from any other provision of this order.*
2. *The PCBU must, in writing, inform the affected worker person specified in the application of the application.*
3. *If the Minister receives an application, the Minister may ask the PCBU to provide any evidence or other information that the Minister reasonably requires for the purposes of deciding whether to grant the exemption.*
4. *The Minister may exempt the affected worker specified in the application from any provision of this order for a specified period if satisfied, on the basis of the evidence or other information provided, that—*
 - a. *the exemption is necessary or desirable—*
 - (i) *to promote the purpose of the Act; and*
 - (ii) *to prevent significant disruption to—*
 - (A) *the essential operations of the New Zealand Police, in the case of an application to exempt from any provision of this order an affected worker who carries out work that belongs to a class specified in Part 1 of Schedule 2;*
 - (B) *the essential operations of the Defence Force, in the case of an application to exempt from any provision of this order an affected worker who carries out work that belongs to a class specified in Part 2 of Schedule 2; and*
 - (b) *the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.*
5. *Before granting an exemption, the Minister must take into account the extent to which the work is necessary, including—*
 - (a) *whether the work could reasonably be delayed to facilitate the vaccination of the affected workers needed to carry out the specified work; and*
 - (b) *whether the work could reasonably be performed by other persons who have been vaccinated; and*
 - (c) *the public health risk associated with the specified work.*
6. *The Minister may impose conditions on the exemption as the Minister considers necessary.*
7. *The Minister must, in writing, inform the PCBU and the affected worker of the outcome of the application and, if the exemption is granted, when the exemption expires.*
8. *If an exemption is granted under this clause, the PCBU must provide the affected worker with written notice of the exemption that states when the exemption expires.*

Annex 2: Proposed process for a Ministerial exemption application

