



BRIEFING

POLICY DECISIONS: COVID-19 VACCINATION REQUIREMENT FOR HIGH RISK WORK IN MANAGED ISOLATION AND QUARANTINE FACILITIES AND BY PUBLIC SERVICE AGENCY WORKERS AT AFFECTED AIRPORTS, AFFECTED PORTS AND AFFECTED SHIPS

Date:	16 April 2021	Priority:	Urgent
Security classification:	In Confidence	Tracking number:	2021-3276

Action sought		
	Action sought	Deadline
Rt Hon Jacinda Ardern Prime Minister	Agree to design choices for COVID-19 Order	16 April 2021
Hon Chris Hipkins Minister for COVID-19 Response	Indicate if you would like any further work on additional support mechanisms	
Hon Michael Wood Minister for Workplace Relations & Safety	Indicate if you would like to discuss this briefing	
	Agree to refer this briefing to COVID-19 Vaccine Ministers, Border Ministers, the Attorney-General and Ministers of Social Development and Employment, and Justice.	

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Paul Stocks	Deputy Chief Executive, Labour, Science and Enterprise, MBIE	9(2)(a)	
Shane Kinley	Policy Director, Workplace Relations and Safety Policy, MBIE		✓

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments



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Purpose

This paper seeks your decisions on policy matters needed for a COVID-19 Order to be issued requiring that work that is high risk in Managed Isolation and Quarantine Facilities (MIQFs) and by Public Service Agency workers (as defined in Schedule 2 of the Public Service Act) at affected airports, affected ports and affected ships, be performed only by workers who have been vaccinated, and your direction on whether any further work is required on additional support mechanisms is required.

Recommended action

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

- 1 **note** legal advice has been provided by Crown Law on the approach to the Order recommended in this briefing (attached as Annex One) Noted
- 2 **note** that the Ministry of Health has advised that requiring that specified high-risk work only be undertaken by vaccinated people is an appropriate measure to address the risk of outbreak and spread of COVID-19, in response to the current pandemic Noted

Order policy design choices

- 3 **note** that the approach to the Order recommended in this paper is based on the *COVID-19 Public Health Response (Required Testing) Order 2020* (Required Testing Order) Noted

- 4 **agree** that the Order recommended in this briefing will apply to high risk work performed at:

EITHER:

- 4.1 Managed Isolation and Quarantine Facilities (MIQFs) only

Agreed / Not agreed

OR:

4.2 MIQFs and Public Service Agency workers (as defined in Schedule 2 of the Public Service Act) interacting with international passengers, crew, their belongings, and affected items at affected airports, affected ports and affected ships

Agreed / Not agreed

5 **note** further policy decisions will be sought in relation to high risk work performed in the broader Border sector eg transport and health

Noted

6 **agree** that the Order will require that specified work can only be done by a vaccinated worker from the end of April with an existing worker (employed on or before 30 April 2021) having needed to have:

6.1 a minimum of their first vaccination by 30 April 2021, to continue performing specified work from 1 May 2021

6.2 their second vaccination by 4 June 2021, to continue performing specified work from 5 June 2021

Agreed / Not agreed

7 **agree** that the Order will require that specified work cannot be performed by a new worker (employed on or after 1 May 2021) who has not had:

7.1 their first vaccination before they commence performing specified work

7.2 their second vaccination within 35 days of commencing performing specified work

Agreed / Not agreed

8 **agree** that specified work will be all work performed by the regularly present workforce at MIQFs and Public Service Agency workers (as defined in Schedule 2 of the Public Service Act) interacting with international passengers, crew, their belongings, and affected items at an "affected airport", "affected port" or "affected ship" (scope reflecting decision on recommendation 4):

8.1 including all workers whose primary place of work is at MIQFs, or who are transporting people to/from MIQFs eg MIQF staff, Defence Force personnel, Police, security guards, hotel staff and medical staff working at MIQFs

8.2 including all workers whose roles regularly require them to visit MIQFs eg MIQ HQ or RIQCCs that may be required to visit MIQFs, and regular maintenance contractors for MIQFs

8.3 including all workers whose roles do or are likely to regularly require them to visit locations within affected airports, affected ports and affected ships where international passengers, crew and their belongings or affected items have been

Agreed / Not agreed

- 9 **note** that specified work would exclude the following:
- 9.1 workers who perform work at MIQFs, and locations within affected airports, affected ports and affected ships where international passengers, crew and their belongings or affected items have been on an unanticipated basis, which is necessary, time critical and cannot be performed by a regular worker (eg unanticipated maintenance work), unless they have to return to work at any of these places
 - 9.2 workers who handle affected items within 72 hours of their removal from an MIQF, affected airport, affected port, and affected ship and who “have contact” with workers in MIQFs while they are both working (the groups recently added to the Required Testing Order)
 - 9.3 workers who need to enter an MIQF, affected airport, affected port, or affected ship to preserve or protect person’s life, health or safety in emergency eg Police, Fire Service
 - 9.4 workers who are authorised or required by law to enter into an MIQF, affected airport, affected port, or affected ship eg Ombudsman

Noted

- 10 **agree** that the Order provide that workers who perform work at MIQFs, and Public Service agency workers at affected airports, affected ports, or affected ships where international passengers, crew and their belongings or affected items have been on an unanticipated basis must not return to work at an any of those places, unless authorised by the Chief Executive of the Public Sector Agency responsible for the work (or their delegate) to enter the place without being vaccinated

Agreed / Not agreed

- 11 **agree** that the Chief Executive of the Public Sector Agency responsible for the work (or their delegate) should only be permitted to authorise a worker to enter the place without being vaccinated (under recommendation 10) where:

- 11.1 the work to be performed is unanticipated, necessary and time critical work, which cannot be performed by a regular, vaccinated worker
- 11.2 not performing the work would mean the MIQF, affected airport, affected port, or affected ship could not operate safely and would need to cease operations

Agreed / Not agreed

- 12 **note** that workers excluded under recommendations 9.2 to 9.4 will still be encouraged to be vaccinated in line with the Government’s Sequencing Framework, however this would not be a mandatory requirement for those workers to perform work at a MIQF, affected airport, affected port, or on an affected ship

Noted

- 13 **agree** that the Order would not apply to work performed at temporarily offline MIQFs provided the facility has been deep cleaned or at least 72 hours has passed since it was occupied by returnees eg facilities with no returnees, including where this is due to maintenance work

Agreed / Not agreed

- 14 **agree** that the Order provide that by the dates specified in recommendation 6:
- 14.1 a person conducting a business or undertaking (PCBU) who employs or engages any person to carry out specified work for the PCBU, must ensure that the specified work is only performed by vaccinated workers
- 14.2 workers may only perform specified work if they have been vaccinated
- Agreed / Not agreed
- 15 **agree** that PCBUs will have obligations similar to testing under the Required Testing Order, eg to notify workers of the requirement to be vaccinated, not prevent workers from getting vaccination during work hours, mandatory use of Ministry of Health register
- Agreed / Not agreed
- 16 **agree** that individuals have to provide information about their vaccination to PCBUs, as per the Required Testing Order, in order to be considered vaccinated
- Agreed / Not agreed
- 17 **agree** that breaching any of the obligations in the Order will be an infringement offence for the purposes of section 26(3) of the COVID-19 Public Health Response Act 2020
- Agreed / Not agreed
- 18 **note** that worker will be refused entry to a MIQF, affected airport, affected port, or affected ship if their vaccination status cannot be confirmed (eg through presenting suitable evidence or verification)
- Noted
- 19 **agree** that there will **not** be any exemptions provided from the obligation that specified work at MIQFs, and work carried out by Public Service Agencies at affected airports, affected ports, or affected ships only be performed by vaccinated workers (other than the authorisations regime proposed under recommendation 11)
- Agreed / Not agreed

Information sharing

- 20 **agree** that, for the avoidance of doubt, the section 11 Order will authorise the matching of information between the COVID-19 Immunisation Register and the Border Worker Testing Register
- Agreed / Not agreed
- 21 **agree** that, to enable employers/PCBUs to meet their obligations under the section 11 Order, the section 11 Order will authorise the sharing of vaccination status of workers who are subject to this Order, or who were subject to this Order in the previous 30 days, with their employers/PCBUs
- Agreed / Not agreed

Further work on additional support mechanisms

- 22 **note** options for additional support mechanisms for workers who are not vaccinated are provided in Annex Two

Noted

- 23 **note** that section 11 of the Act would not empower the making of rules authorising or requiring employers to give preferential treatment to employees who are unable to be vaccinated when making redeployment and other employment decisions

Noted

- 24 **indicate** if you would like further advice on any of the options in Annex Two

Further advice required as indicated in annex Two / No further advice required

Human Rights issues

- 25 **note** the advice on human rights issues in this briefing

Noted

- 26 **note** the Minister for COVID-19 Response must take be satisfied that the approach to the Order recommended in this briefing does not limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990, as part of issuing an Order

Noted

Next steps

- 27 **note** that Parliamentary Counsel Office will expedite the drafting of an Order on receipt of your decisions on this briefing and expects to be able to provide a draft Order early in the week commencing Monday 19 April 2021 and a final Order by the middle of / late in that week, subject to any issues raised in Ministerial consultation (required under the Act) or agency consultation

Noted

- 28 **note** that the Ministry of Health will provide a paper enabling the issuing of the Order recommended in this briefing by the middle of the week commencing Monday 19 April 2021, including advice from the Director-General of Health on public health matters

Noted

- 29 **note** that the Minister for COVID-19 Response must consult with the Prime Minister, Minister of Justice and Minister of Health prior to making any order

Noted

- 30 **note** the Ministry Health will be updating operational guidance (including the immunisation Sequencing framework) to ensure that relevant provision are made for people required to be vaccinated under the Order

Noted

- 31 **note** that further advice will be provided from the Border Executive Board agencies by 7 May 2021 on the recommended approach to requiring specified high risk work performed by other workforces operating at the border (including by non-public sector workers eg airlines, airports and ports workers, DHBs and Crown entities including MaritimeNZ and CAA) can only be done by a vaccinated worker, including any proposed exemptions and other issues for Ministers to consider such as the scope of work and workers impacted at affected airports and affected ports

32 **indicate** if you would like to discuss this briefing.

Wish to discuss / Do not wish to discuss

33 **agree** to refer this briefing to COVID-19 Vaccine Ministers, Border Ministers, the Attorney-General and Ministers of Social Development and Employment, and Justice.

Agreed / Not agreed



Paul Stocks
Deputy Chief Executive, Labour, Science and Enterprise, MBIE

16 / 4 / 2021

Rt Hon Jacinda Ardern
Prime Minister

..... / /

Hon Chris Hipkins
Minister for COVID-19 Response

..... / /

Hon Michael Wood
Minister for Workplace Relations & Safety

..... / /

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Background

1. You met on Tuesday 13 April 2021 with Border Executive Board Chief Executives to discuss your preferred approach to requiring that high risk work at the Border be performed only by workers who have been vaccinated. This followed the provision of a draft Cabinet paper to the Ministers for COVID-19 Response and Workplace Relations and Safety.
2. You have indicated that:
 - a. priority should be given to preparing a COVID-19 Public Health Order (s11 Order) under the COVID-19 Public Health Response Act 2020 (the Act) that cover specified work performed at Managed Isolation and Quarantine Facilities (MIQFs) and by Public Service Agency workers at affected airports, affected ports, or on affected ships
 - b. further advice should be provided on options for additional support mechanisms for workers who are not vaccinated
 - c. further advice should be provided on preparing a s11 Order that covers specified work performed by other workforces operating at the Border.
3. This briefing seeks your decisions on the first two points above. Next steps for the third point are outlined in paragraphs 81 to 88 below.

9(2)(h)



Public Health rationale

6. The Ministry of Health has advised that requiring that specified high-risk work only be undertaken by vaccinated people is an appropriate measure to address the risk of outbreak and spread of COVID-19 in response to the current pandemic. This is because there is a risk that these individuals may be exposed to, and infected by, COVID-19 in the course of their work. The key public health consideration is that vaccines offer a high degree of protection for individuals who are vaccinated, alongside a range of other public health measures designed to protect those vaccinated and others they have contact with. A worker who has been vaccinated will have a very high likelihood that they will be protected from serious illness or death. Evidence of the efficacy of vaccines in preventing person-to-person transmission is still evolving, however, it suggests that the vaccine is also likely to be effective in preventing wider transmission.
7. It is also imperative that other public health measures (such as regular workforce testing, the use of personal protective equipment and safe distancing) remain in place presently.
8. A key consideration is how to define high-risk work, with input from border sector employers, public health and infectious disease experts.

9. This paper proposes definitions for high risk work for MIQFs, which MBIE have developed in consultation with MIQ Policy and Operational teams, MBIE Legal, Crown Law and PCO. Other Border Executive Board agencies and the Ministries of Health and Justice have also been consulted on the approach to these definitions.

Order policy design choices

10. The following policy design choices need to be made so that a s11 Order can be prepared:
- Scope of work to be covered in first Order
 - What does vaccinated mean and when will a worker need to be vaccinated by?
 - What is the definition of high risk work?
 - Who is responsible for complying with the Order and what are the consequences for non-compliance?
 - Should any exemptions be provided for?
11. Officials have based the approach to the s11 Order recommended in this paper on the COVID-19 Public Health Response (Required Testing) Order 2020. This is because that Order provided a base for work that is considered high risk and an approach with comparable duties on a person conducting a business or undertaking (PCBU) who employs or engages any person to carry out specified work for the PCBU, and workers employed or engaged by a PCBU.

Scope of work to be covered in first Order

12. The first decision Ministers need to make is whether the Order recommended in this briefing will apply to high risk work performed at:
- Managed Isolation and Quarantine Facilities (MIQFs) only
- OR:
- MIQFs and Public Service Agency workers (as defined in Schedule 2 of the Public Service Act) interacting with international passengers, crew, their belongings, and affected items at affected airports, affected ports and affected ships.
13. Border Executive Board Chief Executives recommend the broader scope for this Order, which would apply to Customs, MPI and ImmigrationNZ workers interacting with international passengers, crew, their belongings, and affected items at affected airports, affected ports and affected ships.
14. The public health rationale for the broader application is that these workers all face significant risks from interacting with persons arriving in New Zealand who may have COVID-19. Requiring vaccination to perform this work will provide a high degree of protection for individuals who are vaccinated, alongside a range of other public health measures designed to protect those vaccinated and others they have contact with.
15. This scope would not apply to broader public sector workers eg MaritimeNZ, Civil Aviation Authority and DHB workers (including AVSec workers) who are also interacting with international passengers, crew, their belongings, and affected items at affected airports, affected ports and affected ships. This is for pragmatic and implementation reasons because further engagement is needed with those PCBUs to ensure that they are able to comply with the requirements of an Order.

16. The Ministry of Transport will provide further advice on policy decisions to be sought in relation to high risk work performed in the broader Border sector as outlined in paragraphs 81 to 88 below. The Ministry of Health will provide input into this advice in relation to DHB workers.

What does vaccinated mean and when will a worker need to be vaccinated by?

17. In considering what vaccinated should mean and what deadlines for vaccination are recommended, current vaccination numbers for MIQF and public service agency workers have been taken into account, as has progress with the “Educate, Expect, Support” approach and the need to ensure there is an opportunity for workers to access vaccination.
18. MIQ data is that as at 6.00pm 15 April 2021 there were a total of 4,668 workers in the MIQF workforce, of whom 470 (10 per cent) have not had their first vaccination, though at least 160 of those workers are booked for their first vaccination. However, an estimated 3,000 workers in the MIQF workforce are still to have their second vaccination and there is a medical need to allow for three weeks between vaccinations.
19. Public Service agencies (as defined in the Public Service Act 2020) also have 1495 workers on the border who will be in the scope of this Order. This included the New Zealand Customs Service, Immigration New Zealand and the Ministry for Primary Industries. Of those workers, 94 (6%) are unvaccinated

Existing workers

20. Consistent with public statements that high risk work at MIQFs will only be permitted to be performed by a vaccinated worker from the end of April 2021, MBIE recommends that the s11 Order require that no work at MIQFs and performed by other specified public service agency workers should be permitted to be performed by an existing worker (employed on or before 30 April 2021) who has not had:
 - a. a minimum of their first vaccination by 30 April 2021, to continue performing specified work from 1 May 2021
 - b. their second vaccination by 4 June 2021, to continue performing specified work from 5 June 2021
21. This will provide a limited window for the small number of workers who have not yet had their first vaccination to schedule that and will set a firm deadline for all workers to receive their second vaccination. This will also allow for MBIE, Public Sector Agencies and other PCBUs to have the necessary employment conversations with unvaccinated workers about whether they will be vaccinated and, if not, what options are for redeployment.
22. From a public health perspective, providing one to two weeks’ flexibility around the 21 day period between doses is prudent, in the event that an individual faced unforeseen circumstances that prevented them getting a second dose on day 21. (However, we agree that this is essentially an MIQ call, as they are the key employer). The effectiveness of the vaccine is not compromised by a delay of up 36 days after the first dose.
23. These dates will require the Ministry of Health to prioritise vaccinations for MIQF workers within those timeframes.

New workers

24. From a pragmatic and implementation perspective, there is a rationale for setting separate timeframes for new workers employed on or after 1 May 2021. This will allow those new workers to be employed and will provide a window for these workers to get both vaccinations. However, the public health rationale for requiring vaccination of any workers means that these workers should be required to have their first vaccination before commencing high risk work.

25. MBIE recommends that that the Order will require that specified work cannot be performed by a new worker (employed on or after 1 May 2021) who has not had:
 - a. their first vaccination before they commence performing specified work
 - b. their second vaccination within 35 days of commencing performing specified work.
26. This will replicate the 35 day window for existing workers to get their second vaccination. From a public health perspective, this approach is reasonable as while the vaccination course will not be complete at the time these workers start specified work, they have begun the process and there is a clear intent to be fully vaccinated. The vaccine provides an additional layer of protection, in addition to other public health measures that should continue to be taken.

What is the definition of high risk work?

27. The COVID-19 Public Health Response (Required Testing) Order 2020 covers the following workers who perform work at MIQFs:
 - a. Workers at managed quarantine facility
 - b. Workers who transport to or from managed quarantine facility persons required to be in isolation or quarantine under COVID-19 order
 - c. Workers at managed isolation facility
 - d. Workers who transport to or from managed isolation facility persons required to be in isolation or quarantine under COVID-19 order.
 - e. Persons (other than excluded airport persons) who could spend more than 15 minutes in enclosed space on board aircraft that arrives from location outside New Zealand
 - f. Airside government officials (other than excluded airport persons), including (without limitation) personnel from Immigration New Zealand, New Zealand Customs Service, Aviation Security Service, or Ministry for Primary Industries
 - g. Airside district health board workers (other than excluded airport persons)
 - h. All landside workers from Public Service Agencies and DHBs (other than excluded airport persons) who interact with international arriving or international transiting passengers
 - i. Persons (other than excluded port persons) who spend more than 15 minutes in enclosed space on board affected ship
 - j. All other port workers from Public Service Agencies and DHBs (other than excluded port persons) who interact with persons required to be in isolation or quarantine under COVID-19 order.
28. MBIE considers that these groups of workers provide a reasonable starting point for identifying who should be required to be vaccinated to perform work at an MIQF, affected airport, affected port, or affected ship, with a number of minor clarifying inclusions or exclusions, based broadly on whether the worker is regularly performing work at any location.
29. MBIE recommends that the s11 Order should apply to the following groups of workers:

- a. all workers whose primary place of work is at MIQFs, or who are transporting people to/from MIQFs eg MIQF staff, Defence Force personnel, Police, security guards, hotel staff and medical staff working at MIQFs
 - b. all workers whose roles regularly require them to visit MIQFs eg MIQ HQ or RIQCCs that may be required to visit MIQFs, and regular maintenance contractors for MIQFs.
 - c. All workers from Public Service Agencies and DHBs whose primary place of work is, or is likely to become (e.g. via rotation), an affected airports, affected ports, or affected ships.
 - d. All workers from Public Service Agencies and DHBs whose roles regularly require them to visit affected airports, affected ports, or affected ships.
30. MBIE recommends that the s11 Order should exclude (ie not apply to) the following groups of workers for the following rationale:

- a. Exclude workers who perform work at MIQFs, and locations within affected airports, affected ports and affected ships where international passengers, crew and their belongings or affected items have been on an unanticipated basis, which is necessary, time critical and cannot be performed by a regular worker (eg unanticipated maintenance work), unless they have to return to work at any of these places.

Rationale: these workers could not have anticipated that they would need to perform work at these places, therefore would not necessarily have been vaccinated, and PCBUs could not have anticipated the need for these workers.

However, if such a worker needs to perform further work at these places, they should be required to be vaccinated or in limited circumstances an exemption could be granted (see discussion in paragraphs 34 to 36 below).

- b. Exclude workers who handle affected items (eg rubbish and laundry) within 72 hours of their removal from an MIQF, affected airport, affected port, and affected ship and who "have contact" with workers in MIQFs while they are both working (the groups that will be included in the Required Testing Order from 21 April 2021).

Rationale: Public health advice is that the relative risk of exposure for people who do not enter MIQFs themselves is low. Given that people who work at MIQFs, affected airports, affected ports, or affected ships will be vaccinated, the additional risk presented by face-to-face contact is relatively low, assuming that other public health measures (such as safe physical distancing, hand hygiene etc) are also adhered to.

- c. Exclude workers who need to enter an MIQF, affected airport, affected port, or affected ship to preserve or protect person's life, health or safety in emergency eg Police, Fire Service.

Rationale: While some of these workers are prioritised for vaccination, if they need to enter these places to preserve or protect a person's life, health or safety in emergency, then there should not be consequences for either PCBUs or workers if they are not vaccinated.

- d. Excluding workers who are authorised or required by law to enter into an MIQF, affected airport, affected port, or affected ship eg Ombudsman.

Rationale: Public health advice is that for these rare cases, it is reasonable to rely on other public health measures including use of personal protective equipment. This also recognises the special statutory responsibilities of the Ombudsman.

Approach to workers who enter MIQFs, affected airports, affected ports, or affected ships on an unanticipated basis, who have to return to work at those places

31. Paragraph 30.a recommends that a s11 Order should not apply to workers who perform work on an unanticipated basis, which is necessary, time critical and cannot be performed by a regular worker (eg unanticipated maintenance work), unless they have to return to work at any of these places.
32. This is intended to apply in limited circumstances, to reflect the fact that the worker could not have anticipated that they would do that work and it is not clear that they would have been prioritised for vaccination.
33. Once the worker has performed work at these places, they should be eligible for vaccination and can be prioritised. However, we do not consider these workers should be required to be vaccinated to perform future unanticipated work.
34. To ensure the limited exclusion is not over-utilised, the Order is recommended to provide that workers who perform work at these places on an unanticipated basis must not return to work at any of those places, unless authorised by the Chief Executive of the Public Sector Agency responsible for the work (or their delegate) to enter the place without being vaccinated.
35. To ensure these authorisations are limited to where these are genuinely essential, an authorisation should only be permitted to granted where the Chief Executive of the Public Sector Agency responsible for the work (or their delegate) is satisfied that:
 - a. the work to be performed is unanticipated, necessary and time critical work, which cannot be performed by a regular, vaccinated worker
 - b. not performing the work would mean the MIQF, affected airport, affected port, or affected ship could not operate safely and would need to cease operations
36. Providing the authorisation power to the Chief Executive of the Public Service Agency (or their delegate) will help ensure multiple entries by these workers are limited to where it is genuinely essential and will ensure significant oversight. This authorisation power is expected to only be used where the worker needs to return in a relatively short period of time after initially entering these places eg where a follow-up visit is needed and the worker has been unable to be vaccinated in the intervening period.
37. From a public health perspective, the preferred approach would be that all MIQFs, affected airports, affected ports and affected ships should, as a first call, have contracts with 'preferred providers' covering a range of trades/contingences (as a 'just in case'). Where there are such established relationships, provision could be made for nominated staff from these groups to be vaccinated as a contingency. Where there are unanticipated groups that fall outside of these plans – in very exceptional circumstances, from a public health perspective it would be reasonable to provide tightly defined authorisation provisions apply in limited circumstances, as a backstop..

Approach to temporarily offline MIQFs

38. In limited circumstances, a MIQF may be temporarily offline ie not occupied by any returnees, but would still be considered to be a MIQF. This is most likely to be where maintenance work is occurring or it is uncertain if a MIQF will continue to be used.
39. For the avoidance of doubt, MBIE recommends that the Order should not apply to work performed at temporarily offline MIQFs provided the facility has been deep cleaned or at least 72 hours has passed since it was occupied by returnees.

40. These timeframes and conditions should mean the health risks of transmission of COVID-19 at these MIQFs has reduced to the extent that there is no longer a public health rationale for requiring that work at the MIQF only be performed by vaccinated workers.

Operational implications and implementation

41. MBIE (MIQ), other Public Sector Agency responsible for specified work and Ministry of Health will need to work closely together to operationalise the proposals above. The inclusion of all anticipated (regular) workers has the potential to extend the scope of the current vaccination programme and requires Ministry of Health to prioritise vaccinations for these groups within the timeframes proposed. The distinctions drawn between anticipated (regular) workers and unanticipated workers will have some challenges in practice, and will require affected places' sign-in processes and testing/immunisation registers to align appropriately.

Who is responsible for complying with the Order and what are the consequences for non-compliance?

42. The s11 Order will need to specify who needs to comply with it and the consequences for non-compliance.
43. Based on the approach in the Required Testing Order, it would be appropriate to place obligations to comply with the s11 Order on both PCBUs and workers. There are options to restrict the obligations to comply to one party or the other, however these are less likely to reinforce the responsibility that both PCBUs and workers collectively have to minimise the risk of COVID-19 transmission.
44. MBIE recommends a comprehensive approach be taken to reinforce the role that both PCBUs and workers have in preventing the risk of COVID-19 infection. This would involve the Order providing that by the dates specified in paragraph 0 above that:
- a. a person conducting a business or undertaking (PCBU) who employs or engages any person to carry out specified work for the PCBU, must ensure that the specified work is only performed by vaccinated workers
 - b. workers may only perform specified work if they have been vaccinated.
45. To support this, MBIE considers it is appropriate that the s11 Order place obligations on PCBUs and workers similar to under the Required Testing Order. This would include requiring that:
- a. PCBUs notify workers of the requirement to be vaccinated
 - b. PCBUs not prevent workers from getting vaccination during work hours
 - c. PCBUs record vaccination status in Ministry of Health register
 - d. workers provide information about their vaccination status to PCBUs.
46. Under s26(1) of the Act, a person commits an offence if the person intentionally fails to comply with a COVID-19 order. In addition, s26(3) of the Act provides that an Order may specify that breaches of obligations in an Order are infringement offences.
47. MBIE recommends that breaching any of the obligations in the Order should be an infringement offence for the purposes of section 26(3) of the Act. This will enable a proportionate enforcement approach to be taken to ensuring the obligations in the Act are complied with.

48. MBIE has informed WorkSafeNZ that Orders are intended to be issued which will place obligations on PCBUs, as WorkSafe are leading the engagement with PCBUs on their compliance with obligations under Orders. In addition, the Public Service agencies will need to ensure it has assurance systems in place to ensure that MIQFs, affected airports, affected ports, or affected ships and all parties they contract to provide services at these locations have systems in place to promote compliance with the obligations in the s11 Order.

Consequences and implementation of above compliance approach

49. Once a s11 Order is in place, this will mean that workers will be refused entry if their vaccination status cannot be confirmed (eg through presenting suitable evidence or verification). Public Service Agencies will ensure clear communications of this expectation to sites and workers.

Should any exemptions be provided for?

50. A limited power for authorisations has been identified at paragraphs 34 to 36 above for workers who perform work at MIQFs, affected airports, affected ports, or affected ships on an unanticipated basis to be authorised by the Chief Executive of the Public Sector Agency responsible for the work, to perform that work where they have not been vaccinated.
51. While there are a number of reasons why workers may not be vaccinated, some of which may raise human rights issues (discussed at paragraphs 66 to 70 below), allowing for exemptions in these circumstances would not be consistent with the public health objective of minimising the risk of COVID-19 transmission to the community and particularly close contacts of workers performing work at MIQFs, affected airports, affected ports, or affected ships.
52. MBIE therefore recommends that the s11 Order should not provide any ability for exemptions to be provided from the obligation that specified work at MIQFs, affected airports, affected ports, or affected ships only be performed by vaccinated workers (other than as proposed for workers who perform work on an unanticipated basis).

Information sharing

Ministers have indicated that your preferred approach is to require that high risk work at the border be performed by only workers who have been vaccinated

53. Ministers met on Tuesday 13 April 2021 with Border Executive Board Chief Executives to discuss your preferred approach to requiring that high risk work at the Border be performed only by workers who have been vaccinated. To know how well we are achieving this goal, employers/PCBUs need to better understand which border and MIQF workers have and haven't been vaccinated.

To support effective implementation of the proposed Order and the COVID-19 Immunisation Programme the government and employers/PCBUs need to know who has and hasn't been vaccinated

54. The Border Worker Testing Register (BWTR) is the most comprehensive database of who is part of the border and MIQF workforce. It is currently legally possible for the Ministry of Health to access the information from Border Worker Testing Register for the purposes of the Immunisation Programme. However, the Ministry of Health has also been contacting employers and PCBUs to ask for permission and seek information directly in order to be transparent.
55. As part of the Immunisation Programme, we currently seek express consent from border and MIQF workers to share their vaccination status with their employer/PCBU. Vaccination status, and whether they have given consent for their vaccination status to be shared with their employer/PCBU, is captured in the CIR.

Not all MIQF and border employers/PCBUs have a complete picture of the vaccination status of their workers

56. Current practice is that if an employee does not consent to their information being shared with their employer/PCBU, then the employer/PCBU will ask the employee directly to confirm their vaccination status. If the employee refuses to share this information, they are treated as though they have not been vaccinated.

Using the section 11 Order to authorise data matching and sharing information on vaccination status of workers will help employers and PCBUs to meet their obligations under the proposed Order

57. With the changes to the BWTR (making it mandatory for all PCBU to use the Register, and the Ministry of Health having the ability to monitor the BWTR) and the proposed section 11 Order, officials recommend using this opportunity to make it explicit in the Order that we are authorised to match data from the Border Worker Testing Register with the COVID-19 Immunisation Register (CIR) to proactively identify who should be vaccinated. This is currently legally enabled through Information Privacy Principles.
58. Officials recommend also using the section 11 Order to authorise the sharing of vaccination status of workers (who are subject to this Order) with their employers/PCBUs. This would enable employers/PCBUs to have a more accurate understanding of the vaccination status of their workforce, and manage their obligations under the proposed Order, in a more efficient way.
59. Creating a specific clause in a s11 Order could overcome any issues with how information has previously been collected, and provide a firm statutory basis for the kind of information sharing required going forward to indicate who has and hasn't been vaccinated at the border.

There are risks to be managed

60. There is a chance that the creation of a broad authorisation to share the vaccination status of workers with their employers/PCBUs could lead to higher rates of inappropriate disclosures. This is because the explicit consent process removes ambiguity about intent.
61. Given the dynamic nature of the workforce that will be subject to this Order at any point in time, there is a chance that some workers will have their vaccination status disclosed despite the provisions in the Order not directly applying to them at a specific point in time. To mitigate some of this risk, officials recommend a time limitation of being subject to the proposed section 11 Order in the last 30 business days.

Further work on additional support mechanisms

62. Ministers requested that advice be provided on options for additional support mechanisms for workers who are not vaccinated, including support that can be provided by the Ministry of Social Development. Annex Two summarises the options identified by officials, including pros and cons of those options. Annex Two provides space for Ministers to indicate if you would like further advice on any of those options.
63. Advice was requested on whether preference can be given for redeployment or other support if a medical practitioner certifies a worker is unable to be vaccinated (as a version of an exemption regime).

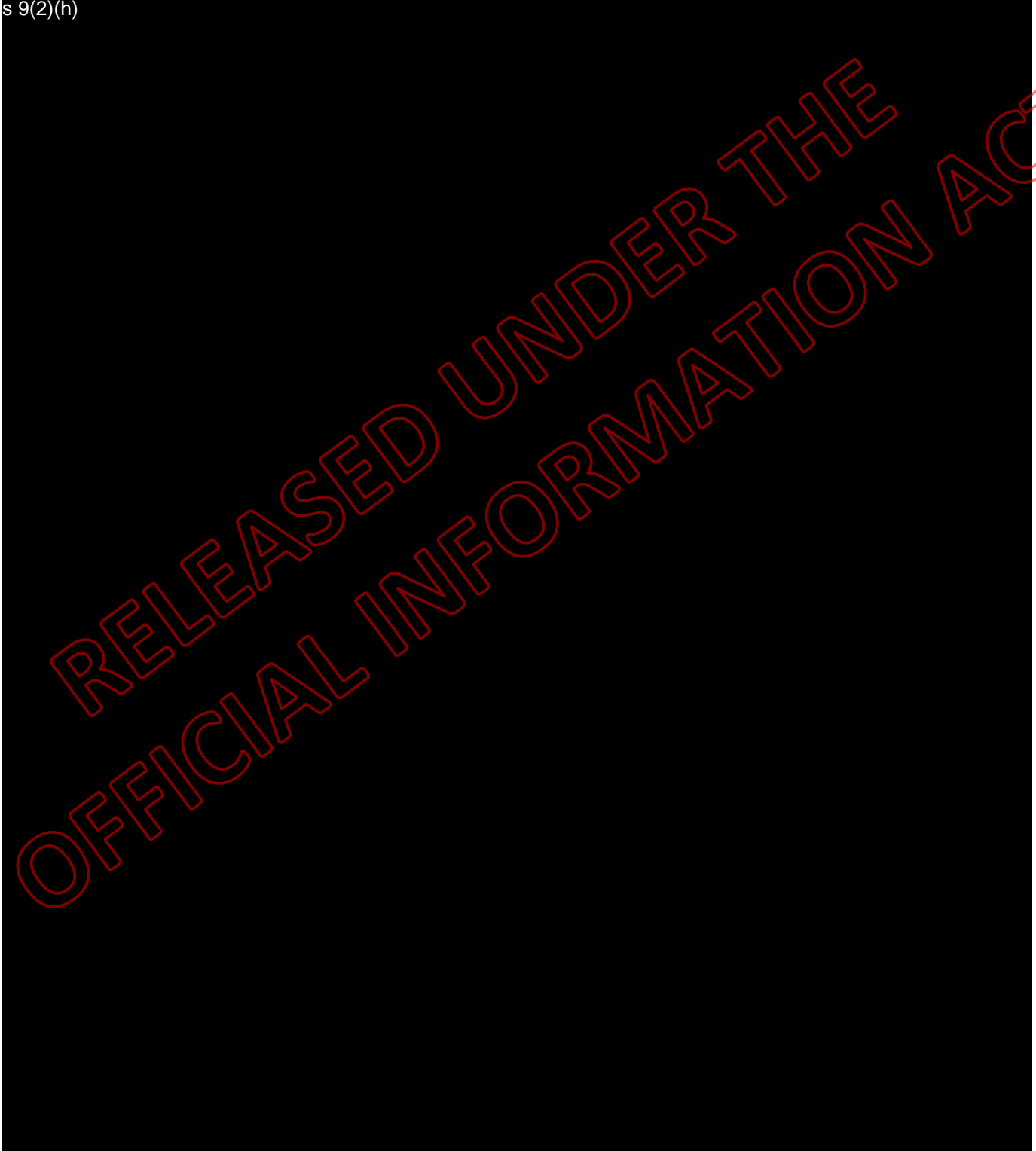
64. 9(2)(h)
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

9(2)(h)



Human rights assessment

s 9(2)(h)



Next steps

73. Following your decisions on the policy matters in this briefing, Parliamentary Counsel Office will expedite the drafting of an Order. The process for issuing an Order would then involve:

Stage	Indicative timeframe	Owner
Policy briefing complete	Friday 16 April	MBIE
Policy decisions signed	Friday 16 April	Minister's Office
Drafting instructions to PCO	Monday 19 April	MOH Legal
PCO provide draft Order	Tuesday 20 April	PCO
PCO, MBIE and MOH undertake agency consultation on draft Order	Tuesday 20 April	PCO/MBIE/MOH
Advice to Minister's Office to support consultation	Tuesday 20 April	MOH Policy
Ministerial consultation on draft Order (with Prime Minister, Ministers of Health and Justice at minimum)	Tuesday 20 – Wednesday 21 April	Minister's Office
PCO finalise Order for Ministerial signing	Wednesday 21 – Thursday 22 April (signature version provided by COB 22 April)	PCO
Final advice from the Director-General of Health and recommendation to sign Order	Friday 23 April	MOH Policy
Minister of COVID-19 Response signs Order	Tuesday 27 April (received by MO 23 April)	Minister's Office
PCO gazette Order	Tuesday 27 April	PCO
Order takes effect	By Friday 30 April	n/a

Approach to requiring vaccination of broader Border sector workforces

74. The scope of the proposed Order is limited in its application to high risk work carried out at MIQ facilities (irrespective of who conducts that work), and high risk work performed by Public Service Agencies at the Border.
75. Further work is required that considers the need for an Order to apply to other workforces operating at the Border. This covers: DHBs, Crown Entities (including MaritimeNZ and CAA/AVSEC, and the majority of the transport border workforce which is privately employed (including Ports, Port Logistics companies, airlines etc).

Rationale for not including Crown entities now

76. The Ministry of Transport (MoT) advises that it is comfortable with Maritime NZ and CAA workforces being covered by the requirement, but had concerns about their ability to comply with a 30 April 2021 deadline.
77. Both agencies put forward longer lists of eligible people for vaccination, than have been prioritised to date. This was agreed with health officials, and gave priority to staff performing roles with frequent exposure/higher-risk, over those who may go on a ship more sporadically for example.
78. While it may be possible to have these staff vaccinated, we note that should they have situations where staff are unable or unwilling to be vaccinated, due to their small size, it may not be practical to respond in the time available.
79. We have engaged with both organisations and they are actively working through their remaining staff being vaccination and to ensure that appropriate steps are being taken in regard to any staff who are unable or unwilling to be vaccinated.
80. We consider a 17 May 2021 requirements date (for their first vaccination) for these organisations would be workable.

Approach to requiring vaccination in remainder of broader Border sector

81. The Ministry of Transport (MoT) will provide further advice by 7 May 2021 on the recommended approach to requiring specified high risk work performed by the non-government border workforce (predominantly the transport sector eg airlines, airports and ports workers) can only be done by a vaccinated worker, including proposed exemptions and other issues for Ministers to consider.
82. Overall, the non-government border workforce (predominantly the transport sector) has been positive about the vaccine programme and encouraging uptake amongst its workforce under the Educate, Expect, Support approach.
83. Qualitative feedback from the sector to date suggests overall uptake has been good, but MoT has limited visibility of data to confirm this at this stage. This is for two main reasons:
 - a. Logistical issues have meant a range of employers experienced delays with staff being booked for vaccination; consequently, some now remain comparatively early in the staff engagement process
 - b. Employers were reliant on vaccination status information being easily obtainable from the CIR. Changes in process meant most employers were not prepared when they were instead requested to obtain vaccine status information through individual discussions with employees. While work continues to enable information to be sourced from the CIR, this has not proved viable for the sector to date.
84. A further challenge has been the recent introduction of QFT, and an increase in the number of staff eligible and prioritised for vaccination. They has been some confusion around

eligibility, and different approaches adopted by different DHBs. While we understand that most air crew will have had access to vaccination prior to the commencement of QFT travel, this is difficult to report on at this time.

85. Many of the logistical issues have now been resolved, though MoT continues to hear unverified reports of significant numbers of eligible port workers experiencing difficulties being booked for vaccination. We are working closely with MoH and DHBs to escalate and resolve these matters as they become apparent.
86. MoT has asked all known PCBUs to engage with staff, or contact MOH, to obtain information about vaccination status. This is due to be provided to MoT by Monday 19 April 2021, and MoT will report on this information to Ministers Hipkins and Wood on Friday 23 April 2021.
87. MoT does, however, expect there will be some gaps in information (given there is no legal obligation for transport sector PCBUs to report to MoT) and a need for follow up.

MoT propose direct engagement with employers to be completed by 30 April. The focus of this will be: to fill any information gaps; to understand any situations where employer risk assessments indicate that work that falls under the required testing order, may not require vaccination and the reasons for this; and to understand the transitional implications, should it become a requirement that this work must be performed by vaccinated persons. This will include giving consideration to the need to require staff involved in supporting QFT flights to be vaccinated.

88. MoT plan to report to Ministers by 7 May 2021 on the scope of high-risk work that may need to be covered by an Order.

Annexes

Annex One: Crown Law Advice – Legally Privileged

Annex Two: Options for additional support mechanisms for workers who are not vaccinated

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Annex Two: Options for additional support mechanisms for workers who are not vaccinated

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Options for additional support mechanisms for workers who are not vaccinated

Aim	Ensure all high risk border work is carried out by vaccinated employees at the conclusion of the current strategy, and identify options to redeploy or support workers who for whatever reason are unable to be vaccinated.	Current Strategy	Border sector employers are currently following an “Educate, Expect, Support” approach aimed at achieving the highest possible vaccination rates for workers performing high risk work at the border or redeployment of unvaccinated workers.	Constraints for options	<ul style="list-style-type: none"> Avoid legislative options Prioritise redeployment over redundancy where possible
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Issue One: Who is covered?

MIQ wider public sector workers (1576 workers)	MIQ private sector (3092 workers)	Public sector border workers (largely as per Public Service Act 2020) (1495 workers)	Other border workers (approx. 8000 – 10,000 Workers)
<p>Of these, 95 (6%) are unvaccinated. 17 workers are booked in to be vaccinated</p> <p>Includes MBIE MIF staff, NZDF, Policy, Aviation Security, DHB health sector staff whose primary place of work is at MIQ</p> <p>There are also approximately 50 MIQ staff based out of national office or RIQCCs who regularly visit MIQFs. They are not counted in the totals above</p>	<p>Of these, 375 (12%) are unvaccinated. 143 are booked in to be vaccinated</p> <p>This applies only to workers for whom MIQFs are their primary place of work: this includes hotel staff and private sector organisations that provide national services, such as security, transport to/from MIQFs and cleaning services</p> <p>We do not know how many workers may regularly be required to visit MIQFs as part of their roles (eg via contracts for service for regular maintenance work)</p>	<p>Of these, 94 (6%) are unvaccinated. 6 are booked to be vaccinated</p> <p>This includes Customs, Immigration New Zealand and Ministry for Primary Industries from within the Public Service as defined by the Public Service Act</p> <p>The wider public sector such as Aviation Security or DHB staff are not reflected in these numbers</p>	<p>This includes broader public sector such as Aviation Security as well as private sector workers</p> <ul style="list-style-type: none"> It is significantly harder to ascertain accurate data Some employers experienced significant delays getting their staff access to vaccine appointments Employers were surprised by, and unprepared for, the need to have 1-on-1 engagements with all staff to determine their vaccination status
<p>4668 MIQ workers in total, of whom 470 (10%) are unvaccinated</p> <p>Approximately one third (160 of 470) of the unvaccinated staff are booked for their first vaccination</p> <p>If these vaccinations were completed today this would leave 5.3% of the MIQ workforce without the first vaccination</p> <p>Approximately 3000 workers still require their second injection (excluding those not captured in the statistics above)</p> <p>Comprehensive update from all transport border sector PCBUs is due Monday 19 April</p>			

Issue Two: What additional support can be provided?

Do you wish to receive further advice	Options	Comment	Pros	Cons
Y / N	0: Maintain the status quo of following an “Educate, Expect, Support” approach beyond the planned eight weeks	<ul style="list-style-type: none"> Includes redeployment where roles are available 	<ul style="list-style-type: none"> All public service direct employees able to be redeployed within agencies will be offered alternative roles 	<ul style="list-style-type: none"> This approach will not achieve the objective of a fully vaccinated high risk border workforce
Y / N	0A: Require no redundancy of public service direct employees	<ul style="list-style-type: none"> Mandates redeployment by current employer 	<ul style="list-style-type: none"> No job losses (without agreement) for public service direct employees 	<ul style="list-style-type: none"> Limited number of workers would need to be found new work, where current agency does not have work currently available
1: Support unvaccinated workers to get a new role options				
Y / N	1A: MSD support to help find unvaccinated workers new employment and provide income support where required	<ul style="list-style-type: none"> Utilise existing MSD Employment Support mechanisms for matching redundant workers to available jobs and providing access to existing benefit payments Note – initial stand-downs have been temporarily removed until 24 July 2021 and these people are also unlikely to have a non-entitlement period (due to voluntary redundancy provisions) under current settings Bespoke redeployment services through MSD’s Rapid Response Teams 	<ul style="list-style-type: none"> Significant suite of employment supports already available through existing avenues, which are well understood by employers and unions, such as flexi wage products, job matching services and Rapid Return to Work Regional and National services delivered by community providers Options for a targeted wrap-around service that could include facilitating redeployment opportunities, information on MSD’s income and employment support products, and connecting to other agencies Can look and feel different depending on the situation and how many employees are affected 	<ul style="list-style-type: none"> Dependent on availability of suitable alternative job opportunities Providing services through MSD’s Rapid Response teams would be heavily dependent on understanding the scale of those impacted, along with understanding the specific businesses / workers that are impacted
Y / N	1B: Facilitate opportunities for employment within the broader public sector	<ul style="list-style-type: none"> Will utilise Public Service Commission Workforce Mobility Hub (Hub) Facilitate opportunities within the public service to workers 	<ul style="list-style-type: none"> The Hub can match across employers where suitable alternative roles exist 	<ul style="list-style-type: none"> The Hub does not currently have the resources to support Private sector employees Dependent on availability of suitable alternative job opportunities, which can be problematic in rural locations The border public sector cannot give preferential treatment to unvaccinated workers on the basis that they have a medical reason why they cannot be vaccinated

Y / N	1C: Facilitate transfer for private sector workers to other work in the private sector	<ul style="list-style-type: none"> Feedback has been received from independent private sector employers that they have limited capacity for redeployment 	<ul style="list-style-type: none"> May be successful for willing parties in achieving transfer 	<ul style="list-style-type: none"> Limited incentives for private sector employers to participate where they do not have redundancy compensation obligations
2: Payment options				
Y / N	2A: Ex-gratia payments to private sector employees in lieu of redundancy compensation	<ul style="list-style-type: none"> Need to determine period of entitlement, payment rates and conditions Cost dependent on number of workers made redundant Payment made directly to employees 	<ul style="list-style-type: none"> Would provide some support for workers made redundant 	<ul style="list-style-type: none"> Will create perverse incentives for employers to make workers redundant or delay redundancy
Y / N	2B: Redundancy compensation entitlements	<ul style="list-style-type: none"> An unquantified number of private sector workers are unlikely to be eligible for "redundancy" compensation under the terms of their employment agreements or have comparatively low entitlements Need to determine period of entitlement, payment rates and conditions Cost dependent on number of workers made redundant 	<ul style="list-style-type: none"> Incentivises employers to seek all possible redeployment options 	<ul style="list-style-type: none"> Will create a perverse incentive for people to turn down the vaccine to 'transition' themselves out of border work May trigger earlier redundancy to avoid coverage Requires legislation to mandate
Y / N	2C: Bespoke income support payment made to individuals (not recommended)	<ul style="list-style-type: none"> A payment would need to be developed that is similar to the COVID Income Relief Payment which provides a higher rate of income support (than standard benefit rates) to those who have been made redundant Significant work would need to be done to consider policy parameters (including eligibility and the interaction with other welfare payments), and to understand how it could be targeted 	<ul style="list-style-type: none"> Would provide some support for workers made redundant 	<ul style="list-style-type: none"> Could go against the aim of incentivising workers to take up the vaccine and would set a precedent for other similar situations (including other industries) impacted by the vaccine roll out There would be significant challenges / risks with this kind of payment at an operational level including policy targeting, IT, training and legal implications MSD consider a lead in time of 2 months from detailed policy settings to IT build would be required (or more if the settings differ from CIRP) along with significant administrative costs
Y / N	2D: Bespoke COVID-19 Payment to employers (not recommended)	<ul style="list-style-type: none"> A payment would need to be made to employers with workers who are not able to be re-deployed for a period of time Significant work would need to be done to consider policy parameters (including eligibility and the interaction with other COVID-19 payments), and to understand how it could be targeted 	<ul style="list-style-type: none"> Would provide some support for workers if they do not secure alternative work within the time frame 	<ul style="list-style-type: none"> Unlikely to be an appropriate intervention, as people who are unable to be redeployed are unlikely to remain connected to their employers Will create a perverse incentive for people to turn down the vaccine to 'transition' themselves out of border work Significant lead in time, operational implications (as above) and relatively high administrative costs

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