

Reference: 20210435

15 October 2021

Graham Burger  
fyi-request-16547-449c8671@requests.fyi.org.nz>

Dear Graham

Thank you for your Official Information Act request (OIA), received on 17 September 2021. You requested the following:

*Have any COVID19 vaccine manufacturers been provided with liability waivers of any kind, including negligence by the NZ government or any agency? Please provide details of any such waivers and the companies and agencies involved.*

The Ministry of Health transferred part of your request to the Treasury under section 14(b)(ii) of the OIA.

The Ministry of Health also transferred part of the request to the Ministry of Business, Innovation and Employment under section 14(b)(ii) of the OIA.

### Information being released

Please find enclosed the following document:

Date	Document Description	Decision
9 August 2021	Donating AstraZeneca COVID-19 vaccines to the COVAX Advance Market Commitment: indemnity request from MOH/MFAT - Gavi	Release in part

I have decided to release the relevant parts of the document listed above, subject to information being withheld under one or more of the following sections of the OIA, as applicable:

- certain sensitive advice under section 6(b)(ii) – to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by an international organisation,
- personal contact details of officials under section 9(2)(a) – to protect the privacy of natural persons, including that of deceased natural persons,
- commercially sensitive information under section 9(2)(b)(ii) – to protect the commercial position of the person who supplied the information, or who is the subject of the information,

- confidential information under section 9(2)(f)(iv) – to maintain the current constitutional conventions protecting the confidentiality of advice tendered by Ministers of the Crown and officials,
- certain confidential information under section 9(2)(ba)(i) – where the release of that information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied, and
- direct dial phone numbers of officials under section 9(2)(k) – to prevent the disclosure of information for improper gain or improper advantage.

Direct dial phone numbers of officials have been redacted under section 9(2)(k) in order to reduce the possibility of staff being exposed to phishing and other scams. This is because information released under the OIA may end up in the public domain, for example, on websites including Treasury’s website

**Information publicly available**

The following information is also covered by your request and will soon be publicly available on the Treasury website:

<b>Item</b>	<b>Date</b>	<b>Document Description</b>	<b>Website</b>
1.	27 May 2021	Donating AstraZeneca doses to the COVAX Facility: Indemnity request from MFAT/MOH	<a href="https://www.treasury.govt.nz/publications">https://www.treasury.govt.nz/publications</a>
2.	29 April 2021	Polynesian COVID-19 vaccine roll-out: Indemnity request from MFAT/MOH – Pfizer New Zealand Limited / BioNTech	<a href="https://www.treasury.govt.nz/publications">https://www.treasury.govt.nz/publications</a>

Accordingly, I have refused your request for the documents listed in the above table under section 18(d) of the OIA: *the information requested is or will soon be publicly available.*

Please note that this letter (with your personal details removed) and enclosed documents may be published on the Treasury website.

This reply addresses the information you requested. You have the right to ask the Ombudsman to investigate and review my decision.

Yours sincerely

Conor McBride  
**Team Leader, International**

**Treasury Report:** Donating AstraZeneca COVID-19 vaccines to the COVAX Advance Market Commitment: indemnity request from MOH/MFAT - Gavi

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<b>Date:</b>	9 August 2021	<b>Report No:</b>	T2021/1882
		<b>File Number:</b>	SH-1-6-1-3-3-13-1

**Action sought**

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	<b>Action sought</b>	<b>Deadline</b>
Hon Grant Robertson <b>Minister of Finance</b>	<b>Agree</b> to provide an indemnity to Gavi, the Vaccine Alliance, for ancillary costs associated with the donation of AstraZeneca doses to the COVAX Facility.  <b>Sign</b> the attached grant agreement.	11 August 2021

**Contact for telephone discussion (if required)**

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<b>Name</b>	<b>Position</b>	<b>Telephone</b>	<b>1st Contact</b>
Hugo Van Dyke	Senior Analyst, International	s9(2)(k) (wk)	N/A (mob) ✓
Conor McBride	Team Leader, International	s9(2)(k) (wk)	N/A (mob)

**Minister's Office actions (if required)**

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**Return** the signed report to Treasury.

**Sign** the attached grant agreement and return to Treasury.

Note any feedback on the quality of the report

**Enclosure:** Yes (attached)

## Treasury Report: Donating AstraZeneca COVID-19 vaccines to the COVAX Advance Market Commitment: indemnity request from MOH/MFAT - Gavi

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### Executive Summary

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This report seeks your approval to provide Gavi, the Vaccine Alliance (Gavi) with an indemnity for the payment of ancillary costs for donating up to 7,600,000 COVID-19 vaccine doses from our Advance Purchase Agreement (APA) with AstraZeneca (AZ) to the COVAX Facility (COVAX) for distribution by the COVAX Advanced Market Commitment (AMC).

This indemnity is similar to the indemnity you approved for donating 1,668,000 COVAX-sourced AZ doses to the AMC, earmarked to the Pacific [T2021/1225 refers].

#### ***Vaccine Ministers have agreed to donate a further 1,000,000 AZ doses***

On 27 July 2021, Vaccine Ministers agreed [HR-2021-1664 refers]:

- to donate the [redacted] delivery of the AZ vaccine of up to 1,000,000 doses to the AMC, and s9(2)(b)(ii)
- the donated doses would be earmarked for countries in the Pacific region as absorptive capacity allows and any surplus doses would be for distribution to other COVAX AMC countries worldwide, according to the WHO Allocation Mechanism.

#### ***The grant agreement for donating these AZ doses requires New Zealand to pay ancillary costs and includes an indemnity for failure to pay those costs***

The attached grant agreement for donating these doses will require New Zealand to:

- pay 6(b)(ii) 9(2)(ba)(i) [redacted] for ancillary costs associated with delivering the donation, 6(b)(ii) 9(2)(ba)(i) [redacted] Payment of these ancillary costs will be funded from Vote Foreign Affairs and will allow Gavi to prioritise its resources towards mobilising the maximum number of doses, and
- indemnify Gavi for any costs, losses or liabilities incurred as a result of New Zealand failing to pay these ancillary costs.

The grant agreement will apply to the initial donation of up to 1,000,000 doses (up to 6(b)(ii) 9(2)(ba)(i) [redacted] and any future donation of APA-sourced AZ doses New Zealand elects to pay ancillary costs for (up to 6(b)(ii) 9(2)(ba)(i) [redacted] for 7,600,000 doses, including the initial 1,000,000). Future donations will be subject to agreement by Vaccine Ministers but will not require further indemnity approvals from you.

#### ***Officials consider that this indemnity meets the public interest test***

To provide this indemnity, you (as Minister of Finance) will need to be satisfied that the indemnity meets the public interest test under section 65ZD of the Public Finance Act 1989.

We consider that the indemnity satisfies the public interest test. The indemnity is low risk and benefits New Zealand as it expedites the rate at which doses are distributed to:

- the Pacific, which reduces the region's reliance on the aid programme, and
- worldwide, which supports the global recovery and our reconnection with the world.

## Recommended Action

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We recommend that you:

- a **note** that on 27 July 2021 Vaccine Ministers agreed to donate up to 1,000,000 doses of the AstraZeneca (AZ) vaccine procured through our bilateral advanced purchase agreement (APA) to the COVAX Advance Market Commitment (AMC) [HR-2021-1664 refers]
- b **note** that Vaccine Ministers have agreed to allocate these doses to COVAX AMC Eligible Economies in the Pacific region with first priority accorded to meeting New Zealand's commitments to Tonga, Fiji, Solomon Islands, Vanuatu, and Kiribati, as absorptive capacity allows, and any surplus doses would be available for distribution to AMC-eligible countries worldwide
- c **note** that the attached grant agreement (**Annex Two**) allows Gavi, the Vaccine Alliance (Gavi) to invoice New Zealand for ancillary costs associated with donating APA sourced AZ doses, including the no fault compensation levy, safe injection equipment and freight (totalling 6(b)(ii) 9(2)(ba)(i))
- d **note** that the Ministry of Health will initially incur the ancillary costs associated with the donation of AZ doses to the AMC and will subsequently invoice the Ministry of Foreign Affairs and Trade with the payment being met from Vote Foreign Affairs
- e **note** that the grant agreement requires New Zealand to indemnify Gavi for costs, losses or liabilities incurred by Gavi as a result of New Zealand failing to pay the grant payment (that is, the payment for ancillary costs) or failing to pay the correct amount; this is in line with the indemnities previously granted in the COVAX Commitment Agreement
- f **note** that, while the donation referred to in recommendation (a) above is for 1,000,000 doses, the grant agreement, including the indemnity, will apply to all APA-sourced AZ doses (7,600,000, including the initial 1,000,000) that New Zealand agrees to donate to the AMC and pay ancillary costs to Gavi for
- g s9(2)(f)(iv)
- h **note** that the indemnity is not within the permitted categories of indemnity that the Ministry of Foreign Affairs and Trade (MFAT) or Ministry of Health (MOH) can give under section 65ZE of the Public Finance Act 1989
- i **note** that under section 65ZD of the Public Finance Act 1989, the Minister of Finance may, on behalf of the Crown, give an indemnity "if it appears to the Minister to be necessary or expedient in the public interest to do so"
- j **note** that officials consider the provision of this indemnity to Gavi meets the public interest test because:
  - i. providing for ancillary costs avoids our donation becoming a drain on the AMC's resources intended to fund the purchase of vaccines for developing countries, and allows the AMC to mobilise the doses as quickly and safely as possible,

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- ii. it is considered preferable that New Zealand provides support to the Pacific region to access vaccines as soon as possible in order to lessening their reliance on New Zealand's aid programme in the event of a COVID-19 outbreak or further border closures, and
  - iii. supporting developing countries more broadly to increase vaccination rates worldwide improves New Zealand's ability to reconnect with the rest of the world
- k **note** that New Zealand can wholly mitigate the risk of this indemnity being called upon because it is within our control to make the relevant payments on time and for the correct amount
- l **agree** to provide an indemnity to Gavi in respect of the ancillary costs associated with donating AZ doses to the AMC under section 65ZD of the Public Finance Act 1989 by signing the attached grant agreement
- Agree/disagree.*
- m **sign** the attached grant agreement (**Annex Two**) to give effect to your decision to provide the indemnity, above

Conor McBride  
**Team Leader, International**

Hon Grant Robertson  
**Minister of Finance**

## Treasury Report: Donating AstraZeneca COVID-19 vaccines to the COVAX Advance Market Commitment: indemnity request from MOH/MFAT - Gavi

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### Purpose of Report

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1. This report seeks your approval to provide Gavi, the Vaccine Alliance (Gavi) with an indemnity for the payment of ancillary costs associated with donating up to 7,600,000 doses of the AstraZeneca (AZ) COVID-19 vaccine to the COVAX Facility (COVAX) for distribution by the COVAX Advanced Market Commitment (AMC).
2. This indemnity provides an extra level of assurance to Gavi that New Zealand will pay the ancillary costs as promised in our agreement. Officials consider the risk of triggering this indemnity is low because New Zealand is in control of making the required payments and we can therefore ensure these payments amounts are accurate and made on time.

### Background

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#### **Previous donations to the Pacific**

3. In May 2020, New Zealand committed to support regional and global access to COVID-19 vaccines [CAB-20-MIN-0382 refers] and to ensure our Pacific neighbours have timely access to a vaccine. Since then, New Zealand has entered into advanced purchase agreements (APAs) with four vaccine companies.
4. To date, this support has been through a combination of bilateral donation directly to Polynesian countries<sup>1</sup>, and donation via the AMC:
  - a In February 2021, Vaccine Ministers agreed to provide Polynesian countries with access to New Zealand's vaccine portfolio [HR20210373 refers] and in April you agreed to indemnify Pfizer New Zealand Limited / BioNTech (Pfizer) s9(2)(b)(ii) s9(2)(b)(ii) s9(2)(b)(ii) T2021/1040 refers]. Since then, at least 25,800 Pfizer doses have been delivered to the Realm (Cook Islands, Niue, and Tokelau). The Realm are near completing their vaccine rollouts to their eligible populations.
  - b In April 2021, Vaccine Ministers agreed to donate 1,668,000 doses of the AZ vaccine to the AMC s9(2)(b)(ii) which would be earmarked for the Pacific, and in May you agreed to indemnify Gavi for ancillary costs associated with donating those vaccines, should they arise [T2021/1225 refers]. These doses were purchased through COVAX [MBIE-2021-1847 refers]. So far, 211,200 doses have been delivered to Tonga, Tuvalu, Fiji, Papua New Guinea, Solomon Islands and Timor-Leste.

#### **Further donations to the AMC**

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<sup>1</sup> The Cook Islands, Niue, Tokelau, Samoa, Tonga and Tuvalu  
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s9(2)(b)(ii)

5. On 27 July 2021, Vaccine Ministers agreed to donate our [redacted] of AZ of up to an additional 1,000,000 doses ([redacted]) to the AMC [HR20211664 refers]. The [redacted] doses are a portion of the 7,600,000 doses that were originally sourced through a [redacted] bilateral advanced purchase arrangement (APA) between New Zealand and AZ last year [T2020/3585 refers].
6. Vaccine Ministers have agreed to distribute the [redacted] doses amongst AMC Eligible Economies in the Pacific region<sup>2</sup>, as absorptive capacity allows, with first priority accorded to meeting New Zealand's commitments to Tonga, Fiji, Solomon Islands, Vanuatu, and Kiribati. Any volumes surplus to Pacific countries' needs would be available for distribution to other COVAX AMC countries according to the WHO Allocation Mechanism<sup>3</sup>.
7. Under the bilateral APA purchase of these AZ doses, New Zealand indemnified AZ in respect of the distribution, administration, use and manufacturing of the doses. The tripartite dose sharing agreement between Gavi, New Zealand and AZ in respect of proposed donations will provide that AZ releases New Zealand from this liability in respect of any AZ doses donated to COVAX.

s9(2)(b)(ii)

The terms of the grant agreement for this donation are similar to the grant agreement for donating the [redacted] doses

s9(2)(b)(ii)

8. The attached grant agreement (**Annex Two**) allows Gavi to invoice New Zealand for ancillary costs associated with the donation, including the no fault compensation levy, safe injection equipment and freight [redacted] 6(b)(ii) 9(2)(ba)(i) [redacted]. These ancillary costs will be funded from Vote Foreign Affairs baselines.
9. The terms of the grant agreement are similar to the previous grant agreement for the donation of [redacted] doses, under which you also agreed to an indemnity to cover the ancillary costs associated with donation. In summary, the key terms for the grant agreement to donate the [redacted] doses were that New Zealand agreed to:
  - a. pay Gavi ancillary costs associated with donating the doses. While these ancillary costs are optional, Vaccine Ministers agreed to make these payments in accordance with the principle of good donorship to reduce the financial burden on COVAX and to support our request that doses be earmarked for the Pacific [HR20211664 refers]; and
  - b. indemnify Gavi for any costs, losses or liabilities incurred as a result of New Zealand failing to pay the ancillary costs correctly.
10. The differences between the terms of this ([redacted]) agreement and the previous ([redacted] doses) agreement are that:

s9(2)(b)(ii)

s9(2)(b)(ii)

s9(2)(b)(ii)

6(b)(ii) 9(2)(ba)(i)

- b. while Gavi will earmark donated doses for AMC eligible economies in the Pacific, if the donated doses exceed the absorptive capacity of those economies (which is

<sup>2</sup> Kiribati, Micronesia, Solomon Islands, Papua New Guinea, Timor-Leste, Vanuatu, Fiji, Marshall Islands, Samoa, Tonga, Tuvalu.

<sup>3</sup> Countries with the lowest vaccination coverage through COVAX will be prioritised

<sup>4</sup> These costs cover the COVAX AMC no-fault compensation levy, safe injection equipment costs and freight.



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s9(2)(b)(ii)

anticipated, with respect to the [redacted] doses and almost certainly will with respect to the remaining 6,600,000 doses), the remainder will be available for wider distribution to eligible economies to the AMC according to the WHO Allocation Mechanism; and


- c this agreement, and associated indemnity, will apply for any donation of APA-sourced AZ doses where New Zealand elects to pay the ancillary costs (i.e. if Vaccine Ministers subsequently agree to donate any of the remaining 6,600,000 or more AZ doses then the terms of this agreement would apply).

**Proposed indemnity**

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- 11. This indemnity is to provide assurance to Gavi that New Zealand will pay the agreed-upon ancillary costs associated with donating AZ doses at 6(b)(ii) 9(2)(ba)(i) [redacted] – this includes the AMC no fault compensation levy, safe injection equipment and freight. Initially this would apply to the [redacted] doses only, but it would also apply to any of the remaining 6,600,000 or more AZ doses, should New Zealand agree to donate them and pay ancillary costs to Gavi. s9(2)(b)(ii)
- 12. The indemnity provisions are set out below and in clauses 6.1 and 6.2 of the grant agreement (**Annex Two**). These are identical to the previous indemnity you provided to Gavi for donation to the COVAX AMC [T2021/1225 refers].

6(b)(ii) 9(2)(ba)(i)



Officials consider that your approval to the proposed indemnity satisfies the public interest test under the Public Finance Act 1989

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13. It is a matter for you (as Minister of Finance) to decide whether or not you are satisfied that it is necessary or expedient in the public interest to indemnify Gavi on the terms outlined in paragraph 12.
14. Officials consider that giving the requested indemnity on the terms set out in paragraph 12 to enable fully funded dose donation through the AMC satisfies the “necessary or expedient in the public interest” test in section 65ZD of the Public Finance Act 1989, for reasons set out below and in the business case at **Annex One**.
  - a *It supports global recovery from the COVID-19 pandemic and New Zealand reconnecting with the rest of the world:* it will expedite the rate at which doses are rolled out to countries in the COVAX AMC, increasing immunisation rates in countries that need it. It also encourages other donors to support roll out of unearmarked donated doses.
  - b *Supporting this multilateral approach to donating vaccines shows our commitment to the global equitable access to vaccines and promotes cooperation in this space:* fully funding our donation will increase Gavi’s resources to purchase more vaccines for COVAX AMC thus helping to increase the supply of vaccines to other countries, which include our Pacific neighbours.
  - c *It is a better use of New Zealand’s public resources:* in the case of doses being donated to the Pacific, New Zealand would likely be required to cover some of the costs of a COVID-19 outbreak in the region. Earlier roll out of vaccines in the region will reduce the likelihood of that occurring, speed up border re-openings and increase economic stability.
  - d *This indemnity has a low risk of being called upon:* New Zealand has complete control over whether this indemnity will be called upon because we can ensure the payments are paid on time and for the accurate amount.
15. Officials also consider the donation to be expedient because of the rapidly evolving global situation including in Pacific countries like Fiji.

### Financial implications and mitigations

16. The financial liability for taking on this indemnity as it applies to the [redacted] doses is the total cost of grant payment for ancillary costs, which will be: s9(2)(b)(ii)  
[redacted] 6(b)(ii) 9(2)(ba)(i)
  - b any costs incurred by Gavi as a result of New Zealand failing to meet its payment obligations, such as costs associated with Gavi finding an alternative funding source.
17. If New Zealand makes future donations of APA-sourced AZ doses to COVAX and elects to pay ancillary costs under the same grant agreement, the financial liability would increase to up to 6(b)(ii) 9(2)(ba)(i) [redacted] plus other costs incurred by Gavi from New Zealand failing to meet a payment obligation.
18. Finally, New Zealand is in control of making the required payments, so officials will mitigate the risk by ensuring the payments are made on time and for the accurate amount.

## Next steps

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19. If you agree that it is necessary or expedient in the public interest to give the indemnity you will need to sign the indemnity provisions within the grant agreement at **Annex Two**.
20. Once the grant agreement and other related contracts are signed, this will enable Gavi to progress with planning to accept and implement New Zealand's donation of up to 1,000,000 AZ doses [REDACTED]. Any AZ donations in addition to the initial 1,000,000 will be subject to agreement by Vaccine Ministers but will not require further indemnity approvals from you. s9(2)(b)(ii)
21. Officials are currently working on what the global vaccine programme will look like for next year and what New Zealand's commitments will be to the Pacific and other countries. We will update you on this as we begin to have a clearer picture.

Annex 1- refer to initial request made to MoH

Annex 2 - withheld under s9(2)(b)(ii)