



BRIEFING

Request for exemptions from the COVID-19 Public Health Response (Vaccinations) Order 2021

Date:	23 September	Priority:	Urgent
Security classification:	In Confidence	Tracking number:	2122-1112

Action sought		
	Action sought	Deadline
Hon Chris Hipkins Minister for COVID-19 Response	Agree to grant exemptions to work to two critical MIQ workers who are fully vaccinated with vaccines currently not accepted under the Order, using your exemption power under the Vaccinations Order	24 September 2021

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Rose King	Head of Managed Isolation and Quarantine	Privacy of natural persons	✓
Privacy of natural persons	Director Legal Services		

The following departments/agencies have been consulted

Minister's office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn



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Purpose

To seek your agreement to grant exemptions from the COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order) to allow two critical MIQ workers to work despite being vaccinated with vaccines currently not accepted under the Order.

Recommended action

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

- a **Note** that the Order requires workers in managed isolation facilities to be fully vaccinated with the Pfizer/BioNTech COVID-19 vaccine.

Noted
- b **Note** that due to skill shortages in New Zealand, two hotels operating as managed isolation facilities have recruited senior staff members from overseas. While these staff members are fully vaccinated (one having received two injections of the Astra Zeneca vaccine and the other having received one dose of the Pfizer/BioNTech vaccine and one dose of the Moderna vaccine) they do not meet the requirements of the Order.

Noted
- c **Note** that the Ministry of Health has briefed you with a proposal to make amendments to the Order to recognise vaccines other than Pfizer/BioNTech that offer an appropriate level of protection. We anticipate that these changes to the Order will be completed late October 2021[HR20212018 refers]. ✓

Noted
- d **Note** that the amendments that are currently underway would accept these two workers as being fully vaccinated.

Noted
- e **Note** that these workers need to commence their roles immediately to ensure the effective functioning of the hotels by which they are employed.

Noted
- f **Note** that under the Order you are able to grant an exemption to the Order if you are satisfied (a) that the exemption is necessary or desirable (i) to promote the purposes of the Act and (ii) to prevent significant disruption to essential supply chains: and (b) that the order is not broader than is reasonably necessary to address the matters that gave rise to the exemption.

Noted
- g **Note** that an exemption is desirable to promote the purposes of the Act because it will ensure proper staffing in two facilities which will otherwise be inadequately staffed. This could give rise to significant disruption to supply chains because it could adversely impact on the flow of essential workers and others involved in essential supply chains from coming across the border.

Noted

h **Note** the workers meet the requirements of the Order in that the exemption is not broader than necessary, and there is limited public health risk. While this particular issue was not contemplated when the exemption was put in place, legal advice suggests that, while not beyond doubt, there is a reasonable argument that your power to grant exemptions could cover this particular situation.

Noted

i **Agree** to grant an exemption for:

a. Privacy of natural persons (Confidentiality)

Yes/No

b. Privacy of natural persons (Confidentiality)

Yes/No

j **Agree** that this briefing is proactively released with appropriate withholdings under the Official Information Act 1982

Yes/No



Brigadier Rose King
Head of MIQ Operations

24/09 /2021



Hon Chris Hipkins
Minister for COVID-19 Response

26 / 09 / 2021

Background

1. Since 30 April 2021, the COVID-19 Public Health Response (Vaccinations) Order 2021 (the Order) has required people working in managed isolation and quarantine (MIQ) facilities to be fully vaccinated with the Pfizer/BioNTech COVID-19 vaccine. To allow for operational flexibility, the Order contains several exemption mechanisms, and a transitional provision which allows workers who have had one Pfizer/BioNTech COVID-19 vaccine to work for 35 days.
2. The limitations of only accepting the Pfizer/BioNTech COVID-19 vaccine are known, and the Ministry of Health has briefed you on widening these settings to accept specified other vaccines where there is evidence that they provide the level of protection for workers in MIQ or at the Border [HR20212018 refers]. The Ministry of Health's briefing proposes that amendments to the Order be in force by 31 October 2021.

MIQ has hired two critical staff who are urgently required to fill senior roles in MIQ facilities but are not able to work because of these restrictions

3. Due to skill shortages in New Zealand, two MIQ facilities have had to recruit senior staff members from overseas. The two staff members concerned are fully vaccinated in accordance with the overseas requirements but do not meet the current strict definition of vaccination in the Order:
 - a. The [Confidentiality] has recruited [Privacy of natural persons] as an executive manager (second in charge of the hotel), after unsuccessfully trying to recruit within New Zealand. Due to the size of [Confidentiality], (over 350 rooms) a senior layer of management is required for it to function safely and efficiently. Without filling this role the hotel is forced to operate without a senior manager on site for three days a week. [Privacy of natural persons] was granted an emergency allocation to MIQ under the time critical criterion due to his critical work status. [Privacy of natural persons] has been vaccinated with two injections of the Astra Zeneca vaccine.
 - b. The [Confidentiality] has recruited [Privacy of natural persons] from overseas to be the front of house manager. This is a skilled and specialised senior management role and the inability for [Privacy of natural persons] to take up this role will have a significant impact on operations within the [Confidentiality] [Privacy of natural persons] has had one vaccine with Pfizer/BioNTech COVID-19 and a second vaccine with Moderna. [Privacy of natural persons] is able to work for a transitional period of 35 days (until mid-October), but cannot work beyond that period.
4. MIQ does not consider waiting on the October Amendment Order a safe option for the running of these managed isolation facilities, due to the critical role each of these workers in the operations of the respective facilities.

You have the power to exempt workers where the exemption would prevent significant disruption to supply chains

5. The Order contains three exemption powers:
 - a. Clause 7A provides an exemption where an affected persons getting a vaccine has been deemed inappropriate by a qualified health practitioner, but this only applies to workers who handle affected items.
 - b. Clause 9 provides that the Chief Executive of MBIE (or equivalent for non-MIQ roles) may authorise a 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; and must be carried out to prevent the ceasing of operations. Because these senior management roles are standing positions, they cannot reasonable be considered unanticipated.

- c. Clause 12A of the Order enables you to grant exemptions where it will prevent significant disruption to essential supply chains.
6. Only the third of these may be applicable in this case, as is discussed below.
7. An alternative option is to amend the Order to create an exemption power if you are satisfied that a person subject to the vaccination order had been fully vaccinated with a vaccination offered overseas. In order to grant the exemption, you would have to be satisfied that the vaccination offers an appropriate level of protection. This would effectively pre-empt the proposed amended order, and would have limited utility once that amendment was in place. This is resource-intensive process, particularly given the existing pressuring on the resources of the Ministry of Health. We do not recommend this option.
8. If you are not comfortable with either option, Privacy of natural persons will have to wait under the Order is amended in late October. Privacy of natural persons can work for 35 days, but will then be disrupted until the amendment occurs. This is not recommended.

We recommend that you use your authority to grant exemptions under 12A for these two workers

The exemption sets a number of requirements

9. In order to grant the exemption, you must be satisfied that that:
 - a. the exemption is necessary or desirable—
 - i. to promote the purposes of the Act; and
 - ii. to prevent significant disruption to essential supply chains; and
 - b. the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.
10. Before granting an exemption, you must take into account—
 - a. the potential for significant supply chain disruption if the work carried out by a particular person does not occur, including the extent of the risk to the public interest if the work does not occur; and
 - b. the extent to which the work is necessary, including whether it could reasonably be—
 - i. delayed to facilitate the vaccination of the persons needed to carry out work; or
 - ii. performed by other persons who have been vaccinated; and
 - iii. the public health risk associated with the work.

Determining the exemption is necessary or desirable

11. Both workers are critical to the operations of the respective MIQ facilities in order to prevent significant disruption to essential supply chains.
12. It needs to be acknowledged at the outset, that this particular issue was not contemplated when the exemption was put in place. However, legal advice suggests that, while not beyond

doubt, there is a reasonable argument that your power to grant exemptions could cover this particular situation.

13. Time limitations can be placed on the exemptions to expire once the Order is amended to make sure that the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.

Legal advice on the use of this exemption [legally privileged]

14.

Legal professional privilege

15.

Other factors to take into account

16. It must be considered if there is the potential for significant supply chain disruption if the work carried out by a particular person does not occur, including the extent of the risk to the public interest if the work does not occur.
17. Both workers are senior management staff, who are vital to the safe operations of the managed isolation facility. Without each of these workers, there is heightened risk in the operational running of the managed isolation facility, which raises risk to public health.
18. The hotels have attempted to recruit in New Zealand, and have been unable to do so. There have been no candidates for the role that are suitable and have the vaccination required.

Public health advice is that there is no public health risk with allowing these employees to work

19. We have consulted with the Ministry of Health to ascertain whether there would be any risks with these two employees working in MIQ facilities given their vaccination status.
20. The Ministry of Health advises that the amendments that are currently underway would accept these two workers as being fully vaccinated, provided Ministers agree to the changes to the Order in October. From a public health perspective and having regard to the advice on vaccinations from the Technical Advisory group, the vaccination history of these workers can reasonably be considered to provide a suitable level of protection for work at the border. In the interim before an amendment could occur, the Ministry of Health is comfortable for these workers to undertake work in the required MIQ facilities.

Next steps

21. Subject to your indication, grant the exemptions for the two workers and they will be able to begin their roles at the respective hotels. Otherwise, begin work to amend the Order to create an exemption power.