



BRIEFING

Legislation to support COVID-19 vaccination

Date:	12 October 2021	Priority:	Urgent
Security classification:	In Confidence	Tracking number:	2122-1302

Action sought

	Action sought	Deadline
Rt Hon Jacinda Ardern Prime Minister	Decide what work-related vaccination law changes you would like to discuss at Cabinet on 18 or 26 October 2021: <ul style="list-style-type: none">A framework or principles to guide decisions about what work requires vaccination.Allowing employers to require vaccination for reasons other than public health (eg overseas market access).Changing employment outcomes when unvaccinated employees are in roles that require vaccination.	13 October 2021
Hon Chris Hipkins Minister for COVID-19 Response		
Hon Andrew Little Minister of Health		
Hon David Parker Attorney-General		
Hon Michael Wood Minister for Workplace Relations and Safety		

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

Crown Law Office, Department of the Prime Minister and Cabinet, Department of Internal Affairs (Government Chief Privacy Officer), Ministry of Health, Ministry of Justice, Office of the Privacy Commissioner, Parliamentary Counsel Office, Public Service Commission, WorkSafe

Minister's office to complete:

☐ Approved

☐ Declined

☐ Noted

☐ Needs change

☐ Seen

☐ Overtaken by Events

☐ See Minister's Notes

☐ Withdrawn

Comments



BRIEFING

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Purpose

To seek your decisions on a framework to support and strengthen COVID-19 vaccination requirements for work purposes, and required legislative changes if greater certainty is required.

Your decisions will guide urgent drafting of a Cabinet paper and preparation for any legislative process.

Executive summary

Employers and workers are facing significant uncertainty in relation to several COVID-19 vaccination issues, such as when vaccination can be required for certain work, and what the employment consequences are for unvaccinated employees. Providing greater certainty about these issues requires legislative change, and will traverse human rights (eg the right to refuse medical treatment, discrimination, and potentially privacy) and te Tiriti o Waitangi/Treaty of Waitangi issues.

Suggested changes

We recommend Ministers create a public health risk-based framework to segment all work in New Zealand into one of (at least) three categories:

- Very high risk work, which requires vaccination and regular testing by law.
- High risk work, which requires vaccination by law.
- All other work, where employers/PCBUs have discretion to decide whether vaccination, testing or other control measures are required.

For the discretionary category, we recommend setting a principle-based risk assessment process in law that all employers/PCBUs must follow. To ensure greater certainty and assurance for employers/PCBUs, we suggest providing a degree of protection from legal challenge for reasonable choices made about necessary controls (which could include requiring vaccination for certain work) if the prescribed process is followed. This means that employers/PCBUs would have certainty about the validity of their decisions, as long as they have followed the prescribed process and reached justifiable conclusions.

Any protection from legal challenge will raise constitutional and human rights considerations, and it will be important to ensure any curtailment of rights is justified.

It is also possible to legislate to:

- Allow employers to require vaccination for other reasons not related to public health, such as overseas market access or to preserve essential services, and
- Determine employment outcomes when unvaccinated employees are doing work that requires vaccination (eg setting out a redundancy/termination process that employers must follow if other options like redeployment are not viable).

Legislative vehicle and timing

Subject to Cabinet decisions, we consider these changes could be made through a Bill amending the COVID-19 Public Health Response Act 2020. This Bill could also provide a vehicle for other policy changes being considered, such as regulating the use of COVID-19 vaccination certificates and providing paid time off for vaccination.

Depending on what changes you want to take to Cabinet, and the timing of Cabinet decisions on any other vaccination-related matters that can be included in the same Bill, we can provide an indication of likely timeframes for drafting and the legislative process.

Recommended action

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

- a **Note** legislation is required to provide certainty to workers, employers and PCBUs about a range of work-related COVID-19 vaccination issues.

Noted

- b **Agree** that based on your decisions on this briefing, officials will prepare a paper for Cabinet on seeking approval to commence drafting legislation, for discussion on:

EITHER:

- i. 18 October 2021.

Agree / Disagree

OR (recommended):

- ii. 26 October 2021, which would allow additional time for consultation and policy design.

Agree / Disagree

Setting or determining vaccination and testing requirements for different types of work

- c **Agree** to:

EITHER (recommended):

- i. Introduce a legislative framework that:

- Sets vaccination and testing requirements for very high risk and high risk work, defines such work, and contains associated exemptions and exceptions for each risk level, and
- For all other work, sets a principle-based risk assessment process in law.

Agree / Disagree

OR:

- ii. Only set a principle-based risk assessment process in law for employers/PCBUs to use when deciding vaccination and/or testing requirements for their workforce.

Agree / Disagree

- d **Agree** that use of the prescribed risk assessment process as part of either recommendation c(i) or (ii) should provide employers/PCBUs with protection from legal challenge for reasonable decisions they make about necessary controls (eg vaccination, testing or other measures).

Agree / Disagree

Allowing employers to require vaccination for certain reasons

e **Agree** to allow employers to require workers be vaccinated to do certain work if:

i. This is an actual condition of overseas market access.

Agree / Disagree

ii. The work relates to essential services, to be defined based on the Employment Relations Act 2000 list of essential services rather than the Alert Level framework list of essential services.

Agree / Disagree

Prescribing employment outcomes for unvaccinated employees

f **Note** it is possible to prescribe a process in law for employees and employers to follow when unvaccinated employees are doing work that requires vaccination, ranging from consultation and redeployment obligations to specifying how employment relationships can be ended if there are no viable alternatives.

Noted

g **Direct** officials to provide further advice or options in the Cabinet paper (subject to your decision on recommendation b) to set a process in law for employees and employers to follow if unvaccinated employees are doing work that requires vaccination.

Agree / Disagree

Disclosure of workers' vaccination status

h **Note** officials do not consider legislative change is needed to support disclosure of workers' vaccination status, if you agree to recommendation c(i).

Noted

i **Agree:**

EITHER (recommended):

i. No further work is required on this.

Agree / Disagree

OR:

ii. To direct officials to do further work on legislative change to support disclosure of workers' vaccination status

Agree / Disagree

Process

j **Note** officials will consult the CTU, BusinessNZ and WorkSafe's COVID-19 Workplace Ginger Group while preparing a Cabinet paper to reflect your decisions on this briefing.

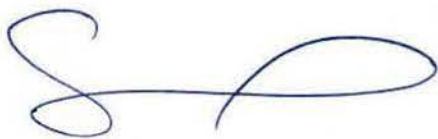
Noted

k **Note** there is other vaccination-related policy work underway which may also require primary legislation, and which could be included in the same Bill as the changes described in recommendations c through g above, subject to timing.

Noted

- I **Note** officials will work with the office of the Minister for COVID-19 Response to identify which other vaccination-related proposals should be addressed as part of the same Bill.

Noted

pp 

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

12/10/2021
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Rt Hon Jacinda Ardern
Prime Minister

..... / /

Hon Chris Hipkins
Minister for COVID-19 Response

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Hon Andrew Little
Minister of Health

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Hon David Parker
Attorney-General

..... / /

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

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Background

1. On 7 October 2021, the Minister for COVID-19 Response, Minister of Health, Attorney-General and Minister for Workplace Relations and Safety met to discuss COVID-19 vaccination issues relating to work.
2. At that meeting, Ministers discussed the need to give greater certainty about COVID-19 vaccination in the work context. Uptake thus far of COVID-19 vaccination, combined with current Delta variant transmission levels, is prompting a large volume of queries about issues such as when employers can require vaccination for certain work, when workers' vaccination status can be disclosed, and the consequences for unvaccinated employees in roles that require vaccination.
3. It is not possible to provide definitive answers to all of these questions without legislative change. Given vaccination will be one of the cornerstones of our response to COVID-19 in the short to medium-term, we consider law change is urgently needed to give certainty to workers, employers and businesses. In the absence of this certainty, employers and businesses will continue to take conservative approaches to manage risk, and industrial disputes and disruption are likely as parties test the limits of current law.

Purpose of this briefing

4. This briefing seeks your decisions on three proposals relating to COVID-19 vaccination that will require primary legislation, which can be achieved by amending the COVID-19 Public Health Response Act 2020 (COVID-19 Act). Using the COVID-19 Act will ensure a continued, unifying focus on public health risks, and would limit measures in time and scope to the COVID-19 response. If you agree to proceed with any of these, we recommend drafting and the legislative process proceed with urgency, given current vaccination and transmission rates.
5. In addition, there are several other vaccination issues on which decisions are pending, and which will likely require a legislative vehicle. These include the use of COVID-19 vaccination certificates (CVCs) domestically and paid time off for vaccination. These changes could also be included in an urgent Bill making vaccination-related amendments to the COVID-19 Act.
6. The advice in this briefing is informed by our recent engagement with business and worker representatives, including via WorkSafe's COVID-19 Workplace Ginger Group (which includes the CTU and BusinessNZ).

Setting or determining work vaccination and testing requirements

7. Vaccination and surveillance testing are currently required for work at the border and in MIQ facilities. Cabinet has agreed to extend vaccination requirements to the healthcare and education sectors. Cabinet will soon also consider requiring vaccination for work at high-risk events and venues as part of decisions on CVCs. These requirements can be imposed through COVID-19 Orders. Other than this, employers and PCBUs need to rely on health and safety risk assessments for each role to decide whether vaccination is required.
8. When employers/PCBUs rely on health and safety risk assessments to require vaccination for certain work, this carries some risk of challenge. In addition, when vaccinated workers say they do not want to work with unvaccinated colleagues, this further complicates employers'/PCBUs' decisions about whether to require vaccination for work within their business.

9. It is possible to legislate to standardise the approach taken to vaccination and/or testing requirements for work. In a broad sense there are two ways of doing this, each of which is described below. Annex 1 also contains more information about approaches taken in other jurisdictions.

Option 1: specifying types of high and low risk work in law

10. Given overlapping developments about vaccination requirements for various workforces, we consider there is value in creating an enabling framework in law to set vaccination and/or testing requirements for different workforces based on risk levels.
11. For illustrative purposes only, this framework could look like the below:

	<i>Requirement</i>	<i>Work covered</i>	<i>Exemptions</i>	<i>Exceptions</i>
<i>Very high risk work</i>	Vaccination and regular testing required by law.	Work at the border and in MIQ facilities.	<u>Vaccination</u> : if authorised by Minister for supply chain reasons, or for medical reasons. The medical reasons exemption only applies to people handling affected items. <u>Testing</u> : for medical reasons only.	<u>Vaccination</u> : if authorised by chief executive for work that is unanticipated, necessary, time-critical and cannot be done by an unvaccinated person; and is needed to prevent operations ceasing.
<i>High risk work</i>	Vaccination required by law, potentially with option for regular testing in some circumstances (eg following exposure).	Work in healthcare and education sectors; work at high-risk events and venues. Could also be work that involves close contact or large amounts/hard-to-trace customer interaction, depending on public health advice.	For medical reasons only.	If authorised by chief executive of relevant agency, for work that is needed to prevent operations ceasing.
<i>All other work</i>	Employers/PCBUs can require vaccination and/or regular testing, if this is reasonably indicated following a prescribed risk assessment process (see option 2).	Work that does not fall into any other category (eg where people work in close proximity but among a known or defined group of people in offices, factories).	Employers/PCBUs must exempt workers who cannot be vaccinated or tested for medical reasons from any requirements they decide to introduce.	—

12. For work that falls in the very high risk and high risk categories, employers and PCBUs would no longer need to do individualised risk assessments to decide whether vaccination or testing are required. This would ensure that work at the highest end of the risk spectrum, determined by an assessment of public health risk, is done by vaccinated workers.

13. There will still be residual uncertainty in relation to the category where employers/PCBUs are to decide whether vaccination is required. Overall, there is a need for a clear and coherent framework that provides relatively consistent outcomes based on identified public health risk. This is why we envisage the risk assessment process will indicate when particular outcomes (eg requiring vaccination) are justified following risk assessment. This is also why we recommend providing a degree of protection from legal challenge for reasonable decisions employers/PCBUs may make following a prescribed process.

Feedback on whether employers/PCBUs should make decisions about vaccination or testing requirements outside very high/high risk setting

14. The Office of the Privacy Commissioner (OPC) has raised concerns about decisions involving the balancing and incursions into fundamental human rights being left to PCBUs, and the potential inconsistencies across PCBUs/employers if they undertake their own risk assessments. Their view is that these decisions should be made by government, based on public health advice.
15. MBIE considers it neither feasible nor desirable for the government to make decisions about whether vaccination and/or testing is required for all workplaces and work situations in the country, and completely displace employers'/PCBUs' discretion. Attempting to do so will likely result in a legislated vaccination requirement for most work in the economy, to avoid inadvertently excluding any circumstance that could pose a high risk of COVID-19 transmission (or serious consequences from transmission). Employers and PCBUs are best placed to assess whether specific work in their workplaces requires vaccination, testing or any other controls, which is a decision that will involve careful consideration of the nature of the work and the impact of all potential control measures on risk.
16. If you wanted to provide additional certainty, this line between the high risk category and all other work could be moved. This would mean increasing the range of work in relation to which employers/PCBUs do not have any discretion, for example by requiring vaccination in medium-risk situations as well.
17. We also considered an explicit prohibition on a vaccination requirement for low-risk work (eg work that is always done at home or in remote locations without contact with any other workers or customers). However, we do not consider this is necessary because this outcome can be reached by employers/PCBUs themselves through the risk assessment process. Guidance can also make clear that it would not be reasonable to require vaccination for low-risk work.

Feedback on protection from legal challenge following the prescribed risk assessment process

18. OPC has suggested an alternative formulation of the prescribed risk assessment process, without protection from legal challenge for reasonable decisions employers/PCBUs may make about what controls (eg vaccination or testing) are necessary.
19. MBIE considers simply setting a risk assessment process in law will not provide the requisite certainty or assurance for businesses beyond the status quo, which you have said is one of your objectives.

Primary and secondary legislation are needed to give effect to this framework

20. The components of the above framework may need to be split between primary and secondary legislation. Primary legislation is more durable to legal challenge, but less easy to vary than secondary legislation. Subject to further work, we consider this split could look like:

<i>Primary legislation</i>	<i>Secondary legislation</i>
<ul style="list-style-type: none"> • A description and definition of each risk level. • Rules for allocating work to each risk level, 	<ul style="list-style-type: none"> • Vaccination and/or testing requirements at each risk level (this could potentially be included in primary legislation).

<p>including who can do this and the process they must use to do so.</p> <ul style="list-style-type: none"> • Authorisation of secondary legislation setting out vaccination and/or testing requirements for each risk level, as well as any exemptions and exceptions. 	<ul style="list-style-type: none"> • Detail about what work falls into each risk level. • Exemptions grounds and exceptions processes for each risk level.
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Adopting this framework could remove the need for vaccination status disclosure

21. At the 7 October 2021 meeting, Ministers discussed two potential ways to support disclosure of workers' vaccination status:
 - a. Allowing employers to disclose workers' vaccination status for certain types of work (eg close contact work), or
 - b. Exempting disclosure by an employer/PCBU of a worker's COVID-19 vaccination status from being considered a privacy breach.
22. We do not think either of the steps in the paragraph above are needed for two reasons.
23. The first is that the types of work likely to be the subject of consumer requests for workers' vaccination information (eg hairdressing, dental services) are likely to be considered high risk according to the framework in paragraph 11, and therefore require vaccination (subject to detailed public health advice). If work cannot be safely done without vaccination, and businesses can only provide those services if workers are vaccinated, the need for customers to ask about workers' vaccination status on a case-by-case basis is removed. Customers can be provided with information about the health and safety measures that a business is taking, and assurance that they are being complied with.
24. The Privacy Act 2020 permits the collection of personal information where that is necessary for a lawful purpose. It also permits the use and disclosure of personal information where that was a purpose of collection. This means that if vaccination is required by law, or required by an employer/PCBU for particular work, the employer/PBCU can collect vaccination information to ensure compliance, and inform customers of the health and safety measures that it is taking. Where that includes vaccination, customers can be informed about that at a general level (ie that they require all workers, or workers in certain roles to be vaccinated or exempt from vaccination).
25. OPC has provided the following comments on the two information disclosure options in paragraph 21:

In our view, neither option is necessary if the framework is mandated by government with clear requirements that are communicated to both businesses and the public. As noted above, the policy framework should support business decision-making, and provide the required certainty, without the need to publicly confirm an individual's vaccination status on request, noting the real risk of discrimination, division and unjustified negative outcomes for individuals. There are alternative regulatory options, such as a class based approach to business types that would be more effective to achieve the policy objective and protective of privacy and individual rights.

Exempting disclosure of COVID-19 vaccination status from being considered a privacy breach would be an extraordinary curtailment that would set a dangerous precedent.

The framework will require significant input to be finalised

26. The table at paragraph 11 is a skeleton of what the framework could look like, and provided to you pending detailed public health input. Ultimately, the framework would set clear boundaries between each category, and reflect current advice about what combination of public health measures are necessary in each work scenario (eg regular testing). This is particularly important given the human rights (including privacy) and employment issues at play.

Option 2: setting a principle-based risk assessment process in law for employers/PCBUs and validating any outcome they reach through this process

27. This option can either be pursued on its own, or as part of the framework in option 1. The advice in paragraphs 13 – 19 therefore applies to this option as well.
28. This option would involve setting out a principle-based risk assessment process in law, with detailed steps contained in either primary or secondary legislation (eg involving their workers and their representatives, using particular inputs for decision-making). This risk assessment process could also indicate when certain controls (eg vaccination, testing) would follow a particular outcome of the risk assessment process.
29. While this would not guarantee the outcomes of their risk assessments, or ensure absolute certainty of outcome across multiple employers/PCBUs, it would provide greater assurance about the process that must be followed, and when it is justified to require vaccination or testing as a result. This could also provide legal cover (eg protection from challenge) where employers/PCBUs have reached reasonable decisions following the prescribed process. It would still be necessary to allow for challenge where unreasonable decisions are made.
30. The principles or steps for this risk assessment process could be based on those developed by WorkSafe, which recommends PCBUs consider the following:
- a. How many people workers come into contact with,
 - b. How easy it would be to identify the people who workers come into contact with,
 - c. How close workers are to other people,
 - d. How long workers have to be close to other people,
 - e. Whether work involves regular interaction with people at higher-risk of severe illness from COVID-19,
 - f. The risk of COVID-19 infection and transmission in the work environment compared to the risk outside work, and
 - g. Whether the work will involve regular interaction with unknown people if the region is at a higher Alert Level or a particular traffic light.

We recommend option 1

31. Option 1 will provide certainty where it is most needed for our COVID-19 response (the most risky work), and more certainty about processes for all other work. Option 2, on its own, will likely see continued pressure to legislate in a piecemeal way for various occupations over time to require vaccination rather than relying on each PCBU's risk assessment process.
32. There will be several issues to work through for option 1, such as potential inequitable impact of any additional vaccination requirements in law given uneven distribution of vaccination rates at present.

Allowing employers to require vaccination for certain reasons

33. Employers can only require vaccination for work where this is authorised by a COVID-19 Order or for health and safety reasons. In other circumstances, there is significant uncertainty about whether it would be justifiable to require workers to be vaccinated to do certain work.

Overseas market access

34. Some overseas markets may not allow access to New Zealand exporters without guarantees or assurances of a vaccinated supply chain (eg for primary products). While this may not be an explicit trade barrier, we need to take steps to avoid this becoming a practical barrier to New Zealand exporters.
35. We recommend allowing employers to require workers to be vaccinated to do work where this is a condition of overseas market access. This cannot be part of the framework in paragraph 11 because the vaccination requirement does not stem from public health risk.
36. Further work with the Ministry of Primary Industries would assist in understanding the likely scale and duration of any such conditions on market access. Any requirement for vaccination based on overseas market access would also need to correspond to an *actual*, rather than perceived or potential, access condition, and the specific work covered by such a condition.

Critical infrastructure and other essential services

37. There are some work situations where there may not be a high risk of COVID-19 exposure or transmission, but where the consequences of being a site of transmission would be very significant. For example, critical national infrastructure could be threatened if a large number of workers need to self-isolate if their workplaces become locations of interest.
38. We recommend allowing employers to require vaccination for work on essential services, with two potential approaches to defining these (see Annex 2 for more detail):
- a. Using the essential services list in the Employment Relations Act 2000, or
 - b. Using the Alert Level 4 businesses and services list.
39. Our initial view is that the Employment Relations Act's essential services list, which is used to establish different strike and lockout notice requirements for certain industries/occupations, is a more appropriate starting point than the Alert Level 4 businesses and services list. We can then consider whether any industries/work from the Alert Level 4 list should also be included.

These could require changes to the purpose of the COVID-19 Act

40. Allowing employers to require vaccination for reasons that are not grounded in public health may be beyond the current scope of the COVID-19 Act. While the COVID-19 Act could ultimately be where this authorisation is contained, this would likely require some change to the purpose of that Act.

Prescribing employment outcomes for unvaccinated employees

41. As we have seen with the border and MIQ workforce, it is likely there will continue to be unvaccinated employees doing work that requires vaccination. We have provided general process guidance for employees and employers in these situations, but there remains uncertainty about what parties should do when options like leave and changing work duties or arrangements (eg redeployment) are not viable.

42. There are different pathways that employers could use to end employment relationships with unvaccinated employees. Our initial advice was that these situations should be treated as restructuring (which might result in redundancies). However, some employers are using termination processes on the basis that employees are not ready, willing and able to work. If termination is used, employees will not be entitled to any contractual redundancy/medical incapacity compensation in their employment agreements.

Setting a process in law for employees and employers to follow

43. It is possible to establish a process in legislation for employees and employers to follow when unvaccinated employees are in roles that require vaccination. This could look like the following examples:
- a. Requiring consideration of all alternative options that would preserve employment (eg redeployment) if they can be mutually agreed between employees and employers. If there are no viable options, allowing employers to treat this as a termination on the basis that unvaccinated employees are not ready, willing and able to work. A minimum paid notice period could also be set in law (eg two or four weeks).
 - b. The starting point could be the same as above (ie requiring consideration of all alternative options). If there are no viable options, employers could be required to treat this as a restructuring and redundancy process, but potentially with streamlined/expedited steps. Unvaccinated employees would then be entitled to any redundancy compensation in their (individual or collective) employment agreement.
44. Not legislating would mean this area will continue to be the focus of employment litigation. Determinations from the Employment Relations Authority will not set precedent, and even judgments from the Employment Court are unlikely to be of specific use to all employers because they will be highly fact-specific.

New Zealand Bill of Rights Act implications

45. The proposals above will engage rights under the New Zealand Bill of Rights Act 1990 (BORA).
46. Any draft legislation will need to be vetted for BORA consistency. If the Attorney-General considers it inconsistent with BORA, they will table a report to this effect in Parliament. To be a justified limitation of any human rights under BORA, measures must be linked in their breadth to the objective to be achieved, and necessary to achieve the public health rationale.

47 Legal professional privilege

Other vaccination proposals seeking a legislative vehicle

48. We understand the following proposals are being developed by agencies or considered by Ministers, which may require primary legislation. It may be possible to also include these in a vaccine-related Amendment Bill for the COVID-19.
- a. CVCs, on which Cabinet decisions are expected on 26 October 2021. This will require primary legislation, particularly to prohibit the use of CVCs for customers in certain settings (eg supermarkets).
 - b. Paid time off for COVID-19 vaccination: this will require primary legislation. We are aiming to include this in the Cabinet paper covering your decisions on this briefing, subject to the timing of further advice and decisions from Ministers.

- c. Vaccination requirements for people crossing Alert Level boundaries: this could require changes to the purpose or empowering provisions in the COVID-19 Act.
- d. Setting different Alert Level rules based on vaccination status: this could require changes to the purpose or empowering provisions in the COVID-19 Act.

Next steps

- 49. Potential timeframes for enactment of legislation will ultimately depend on how many vaccine-related proposals form this Bill, when policy decisions are made for each of those, and how much drafting they require.
- 50. We can prepare a paper for Cabinet on the proposals in this paper, which are covered by recommendations c through g. This will include considering BORA and te Tiriti o Waitangi/Treaty of Waitangi issues, and implications for particular population groups such as Māori, given current vaccination rates.
- 51. A paper can be ready in time for next Monday's Cabinet meeting (18 October 2021). However, an additional week (ie aiming for the 26 October 2021 Cabinet meeting) will enable more thorough stakeholder consultation and policy design.
- 52. Drafting for some components of the Bill can begin once Cabinet decisions are made, while the remaining components are finalised. This includes CVCs, which are due to be discussed by Cabinet on 26 October 2021.
- 53. In the meantime, we will work with the office of the Minister for COVID-19 Response and agencies to understand timeframes for all policy work that may ultimately result in vaccine-related primary legislation this year, to identify proposals that will be appropriate to group in this Bill. Following that, we will be able to provide a timeframe for preparation of the Bill.

Annexes

Annex 1: Work-related vaccination requirements in other jurisdictions

Annex 2: Essential services lists

Annex 1: Work-related vaccination requirements in other jurisdictions

Due to time constraints and rapid overseas developments, information in this table may not be current.

<i>Jurisdiction</i>	<i>Workforce required to be vaccinated by law</i>	<i>Details</i>	<i>Consequences if not vaccinated</i>
Australia (federal)	Residential aged care workers.	All residential aged care workers must have received the first dose of a COVID-19 vaccine by mid-September (the exact date may vary by state/territory). Each state and territory has made its own public health orders (or use similar mechanisms) to achieve this.	Unclear. Medical contraindications (and in some states/territories, the reasonable unavailability of vaccination for a particular worker) are grounds for an exemption from the vaccination requirement.
Australia: New South Wales (state)	Healthcare workers (in addition to residential aged care workers). Excludes private primary care providers such as GPs.	Health care workers are required to have their first dose COVID-19 vaccination by 30 September 2021 and second dose by 30 November 2021.	Unclear. Medical contraindications are grounds for an exemption from the vaccination requirement.
	Airport workers	Workers will not be able to enter or provide services at an airport unless they are vaccinated.	Unclear.
Australia: Queensland (state)	Residential aged care facilities, public service employees in hospital or clinical care.	Must have received at least the first dose of a COVID-19 vaccine by 30 September 2021; and have received the second dose of a COVID-19 vaccine by 31 October 2021.	Unclear.
Australia: Victoria (state)	Workers in construction, freight, healthcare and education.	Workers cannot go to work unless they are vaccinated.	Both workers and employers can be fined under the Public Health and Wellbeing Act 2008.
	All workers in Melbourne and regional Victoria on the authorised worker list. This list has more than 70 categories.	The authorised worker list includes health practitioners, emergency workers, essential service workers and those who work in courts or the administration of justice, manufacturing, public transport, professional athletes, zoo workers, faith leaders, actors and parliamentarians. Workers have to have received their first vaccine by 15 October 2021 to continue working on site, and their second dose by 26 November 2021 to attend, or continue to attend their workplaces.	
Canada (federal)	All federal employees and those working in	As of 30 October 2021, the Canadian government will require employers in the air, rail and marine sectors to establish vaccination policies for	Unclear. For those with a medical reason for not being vaccinated, alternative

	some federally-regulated industries (airlines, railways).	their employees. Policies must include provisions of employee attestation/declaration of their vaccination status and a description of consequences for employees who do not comply or falsify information. The Canadian government has also announced that it expects employers in other federally-regulated industries to require vaccination as early as by the end of September 2021.	measures (which includes testing) will be arranged.
Canada: Ontario (province)	Workers in multiple sectors including hospitals, schools and child care settings and other high-risk settings.	<p>Since 7 September 2021 a policy requires workers to provide proof of one of the following:</p> <ul style="list-style-type: none"> • Full vaccination against COVID-19, • A medical reason for not being vaccinated against COVID-19, or • Completion of a COVID-19 vaccination educational session prior to declining vaccination for any reason other than a medical reason. <p>Government is now intending to require long-term care home workers to be vaccinated from 15 November 2021.</p>	Individuals who do not provide proof of full vaccination against COVID-19 will be required to undertake regular COVID-19 testing and demonstrate a negative result, at least once every seven days. Employers will be required to track and report on the implementation of these policies to the Ontario Government.
Canada: Toronto (city)	All workers	<p>Workers in Toronto City must disclose their immunisation status before 18 September 2021.</p> <p>Employees will then have until 30 October 2021 to be fully vaccinated.</p>	Those who are unvaccinated or refuse to disclose their vaccination status will be required to participate in an information session about the benefits of vaccinations. Unclear what consequences apply for those who remain unvaccinated.
France	Health and care sector professionals.	<p>Until 15 September, these workers have the option of presenting a certificate of recovery from COVID-19 or a negative result from a test taken within the last 72 hours.</p> <p>From 15 September to 15 October, workers have to show they have received at least one dose of a COVID-19 vaccine and a negative test result.</p> <p>After 15 October, workers have to be fully vaccinated.</p>	<p>Healthcare workers who are not vaccinated face suspension without pay.</p> <p>University hospital health professionals subject to compulsory vaccination be suspended from their university duties.</p> <p>Those who are found not complying with the order more than three times in 30 days can be fined or punished by 6 months imprisonment or community service.</p>
	Workers who have face-to-face contact with the public.	This applies to workers in places like public transport, cafes, restaurants, bars and cinemas. This health pass requirement already applies to the public when accessing some of these places.	If not vaccinated, workers will need to show a negative test result from the last 72 hours.
Hungary	Healthcare workers.	The Hungarian government has announced this is the only workforce for whom they intend to mandate vaccination. It is unclear when this	Redeployment or suspension without pay for the rest of the year (it is unclear what

		came/will come into effect.	will happen after 31 December 2021).
Italy	Healthcare workers and pharmacists.	Italy was the first European country to require vaccination for healthcare workers and pharmacists in April.	For healthcare workers and pharmacists: redeployment or suspension without pay for the rest of the year. Unclear what would happen after 31 December 2021.
	All workers.	The Italian government has announced that its COVID-19 "Green Pass" (originally introduced for travel reasons) will be mandatory for all workers from October 15 2021.	Green Pass will show whether someone has received at least one dose, tested negative, or recently recovered from COVID-19. A worker without a Green Pass can be suspended without pay. Unclear whether this could be grounds for dismissal.
Lebanon	Workers at restaurants, cafes, pubs and beaches.	This requirement also applies to all patrons/customers at these venues.	If not vaccinated, workers will need to show a negative result from a PCR test in the last 72 hours.
Panama	Government workers.	This requirement was being considered by the Panamanian government as of mid-August. It is unclear whether it will become law, or when.	Leave without pay.
Russia	Service sector workers.	Businesses in the service sector (eg supermarkets, education services, healthcare services, banks, restaurants, bars, gig work platforms) must ensure 60% of their customer-facing workers are vaccinated. At least 60% needed to have received a first dose by 15 July 2021, and the same proportion needed to be fully vaccinated by 15 August 2021. The 40% of workers who are not vaccinated should consist of workers who cannot receive the vaccine for medical reasons and others "at the employer's discretion," according to official guidelines for businesses.	The relevant authorities have said employers have the right to suspend workers without pay who refuse to be vaccinated. Businesses who fail to meet requirements can be fined or ordered to close their premises for up to 90 days.
Saudi Arabia	All workers seeking to enter a workplace.	All adults are required to be vaccinated in Saudi Arabia, and it has been specifically stated this extends to anyone entering any workplace.	Unclear. The country's vaccination programme is still at a relatively early stage.
Singapore	Workers in healthcare, eldercare, educational settings for children under 12, and higher-risk-mask-off sectors (gyms, personal care facilities, and F&B establishments)	Workers in these sectors must be vaccinated from 1 October 2021.	Those not vaccinated will be required to undergo regular testing.

United Kingdom	Care home workers.	<p>16 September 2021 is the last date for care home workers to receive their first dose.</p> <p>11 November 2021 is when regulations come into force requiring care home workers to be fully vaccinated.</p> <p>The regulations apply to anyone working in Care Quality Commission-regulated care homes.</p>	Operational guidance says redeployment and dismissal are options available to employers.
United States (federal)	<p>All federal employees and contractors.</p> <p>All workers at companies with 100+ workers.</p>	<p>The Department of Justice has also said public agencies and private businesses can require vaccination.</p> <p>Employers are to provide paid time off for staff to be vaccinated.</p>	Unvaccinated workers must subject to regular testing and other mitigation measures (eg masking and physical distancing).
United States: California (state)	All state employees and contractors	All state employees must be vaccinated from September 2021.	Unvaccinated workers will undergo testing at least once a week. Unclear if any other consequences exist.
United States: New York (state)	State employees, healthcare and care home workers, and workers at restaurants, gyms and indoor entertainment venues.	Requirement that state employees get vaccinated or undergo weekly tests. Was originally meant to begin in September but has been delayed until 12 October 2021.	State employees who are unvaccinated must be tested weekly for COVID-19. It is unclear if this option is available for other unvaccinated workers covered by vaccination mandates.
	Patient-facing workers at state-owned hospitals and veterans home.	Workers need to have received their first dose by 27 September 2021.	Unclear.

Annex 2: Essential services lists

Essential services as set out in Schedule 1 of the Employment Relations Act 2000

The production, processing, or supply of manufactured gas or natural gas (including liquefied natural gas).

The production, processing, distribution, or sale of petroleum, whether refined or not.

The production or supply of electricity.

The operational management of a State enterprise (within the meaning of section 2 of the State-Owned Enterprises Act 1986) or a mixed ownership model company (within the meaning of section 45P of the Public Finance Act 1989) that is a generator of electricity.

The supply of water to the inhabitants of a city, district, or other place.

The disposal of sewage.

The delivery of designated services (within the meaning of section 6 of the Fire and Emergency New Zealand Act 2017) by employees of Fire and Emergency New Zealand.

The provision of all necessary services in connection with the arrival, berthing, loading, unloading, and departure of ships at a port.

The operation of—

- a service for the carriage of passengers or goods by water between the North Island and the South Island or between the South Island and Stewart Island; or
- a service necessary for the operation of a service referred to in paragraph (a).

The operation of—

- an air transport service, being a service by aircraft for the public carriage of passengers or goods for hire or reward (but excluding an air topdressing service); or
- a service necessary for the operation of an air transport service referred to in paragraph (a).

The operation of an ambulance service for sick or injured persons.

The operation of—

- a hospital care institution within the meaning of section 58(4) of the Health and Disability Services (Safety) Act 2001; or
- a service necessary for the operation of such an institution.

The manufacture or supply of surgical and dialysis solutions.

The manufacture or supply of a pharmaceutical that is for the time being listed in the pharmaceutical schedule under the New Zealand Public Health and Disability Act 2000.

The operation of a residential welfare institution or prison.

The production of butter or cheese or of any other product of milk or cream and the processing, distribution, or sale of milk, cream, butter, or cheese or of any other product of milk or cream.

The provision of Police emergency response services as defined in clause 3 of Schedule 1C of the Employment Relations Act.

The holding and preparation of an animal that—

- is a mammal or bird; and
- is held and prepared for the purposes of commercial slaughter and subsequent processing of its meat and offal for human or animal consumption, whether in the domestic market or the export market.

The operation of meat inspection services associated with the slaughtering or supply of meat for domestic consumption.

Essential services as set out in Schedule 2 of the COVID-19 Public Health Response (Alert Level Requirements) Order (No 11) 2021

Supermarkets.

Diaries.

Petrol stations, including any stores operating as part of the petrol station.

Licensing trusts operating in Waitakere and Portage, but only in respect of the sale of alcohol under an off-license.

Health Services.

Drug and alcohol testing services required for work purposes by –

- an alert level 4 business or service; or
- an exempt business or service.

Pharmacies.

Food banks.

Self-service laundries.

Hardware and do-it-yourself stores, but only for the purpose of selling to trade customers.

Food delivery services for –

- bakeries
- uncooked food suppliers
- alcohol suppliers.

Cooked food delivery services (but only if referred by the Ministry of Social Development, a District Health Board, or the Accident Compensation Corporation eg Meals on Wheels).

Sale of essential non-food consumer products (via online ordering and contactless delivery) that are necessary for people to remain healthy and safe while isolating, to work or study from home, and to stay in communication with whānau and friends and remain up to date with news and health information, including—

- necessary clothing, footwear, and bedding
- urgently required whiteware and appliances (eg refrigerators, heaters, washing machines and dryers, vacuum cleaners, fans, and dehumidifiers)
- urgently required cooking, cleaning, and laundry equipment
- medicinal and hygiene products (eg medication, PPE, first aid products, soaps, shampoos, moisturisers, and hand sanitisers)
- urgently required items for transport maintenance (eg bicycle and automotive parts and repair kits)
- materials for urgent home repair

- urgently required communication devices (eg mobile phones, computer equipment, modems and Internet equipment, televisions, and radios)
- urgently required educational materials and books
- urgently required home office equipment.

Accommodation services.

Building, construction, and maintenance services required for one or both of the following:

- to address immediate risks to health and safety
- nationally important infrastructure.

In this above, nationally important infrastructure means infrastructure that enables or supports supply chains that are needed for one or both of the following:

- to provide for the current needs of people and communities
- to enable or support the recovery of the whole or any part of New Zealand from the effects of COVID-19.

Entities with statutory responsibilities for building and resource consenting that is necessary to enable the building, construction, and maintenance services referred to above.

Courts and tribunals.

Justice sector (other than the justice sector businesses and services specified elsewhere in this list)

Postal and courier services.

Freight services (including those for transporting livestock) provided by means of road, rail, air, or sea.

Any other transport and logistics services, including those provided at or through an aerodrome or a port.

Transport stations.

Passenger services provided by means of road, rail, air, or sea (excluding public transport services provided by means of air transport or small passenger service vehicles).

Public transport services provided by means of air transport or small passenger service vehicles.

Primary industries (which means food and beverage processing, packaging, and production for both domestic consumption or export, plus the relevant support services) and veterinary and animal health and welfare services

Scientific services (including research organisations) of the following kind or provided by the following entities or facilities:

- ESR, GNS, GeoNet, NIWA, MetService
- services involved in COVID-19 response, including laboratories and Physical Containment level 3 (PC3) facilities
- services involved in hazard monitoring and resilience
- services involved in diagnostics for critical businesses or services like biosecurity, food safety, or public health
- other significant research facilities, including animal facilities, clinical trials, and infrastructure that requires constant attention (for example, samples, collections, and storage facilities), that are important to New Zealand.

Entities required to provide distance or online learning for primary and secondary education.

School hostels.

Social and community-based services provided to support persons to maintain critical well-being or as crisis support for people who are unsafe or homeless.

Key utilities, which means utilities that provide for the production, supply, sale, distribution, or disposal of one or more of the following:

- electricity
- gas
- water
- wastewater (for example, sanitation)
- waste (for example, rubbish collection and recycling)
- liquid or solid fuel
- telecommunications services (as defined in section 5 of the Telecommunications Act 2001).

Key communications, which—

- means news (including news production) and broadcast media; and
- includes delivery of newspapers for non-English-language material audiences or communities that have limited access to digital connectivity and are hard to reach due to physical location.

Government services, including services provided by State services and local authorities, but only if—

- the service is a regulatory, defence, or social service, or relates to the COVID-19 response or infrastructure; and
- provision of the service cannot reasonably be delayed (for example, because a delay would breach an obligation under an enactment, risk harm to people or communities, or risk damage to the environment).

In the above item, State services has the same meaning as in section 5 of the Public Service Act 2020 and local authority has the same meaning as in section 5(1) of the Local Government Act 2002.

Foreign Government (maintaining critical operations of foreign missions based in New Zealand).

Security Services.

Pest management services.

Essential elements of pulp and paper plants.

The essential operations of the following businesses and services:

- the Golden Bay Cement manufacturing plant in Portland, Whangarei
- New Zealand Steel.

Services provided for deceased persons or tūpāpaku.

Unions, if reasonably necessary to provide a service that cannot reasonably be delayed.

Businesses or services necessary, during the period that the business or service is operating in the alert level 4 area, to maintain any of the following:

- other alert level 4 businesses or services

- exempt businesses or services.

Services provided to a person (A) at A's home or place of residence relating to—

- the delivery, installation, or maintenance of goods that are necessary for A's health or safety (for example, the maintenance of kitchen appliances)
- building, construction, and maintenance services required to address immediate risks to health and safety
- utility services relating to the installation and maintenance of services necessary to address immediate risks to health and safety (for example, electricity, gas, water, waste water and sanitation, waste, liquid fuel, and solid fuel)
- security services (including locksmiths)
- services for deceased persons and tūpāpaku.