



Briefing

COVID-19 VACCINATION CERTIFICATES: FURTHER ADVICE ON PROHIBITED SETTINGS

To: Hon Chris Hipkins
Minister for COVID-19 Response

Date	5/11/2021	Priority	High
Deadline	9/11/2021	Briefing Number	DPMC-2021/22-701

Purpose

This paper proposes an approach to prohibiting certain settings from denying entry on the basis of vaccination status, including by requiring a COVID-19 Vaccination Certificate (CVC) as a condition of entry/use. It seeks decisions on the prohibited settings, which will apply at all Alert Levels and the under the COVID-19 Protection Framework.

Recommendations

- Note** that CVCs can be used as evidence to ensure people in these settings can demonstrate that they are either fully vaccinated, or medically exempt from vaccinated, and that using CVCs to limit access to certain settings to those who are vaccinated has been identified as a tool to help support the broader public health response to COVID-19;
- Note** that private bodies have the existing ability to limit the general public from accessing their premises;
- Agree** to only limit this right where there is a risk that a private provider of a service will apply a vaccination requirement as a condition of entry/use for a service which is life-preserving;
- Agree** that services prohibited from implementing vaccine requirements cannot limit the services provided to unvaccinated patrons, although they may wish to implement other health and safety measures;

YES NO

YES NO

5. **Note** Public Health advise that ensuring access to 'life-preserving services' is important and agree that prohibiting the use of a vaccination requirement in specified settings would also support a proportional response to the risk of COVID-19 in an increasingly vaccinated population;
6. **Note** that the Public Service Commission will issue guidance to government agencies and local government about the use of vaccination requirements in government-run services, (e.g. Work and Income offices, post offices, libraries);
7. **Agree** to share this briefing with Ministers who have responsibility for the portfolios and sectors affected by the proposed vaccine requirement prohibitions; YES NO

Education settings

8. **Agree** to prohibit vaccination requirements at:
 - 8.1. all licenced early childhood education services and registered schools (i.e. primary and secondary schools, including private providers), for all children, students and their parents, whānau or caregivers (except where parents or caregivers are providing volunteer services at a school activity); YES NO
 - 8.2. all school hostels; YES NO
 - 8.3. all school transport services, for all students; YES NO
 - 8.4. all OSCAR programmes, for all children, students and their parents or caregivers, to ensure alignment with the approach of schools; and YES NO
 - 8.5. for secondary students at tertiary education organisations to access their learning; YES NO
9. **Note** that officials do not recommend prohibiting the use of vaccine requirements at early childhood education and school events such as fundraising fairs, concerts, community events where participants extend beyond staff, parents, and learners; or third-party use of education facilities;
10. **Note** that COVID-19 Responsible Ministers have already decided that vaccination requirements will apply to on-site tertiary students and staff at the Red level of the COVID-19 Protection Framework, and as such officials do not recommend a prohibition for tertiary providers as part of the provision of education, other than is provided at recommendation 8.5;

Public Transport settings

- 11. **Note** that access to public transport is necessary to ensure access to life-preserving services;
- 12. **Indicate** your preference to prohibit vaccination requirements on:
 - 12.1.all public transport apart from air travel (**recommended**);
 - 12.2.all inter-regional travel via public transport; or
 - 12.3.all forms of public transport;
- 13. If you have agreed to recommendation 12.1, **agree** to an exemptions process for those needing to travel inter-regionally via air to access a specified life-preserving service (e.g. specialist healthcare not available in their region);
- 14. **Note** that officials will undertake further work on the design of this process, including how people can access an exemption and what the specific requirements are required to meet the threshold;

YES NO
 YES / NO
 YES / NO

YES / NO
 This rec does not make sense. CH

Housing

- 15. **Agree** that the use of vaccination status to restrict access to housing be prohibited for all housing and housing support services funded directly by, or under contract to, the following state sector agencies:
 - 15.1.Kāinga Ora – Homes and Communities;
 - 15.2.Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development;
 - 15.3.Ara Poutama – Department of Corrections; and
 - 15.4.Oranga Tamariki – Ministry for Children;
- 16. In addition to the services set out recommendation 15, **agree** to introduce a prohibition for premises used to provide emergency housing;

YES NO
 YES NO
 YES NO
 YES NO
 YES NO

Other essential services

- 17. **Agree** that supermarkets, dairies, pharmacies and petrol stations will be prohibited from requiring proof of vaccine from customers;
- 18. **Agree** that a vaccination requirement will be prohibited for all people accessing essential health and disability services;

YES NO
 YES NO

19. **Note** these decisions will be reflected in an Order once the enabling legislation has been passed;

20. **Agree** that this briefing is proactively released, with any appropriate redaction where information would have been withheld under the Official Information Act 1982, in January 2022.

YES NO



Ruth Fairhall
Head of Strategy & Policy, COVID-19 Group

5/11/2021



Hon Chris Hipkins
Minister for COVID-19 Response

11/11/2021

Contact for telephone discussion if required:

Name	Position	Telephone	1st contact
Ruth Fairhall	Head of Strategy & Policy, COVID-19 Group	s9(2)(a)	✓
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Minister's office comments:

- Noted
- Seen
- Approved
- Needs change
- Withdrawn
- Not seen by Minister
- Overtaken by events
- Referred to

PROACTIVELY RELEASED

COVID-19 VACCINATION CERTIFICATES: FURTHER ADVICE ON PROHIBITED SETTINGS

Executive Summary

1. Limiting access to certain settings to those who are vaccinated has been identified as a tool to help support the broader public health response to COVID-19 [CAB-21-MIN-0421]. Cabinet and Ministers have made previous decisions on CVCs to date, and this paper outlines the proposed approach for prohibiting certain settings from denying entry on the basis of vaccination status, including by requiring a COVID-19 Vaccination Certificate (CVC) as a condition of entry/use.
2. It also seeks final decisions on the prohibited settings to be included in the Order which creates the COVID-19 Protection Framework, including settings where CVCs are mandated or optional at different levels. The application of any prohibitions on the use of vaccination requirements would operate at all levels of the Alert Level system and COVID-19 Protection Framework.
3. Officials propose that certain businesses and service providers should be prohibited from implementing a vaccination requirement when they are providing essential products or services that are necessary for the preservation of life or are necessary to ensure access to these services. In addition, officials recommend that prohibitions also apply to specific education services to protect the right to education. On this basis, officials advise prohibiting the use of vaccine requirements in specified education, public transport, and government funded housing settings, as well as for people accessing basic food, healthcare and disability services.
4. Public Health advise that access to 'life-preserving services' is important both for maintaining equity and the health and wellbeing of all. They note that prohibiting the use of a vaccination requirement for customers or patrons in specified settings would also support a proportional response to the risk of COVID-19 in an increasingly vaccinated population.
5. If you agree to the prohibitions outlined in this paper, we will issue drafting instructions to bring them into effect. In addition, further work is needed to finalise details for workstreams defining the health-related services that should be excluded for the prohibition, undertaking agency-led engagement with sector groups on the implications of this policy, design of the exemptions process for those travelling inter-regionally by air for specified life-preserving services, and issuing guidance to government agencies and local government about the use of vaccination requirements in government-run services.

Background

6. Limiting access to certain settings to those who are vaccinated has been identified as a tool to help support the broader public health response to COVID-19 [CAB-21-MIN-0421]. In a domestic context, CVCs can be used as evidence to ensure people in those settings can demonstrate that they are either fully vaccinated, or medically exempt from vaccination. The availability of CVCs to the public, and with them the ability to limit access to services based on vaccination status, is expected by the end of November and may

occur before a full transition to the COVID-19 Protection Framework. As such, the application of any prohibitions on the use of vaccination requirements would operate at all levels of the Alert Level system and COVID-19 Protection Framework.

7. Cabinet and Ministers have previously agreed:
 - a) On 18 October, Cabinet considered high level advice relating to the use of CVCs, noting broad categories to define settings for the application of vaccination requirements, and agreeing high level settings in which to mandate a required use of CVCs. Cabinet also agreed to issue drafting instructions to support the introduction of CVCs and to prohibit their use in certain settings [CAB-21-MIN-0421];
 - b) On 21 October, delegated Ministers agreed the final settings for the introduction of CVCs as part of a revised COVID-19 Protection Framework, which were announced publicly on 22 October [DPMC-2021/22-621]; and
 - c) On 26 October, Cabinet took further decisions relating to the implementation of CVCs in domestic settings, including to a review into their use in early 2022 [CAB-21-MIN-0438].
8. This briefing provides further advice on the recommended scope of prohibitions on the use of CVCs or any other form of evidence of vaccination, in order to protect people's access to life-preserving basic needs providers, and certain education settings, irrespective of their vaccination status.
9. Officials note that, for the purpose of this briefing, agencies have not been able to consult with sector representatives on the potential impact of these proposals. If you agree to the suggested prohibitions, agencies will engage with all affected sectors and work to provide guidance on their practical application, including any mitigating health and safety measures.
10. Officials recommend that you share this briefing with Ministers who have portfolio responsibilities for the sectors affected by the proposed vaccine requirement prohibitions. These are the Ministers of Transport, Education, Health, Housing and Economic Development.

Proposed approach to prohibiting a vaccination requirement for customers accessing specific services

11. Officials propose that certain businesses and service providers should be prohibited from implementing a vaccination requirement when they are providing essential products or services that:
 - a) are necessary for the preservation of human life, namely – supermarkets, dairies, healthcare providers (including pharmacies), publicly-funded housing and housing support services (including emergency housing), or
 - b) are necessary to ensure access to these services – (e.g. public transport).

12. In addition to the life-preserving services set out above, officials recommend that prohibitions apply to specific education services, given the importance of the right to education to support children's ongoing development and future success.
13. Officials propose that services prohibited from imposing vaccine requirements are also not able to limit the type of service provided to customers/patrons based on vaccination status (e.g. where a supermarket might check customers' CVCs in order to require unvaccinated people to only use the self-checkout tills in the supermarket). This would likely give rise to accessibility and equity issues, and in some cases effectively prevent access for unvaccinated individuals. Any application of vaccination requirements in these settings (entry requirements or otherwise) will be prohibited.
14. Cabinet noted on 18 October that private bodies can limit the general public from accessing their premises, as long as this does not amount to unlawful discrimination [CAB-21-MIN-0421]. Prohibiting businesses and service providers from barring access to the unvaccinated would restrict this ability. Officials consider this a justified restriction on private providers' rights given the nature of the service they provide.
15. Officials have limited the scope of prohibitions to services where we consider there is the most risk that private providers will implement vaccination requirements as a condition of access. This does not include services such as food banks, crisis support services and women's refuge, as we consider it highly unlikely those providers would seek to exclude people in need. However, a prohibition could be introduced later via an amendment to the order if issues with these services arise.
16. Officials are also currently not advising that a prohibition be introduced for services which are delivered directly by government. Te Kawa Mataaho/the Public Service Commission intends to issue separate guidance to all public sector agencies about the use of vaccination requirements in government services, with a guiding principle that access to government services should not be limited based on vaccination status. This guidance would cover services such as Work and Income offices, post offices and local government services such as libraries.
17. A prohibition is recommended for government services which are delivered in whole or in part by private providers, such as health and disability services and government-funded housing. Explicit prohibitions are also recommended for education settings to give clarity to schools and ensure the right to education is maintained.
18. Where vaccination requirements are prohibited, businesses and services may want to implement other reasonable health and safety policies to enable safe operations, as long as it does not limit unvaccinated people's access to their services.
19. Given that prohibiting vaccination requirements in specific venues and settings would apply to customers and attendees only, workers would be subject to any applicable vaccination requirements to undertake work in certain settings.

Public health advice on prohibiting a vaccination requirement for specified settings

20. Public Health advise that access to 'life-preserving services' is important both for maintaining equity and the health and wellbeing of all. Prohibiting a vaccination

requirement for customers or patrons in specified settings would also support a proportional response to the risk of COVID-19 in an increasingly vaccinated population.

21. In terms of any cumulative risk related to allowing prohibition in the above settings (food, healthcare and disability services, housing, transport, education), Public Health advise that there is no evidence-based threshold here, as preserving access supports the goal of maintaining a proportionate response. It is important to reiterate that vaccine requirements should be seen as an interim measure as we move towards a highly vaccinated population.
22. Regarding the approach to transport services, people need to have transport access to the life-preserving services. While air travel would be used less for this access, there are examples where it may be required (e.g. someone needing to travel to a specialist healthcare setting for health services outside the region they live in).
23. s9(2)(f)(iv), s9(2)(g)(i)



Vaccination requirements in education settings

24. Ministry of Education agree that a guiding principle to inform the prohibition of vaccination requirements in education settings should be that vaccination requirements should not restrict children and young people's access to learning, or parents and caregivers' ability to support their children in their learning.
25. Therefore, officials propose to prohibit vaccination requirements in all licenced early childhood education services and registered schools (i.e. primary and secondary schools, including private providers), for all children, students and their parents or caregivers. It is recommended that the prohibition extends to hostels and school transport, but not to licenced early childhood and school events such as fundraising fairs, concerts, community events where participants extend beyond staff, parents, and learners, or to volunteers who captured by vaccination mandates.
26. However, this proposed approach in education settings does not prohibit providers from requiring proof of vaccine for other visitors to the site, (e.g. contractors, family friends), or for third-party use of education facilities, with the exception of Out of School Care and Recreation services (OSCAR) (discussed further below).

Use in tertiary education settings

27. For tertiary education, at the Red level of the COVID-19 Protection Framework, tertiary providers who chose to open onsite will need to ensure that attending students and staff are vaccinated. Tertiary education will not be covered by vaccine prohibitions generally, but there will be some specific settings where use of CVCs will be prohibited on campus – for example, at on-site healthcare providers and pharmacies. These prohibitions for specific settings will also apply even where tertiary education organisations impose their own vaccination mandates.

28. It will also be important to ensure that secondary school students who attend tertiary institutions (for example, at Trades Academies) are able to continue to access their learning; therefore, vaccination requirements will be prohibited for secondary students at tertiary education organisations to access their learning.
29. Further consideration is needed for situations where students are involved in programmes delivered in other sites. This includes programmes delivered in museums, art galleries and workplace-based learning. Workplaces will generally not be covered under the education vaccination mandate and are entitled to impose their own site vaccination requirements. We do not envisage the prohibition order being applied to these sites, which will impact on students' automatic access to learning. Ministry of Education officials are developing additional advice for the Minister of Education on this matter.

School transport services

30. For the purposes of vaccine prohibitions, school transport services funded by the Ministry of Education are treated as education settings, rather than public transport. School transport arrangements are critical for enabling access to education for a significant number of students in rural and semi-urban settings across the country.
31. Ministry of Education school transport services may be directly contracted by the Ministry, contracted by a school or network of schools, or run by a school itself using funding from the Ministry. Therefore, it is necessary to prohibit any use of vaccination requirements for passengers in order to preserve this access and protect against any third-party contractors or private providers implementing a vaccination requirement for their transport services.
32. Transport provided by licenced early childhood services is also included in education settings. Some early learning services in low socio-economic areas provide transport for children to and from the services. This enables access for families who have limited access to their own transport.

Complex dynamics in education settings

33. There are some issues with prohibiting the use of vaccination requirements that may be more significant in certain communities than in others. For example, Māori vaccination rates are lower than for other ethnicities. This means the Māori children at schools and early childhood services with high concentration of Māori children (such as Te Kura Kaupapa Māori and Te Kōhanga Reo) in areas with lower general vaccination rates (such as Northland, Tairāwhiti, or the Bay of Plenty) are likely to be at higher risk of exposure to the virus. Outbreaks in those schools and services may be more likely as a result, however the vaccination requirement for teachers would go some way to mitigating this risk.
34. Furthermore, some early childhood services are telling us that vaccinated parents are worried about the risk to their children if the parents of other children at the service are unvaccinated. The staff at these services are also worried about their exposure to the virus from unvaccinated families. The services are worried that vaccinated parents will remove their children because of the presence of unvaccinated families. This is not a dynamic that is present in schooling to the same degree because of enrolment limits/zoning and the compulsory nature of schooling.

35. These are complex dynamics, but on balance we have prioritised the importance of access to education and that vaccination requirements should not restrict children and young people's access to learning, or parents and caregivers' ability to support their children in their learning.
36. The Ministry of Education will provide further guidance to the sector on issues relating to vaccination requirements' use or prohibition to help address parent and community concerns, and, for example, when education entities can restrict access based on suspected illness, and for events such as fairs, concerts, prizegiving etc.

OSCAR programmes

37. The Ministry of Social Development (MSD) proposes that the prohibition of vaccination requirements for OSCAR programmes should align with those of schools. While OSCAR programmes are not defined as an 'education service', these programmes will receive students from multiple schools and some programmes are delivered on school grounds.
38. MSD notes Cabinet's previous agreement to formally extend the same vaccination, testing requirements and public health controls to OSCAR programmes that apply to schools and early childhood services as a condition of their reopening [CAB 21-MIN-0422 refers]. These conditions have been communicated to OSCAR providers.
39. As such, officials propose that vaccination requirements are prohibited in OSCAR programmes for students to ensure alignment with the approach above and students' access to OSCAR programmes is not restricted. This prohibition would apply to all OSCAR programmes and not just those funded by MSD.

Vaccination requirements for transport services

40. Access to public transport is necessary to maintain access to essential services. This includes the use of urban public transport (buses, trains, taxi and share car services) to access food and local healthcare providers, but also inter-regional public transport (intercity bus services, trains, ferries, rental cars, and air transport) for those who need to access specialist medical care or other life-preserving services not available where they live.

Public Transport

41. Officials seek a decision from you on which public transport services you wish to prohibit from limiting access based on vaccination status. We consider there are three options:
 - a) To prohibit vaccination requirements on all public transport apart from air travel, with an exemption for those who need to travel by air to access a specified life-preserving service);
 - b) To prohibit vaccination requirements on all inter-regional public transport; or
 - c) To prohibit vaccination requirements on all forms of public transport.
42. Option c) is the most straightforward option and would preserve access without any additional administrative burden. This option is also supported by public health advice.

However, officials are aware there is broad support for vaccination requirements on domestic flights and that some airlines do wish to introduce vaccination requirements in order to reassure passengers.

43. Option b) will be difficult to implement, as inter-regional public transport is not clearly defined. Many bus or train services operate both within and across regional boundaries and may be used by local commuters alongside those travelling further afield or on purely scenic journeys. It may also affect people's access to the closest supermarket.
44. On this basis, DPMC officials recommend taking the approach set out in option (a), whereby air transport is excluded from the prohibition, but provide for an exemption to the requirements if put in place by commercial providers for those with a defined need to travel. This is consistent with advice included in: *COVID-19 Vaccination Certificates: Implementation in Domestic Settings* [CAB-21-MIN-0421].
45. s9(2)(g)(i) 
s9(2)(g)(i) We would, however, expect the number of people travelling regionally via air to be significantly higher than the number travelling via other forms of inter-regional public transport, and therefore the scale of inter-regional travel supported by air may warrant different treatment.
46. Additionally, the need to provide an exemption for those travelling to access a specified life-preserving service (depending on the system design) could add operational and administrative burdens for airlines and healthcare providers. However, officials are aware some airlines may be considering negative test options for the unvaccinated, rather than strict vaccine requirements, and this may reduce the need for exemptions. Officials will seek to clarify details about these processes and provide guidance to these providers if you seek to take this option forward. The exemption process could include a standard, verifiable document similar to the current business travel document.
47. There are concerns about the potential impact of airline travel vaccination requirements for people living in the more isolated parts of New Zealand, such as Great Barrier Island, Stewart Island or the Chatham Islands. Air travel is the key link to the mainland for these communities.

Vaccination requirements in government-funded housing settings

48. Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development (HUD) advises that access to housing should, as far as possible, not be restricted on the basis of COVID-19 vaccination status.
49. Officials propose that the use of vaccination status to restrict access to housing be prohibited for all housing and housing support services funded directly by, or under contract to, the following state sector agencies:
 - a) Kāinga Ora – Homes and Communities;
 - b) Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development;

- c) Ara Poutama – Department of Corrections; and
 - d) Oranga Tamariki – Ministry for Children.
50. This approach would capture a range of programmes and supports, which are included in Attachment A.
 51. These accommodation and associated housing support services are generally targeted to particularly vulnerable population groups, many of whom have high and complex needs and often face multiple barriers to accessing and maintaining alternative accommodation. Transitional Housing and contracted motels are often 'last resort' options for those in housing need.
 52. In addition to the services set out in Attachment A, officials recommend introducing a prohibition for premises used to provide emergency housing. While the Government does not generally contract with motels providing emergency housing, this form of housing support is a vital component of the housing system and, by definition, for individuals and whānau in urgent housing need. Emergency Housing Special Needs Grants, which are administered by MSD, are provided to clients as opposed to suppliers.
 53. Officials advise that any emergency housing prohibition would apply for the whole motel premises, and not just for those rooms being used for emergency housing. Officials note that at present, emergency housing providers may have an appetite to require guests to be vaccinated before offering services. Introducing a CVC prohibition for premises that used to provide emergency housing, may see providers (generally motels) choose not to take emergency housing clients at all because they only want vaccinated visitors. Suppliers may be more willing to continue to take emergency housing clients if the prohibition applied to the entire premises.

Managing risks associated with unvaccinated clients

54. Providers of services are already required to undertake health and safety risk assessments (under the Health and Safety at Work Act 2015) and to put in place appropriate measures to manage the risk of transmission of COVID-19 for people who live and work in these environments.
55. Prohibiting the use of vaccination requirements will require providers to accept people into their services regardless of vaccination status. Where providers identify a heightened risk with unvaccinated people accessing their housing and housing support services, providers will still be required to put in place appropriate measures to manage health and safety risk. This could include placing unvaccinated people in accommodation that presents a lower risk of potential COVID-19 transmission (for example, using low density facilities without any communal/shared facilities, and/or modifying the provision of services).
56. Officials note that while this proposal means that providers will not be able to refuse access to services solely on the basis of COVID-19 vaccination status, providers should be able to continue to apply their existing assessment processes to make placements that meet client needs. For example, family size and age of children may be factor in assessing whether or not particular accommodation offering is suitable.

Risks to supply of supporting and emergency housing

57. There is a risk that prohibiting contracted housing and housing support providers, together with emergency housing providers, from requiring that people accessing services be vaccinated may result in some providers exiting the market. Some providers have already indicated their desire to require that people are vaccinated to access housing and related support services. However, on balance, officials consider that a prohibition on the use of vaccination requirements is likely to result in the best outcomes for this vulnerable population group.
58. Officials have not directly consulted with the sector on this issue. Further work will be required to understand provider concerns, where they exist, and to provide appropriate guidance including on the ongoing use of assessment processes.
59. Further analysis is required to determine whether it would be desirable and feasible to include parts of the private rental housing market in any future decisions about the prohibited use of CVCs. Officials will maintain a watching brief on market activities, including the response of private boarding houses that also provide accommodation to vulnerable groups of people.

Prohibition of vaccination requirements for people accessing basic food, healthcare and disability services

Supermarkets, dairies and petrol stations

60. We recommend that supermarkets and dairies¹ are prohibited from requiring customers to be vaccinated, in order to preserve access to essential food and other basic needs. This means unvaccinated persons will be entering stores, increasing the risk of staff exposure to COVID-19. This increased risk may justify a government vaccination mandate for workforces and the Ministry for Business, Innovation and Employment are consulting with supermarkets for their views on this. One supermarket chain, Countdown, has announced a vaccination mandate for its workforce and is consulting with its staff on this proposal.
61. We also recommend that petrol stations are prohibited from imposing vaccination requirements on their customers, given that in many parts of the country essential services can only practically be accessed via personal vehicles. In this way, access to petrol is essential for those who may not have access to public transport. Officials also note the importance of maintaining service access for these settings for rural communities.

Soup kitchens

62. Soup kitchens are classed as 'hospitality' under existing orders, which means that not requiring vaccines would impose restrictions on operations above Alert Level 2 and at all levels of the COVID-19 Protection Framework. However, soup kitchens have been providing ready-to-eat food through contactless delivery under Alert Level 3 and could continue to do so. We do not expect soup kitchens are likely to want to impose vaccine

¹ It is necessary to include dairies, as it is not possible to distinguish between a large dairy and a small supermarket. There are also likely to be some definitional issues around stores that partly specialise, such as green grocers, butchers, some bakeries, ethnic supermarkets. Officials will need to develop guidance for businesses on this point.

restrictions, given the vulnerable nature of their clientele. We therefore do not recommend an explicit prohibition for soup kitchens.

Health and disability services

63. Vaccination status should not be a barrier or a prerequisite for accessing essential health and disability services. All providers of these services should be prohibited from vaccination requirements. Health and disability services provide for people's basic needs and in some cases are necessary for the preservation of life. Vaccination status should not dissuade or delay a person from seeking healthcare services. Delayed access to health and disability services can result in poorer health outcomes. These services include but are not limited to:

- Primary care services
- Specialist clinics
- Laboratories and imaging services
- Public and private hospitals
- Maternity care
- Hospice services
- Oral healthcare services
- Mental health care services
- Ambulances and emergency care
- Aged residential care services

64. Other more discretionary health and disability services may not require a prohibition. The Ministry of Health is working to define the exact scope of 'essential health and disability services' to be covered by the prohibition. Ministry of Health officials will update your office on this issue.

65. Health and disability workers are under mandatory vaccination requirements, which will provide some level of protection against COVID-19 if they are exposed to clients who are not vaccinated and may have COVID-19.

66. Mental health and addiction treatment and support services are essential health services that all New Zealanders need to be able to access. Mental health and addiction services are provided in a range of settings including residential, inpatient, outpatient, in-home, primary and community settings. Vaccination requirements should be prohibited for use by all Ministry of Health and DHB-funded mental health and addiction service providers. This includes services provided by DHBs, NGOs and private providers via contracts with DHBs or directly with the Ministry of Health.

67. There is a range of disability supports where vaccination requirements should be prohibited as it would have a substantial adverse impact on disabled people to live day to day. These disability supports include the various forms of residential care (e.g. aged residential care facilities or group homes for people with physical or intellectual disabilities), personal cares that many people require to carry out activities of daily living (e.g. showering or toileting), and carer support and respite care (that e.g. enables parents to continue caring for a disabled child), and individualised funding arrangements (which allowed disabled people to purchase supports that are most appropriate to them). Other supports, such as equipment and modifications, can be considered essential in some situations.

Crown Law advice on human rights impact [legally privileged]

68. s9(2)(h)



Te Tiriti o Waitangi/Treaty of Waitangi considerations

- 73. Officials have considered te Tiriti o Waitangi/the Treaty of Waitangi and its principles. Relevant Treaty obligations include the Crown’s duty to actively protect Māori from adverse health outcomes, to ensure equity for Māori, and to allow Māori to exercise their rangatiratanga. Relevant to these considerations are the lower levels of vaccination within the Māori population, the difficulty for Māori living in isolated communities to receive a vaccine, and the higher risk that COVID-19 poses to Māori communities.
- 74. Prohibiting vaccination requirements would impact the ability for Māori to exercise rangatiratanga by removing one of the tools that Māori-run services might wish to use to protect their communities. Ministry of Education officials advise that they have not yet been

able to explore the impact of the prohibition for Māori education entities (eg kura and kohanga reo).

75. However, public health advice does not indicate significant adverse health outcomes from the use of prohibitions on requiring proof of vaccination status. Rather, the prohibitions will protect Māori access to healthcare, other live-preserving services, and education. These protections are particularly important while Māori vaccination rates remain low, as vaccination requirements will disproportionately affect Māori. In this sense the prohibitions assist the Crown in upholding its duty to actively protect Māori and ensure equitable access to healthcare and education.
76. Future engagement with Māori-run services affected by the prohibitions, including Māori education entities, should focus on ways to support alternative health and safety measures in the absence of vaccination requirements.

Next steps

77. If you agree to the prohibitions outlined in this paper, we will issue drafting instructions to bring them into effect.
78. Further work is needed to finalise details in the following workstreams:
 - a) defining the health-related services that should be excluded for the prohibition;
 - b) agency led engagement with sector groups on the implications of the prohibitions in this policy;
 - c) subject to further decisions by you, confirming the design of the exemptions process for those travelling inter-regionally by air, including how people can access an exemption and what the specific requirements are required to meet the threshold; and
 - d) issuing guidance to government agencies and local government about the use of vaccination requirements in government-run services.

Financial Implications

79. There are no financial implications with the proposals in this paper.

Consultation

80. The following agencies contributed information: The Ministries of Health, Housing and Urban Development, Social Development, Transport, Education, and Business, Innovation and Employment. The following agencies were consulted on this briefing: Oranga Tamariki, Ministry of Justice, Crown Law Office, Ministry for Primary Industries, Department of Internal Affairs and Public Service Commission.
81. Officials note that given the timeframes in drafting this advice, limited consultation has occurred with sector representatives and bodies on the implications of this policy. Engagement and consultation will be led by agencies as needed and inform further work.

Attachment A: Housing programmes and supports recommended for a prohibition on vaccine requirements

<p>Kāinga Ora – Homes and Communities</p>	<ul style="list-style-type: none"> • Public Housing (64,211 places) • Community Group Housing Places for supported housing provided through a range of agencies and providers
<p>Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development</p>	<p>Contracted housing and housing-related support services including:</p> <ul style="list-style-type: none"> • Public Housing provided by Community Housing Providers • Transitional Housing Accommodation and support services • Rapid Rehousing • Housing First • Contracted Emergency Housing and support services • Sustaining Tenancies • Creating Positive Pathways
<p>Ara Poutama – Department of Corrections</p>	<p>Contracted supported accommodation services that support people's reintegration back to whānau and their community (approximately 326 beds nationally as at 30 June 2021):</p> <ul style="list-style-type: none"> • Emergency housing • Bail support to prevent people needing to go to or stay in prison • Transitional accommodation • Intensive support for people with high and complex needs • Accommodation for Returning Offenders from Overseas • A range of supported housing for people leaving prison to prevent people from entering prison
<p>Oranga Tamariki – Ministry for Children</p>	<ul style="list-style-type: none"> • Contracted supported accommodation through the Transition Support Services for eligible young people leaving Oranga Tamariki care • Temporary emergency housing through motels for young people residing in and leaving care and youth justice settings when there is no other option available