



COVID-19 Public Health Response (Required Testing and Vaccinations) Amendment Order 2021

This order is made by the Minister for COVID-19 Response under sections 11 and 15(1) of the COVID-19 Public Health Response Act 2020 in accordance with section 9 of that Act.

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Order

1 Title

This order is the COVID-19 Public Health Response (Required Testing and Vaccinations) Amendment Order 2021.

2 Commencement

- (1) Clauses 7, 10, 12(1), 13(1) and (2), and 14(2) come into force at 11.59 pm on 6 November 2021.
- (2) The rest of this order comes into force at 11.59 pm on 7 November 2021.

Part 1

Amendments to COVID-19 Public Health Response (Required Testing) Order 2020

3 Principal order

This Part amends the COVID-19 Public Health Response (Required Testing) Order 2020.

4 Clause 12A amended (Interpretation)

- (1) In clause 12A, definition of **affected education service**, replace paragraph (a) with:

(a) a licensed early childhood service:

- (2) In clause 12A, revoke the definition of **early childhood service**.

- (3) In clause 12A, insert in its appropriate alphabetical order:

licensed early childhood service has the same meaning as in section 10(1) of the Education and Training Act 2020

5 Clause 12C amended (Affected persons required to return negative result from COVID-19 test)

In clause 12C(1), replace “an early childhood service” with “a licensed early childhood service”.

Part 2

Amendments to COVID-19 Public Health Response (Vaccinations) Order 2021

6 Principal order

This Part amends the COVID-19 Public Health Response (Vaccinations) Order 2021.

7 Clause 4 amended (Interpretation)

- (1) In clause 4, definition of **affected education service**, replace paragraph (a) with:

(a) a licensed early childhood service:

- (2) In clause 4, replace the definition of **care and support worker** with:

care and support worker means a person employed or engaged to provide care and support services within a home or place of residence

- (3) In clause 4, revoke the definition of **early childhood service**.

- (4) In clause 4, replace the definition of **exempt person** with:

exempt person means a person who has a COVID-19 vaccination exemption

- (5) In clause 4, replace the definition of **staff member of a prison** with:

staff member of a corrections prison—

(a) means—

- (i) any officer of a corrections prison; and
- (ii) any employee appointed or engaged to provide non-custodial services in respect of a corrections prison or any prisoner detained in a corrections prison; and

(b) in relation to any particular corrections prison, means—

- (i) any officer of that corrections prison; and
- (ii) any employee appointed or engaged to provide non-custodial services in respect of that corrections prison or any prisoner detained in that corrections prison

- (6) In clause 4, insert in their appropriate alphabetical order:

corrections prison—

(a) includes a prison operated by the Department of Corrections (including a temporary prison) and a contract prison; but

(b) does not include—

- (i) a Police jail; or
- (ii) any of the following that have been declared by notice in the *Gazette* to be part of a corrections prison:

- (A) a cell block;
- (B) a court cell and any adjacent areas

COVID-19 vaccination exemption means a COVID-19 vaccination exemption granted by the Director-General under clause 9B

licensed early childhood service has the same meaning as in section 10(1) of the Education and Training Act 2020

medical practitioner means a health practitioner who—

- (a) is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine; and
- (b) holds a current practising certificate

nurse practitioner means a health practitioner who—

- (a) is, or is deemed to be, registered with the Nursing Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of nursing and whose scope of practice permits the performance of nurse practitioner functions; and
- (b) holds a current practising certificate

8 Clause 7 replaced (Duty of affected person not to carry out certain work unless vaccinated)

Replace clause 7 with:

7 Duty of affected person not to carry out certain work

An affected person must not carry out certain work unless they are—

- (a) vaccinated; or
- (b) an exempt person.

9 Clause 7A revoked (Exemption from duty under clause 7)

Revoke clause 7A.

10 Clause 9 amended (Chief executive may authorise affected persons not vaccinated to carry out certain work)

In clause 9(5)(ca), replace “prison” with “corrections prison”.

11 New clause 9B inserted (Director-General may grant COVID-19 vaccination exemption)

After clause 9A, insert:

9B Director-General may grant COVID-19 vaccination exemption

- (1) A suitably qualified medical practitioner or nurse practitioner (the **applicant**) may apply for a COVID-19 vaccination exemption on behalf of a person who—
 - (a) belongs to a group specified in Part 6, 7, 8, or 9 of the table in Schedule 2; and
 - (b) is not vaccinated.
- (2) An application may be made only on the ground that the person on whose behalf the application is made (the **person**) meets the specified COVID-19 vaccination exemption criteria.
- (3) The person must—
 - (a) certify that the information that they have provided to the applicant for the purposes of making the application is accurate; and
 - (b) sign the application.
- (4) An application must be accompanied by a certificate signed by the applicant certifying that they—
 - (a) have reviewed the person's medical history and assessed the person's state of health; and
 - (b) have reasonable grounds for believing that the person meets the specified COVID-19 vaccination exemption criteria.
- (5) The applicant must state their grounds for believing that the person meets the specified COVID-19 vaccination exemption criteria.
- (6) On receiving an application, the Director-General may ask the applicant or person to provide any evidence or further information that the Director-General reasonably requires for the purposes of deciding whether to grant the application.
- (7) The Director-General may grant the application if the Director-General is satisfied, on the basis of the evidence or other information provided, that the person meets the specified COVID-19 vaccination exemption criteria.
- (8) A COVID-19 vaccination exemption is valid for the period that the Director-General determines, which must be no longer than 6 months.
- (9) The Director-General must notify the applicant and the person of the outcome of the application.
- (10) If the application is granted, the Director-General must provide a copy of the COVID-19 vaccination exemption in written or electronic form to the applicant and person that states the date on which the exemption expires.
- (11) At any time before or after a COVID-19 vaccination exemption expires, a new application for a further exemption may be made under this clause by any medical practitioner or nurse practitioner on behalf of the person in respect of whom an exemption was granted.

- (12) In this clause, **specified COVID-19 vaccination exemption criteria** means the criteria determining when a person may be granted a COVID-19 vaccination exemption that the Director-General has approved in a notice published—
- (a) on a publicly accessible Internet site maintained by or on behalf of the New Zealand Government; and
 - (b) in the *Gazette*.

12 Clause 12A amended (Power of Minister to grant exemptions)

- (1) In clause 12A(4)(a)(ii)(C), replace “prison” with “corrections prison”.
- (2) After clause 12A(4)(a)(ii)(C), insert:
 - (D) the operation of learning in registered schools, in the case of an application to exempt from any provision of this order a person belonging to a group specified in Part 9 of the table in Schedule 2; or
 - (E) the essential operations of a hostel in the case of an application to exempt from any provision of this order a person belonging to a group specified in Part 9 of the table in Schedule 2; and
- (3) After clause 12A(8), insert:
- (9) Subclause (4)(a)(ii)(D) and (E) are revoked on 1 January 2022.

13 Schedule 1 amended

- (1) In Schedule 1, replace the cross-heading above clause 6 with:

Corrections prisons

- (2) In Schedule 1, heading to clause 6, replace “**prisons**” with “**corrections prisons**”.
- (3) In Schedule 1,—
 - (a) insert the Part set out in the Schedule of this order as the last Part; and
 - (b) make all necessary consequential amendments.

14 Schedule 2 amended

- (1) In Schedule 2, replace item 7.1 with:

7.1 Health practitioners providing health services to patients in person

- (2) In Schedule 2, replace Part 8 with:

Part 8: Groups in relation to corrections prisons

- 8.1 Staff members of a corrections prison (other than staff members of a corrections prison who are specified visitors or statutory visitors) who may be required to undergo a security screening process before being allowed entry into the corrections prison
- 8.2 Persons employed or engaged by a contractor or subcontractor to provide services in respect of a corrections prison (other than persons who are specified visitors or statutory

visitors) who may be required to undergo a security screening process before being allowed entry into the corrections prison

Schedule

New Part 4 inserted into Schedule 1

cl 13(3)

Part 4

Provisions relating to COVID-19 Public Health Response (Required Testing and Vaccinations) Amendment Order 2021

- 9 Transitional provision for Police employees working where health services are provided or at or for affected education services before commencement**
- (1) This clause applies despite clauses 5 and 7.
 - (2) If an affected person who belongs to a group specified in item 7.2 or 9.1 of the table in Schedule 2 is a Police employee and is not vaccinated before the commencement of this clause, the affected person must—
 - (a) be treated as vaccinated until 29 November 2021 if they have their first dose of a COVID-19 vaccine before the close of that date;
 - (b) be treated as vaccinated until 14 January 2022 (and after that date) if they—
 - (i) have their first dose of a COVID-19 vaccine before the close of 29 November 2021; and
 - (ii) have their second dose of a COVID-19 vaccine before the close of 14 January 2022.
 - (3) If an affected person who belongs to a group specified in item 7.2 or 9.1 of the table in Schedule 2 is a Police employee who is not vaccinated before the commencement of this clause and does not have their first dose of a COVID-19 vaccine before the close of 29 November 2021, the affected person must be treated as vaccinated—
 - (a) on the date on which they have their first dose of a COVID-19 vaccine; and
 - (b) from that date until 14 January 2022 (and after that date) if they have their second dose of a COVID-19 vaccine before the close of 14 January 2022.
 - (4) In this clause, **Police employee** has the same meaning as in section 4 of the Policing Act 2008.
- 10 Transitional provision for affected workers who are exempt persons before commencement of Amendment Order**
- (1) This clause applies to an affected worker who—
 - (a) belongs to a group specified in Part 6 or 8 of the table in Schedule 2; and

- (b) was granted an exemption under clause 7A before the commencement of the Amendment Order.
- (2) An affected worker continues to be an exempt person until the earlier of the following dates:
 - (a) the close of 21 November 2021;
 - (b) the close of the date on which they receive notification that an application made on their behalf under clause 9B has not been granted.
- (3) For the purposes of this clause,—
 - (a) the definition of exempt person set out in clause 4 of this order as in force immediately before the commencement of the Amendment Order continues to apply; and
 - (b) clause 7A of this order as in force immediately before the commencement of the Amendment Order continues to apply.
- (4) In this clause, **Amendment Order** means the COVID-19 Public Health Response (Required Testing and Vaccinations) Amendment Order 2021.

Dated at Wellington this 5th day of November 2021.

Hon Chris Hipkins,
Minister for COVID-19 Response.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order amends the COVID-19 Public Health Response (Required Testing) Order 2020 and the COVID-19 Public Health Response (Vaccinations) Order 2021.

The amendments to the COVID-19 Public Health Response (Required Testing) Order 2020 come into force at 11.59 pm on 7 November 2021. The effect of those amendments is to ensure that the testing requirements in that order that apply to affected education services in an alert level 3 area do not apply to unlicensed early childhood services.

The amendments to the COVID-19 Public Health Response (Vaccinations) Order 2021 (the **Vaccination Order**) fall into 2 groups.

The first group of amendments to the Vaccination Order come into force at 11.59 pm on 6 November 2021 and clarify that the following persons do not belong to the group specified in Part 8 of Schedule 2 of the Vaccinations Order (groups in relation to prisons) and are not required to be vaccinated:

- persons appointed or designated by the Commissioner of Police to work in Police jails; and
- persons who solely work in and around court cells.

The second group of amendments to the Vaccination Order come into force at 11.59 pm on 7 November 2021. The effect of those amendments is to—

- revoke clause 7A, which enables an affected worker to carry out certain work without being vaccinated if a suitably qualified health practitioner determines that it would be inappropriate for the affected worker to receive a COVID-19 vaccination because of their physical or other needs (but existing exemptions under clause 7A for affected workers belonging to a group specified in Parts 6 or 8 of the table in Schedule 2 continue until 21 November 2021 or when an application made on their behalf under *new clause 9B* is declined, if earlier):
- insert *new clause 9B*, which enables a suitably qualified medical practitioner or nurse practitioner to apply to the Director-General of Health on behalf of an affected worker for a temporary exemption from the requirement to be vaccinated on the ground that they meet the specified COVID-19 vaccination exemption criteria:
- require all care and support workers who provide care and support services to a person in the person's home or place of residence to be vaccinated:
- provide that health practitioners who conduct consultations with patients only by remote means (for example, on-line or by telephone) are not required to be vaccinated:
- enable the Minister for COVID-19 Response, until 1 January 2022, to grant exemptions under clause 12A to prevent significant disruption to the operation of learning in a registered school or to the essential operation of a hostel:
- extend the period for which Police employees working in the health and disability sector or at or for affected education services are treated as vaccinated (until 29 November 2021 if they receive their first dose of a COVID-19 vaccine on or before that date, and until 14 January 2022 if they receive their first dose of a COVID-19 vaccine on or before 29 November 2021 and their second dose of a COVID-19 vaccine on or before 14 January 2022).

This order must be approved by a resolution of the House of Representatives before the expiry of the period described in section 16(2) of the COVID-19 Public Health Response Act 2020. If that does not happen, the order is revoked on the expiry of that period.

Issued under the authority of the Legislation Act 2019.
Date of notification in *Gazette*: 5 November 2021.
This order is administered by the Ministry of Health.