

Joint Briefing

THE DOMESTIC USE OF COVID-19 VACCINATION CERTIFICATES IN HIGH-RISK SETTINGS

To: Hon Chris Hipkins
Minister for COVID-19 Response

CC: Rt Hon Jacinda Ardern
Prime Minister

Date	24/09/2021	Priority	High
Deadline	27/09/2021	Briefing Number	DPMC-2021/22-412

Purpose

You requested advice on requiring attendees at high-risk events and venues, and lower risk settings, to provide proof of a COVID-19 vaccination as a condition of entry.

This paper provides advice on the characteristics of high-risk settings for the purposes of requiring vaccination as a condition of entry, proposes prohibiting the use of vaccination as a condition of entry to essential services and proposes providing guidance to enable other businesses and organisers of events to apply a vaccination requirement, should they wish to, to continue operating in the event of an escalation of Alert Levels.

Recommendations

1. **Note** public health advice is:
 - a. COVID-19 Vaccination Certificates (CVCs) could be used to reduce the risk of super-spreader events, especially while COVID-19 vaccination rates are lower than optimal
 - b. The requirement for a CVC to be able to attend some events or venues may also act as an incentive to encourage people to be vaccinated against COVID-19
 - c. CVCs should be considered as part of a wider suite of interventions to reduce the risk of community transmission of COVID-19

- d. All event organisers should ensure public health messaging and basic precautionary measures to prevent and control infection are provided
2. **Note** officials have developed a draft risk-based rather than universal approach to the application of CVCs, which in the near term focuses on specific types of high-risk events
3. **Agree**, for the purpose of consultation, to the following framework for requiring, prohibiting and enabling the use of CVCs:
- a. CVCs are required for admission to very large high-risk events, where more than 1000 people are in attendance, where significant intermingling is likely to occur, where there will be dispersal outside the local area, and where the event is ticketed (for feasibility) **YES / NO**
 - b. CVCs are prohibited from being used at life-preserving and other essential services, including supermarkets, health services, and schools **YES / NO**
 - c. All other events, businesses and gatherings (including weddings and funerals) are provided with guidance to implement a CVC requirement, should they wish, that would enable them to remain open at elevated alert levels **YES / NO**
4. **Direct** officials to provide further detail on these categories of events in following advice, following consultation with stakeholders **YES / NO**
5. **Note** public health advice is that workers at very large high-risk events and venues should also be vaccinated to work in these settings if vaccination is a requirement for attendees in order to maintain the intent of this measure
6. **Direct** officials to develop further work on requiring vaccination of workers at very large high-risk events, to ensure consistency with existing vaccination requirements and obligations to work in various settings **YES / NO**
7. s9(2)(h) [REDACTED] **YES / NO**
8. **Direct** officials to develop an exceptions framework and develop a process for providing certification that an exempted person can hold **YES / NO**
9. **Agree** that those who are excepted from the vaccination requirement should instead be required to provide evidence of a recent negative COVID-19 test result, except for children under 12 **YES / NO**


- 10. **Note** the COVID-19 Immunisation Register currently records COVID-19 vaccinations administered in New Zealand and further work is required to develop a process to record vaccinations received overseas and issue a CVC for approved vaccinations
- 11. **Note** the vaccination requirement may only need to be in place temporarily and may be expanded or removed in the future based on public health assessment as the pandemic and vaccines evolve
- 12. **Note** that vaccination status requirements are within the scope of powers provided to Minister under the COVID-19 Public Health Response Act 2020, so long as the requirements of s 9 are met, including the requirement that the measures are consistent with the New Zealand Bill of Rights Act 1990
- 13. **Direct** officials to develop advice on how a COVID-19 vaccination requirement for high-risk events and venues could be operationalised, including on workplace relations and safety issues and the earliest start date **YES / NO**
- 14. **Note** the Ministry of Health has scoped a two-stage delivery of a domestic vaccination certificate, with an initial solution being technically available early November
- 15. **Forward** this briefing to the Minister for Workplace Relations and Safety and the Attorney-General
- 16. **Note** officials will engage with stakeholders and report back to you next week with any further advice, alongside advice on implementation and operational considerations **YES / NO**



24/9/21

Ruth Fairhall
**Head of Strategy and Policy
COVID-19 Policy, Department of the
Prime Minister and Cabinet**

Hon Chris Hipkins
Minister for COVID-19 Response



Dr Ashley Bloomfield
Te Tumu Whakarae mō te Hauora
Director-General of Health

...../...../2021

Contact for telephone discussion if required:

Name	Position	Telephone	1st contact
Dr Ashley Bloomfield	Te Tumu Whakarae mō te Hauora Director-General of Health	s9(2)(a)	
Ruth Fairhall	Head of Strategy & Policy, COVID-19 Response	s9(2)(a)	✓

Minister's office comments:

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

THE DOMESTIC USE OF COVID-19 VACCINATION CERTIFICATES IN HIGH-RISK SETTINGS

Executive Summary

1. COVID-19 Vaccine Certificates (CVCs) can be used as a tool to provide evidence that someone has been vaccinated for COVID-19. Over the coming months while vaccination rates are not yet optimal, requiring proof of vaccination using a CVC for large high-risk events will support the public health response to COVID-19 by reducing the risk of super spreader events and potentially encouraging those who are yet to be vaccinated to get vaccinated.
2. The approach will need to be designed carefully, as the public health benefit of this measure depends on a range of factors, such as levels of vaccination and COVID-19 incidence in New Zealand. A range of other issues are engaged, such as equity, feasibility, employment, access to lifeline services, human rights, privacy and Treaty considerations.
3. There are also issues around maintaining social licence over the management of the pandemic and social cohesion. Over time, this measure may no longer be justifiable as vaccination rates increase and the public health rationale becomes diminished.
4. Alongside the implementation advice and further policy development, the Ministry of Business, Innovation and Employment will provide further advice on the workplace relations and safety implications of requiring workers at high-risk events to be vaccinated to work in those settings. This is because public health advice is that a CVC should be required for all attendees, including workers on site during the event to align with the intent to prevent a super-spreader event.
5. While we consider that government should provide clarity and consistency generally, a differential approach to vaccination as a condition of entry is recommended depending on the venue and level of risk. Given that the private sector and other non-government organisations could, subject to privacy and discrimination requirements, introduce COVID-19 vaccination status as a requirement of entry, officials propose three key government roles should be taken, with a mix of active and passive stances in relation to different types of venues:

Proposed role of government	Proposed scope	Note
1. Mandating use of CVCs to access large high-risk events (active and requiring role)	<ul style="list-style-type: none">• Large high-risk events are defined as ticketed events with over 1000 people involved in higher risk activity, such as music festivals and concerts, that involve food and dancing in a confined area	This is considered justified on the basis of the higher risk of transmission at such events. Public health advice is that, where attendees are required to present proof of COVID-19 vaccination, employees would also need to be vaccinated.

Proposed role of government	Proposed scope	Note
	<ul style="list-style-type: none"> During escalated Alert Levels, a wider set of venues could be considered for requirements 	
<p>2. Prohibiting use of CVCs for access to certain businesses (active but preventative role)</p>	<ul style="list-style-type: none"> Essential businesses and basic human-needs services, which are required for life preservation, such as supermarkets, and pharmacies. Venues that offer education (in classroom settings), and community and services (such as libraries and sporting facilities). 	<p>This would ensure that unvaccinated people are not prevented from accessing essential services.</p> <p>By including educational, recreational and community services, people would still be able to access services.</p> <p>Further work is needed on understanding the legal framework required to do this, and on a potential requirement to vaccinate workers at these businesses and venues (potentially primary legislation)</p>
<p>3. Allowing the use of CVCs in other settings and providing tools for businesses to implement (passive but enabling role)</p>	<ul style="list-style-type: none"> All other venues not covered above, which are considered lower risk 	<p>In these contexts, government would provide the tools for businesses and other parties to enable, appropriately limit and implement a vaccination requirement if they choose to put one in place – for example, providing documentation of exemptions, and guidance – and monitoring the effectiveness and equity of the use of CVCs.</p>

6. We recommend that those who cannot be vaccinated for health and religious reasons would be exempted, to provide protection from discrimination, to justify any requirement of CVCs in high-risk events and venues. This could involve providing certification to enable an exempted person to prove that they do not need to meet the vaccination requirement and enabling the alternative option of a recent negative COVID-19 test result. Children who are ineligible for vaccination would be exempt from these requirements. More work is needed on the exemptions process, in particular confirming who is exempt and what form a formal exemption would take.

7. Public health advice is that proof of a negative test is less effective in benefiting public health than proof of full vaccination. Vaccination generally provides better assurance of baseline protection, and therefore proof of vaccination would be the stronger public health measure. Proof of a negative test could be used in specific situations, particularly to allow those exempt from vaccination access to high-risk venues. Having an alternative measure will prevent discrimination against those who legitimately cannot be vaccinated,

however a negative test is not recommended as a broad substitute for proof of vaccination in high-risk settings.

8. Officials are planning a two-stage delivery of the domestic vaccination certificate. Stage one will provide a paper-based certificate with a working title of the “Summer Pass” that can also be stored on mobile phones. Due to privacy concerns this is a separate solution from the digital vaccination certificate for international travel and will show a simple view of compliance vaccination (or exemption) status with no clinical or private information. Work on the Summer Pass as a tool for proving vaccination status is scheduled to be completed by 8 November 2021.
9. Subject to your decision, we will engage with Treaty partners, community, and business stakeholders to discuss how government could set the direction of CVC use. This will inform further advice on the operational matters of introducing government guidance and/or requirements on the use of CVCs in high-risk settings, including privacy and data-protective measures.

Background

10. You were provided with initial advice on how proof of COVID-19 vaccination could be used domestically to reduce the risk of spread of COVID-19 on 17 September [DPMC-2021/22-324 refers]. You then directed officials to develop further advice on using CVCs at high-risk events and venues, and a wider set of lower-risk settings.
11. As New Zealand’s vaccination programme advances, the use of vaccination as a condition of entry to venues provides a potential additional risk mitigation measure to further reduce the risk of outbreaks. However, depending on how this requirement is used, there are a range of equity, human rights, privacy and feasibility concerns to be managed. s9(2)(h)
[REDACTED]

Public health advice on domestic use of CVCs for access to high-risk events and venues in order to mitigate the risk of COVID-19 outbreaks

12. The public health benefit of using CVCs in high-risk events and venues depends on the level of vaccination coverage, if an outbreak is occurring, and the number of COVID-19 cases. CVCs could mitigate the risk of COVID-19 outbreaks in some settings and protect vulnerable populations by reducing the risk of COVID-19 spread.
13. Secondary benefits could be to incentivise vaccination and provide reassurance to event organisers that their event is unlikely to be cancelled if there is an escalation of Alert Levels. It is unclear to what extent the use of CVCs drives higher vaccination rates as this depends on the scope of the requirement and social license for vaccination as a key public health protection measure.
14. The events and venues that are considered to be highest risk are those where there are large numbers of people, which continue for a long period of time, and where there is close interaction between attendees. The key risk factors to use when identifying high-risk events and venues include:
 - Number of people
 - Proximity to each other / density and crowding / whether people are travelling or living together

- Length of time together
- The proportion of people that attend from outside the region
- Ventilation systems at indoor venues
- Presence of vulnerable people

15. Officials have identified a range of events and venues and assessed them for risk in **Table 1 below**.

Table 1: Risk of an event being a super-spreader event

Risk category	Characteristics
Very large high-risk events	<p>Events with over 1000 people where people spend lengths of time together in close proximity.</p> <p>These events generally involve people travelling outside their local area to attend and present a risk of being a super-spreader event.</p> <p>For example, large conferences, conventions, festivals, music concerts, large spectator sports events.</p>
Large high-risk events	<p>Events of more than 500 people where people spend lengths of time together in close proximity.</p> <p>For example smaller conferences, conventions, festivals, concerts, spectator sports events, large weddings and funerals</p>
Smaller high-risk events and venues	<p>Events and venues with more than 100 people in attendance.</p> <p>For example bars, nightclubs, smaller concerts and private gatherings.</p>

16. The introduction of CVCs should be considered alongside other mitigation measures and public health messaging, for example staying at home if sick, scanning in, mandatory record keeping, zoned areas to maintain smaller bubbles, reinforcement of hygiene messaging and mask wearing. These measures may be presented as guidance to event organisers and attendees and could be considered alongside CVCs in the event of a community outbreak.

Extending the use of CVCs during an escalation of Alert Levels

17. There would be public health benefit in extending the use of CVCs to a wider range of low-risk venues (e.g. cafes, museums, art galleries) in the event of an escalation of Alert Levels. However, this would be in addition to other public health controls. Extending the use of CVCs during higher Alert Levels would mean that those who are at lower risk of being infected or infecting others are given more freedom.

Ongoing or temporary use of CVCs in reducing the risk of outbreaks and community spread

18. Public health advice is that CVCs should be used as a temporary requirement for entry to large high-risk events or venues to reduce the risk of large outbreaks and community spread and should be reviewed in relation to vaccination rates. The more people who are vaccinated, the smaller the pool of people who could be infected and spread COVID-19,

meaning that outbreaks would be smaller and easier to control, and a CVC may no longer provide significant public health benefit.

Vaccination requirements for workers

There are issues relating to workers at venues/events that will need to be considered in a decision on whether the government should introduce CVCs

19. Should the government set any requirements for attendees of high-risk events to present CVCs for entry, the public health advice is that employees should be supported to be vaccinated in order to prevent super-spreader events.
20. The Ministry of Business, Innovation and Employment (MBIE) has recently advised the Minister for Workplace Relations and Safety on a framework to use when considering vaccination requirements in workplaces:
 - Issues relating to workplace COVID-19 vaccination involve overlap between the employment, health and safety and public health regimes. s9(2)(h) [REDACTED]
 - The boundary between work that requires vaccination for public health reasons and all other work can be set by the Government through legislation or regulation. Currently, this is done through the COVID-19 Public Health Response (Vaccinations) Order 2021.
 - s9(2)(h) [REDACTED] However, there is a large amount of uncertainty for PCBUs and workers going through this process, because health and safety risk assessments are dynamic and fact-specific.
 - s9(2)(h) [REDACTED]
21. Given public health advice is now that workers and attendees at high-risk events and venues should be vaccinated, the following issues need to be considered.
22. To consistently ensure that work done at high-risk events and venues is only performed by vaccinated workers, legislation or regulation will be required. Otherwise, this decision will continue to be made by PCBUs based on their health and safety risk assessments. This legislation or regulation will also need to accommodate the different regimes that apply when restricting people's access to places generally, and when restricting the circumstances in which people can do certain work.

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23. The best vehicle for this vaccination requirement will depend on the details of the final proposal, and whether any changes to regular employment and health and safety law are desired or required.
24. There is a risk of inconsistency in vaccination requirements for different workforces.
s9(2)(h) [REDACTED]
[REDACTED]
[REDACTED] However, the relative levels of public health risk posed by different types of work need to be kept under review as circumstances, such as our vaccination rates and the level of domestic COVID-19 transmission, evolve.
25. There are a range of operational considerations to work through, such as the division of duties and obligations among PCBUs, workers and people in control of places where high-risk events and venues take place (who may be someone other than the PCBUs for those workers). For example, because this is a public health measure affecting workers, rather than a workplace health and safety measure to protect workers, this might suggest the duty holder should be the person running the event/venue rather than workers themselves. Who the duty holder is will inform choices about the appropriate enforcement agency and approach.
26. s9(2)(h) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
27. MBIE, in consultation with WorkSafe, will provide input into implementation advice to Ministers on the employment and health and safety aspects of this proposal.

Risk and benefits of a CVC

28. While there is public health benefit in a potentially wide application of CVCs, the wider the use, the greater the risks around equity, social division, compliance and enforcement.

Equity and social license

29. Experience overseas demonstrates the risk of loss of social license if a CVC is applied too broadly, in a way that is seen as interfering too much in day-to-day affairs. It also has the potential to deny access to everyday services to people who are legally exercising their right to not be vaccinated. For this reason officials propose that any mandatory requirements are narrow in scope, at least initially, and focused on the highest-risk events, to avoid any unacceptable impacts on people's day to day lives, particularly when the risk of COVID-19 transmission in the community is low.
30. Given that businesses are legally able to implement a vaccination requirement for customers, and that this could apply quite broadly, officials propose that the use of CVCs is prohibited in certain settings, to ensure that unvaccinated people are not prevented from accessing life-preserving services such as health care services, educational facilities, and supermarkets. Further advice will be developed on the scope and legal mechanism for this proposal.

31. The more that vaccination is seen as mandatory, for example by requiring CVCs for access to a wide range of venues (even if considered high-risk by public health officials) the greater the risk of loss of social license for vaccination overall.
32. It is preferable that all eligible people in New Zealand would have sufficient opportunity to be vaccinated before a CVC requirement is introduced, to avoid inequitable prevention of access to events to those who have not had the opportunity to be vaccinated due to the staged eligibility of the roll out. Officials consider that the implementation timeframes for the CVC could be aligned with the roll out of the New Zealand vaccination programme such that by the time this policy could be introduced, eligible New Zealanders would have had reasonable opportunity to be vaccinated, even if they have not yet taken up that opportunity.
33. While at an aggregate level there remains strong trust in government, there are ongoing and increased concerns and anxieties among some Māori and other population groups around surveillance and low trust in government agencies. At the same time the demographic features of the population, particularly Māori and Pacific, has higher levels of structural disadvantage and currently has the lowest rate of uptake of the vaccination.
s9(2)(g)(i)
This is why transparent and outward facing engagement is likely to be critical to successful adoption of CVCs.
34. Information provided through a CVC should only be used for determining entry to a venue/event, and should not be used for other purposes, including law enforcement. A potential way to mitigate this risk is to prohibit re-use of information collected, so that individuals can have confidence their personal information will not be re-used for purposes other than entry to a particular venue/setting. This should include re-use for law enforcement purposes. Further work is required as to the feasibility of such a prohibition.

Operational challenges with enforcing a CVC requirement

35. There would be operational challenges with implementing CVCs in high-risk events where it is not feasible to control access, such as outdoor events where there are multiple entry and exit points. Events, such as free festivals, may present a similar health risk to due numbers of attendees and types of activity, however it may be more difficult to control access and impose restrictions to participate.
36. For this reason, we consider that the mandatory requirement should be limited to ticketed events, at least initially, to avoid implementing a requirement where it is not possible to check compliance.
37. Therefore, these events would not be allowed to operate at alert level 2 or higher, though, unless they choose to introduce and enforce a CVC.

The business and events sector want assurance that they can continue operating at escalated alert levels

38. The business and events sectors are calling for government direction and guidance to inform their decisions. They also want assurance that they can remain open at escalated alert levels.
39. To meet this need, we intend to provide guidance to all other events, organisers of gatherings to support them to introduce this requirement, should they wish to. Advice would be provided on the limitations of the use of CVCs in relation to discrimination and applicable

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exceptions. Meeting the guidance could then enable those events / venues to remain open at escalated alert levels when there would otherwise be gathering limits in place.

The role of the government should be a mix of active and passive in relation to different types of high-risk events and venues

40. In light of concerns around equity, social license and compliance and enforcement, we propose the following framework for mandating, prohibiting and enabling the use of CVCs. This would involve the government taking a mix of active and passive stances in relation to different types of venues:

- **Mandating (active role)**– government sets mandatory requirements on the use of CVCs to access large high-risk events to reduce the risk of super-spreader events
- **Prohibiting (active but preventative role)** – government prohibits the use of CVCs for access to certain businesses (e.g. limited set of basic-human needs providers which are required for life preservation)
- **Permitting and monitoring (passive)** – government allows the use of CVCs in other settings not captured above and provides the fundamental tools required for businesses to implement a vaccination requirement, for example by providing people exempted with proof of their status and monitor the effectiveness and equitability of the use of CVCs to inform government response, as required. The government can also provide guidance.

41. This requirement could then be expanded in the event of an outbreak by allowing businesses with a vaccination requirement to remain open during escalated Alert Levels, perhaps with additional capacity limits. Officials recommend this could come in the form of guidance for businesses to implement, rather than a mandatory requirement from government.

42. While any role that the government takes would involve a degree of monitoring the private sector’s use of vaccination status entry requirements, we do not recommend an active monitoring role.

Legal mechanisms and exceptions (legally privileged)

43. s9(2)(h)
[Redacted text]

44. s9(2)(h)
[Redacted text]

45. s9(2)(h)
[Redacted text]

¹ Legally privileged

s9(2)(h) [Redacted]

s9(2)(h) [Redacted]

46. s9(2)(h) [Redacted]

47. s9(2)(h) [Redacted]

48. s9(2)(h) [Redacted]

s9(2)(h) [Redacted]

49. s9(2)(h) [Redacted]

50. s9(2)(h) [Redacted]

51. s9(2)(h) [Redacted]

PROACTIVELY RELEASED

Timeline of development of possible digital certificate

52. The Ministry of Health has scoped a two-stage delivery of a domestic vaccination certificate. Stage one will provide a paper-based certificate with a working title of the “Summer Pass” that can also be used and stored electronically on iOS and Android phones. This certificate would contain a QR code and a digital signature to prove authenticity and provide tamper resistance.
53. Due to privacy concerns this is a separate solution than the digital vaccination certificate for international travel and will show a simple view of compliance vaccination (or exemption) status with no clinical or private information. Work on the Summer Pass (as a tool) is scheduled to be completed by 8 November 2021.
54. s9(2)(f)(iv) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
55. The Ministry of Health is working with the Office of the Privacy Commissioner and the Government’s Chief Digital Officer to ensure the Summer Pass s9(2)(f)(iv) [REDACTED] a privacy-preserving approach.
56. The Office of the Privacy Commission recommends a solution is designed that does not require venues collect and hold the personal vaccination status of potentially thousands of patrons. If the system absolutely requires that venues collect information, the information should be limited and retained for the bare minimum period (as guided by public health advice). This requirement will need to be resolved through the coming weeks.
57. The Ministry of Health presented on a proposed approach to Summer Passes at the COVID-19 Vaccine Ministers Group meeting on 24 September.

Te Tiriti o Waitangi considerations and stakeholder engagement

58. The government’s role in the domestic use of CVCs should be aligned with and uphold Te Tiriti o Waitangi. The proposals in this paper serve to protect Māori from COVID-19 and we will need to meaningfully engage with Māori to ensure principles of the Te Tiriti are upheld.
59. The next phase of advice will include a more comprehensive Te Tiriti analysis, informed by engagement across government and with key community stakeholders.
60. If you agree to require vaccination for attendees and employees in high-risk settings, we will engage with Treaty Partner, business and community stakeholders in the week of 27 September 2021.
61. Officials propose to engage with Treaty Partner, Pasifika representatives and representatives of people with disabilities via the DPMC Community Panel and business stakeholders via the Business Leaders Forum. We would also engage with the hospitality and arts sectors, and look to engage with Māori health providers and Whānau Ora commissioning agencies.

62. We would focus this engagement on the government's role in introducing and monitoring the use of CVCs both in a low COVID-19 environment with a focus on high-risk settings, and also in the event of an outbreak, escalation of Alert Levels or super-spreader event.

Financial Implications

63. There are no financial implications arising from this paper. Advice on costs of implementing the proposals in this paper will be provided in further briefings.

Next Steps

64. Following your direction, officials will undertake further work on:
- Detailed advice on the categories and characteristics of high-risk events
 - Vaccination requirements for workers at very large high-risk venues – this advice will need to consider existing employment law and health and safety requirements and ensure consistency with existing vaccination requirements and obligations to work in various settings
 - Exemption framework – officials will need to scope the operational feasibility of exemptions processes for attendees and consider the different categories for exemption
 - How a COVID-19 vaccination requirement for high-risk events and venues could be operationalised, including on workplace relations and safety issues and the earliest start date, as well as accessibility considerations
 - Legal requirements to prohibit the use of CVCs in certain human needs providers, including the most appropriate instrument to do so, and enforceability of the measures explored in this paper.
65. We will also work with stakeholders and agencies on implementation and operational considerations for CVCs depending on your decision. MBIE will provide advice on implementing workforce vaccination requirements as part of the implementation and operational advice.
66. Officials will prepare a paper for Cabinet consideration in October, including detailed policy proposals for options to use CVCs.