

Departmental Disclosure Statement

COVID-19 Response (Vaccinations) Legislation Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Health.

The Ministry of Health certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

22 November 2021.

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Part One: General Policy Statement

The single broad policy of the Bill is to make amendments relating to matters that are aimed at assisting the Government and New Zealanders to more effectively manage, and recover from, the impacts of COVID-19. The amendments make vaccination a more apparent part of New Zealand's COVID-19 response framework.

The Bill provides for:

- broadening of orders to better reflect the new measures and intentions under the COVID-19 Protection Framework;
- forms of acceptable evidence of compliance with COVID-19 Orders;
- making it an offence to store, process, use or manage data from Covid-19 Vaccination Certificates (CVC) through the verification process, except for law enforcement purposes
- that enforcement officers can direct a person to produce evidence to demonstrate compliance with an order under the Act

In addition, the Bill amends the COVID-19 Public Health Response Act 2020 to:

- support future vaccination or testing mandates where there is a strong public interest in doing so;
- that vaccination can be required where the Director-General for the Ministry for Primary Industries has determined this is necessary in order to facilitate access for specific products or classes of products to specific overseas markets
- provide for the Minister of Workplace Relations and Safety to prescribe a risk assessment tool that any employer may use to decide whether it is reasonable for work to only be done by vaccinated workers or to require testing

Amendments are also being made to the Employment Relations Act 2000 to provide for reasonable paid time off for employees to be vaccinated. In addition, a four-week termination notice to be provided if the employer requires vaccination, but the employee is unvaccinated.

The employee will have a reasonable time to be vaccinated before the termination notice applies and the notice will cease if the employee gets vaccinated during this period.

If the employee chooses not to be vaccinated, they will receive the greater of four weeks' notice or the notice period which is in their contract. The employee will still be able to bring a personal grievance and can terminate their employment early by mutual agreement with the employer.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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The proposals in the Bill have not been identified as being inconsistent with any international obligations.
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Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The principles of Te Tiriti o Waitangi have been considered and incorporated into all policy decisions to be given effect by the Bill, including:

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| <ul style="list-style-type: none">• partnership - In relation to the CVC proposals in the Bill officials have sought the views of Te Arawhiti, Te Puni Kōkiri, DPMC's Community Panel and at a Ministerial level, the National Iwi Chairs Forum (NICF).• protection – the Crown has a duty to protect Māori health equitably and actively. The Bill implements this by providing greater protection from transmission of COVID-19 through vaccination requirements. It also creates incentives for vaccination to increase access and uptake of vaccinations for populations with lower vaccination rates than the general population. |
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Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	NO
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Advice will be provided to the Attorney-General by the Ministry of Justice, and will be publically available at https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/advice/ upon the Bill's introduction to the House.
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Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
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An offence is created at section 34B(3), relating to failure to comply with requirements relating to protection of information.

The Bill also allows for orders made relating to specified work to specify breaches as infringement offences.

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
Provisions were updated as necessary following consultation.	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
Section 34B provides for the protection of information provided or obtained for the purpose of determining whether a person has been vaccinated.	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
The Office of the Privacy Commissioner was consulted on the policy proposals and feedback taken into account.	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
Consultation has been undertaken with business and community groups. MBIE undertook consultation with CTU, BusinessNZ, MBIE's Small Business Advisory Group and Retail NZ.	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
Section 34D - Power to amend Schedule 4 by Order in Council which sets out approved COVID-19 vaccines and requirements for administration	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>1 The Bill amends the order making provisions of the COVID-19 Public Health Response Act 2020 to enable orders to be made relating to a person's COVID-19 vaccination status and the use of CVCs. The Director-General of Health is given the power to issue COVID-19 vaccination certificates.</p> <p>New order-making power for Minister for Workplace Relations and Safety</p> <p>2 The Bill further creates a new order-making power allowing the Minister for Workplace Relations and Safety to make orders in relation to vaccination and testing for specified work, where it is in the public interest. The Minister may:</p> <p>2.1 specify work or classes of work that must be done by vaccinated workers;</p> <p>2.2 require workers who do certain work to be tested for COVID-19.</p> <p>New regulation-making power</p> <p>3 The Bill also provides that the Governor-General may, by Order in Council on the recommendation of the Minister for Workplace Relations and Safety, prescribe a framework or tool which PCBUs may use to decide whether work should only be done by vaccinated workers, or that workers require COVID-19 testing.</p> <p>4 This framework or tool can be used for any work not covered by an order requiring vaccination, but PCBUs will not be prevented from using any other risk assessment methodology they may prefer. The Bill will require PCBUs to consult with workers and their representatives when using the framework or tool set out in regulations.</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO