



## BRIEFING

### Signing of the COVID-19 Public Health Response (Specified Work Vaccinations) Order 2021

<b>Date:</b>	10 December 2021	<b>Priority:</b>	High
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2122-2119

Action sought		
	Action sought	Deadline
Hon Michael Wood <b>Minister for Workplace Relations and Safety</b>	<b>Sign</b> the COVID-19 Public Health Response (Specified Work Vaccinations) Order 2021.	13 December 2021

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

The following departments/agencies have been consulted
Crown Law, Ministry of Health, New Zealand Defence Force, New Zealand Police

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 Withdrawn           |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

## Signing of the COVID-19 Public Health Response (Specified Work Vaccinations) Order 2021

<b>Date:</b>	10 December 2021	<b>Priority:</b>	High
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2122-2119

### Purpose

To recommend that you sign the attached COVID-19 Public Health Response (Specified Work Vaccinations) Order 2021 by Monday, 13 December 2021.

### Executive summary

As part of the Government's COVID-19 strategy, Cabinet has agreed to mandate vaccination for work carried out by the following category of workers on public interest ground [CAB-21-MIN-0495 refers]:

- New Zealand Police constables, Police recruits and authorised officers employed by Police, and
- All New Zealand Defence Force (NZDF) workers.

PCO have drafted the COVID-19 Public Health Response (Specified Work Vaccinations) Order 2021 (SWVO) to give effect to this decision. The SWVO will be made under provisions recently added to the COVID-19 Public Health Response Act 2020 (the COVID Act), and will require affected workers to:

- Have had at least one dose to do work between 17 January and 28 February 2022 (dates inclusive), and
- Be fully vaccinated for work done from 1 March 2022.

The main duties (to not do work without vaccination, and to not allow work to be done without vaccination) are now in the COVID Act. The COVID Act also requires affected PCBUs to keep records of workers' vaccination status, with this requirement detailed in the SWVO.

The SWVO also sets out a number of exemption and authorisation provisions, which are similar to those in the current COVID-19 Public Health Response (Vaccinations) Order 2021.

Before signing the SWVO:

- You must be satisfied that the Order does not limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990 (BORA). **Legal professional privilege**
- You must be satisfied that the Order is in the public interest and that the Order is appropriate to achieve the purpose of the COVID Act.
- You must consult the Prime Minister, the Minister for COVID-19 Response, the Minister of Justice, and the Minister of Health. You may also consult with any other ministers as you see fit; MBIE recommends you consult the Minister of Police and Minister of Defence.

**Recommended action**

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

a **Note** that Cabinet has agreed to mandate vaccination for certain work by the New Zealand Police and all work by the New Zealand Defence Force.

*Noted*

b **Note** PCO has drafted the COVID-19 Public Health Response (Specified Work Vaccinations) Order at Annex 1 to give effect to this decision.

*Noted*

c **Note** the following requirements which must be met before you sign the Order:

i. You must be satisfied that the Order does not limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990 (BORA).

ii. You must be satisfied that the Order is in the public interest and that the Order is appropriate to achieve the purpose of the COVID-19 Public Health Response Act 2020.

iii. You must consult the Prime Minister, the Minister for COVID-19 Response, the Minister of Justice, and the Minister of Health. You may also consult with any other ministers as you see fit.

Legal professional privilege

e **Agree** to consult the Prime Minister, the Minister for COVID-19 Response, the Minister of Justice, Minister of Health, Minister for Police, and Minister for Defence on the draft Order at Annex 1.

*Agree / Disagree*

f Following consultation, **agree** to sign the attached COVID-19 Public Health Response (Specified Work Vaccinations) Order by 13 December 2021, which will then commence at 11.59 pm on 15 December 2021.

*Agree / Disagree*

g **Note** if you sign the Order later than 13 December 2021, its commencement clause will need to be amended to reflect the 48-hour notice requirement for Orders under the COVID-19 Public Health Response Act 2020.

*Noted*

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

10 / 12 / 2021

Hon Michael Wood  
Minister for Workplace Relations and  
Safety  
..... / ..... / .....

## Background

---

1. The Government has shifted its COVID-19 strategy from elimination to a minimisation and protection approach. To support this shift in strategy and to strengthen the approach to Government vaccination and testing mandates, Cabinet agreed on 26 October 2021 to make a number of amendments to the COVID-19 Public Health Response Act 2020 (the COVID Act). This included an amendment to allow future vaccination or testing mandates for work on public interest grounds [CAB-21-MIN-0436 refers].
2. Subsequently, the COVID Act was amended to give the Minister for Workplace Relations and Safety the power to make an Order requiring vaccination or testing for work under the COVID Act, where it is in the public interest to do so, and is appropriate to achieve the purpose of the Act.
3. Under this new power, Cabinet further agreed on 22 November 2021 to mandate vaccination for work carried out by the following category of workers on public interest grounds [CAB-21-MIN-0495 refers]:
  - a. New Zealand Police constables, Police recruits and authorised officers, and
  - b. All New Zealand Defence Force workers (Armed Forces and civilian staff).

## COVID-19 Public Health Response (Specified Work Vaccinations) Order

---

4. The COVID-19 Public Health Response (Specified Work Vaccinations) Order (Annex 1; the “SWVO”) has been drafted to give effect to Cabinet’s decisions on 22 November 2021. MBIE has consulted the Ministry of Health, New Zealand Police and New Zealand Defence Force during drafting to ensure the SWVO is accurate and workable.

### Key differences between this and the existing Vaccinations Order

5. The draft SWVO has been modelled on the current COVID-19 Public Health Response (Vaccinations) Order 2021 (the “Vaccinations Order”). However, there are some key differences, which are explained below.
6. First, the SWVO is being made on public interest grounds, as well as for public health reasons, in line with the new provisions of the COVID Act. This is reflected in the SWVO’s purpose, which differs to the Vaccinations Order’s purpose.
7. Second, the duties on PCBUs and affected workers are not detailed in the SWVO (eg for PCBUs to not allow work to be done by unvaccinated workers, and for workers to not do work without being vaccinated). This is because these duties are now set out in the COVID Act. These duties include that:
  - a. PCBUs must prevent an affected worker from carrying out specified work unless vaccinated,
  - b. Affected workers must not carry out specified work unless vaccinated, exempt, or authorised to do so,
  - c. PCBUs must keep records about workers’ vaccination status,
  - d. PBCUs can request vaccination status information from workers, and treat workers who do not provide this information as unvaccinated, and
  - e. Affected workers must provide updated information about their vaccination status to their PCBU.

8. Third, the SWVO contains different record-keeping requirements than the Vaccinations Order, which reflect the changing landscape in relation to vaccinations, including the introduction of vaccine passes. This also reflects feedback from both Police and the NZDF about the administrative difficulty of keeping very detailed vaccination records for their workers.
9. It is thus proposed that PCBUs must record that they have verified workers' vaccine passes, rather than recording the name and date of every COVID-19 vaccine administered to affected workers. Where workers have only received one dose (which is enough to continue working until 28 February 2022), PCBUs would have to continue record the date on which that dose was received and what type of vaccine it was. However, for fully-vaccinated workers, PCBUs just need to record that they have verified that worker has a valid vaccine pass. We have consulted the Ministry of Health on this approach, and they are supportive.
10. Finally, the SWVO makes it clear that the SWVO does not apply to any NZDF personnel or Police constabulary, recruits and authorised officers who are covered by the Vaccinations Order's provisions on work done at the border and in MIQ facilities. For other workers who are covered by both Orders, the SWVO will take precedence (ie Police constabulary, recruits and authorised officers tangentially captured by the Vaccinations Order's requirements for the health and disability sector and education services).
11. Other minor differences include significantly fewer definitions, as many in the Vaccinations Order are either not relevant to the proposed SWVO or are now incorporated in the COVID Act. There is also no need for a schedule outlining all the allowable vaccinations, as the COVID Act now allows this to be specified in an Order made under the COVID Act, which is currently the Vaccinations Order. This replaces the previous approach of defining "vaccinated" in each different Order that used that term.

## **Exemptions and authorisations**

12. The exemption and authorisation provisions of the SWVO are substantially similar to the Vaccinations Order. They include that:
  - a. The relevant chief executive (ie Chief of Defence Force or Commissioner of Police) may authorise a worker who is not vaccinated to carry out specified work if the work is unanticipated, necessary, 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. The Chief of Defence Force and Police Commissioner may delegate this decision-making authority under the Defence Act 1990 and Policing Act 2008 respectively.
  - b. The Director-General of Health may authorise a 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 also 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 (being you, as the responsible Minister) may grant an exemption to prevent significant disruption to the essential services of either the New Zealand Police or New Zealand Defence Force.

## **Transitional provisions**

13. The SWVO will commence at 11.59 pm on 15 December 2021. Any workers covered by the SWVO who are not already vaccinated will be considered vaccinated if they have their first dose by the close of 16 January 2022 (ie to allow them to continue work from 17 January 2022), and must have had their second dose by the close of 28 February 2022 (ie to continue work from 1 March 2022 onward).


14. The SWVO also allows for workers who miss the first deadline of 16 January 2022 to be treated as vaccinated until 28 February 2022 from the date they receive their first dose.

## **Legal requirements for making an Order**

---

15. Before making an Order under section 11AB of the COVID Act, the following requirements must be met:
  - a. You must be satisfied that the Order does not limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990 (BORA), per section 11AA(1)(a).
  - b. You must be satisfied that the Order is in the public interest and that the Order is appropriate to achieve the purpose of the Act, per section 11AA(1)(c)(ii).
  - c. You must have consulted the Prime Minister, the Minister for COVID-19 Response, the Minister of Justice and the Minister of Health, per section 11AA(1)(b)(i).
16. Before making an Order under section 11AB of the COVID Act, you may also:
  - a. Consult any other Minister as you see fit, per section 11AA(1)(b)(ii), and
  - b. Consult the Director-General of Health, per section 11AA(1)(c)(i).
17. Some of the above matters are covered in your paper to Cabinet on 22 November 2021 seeking approval to mandate vaccination for the workforces concerned. For completion, we have reproduced some of that material below.

Legal professional privilege



**Establishing that the Order is in the public interest and appropriate to achieve the purpose of the COVID Act**

27. When making Orders under the COVID Act, you must be satisfied that the Order is in the public interest and is appropriate to achieve the purpose of this Act. As per section 11AA(2) of the COVID Act, public interest includes, but is not limited to:
- a. Ensuring continuity of services that are essential for public safety, national defence, or crisis response,
  - b. Supporting the continued provision of lifeline utilities or other essential services,
  - c. Maintaining trust in public services, and
  - d. Maintaining access to overseas markets.
28. There is clear public interest in ensuring continuity of the services provided by Police and the NZDF for our overall COVID-19 response, and which are also essential for public safety, defence and crisis response. The consequences and potential adverse effects of COVID-19 infection and transmission among the Police and NZDF are more severe than for other types of work, even if the likelihood of infection and transmission may be similar to other workplaces for which a mandate does not apply.
29. Both Police and the NZDF play a critical role in our COVID-19 response. Preventing outbreaks among their workforces, and mitigating against the adverse effects of COVID-19

transmission, is therefore appropriate to achieve the purpose of the COVID Act, which is to support our public health response to COVID-19.

### *Police*

30. Police have a key role in maintaining public safety and enforcing laws. They are part of our national security architecture and play a role in our emergency management and crisis responses. Additionally, their crime prevention and community support roles frequently involve working with communities and being in contact with vulnerable members of the public.
31. A fully-functioning Police service ensures our communities are safe and feel safe, particularly when interacting with Police (eg as they enforce rules of the Alert Level and Protection Frameworks). It also contributes to public trust and confidence in Police's commitment to maintaining law and order and playing a key role in our COVID-19 response.
32. The SWVO will cover:
  - a. All constabulary, which comes to just over 10,000 police staff. While constables are generally in frontline roles, this will include those who may not currently be, as all constabulary are eligible for immediate deployment to the frontline. Generally, there is not time to vaccinate officers ahead of redeployment to other areas of work. For example, when the 2019 mosque incident occurred, 2,500 Police staff from around New Zealand were deployed to Christchurch within 24 hours.
  - b. Police recruits training at the Royal New Zealand Police College, approximately 240 FTE. This will address the risk that recruits are unable to be immediately deployed following graduation due to vaccination status. It also acknowledges that recruits can be deployed for initial contact and interviews of possible witnesses in major investigations and foot patrols as part of preventative work.
  - c. All authorised officers employed by Police, approximately 340 FTE. These staff have limited constabulary powers relevant to their duties and are employed in a range of similar roles, including in custody suites, and serious and organised crime teams. Significantly higher rates of sick leave by unvaccinated authorised officers due to COVID-19 would directly impact Police's ability to maintain policing services and public safety, as constabulary staff would need to be redeployed to offset authorised officer absences, or police investigations would be delayed or abandoned.
33. Police support public safety in many forms. On an average day, Police stop 2,136 vehicles, open 370 family harm investigations, conduct 66 firearm assessments, attend 168 traffic crashes, conduct 4,426 breath tests and resolve 515 charges by prosecution. While this is predominantly carried out by constabulary staff, non-constabulary police employees also deliver some of these public facing services.
34. Police are also a key enforcement agency in our COVID-19 response. Police respond to reports of breaches of COVID-19 restrictions, which can involve close contact with people who have COVID-19. Police also patrol regional boundaries and carry out prevention activities. Police have a key role in educating the public about the rules of the COVID-19 Protection Framework when they receive complaints of non-compliance, and enforcing those rules when breaches threaten public health and safety.
35. Frontline policing is a potential vector of COVID-19 transmission into vulnerable communities and people's homes, where the affected individuals may have no choice about their contact with Police staff. The reverse is also true, with frontline Police at risk of contracting COVID-19 in the course of their work due the levels of interaction they have with the public.
36. Unvaccinated individuals are more likely to contract and transmit COVID-19 and become more seriously ill, or require longer time in isolation if exposed. This means that unvaccinated



Police staff are likely to have higher levels of sick leave. Significantly higher rates of sick leave across Police due to COVID-19 would directly impact Police's ability to maintain policing services and public safety.

37. If a specialist unit or entire workforce at a regional police station was exposed or infected with COVID-19, Police would look to redeploy staff from other service groups and regions. Where redeployment is possible, such as to a regional Police station, this would affect overall service delivery in all impacted areas.
38. In some instances, such as asset recovery units and the National High Tech Crime Group, the technical skills and security clearances required mean staff cannot be redeployed to cover constabulary and authorised officer absences and investigations would be delayed or abandoned. If situations such as these occur, they could result in reduced trust and confidence in Police.
39. Existing controls such as the use of PPE will not reduce the risk of transmission sufficiently. Vaccination is therefore a critical tool to minimise the risk that the constabulary, recruits and authorised officers contract COVID-19 and become severely ill and are absent from work for extended periods.
40. In addition, mandating vaccination for all Police constabulary, Police recruits and authorised officers will provide the community with greater confidence that it is safe to interact with and call on Police for assistance when needed.

#### *New Zealand Defence Force*

41. Pursuant to section 5 of the Defence Act 1990, the NZDF performs a unique and critical function for New Zealand, namely defending New Zealand, and protecting her interests both in New Zealand and overseas.
42. The NZDF plays a key role in our overall public health response to COVID-19. The NZDF assists Police at regional boundaries and supports MBIE to resource MIQ facilities. The NZDF is also tasked with providing any public service and aid to the civil power in times of emergency. Recent examples of the functions the NZDF provide include providing assistance to Papua New Guinea with its COVID-19 response and supporting the evacuation of Afghan civilians from Kabul.
43. All of these functions require mitigation of the risk of COVID-19 to the extent possible. The NZDF's work requires overseas travel and interaction with people at higher risk of transmitting COVID-19. In recognition of the health and safety risks involved in the work the NZDF may be called on to do, the Chief of Defence Force has established that the baseline vaccination requirements for the Armed Forces includes COVID-19 vaccination.
44. There is also a real risk to the NZDF's capacity and capability to respond to specific events if part of the workforce is incapacitated by a COVID-19 outbreak or isolation requirements. Recently, a number of Navy divers contracted COVID-19 (despite being fully vaccinated) during a training exercise offshore. Given the medical impact of the virus, they are currently stood down from diving for six months.
45. Although the NZDF still has the ability to perform diving operations with careful management of its resources, further spread of the virus amongst operational units such as divers could seriously impact on the ability of the NZDF to undertake search and rescue operations. Similarly, the introduction of COVID-19 to the limited number of flight crews could impact the NZDF's ability to do search and rescue missions, or to respond to a humanitarian aid mission.
46. Given the nature of the NZDF bases, where a large number of workers (both armed forces and civilians) live and work in a confined area, transmission or close contact amongst a large number of people may be more likely than in other workplaces or household settings. The

NZDF also relies on a substantial number of contractors to deliver services on base, such as catering and cleaning.

47. Mandating vaccination for the Armed Forces recognises the need for the NZDF to be able to undertake its core functions (such as supporting local communities through activities such as search and rescue assistance, building bridges, providing medical/dental services and training and education programmes for vulnerable youth), as well as being ready to respond to a significant local or national emergency.

### **Consultation required before making Orders**

48. When making the SWVO, you are required to consult the Prime Minister, the Minister for COVID-19 Response, the Minister of Justice, and the Minister of Health.
49. You may also consult any other Ministers you think fit. MBIE recommends that you consult the Minister for Police and Minister for Defence, as the relevant ministers for the affected workforces.
50. We have consulted the Ministry of Health when preparing the SWVO, and on this briefing. You will also be consulting the Minister of Health on the SWVO. Given that, we do not consider specific consultation with the Director-General is required on the SWVO.

### **Next steps**

---

51. On receiving this briefing, MBIE recommends you commence ministerial consultation on the draft SWVO. PCO will provide a consultation version of the SWVO to your office directly.
52. Subject to ministerial consultation and your satisfaction that all other statutory requirements are met, MBIE recommends you sign the SWVO on Monday, 13 December 2021. PCO will provide your office with a signature copy of the SWVO for this purpose. Signing the SWVO on Monday will allow it to be gazetted that same evening. This will satisfy the requirement for 48 hours' notice before it commences at 11.59 pm on Wednesday, 15 December 2021.
53. MBIE will communicate your signature of the SWVO to Police and the NZDF.
54. MBIE is also working to establish a process by which you can consider ministerial exemptions for significant disruptions to the essential disruptions of the operations of NZ Police and the NZDF, though very few applications are expected to be made.

### **Annexes**

---

Annex 1: COVID-19 Public Health Response (Specified Work Vaccinations) Order 2021

**Annex 1: COVID-19 Public Health Response (Specified Work Vaccinations) Order 2021**

---