



Briefing

Supply chain exemption from the COVID-19 Public Health Response (Vaccinations) Order 2021 - outline of further policy advice

Date due to MO: 29 July 2021 **Action required by:** 4 August 2021

Security level: IN CONFIDENCE **MoT Report:** OC210606

BEB Report: 21/038

To: Hon Chris Hipkins, Minister for COVID-19 Response

Copy to: Hon Michael Wood, Minister of Transport

Contact for telephone discussion

Name	Position	Telephone
Christine Stevenson	Chair of the Border Executive Board	s9(2)(a) OIA
Shelley Tucker	Director – COVID-19 Response - MoT	s9(2)(a) OIA

Minister's office to complete:

- | | | |
|---|------------------------------------|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Decline | <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 Withdrawn | |

Comment:



Supply chain exemption from the COVID-19 Public Health Response (Vaccinations) Order 2021 - outline of further policy advice

Security level: IN CONFIDENCE **Date:** 29 July 2021

To: Hon Chris Hipkins, Minister for COVID-19 Response

Purpose of report

- To provide further information on the supply chain exemption to the COVID-19 Public Health Response (Vaccinations) Order 2021 (Vaccination Order), including:
 - further context on the supply chain and the roles we expect may seek exemptions
 - the evidence list we have developed to assess applications against
 - the proposed process PCBUs would need to follow to apply for an exemption
 - what you can expect from officials to support your role as the decision maker.
- We specifically seek your agreement to the type of evidence we will seek from PCBUs – noting the desire to strike a balance between the intent of the Order and the desire to manage supply chain risks; and to the process – which seeks to ensure transparency and efficient and just assessment of the applications.

Recommendations

We recommend you:

- Note** this briefing provides further advice on the supply chain exemption in the Vaccinations Order 2021
- Note** that the Border Executive Board considered this advice on 22 July 2021
- Agree** that the evidence we intend to seek from PCBUs and the process outlined meets the intent of the Order and the supply chain exemption Yes / No
- Agree** that representatives of the following agencies are invited to be a part of the cross-agency panel (that will make recommendations on applications received): the Ministry of Transport (Supply Chain and Covid-19 teams and the Senior Licensing Advisor), Maritime New Zealand (for maritime sector applications), Civil Aviation Authority (for air sector applications), MBIE (team TBD), the Treasury and the Ministry of Health (Public Health) s9(2)(g)(i) OIA
- Agree** that the Chair of BEB will consider the cross-agency panel's recommendation and send their advice on the recommendation to you as Minister for COVID-19 Response for decision Yes / No



BORDER EXECUTIVE BOARD



Ministry of **Transport**
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- 6 **Note** that next steps will focus on development of templates and guidance to support the maritime and aviation sectors to apply for the exemption.

Christine Stevenson

Chair of the Border Executive Board

Date: 30 July 2021

Hon Chris Hipkins

Minister for COVID-19 Response

Date:

Released under the Official Information Act 1982



Supply chain exemption from the COVID-19 Public Health Response (Vaccinations) Order 2021 - outline of further policy advice

Background

3. The Vaccination Order came into force on 1 May 2021. It requires that specified roles only be undertaken by vaccinated people. This is due to the risk that these individuals, in the course of their work activities, may be exposed to and infected by COVID-19.
4. On 17 May 2021, you agreed to amend the Order to require additional groups of workers to be vaccinated in order to work at certain higher-risk workplaces [OC210396 refers]. On 9 June 2021, you agreed that groups of persons required to be vaccinated will be expanded to apply to people working at:
 - MIQFs and MIFs (previously covered)
 - airside areas of affected airports and to some other higher-risk work at airports
 - affected ports
 - accommodation services where specified aircrew members are self-isolating.
5. You agreed to a health exception for the "affected items group" and you agreed to insert an exemption power into the Order where it was necessary to prevent significant disruption to essential supply chains. You consequently agreed that the power for you (as Minister for COVID-19 Response) to grant this exemption for specified workers would come into force 28 days after the commencement of the Amendment Order (12 August 2021).

The supply chain exemption in the Order

6. The Vaccination Order places a duty on affected individuals to ensure they are vaccinated in order to continue carrying out border work. An exemption is in place for workers who do not get vaccinated, for cases where the removal of that worker from the role would result in a critical supply chain disruption. The exemption is designed to be time specified, for example to enable recruitment or retraining of workers to perform the role.
7. The supply chain exemption is described in the Order as:



Power for Minister to grant exemptions

- (1) A relevant PCBU may, by notice in writing to the Minister, apply for an exemption for a person specified in the application from any other provision of this order.
- (2) The relevant PCBU must, in writing, inform the person specified in the application of the application.
- (3) If the Minister receives an application, the Minister may ask the relevant PCBU to provide any evidence or other information that the Minister reasonably requires for the purposes of deciding whether to grant the exemption.
- (4) The Minister may exempt the person specified in the application from any provision of this order for a specified period if satisfied, on the basis of the evidence or other information provided, that—
 - (a) the exemption is necessary or desirable—
 - (i) to promote the purposes of the Act; and
 - (ii) to prevent significant disruption to essential supply chains; and
 - (b) the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.
- (5) Before granting an exemption, the Minister must take into account—
 - (a) the potential for significant supply chain disruption if the work carried out by a particular person does not occur, including the extent of the risk to the public interest if the work does not occur; and
 - (b) the extent to which the work is necessary, including whether it could reasonably be—
 - (i) delayed to facilitate the vaccination of the persons needed to carry out work; or
 - (ii) performed by other persons who have been vaccinated; and
 - (c) the public health risk associated with the work.
- (6) The Minister may impose conditions on the exemption as the Minister considers necessary.
- (7) The Minister must, in writing, inform the relevant PCBU and the person specified in the application of the outcome of the application and, if the exemption is granted, when the exemption expires.
- (8) If an exemption is granted under this clause, the relevant PCBU must provide the person exempted with written notice of the exemption that states when the exemption expires.

We expect interest from a number of PCBUS, particularly in the port environment

8. Stakeholder engagement carried out ahead of the public announcement of the amendment to the Order has confirmed that the most likely workers to seek a supply chain exemption will be in the port environment. Relative to the aviation sector, the port sector has lower vaccination rates, and has an existing supply chain constraint. The supply chain congestion context, and port roles affected by this Order, are discussed below.



9. Aviation stakeholders have (in most cases) relatively high vaccination rates already and have not identified any particular supply chain impacts that may result from the Order coming into force. This isn't to say there won't be applications from this sector, but at this time we are expecting the balance of interest in the exemption to be from port PCBUs.
10. The higher-risk port workers who will be required to be vaccinated under the Order are:
 - a. workers who board affected ships
 - b. pilots carrying out work on or around affected ships
 - c. stevedores carrying out work on or around affected ships
 - d. all workers who transport persons (other than crew) to or from affected ships
 - e. all other port workers who interact with anyone required to be in isolation or quarantine under a COVID-19 Order.
11. Based on Border Worker Testing Register data from 9 July 2021, there are 2,662 total active port workers in the register, 54% of which (or 1,435) are fully vaccinated, 2% (or 57) have received the 1st dose, and 44% (or 1,170) who have yet to receive a dose.

Ports are currently under significant pressure due to ongoing supply chain congestion and disruptions to global trade

12. There are currently significant delays and blockages throughout the global supply chain. Ship arrivals into New Zealand ports are very unreliable due to delays everywhere across the world, which creates challenges for rostering appropriate staff to service ships due to unpredictability and lumpy demand. The sector is already suffering significant labour and skills shortages while at the same time requiring more labour than usual to cope with erratic schedules, resulting in inefficiently loaded ships and congested container terminals. For example, the Port of Tauranga reports that their average labour hours per ship increased from 14 hours in November 2019 to 28 hours in November 2020.
13. Any delays in processing one ship at a port has consequences for the wider supply chain. Ports only receive a few days' notice of the ships due to come in, and even that can vary at the last minute. Ships have different sizes and different types of cargo, so port crews need to tailor their response to servicing each ship. To service incoming ships, ports need to organise their labour around the combination of equipment and staff required for each particular ship, while also taking into account health and safety requirements such as management of fatigue. (Labour is often on call due to the varying nature of ship arrivals.) As ports operate 24 hours a day, seven days a week regardless of weather, fatigue is a major issue particularly because of delays, much of the work being very physical and the use of specialised heavy machinery to load and unload cargo.



14. Delays in servicing incoming ships slow down the whole supply chain in a number of ways:
 - cargo may get left behind, and then get stuck on the wharf or in an offsite terminal, which then causes congestion and slows down onward trips
 - import delays may have consequences for medical supplies, other essential goods such as construction materials, as well as materials needed for manufacturing and production in New Zealand
 - some exports miss their sailings, meaning they fail to get to market or end up spoiled by the time they arrive overseas (e.g. avocados at the peak of their season), affecting market share, reputation, and future sales in those markets
 - any further drop in productivity at New Zealand ports due to insufficient staff could result in some international shipping lines cancelling sailings to New Zealand altogether.
15. The supply chain is inter-linked in complex ways, meaning any delays in one part of the supply chain tend to have a compounding impact, particularly at this time when there are limited quiet periods for port crews to catch up.
16. The current global and local disruptions in the supply chain are expected to continue for at least the next 12-18 months. The costs to businesses and households, both in terms of delays and freight rates, are already high, and are increasing.

Information from the sector indicates a potential supply chain risk where specialised staff are limited

17. The port workers most directly involved with incoming ships include ship pilots (who board (or guide) every ship coming into/ departing port) and stevedores comprising crane operators, digger drivers, lashers etc.
18. Feedback from private sector employers indicates that some critical specialised roles such as ship pilots, lashers and crane operators (not an exhaustive list) would be very difficult to replace in the short or medium term if these workers choose not, or are unable, to be vaccinated. The potential impact of these port workers being unable to work as a result of refusing vaccination is outlined in the following table (which is accurate as of 15 July 2021 but subject to change):

Role	Training time to replace staff	Likely impact of staff refusing vaccination
Lasher	Eight weeks as relatively low skill	Absences can usually be managed through rostering as there are more lashers compared to other roles



Role	Training time to replace staff	Likely impact of staff refusing vaccination
Crane operators	4-6 months to be fully productive	Each ship requires 1-3 cranes depending on its size. Insufficient qualified staff to operate the cranes at any point in time will result in fewer cranes being able to be operated to service a ship, which will delay unloading/loading or prevent the ship from being serviced at all, until sufficient labour becomes available. This will lengthen further the long queues of ships waiting to berth, or cause port visits to be skipped altogether, and mean that the 'gang' of stevedores supporting the crane driver cannot work
Ship pilots	5 years minimum	No pilots available on shift means no ships can arrive or depart the port. Pilotage areas are mandated in Maritime Rule Part 90 – and this covers most places in New Zealand. In the view of Maritime NZ, it is critical to have a pilot for ships arriving and departing. Even if the pilot isn't on the ship physically, they need to be on the radio and in visual range of the ship.

19. The current training model is to train on the job within sites using onsite trainers within teams – these are also skilled operators. If industry were to lose these, or be restricted in how they operate on ports, then they would need to train in a centralised location. This would require new set up costs, time to be established and would be a new model of operating. None of this is planned at this stage.
20. New Zealand currently has around 65 ship pilots, and most smaller ports have only one or two. The smaller ports are very vulnerable to staff loss but do have less frequent ship visits. While Ports of Auckland and Tauranga each have around 11 ship pilots, and thus more room to manage any vacancies through rostering, they cannot afford to have insufficient pilots for an extended period of time as there is always a queue of ships waiting for several days to berth.
21. Feedback from Maritime NZ indicates that at least three pilots nationwide are unlikely to be vaccinated. If ship pilots are unable to continue to perform their role, they will be difficult to replace in the short or medium term because they are in short supply, need to hold a pre-requisite qualification as Master of a foreign going ship (or equivalent) and take a number of years to train from scratch to be able to pilot all ships entering a port. Even if trained ship pilots from another port or from overseas could be made available as a replacement, they must be rated to operate at a specific location because local knowledge and experience is essential to the role. This process would still take many months, in the most favourable circumstances.



22. Based on this information from the sector, any ship pilot vacancies resulting from non-compliance with the Vaccination Order would have a disproportionate impact on port operations. We therefore expect to see this role, and ones with similar constraints, seek an exemption.

Proposed evidence for assessing exemption applications

23. Clause 12A of the Order allows you to exempt a person from the application of the Order.
24. The purpose of the exemption is to prevent significant disruption to essential supply chains. Each exemption must strike a balance between upholding the public health response of requiring vaccination for those working in higher-risk areas, with the need to mitigate the adverse economic consequences that may arise if workers in critical roles cannot or choose not to be vaccinated.
25. The decision you will be asked to make is whether:
- a. the exemption is necessary or desirable –
 - i. to promote the purposes of the Act; and
 - ii. to prevent significant disruption to essential supply chains; and
 - b. the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.
26. The table below sets out the specific matters you must take into account in making your decision, and the indicative information that a PCBU should provide to assist you in making that decision.

What the Minister must take into account	What information should PCBUs provide
12A(5)(a) The potential for significant supply chain disruption if the work carried out by a particular person does not occur	<ul style="list-style-type: none"> • What efforts have been made to make the worker aware of the vaccination requirement, including the deadline for getting vaccinated • Has the PCBU offered the worker the opportunity to receive the vaccine during their usual working hours • What is the reason the worker is deciding not to be vaccinated at this time (including any identified barriers to the workers being vaccinated) • What is the supply chain disruption that would result from the worker being unable to perform the role • How significant would the supply chain disruption be • Whether the supply chain is essential • What is the extent of the risk to the public interest from the supply chain disruption, including economic impacts

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What the Minister must take into account	What information should PCBUs provide
12A(5)(b) The extent to which the work is necessary	<ul style="list-style-type: none"> • Can the individual worker not be replaced with another existing worker, by another function, or by training of other/new staff in the short term • Can the PCBU not operate without the role, even while recruitment or retraining is underway (noting any qualifications required and how long training will take) • How necessary are the work activities, including whether they could reasonably be delayed to facilitate vaccination of the worker needed to perform the role
12A(5)(c) The public health risk associated with the work	<ul style="list-style-type: none"> • What is the public health risk associated with the role

27. As exemptions would be for a specific period, applicants would also need to provide information on the time required to replace the person through recruitment of a new worker and/or re-training of existing workers. The exemption would then only be in force until, for example, the worker decides to get vaccinated or until the PCBU has been given a reasonable period of time to replace the worker.
28. Where more than one exemption from a PCBU is being sought, we will invite that information to be made available through the application. The cumulative impact – on both the PCBU and the sector – will be relevant and should be a consideration. The time-limited nature of the exemptions is a good mitigation to creating any perverse incentives through acknowledging the impact of multiple workers refusing to be vaccinated.

Overview of proposed exemptions process

29. The decision to grant or decline an exemption from the vaccination requirement rests with you as Minister for COVID-19 Response. We have developed a process that will rely on officials processing and assessing requests, with a multi-agency panel process, and providing advice through the Border Executive Board, to you. This process is outlined in **Appendix A**.
30. It shows there will be a lead agency for this exemption – the Ministry of Transport (MoT).
31. The Order recognises that PCBUs hold the evidence required to demonstrate that the criteria for an exemption are met and relate to the individual worker’s role in the wider supply chain. They must also demonstrate a significant disruption to an essential supply chain is likely. We consider PCBUs are therefore best placed to apply for an exemption.



32. MoT will host information about the exemption and process on the MoT website, including a template or application form. The MoT's Senior Licensing Advisor will be the first port of call for enquiries, and PCBUs will make the application, through the MoT's website/Senior Licensing Advisor.
33. MoT's Senior Licensing Advisor will do a high-level review of the application, to ensure enough information has been provided for a full assessment to occur. It is expected that more information may be sought from the PCBU at this time.
34. MoT will then convene a cross-agency panel to assess the application. A cross-agency panel Terms of Reference will be developed to support this process. It is proposed to invite the following roles/agencies to be panel members:
- a. the MoT Senior Licensing Advisor – as the coordinator of the process
 - b. a Ministry of Health (MoH) public health representative – to assess the public health risk and recommend any addition public health measures required by the worker should the exemption be granted
 - c. Maritime New Zealand and/or Civil Aviation Authority (dependent on whether the application relates to maritime or air border workers) – providing key sector knowledge on the role of the worker within the PCBU and supply chain, training/recruitment knowledge and other specialist sector knowledge
 - d. a representative of the Supply Chain team at MoT – contributing expertise on the supply chain context and broader public interest elements
 - e. a member of the Covid-19 team at MoT – as a conduit to BEB
 - f. a Treasury representative – contributing broader expertise on economic impacts
 - g. an MBIE (team TBD) representative – contributing a broader business and economic view.
35. This panel (likely to be mostly made up of managers) will assess the alignment of the application to the criteria, and form a recommendation of whether the application should be granted by the Minister, any public health mitigations required, and a time limit for the exemption. Panel members will need to represent their agency in informing the exemption request recommendation. For example, the MoH representative will need to contribute the public health advice for the Ministry.
36. Based on this process, a report will be prepared with a recommendation for the Chair of BEB, who will then send their advice on the recommendation to you.



37. We expect it will take at least two weeks from receipt of application to communication of a final decision. You would be provided at least three days to consider the recommendation. This balances time for assessment by the panel and a Ministerial decision, and allowing workers time to comply with the Order should the application be declined.

Next steps

38. If you agree that the suggested evidence and process in this document will strike the necessary balance of the intent of the Order and the maintenance of the supply chain, we will develop documents to support PCBUs to apply for the exemption.
39. Namely, we will publish guidance, FAQs, templates and contact information for PCBUs wanting more information. We would publish this material approximately one week before the exemption process commences on 12 August 2021. The panel will meet as and when required, dependent on when/the number of requests received.
40. The Border Executive Board will use regular reporting mechanisms to advise you of when applications and recommendations may be provided to you and associated timeframes.

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Appendix A: process for PCBUs to apply for a Supply Chain Exemption from the COVID-19 Public Health Response (Vaccinations) Order 2021 for a worker

Front door: Ministry of Transport website, linked from other agencies (e.g. MoH and UAC)

First contact person: MoT Senior Licensing Advisor. Criteria/ evidence required/ templates/ application form/ guidance/ FAQs all available on the web from approx. 5 August 2021.



PCBU can make an application for a named worker from 12 August 2021. Application form will require PCBU to confirm that the named person is aware of the application and demonstrate how the application meets the requirements in the Order. Application will be submitted/sent to MoT Senior Licensing Advisor.



Senior Licensing Advisor will make an initial assessment of whether the necessary material has been provided by the PCBU and seek more information where necessary for the panel to make their assessment.



Application then forwarded to panel members (MoT Senior Licensing Advisor, MoH public health, MoT Covid-19 team, MoT supply chain team, CAA and/or MNZ (dependent on whether the applications has maritime or aviation impacts), Treasury and MBIE reps.



Cross-agency panel meets (within one week of receipt of the application) to assess the application against the criteria, and provide a recommendation to the Minister on whether the exemption should be granted, any public health mitigations that would be required should the exemption be granted, and the time specified for the exemption.



The report will be considered by the Chair of the BEB which will be sent with their advice to the Minister for COVID19 Response (who is the decision maker).

A decision will be communicated to the PCBU and named worker following Ministerial decision, advising whether the exemption is granted, any public health measures required and any time specified. Intention would be to communicate a decision within two weeks of receipt of the application.