

COVID-19 Response (Vaccinations) Legislation Bill

Government Bill

Explanatory note

General policy statement

This Bill is an omnibus Bill introduced under Standing Order 267(1)(a). That standing order provides that an omnibus Bill that amends more than 1 Act may be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. The amendments make vaccination a more prominent part of New Zealand's COVID-19 response framework.

Amendments to COVID-19 Public Health Response Act 2020

The Bill amends the COVID-19 Public Health Response Act 2020 (the **Act**) to—

- provide for the broadening of COVID-19 orders to better reflect the new measures and intentions under the COVID-19 Protection Framework;
- provide for forms of acceptable evidence of compliance with COVID-19 orders;
- make it an offence to hold, store, use, or disclose personal information from COVID-19 vaccination certificates through the verification process, except for law enforcement purposes;
- provide that enforcement officers can direct a person to produce evidence to demonstrate compliance with an order under the Act.

In addition, the Bill amends the Act to—

- support future vaccination or testing mandates for work in the public interest;
- provide for regulations to be made that prescribe an assessment tool that persons conducting a business or undertaking (**PCBUs**) may use to ascertain whether it is reasonable for work carried out for the PCBU to be carried out only by workers who are vaccinated or tested.

Amendments to Employment Relations Act 2000

Amendments are also being made to the Employment Relations Act 2000 to provide for reasonable paid time off for employees to be vaccinated.

In addition, the amendments also provide for a 4-week paid notice period for termination if the work requires vaccination but an employee is unvaccinated. The termination notice will be cancelled if the employee gets vaccinated during that period, unless cancelling the notice would unreasonably disrupt the employer's business.

The employee will still be able to bring a personal grievance in relation to the ending of the employment agreement and can terminate their employment early by mutual agreement with their employer.

Departmental disclosure statement

The Ministry of Health is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2021&no=101>

Regulatory impact statement

A regulatory impact statement is not required for this Bill.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. It provides that the Bill comes into force on the day after the date on which it receives the Royal assent.

Part 1

Amendments to COVID-19 Public Health Response Act 2020

Clause 3 provides that *Part 1* amends the COVID-19 Public Health Response Act 2020 (the Act).

Clause 4 amends section 5, which concerns interpretation. The amendments add or modify several definitions.

Clause 5 amends section 9, which sets out requirements for making COVID-19 orders, to clarify that the requirements apply to orders made under section 11.

Clause 6 amends section 11, which empowers the Minister for COVID-19 Response to make COVID-19 orders. The amendments specify other types of COVID-19 orders that may be made.

New section 11(1)(b)(i) and (ia) extends the example in existing section 11(1)(b)(i) to clarify that an order may—

- require persons to refrain from going to an area, a place, or premises in specified circumstances or unless in compliance with specified measures:
- permit persons to enter an area, a place, or premises only in specified circumstances or in compliance with specified measures (for example, permitting entry to a place only if a COVID-19 vaccination certificate is produced).

New section 11(1)(b)(iv) clarifies that an order may require persons to refrain from travelling to or from an area or a place, or refrain from travelling to or from an area or a place in specified circumstances or unless in compliance with specified measures.

New section 11(1)(h) enables an order to be made requiring persons to permit individuals to enter a place or receive a service whether or not the individuals are vaccinated, have a COVID-19 vaccination certificate, or are otherwise able to produce evidence of their vaccination status.

New section 11(1)(i) enables an order to be made specifying the evidence that may be required to be produced to demonstrate compliance with a specified measure (for example, specifying that a COVID-19 vaccination certificate is required to be produced to enter certain premises).

New section 11(1)(j) enables an order to be made specifying, for the purposes of a COVID-19 vaccination, the required doses for each COVID-19 vaccine or combination of COVID-19 vaccines.

New section 11(1)(k) provides for an order to be made relating to applications for, and the issue, renewal, and extension of, COVID-19 vaccination certificates.

Clause 7 inserts *new sections 11AA and 11AB*, which enable the Minister for Workplace Relations and Safety to make COVID-19 orders in relation to specified work.

New section 11AA sets out requirements for making an order under *new section 11AB*, including a requirement that before making the order, the Minister must be satisfied that the order is in the public interest and is appropriate to achieve the purpose of the Act.

New section 11AB provides for COVID-19 orders to be made under the Act relating to specified work, including (among other things) an order—

- specifying work, or classes of work, that may not be carried out by an affected worker unless they are vaccinated, an exempt person, or an authorised person:
- requiring affected workers who carry out specified work to report for and undergo medical examination and testing for COVID-19.

Clause 8 amends section 12, which sets out general provisions relating to COVID-19 orders. The amendment to section 12(1)(a) clarifies that orders may impose different restrictions on persons depending on whether they have a COVID-19 vaccination certificate or on their vaccination status.

New section 12(1)(aa) provides that orders may specify the evidence that may be produced to demonstrate compliance with a requirement, restriction, direction, or condition imposed by an order.

Clause 9 inserts into Part 2 *new subpart 2A* (*new sections 17A to 17F*), which sets out duties that apply to PCBUs and affected workers in relation to specified work.

New section 17A deals with the application of *new subpart 2A* and clarifies that—

- the duties set out in *new subpart 2A* apply only if a COVID-19 order is made under *new section 11AB(1)(a)*; and
- nothing in *new subpart 2A* applies to a person who has the same, or substantially the same, duty imposed on the person by an order made under section 11 of the Act in relation to COVID-19 vaccinations.

New section 17B requires a PCBU to keep a record of an affected worker's vaccination status.

New section 17C imposes a duty on PCBUs to facilitate the vaccination of affected workers by—

- notifying affected workers of their duty not to carry out specified work unless they are vaccinated, an exempt person, or an authorised person; and
- allowing an affected worker to be vaccinated during their normal working hours.

New section 17D imposes a duty on affected workers of a PCBU not to carry out specified work unless they are vaccinated, an exempt person, or an authorised person.

New section 17E requires an affected worker to produce information to the PCBU that verifies the worker's vaccination status and allow the PCBU to take a copy or an image of a document produced. *New section 17E(3)* provides that if an affected worker fails to comply with the duty to produce evidence, the PCBU may treat the affected worker as being unvaccinated or not otherwise permitted to perform their work.

New section 17F requires an affected worker to update the information provided to the PCBU under *new subpart 2A* as soon as practicable after it changes.

Clause 10 replaces the cross-heading above section 18 to reflect other changes made by the Bill.

Clause 11 consequentially amends section 18, which relates to authorised persons, to reflect other changes made by the Bill.

Clause 12 inserts *new section 23A*, which empowers an enforcement officer to direct a person to produce evidence of compliance with any specified measure.

Clause 13 inserts *new sections 33AA and 33AB*.

New section 33AA provides for the making of regulations prescribing an assessment tool that PCBUs may use to ascertain whether it is reasonable to require that certain work should only be carried out by workers who are vaccinated or required to undergo medical examination or testing for COVID-19 (or both).

New section 33AB provides that a PCBU may conduct an assessment of the work carried out by workers of the PCBU to ascertain whether it is reasonable to require those workers not to carry out that work unless they are vaccinated or required to undergo medical examination or testing for COVID-19 (or both). *New section 33AB(2)* provides that a PCBU may, in the PCBU's absolute discretion, conduct the assessment in accordance with the assessment tool prescribed by regulations made under *new section 33AA*.

Clause 14 amends section 34A, which concerns the protection of contract tracing information. The amendment clarifies that personal information obtained for the purposes of contact tracing under the Act may be used for the purposes of enforcing the Act or a COVID-19 order.

Clause 15 inserts *new sections 34B and 34C*.

New section 34B concerns the protection of information collected or obtained for the purpose of determining whether a person has been vaccinated, has been issued with a COVID-19 vaccination certificate, or has complied with the Act or a COVID-19 order.

New section 34C provides that a breach of *new section 34A or 34B* constitutes an action that is an interference with the privacy of an individual under section 69 of the Privacy Act 2020.

Clause 16 inserts *new Part 3* into Schedule 1. *New Part 3* contains transitional provisions arising from the Bill.

Clause 17 amends 2 forms in Schedule 3 to update references to authorised persons.

Clause 18 consequentially amends the secondary legislation specified in *Schedule 2* in the manner set out in that schedule.

Part 2

Amendments to Employment Relations Act 2000

Clause 19 provides that *Part 2* amends the Employment Relations Act 2000 (the **Act**).

Clause 20 inserts *new section 238A*, which signposts the new provisions relating to COVID-19 vaccinations set out in *new Schedule 3A* (as set out in *Schedule 4* of the Bill).

Clause 21 inserts *new Part 4* into Schedule 1AA of the Act, which sets out transitional, savings, and related provisions.

Clause 22 inserts *new Schedule 3A* into the Act.

Schedules

Schedule 1 sets out transitional provisions to be inserted as *new Part 3* of Schedule 1 of the COVID-19 Public Health Response Act 2020.

Schedule 2 sets out consequential amendments arising from the amendments to the COVID-19 Public Health Response Act 2020.

Schedule 3 sets out transitional provisions to be inserted as *new Part 4* of Schedule 1AA of the Employment Relations Act 2000. The provisions in *new Part 4*—

- clarify that *clause 3 of new Schedule 3A*, which provides for the termination of an employee's employment agreement for a failure to be vaccinated, applies only to an employee who receives a notice under that clause after the commencement of the clause;
- repeal the new provisions relating to COVID-19 vaccinations on the date on which the COVID-19 Public Health Response Act 2020 is repealed.

Schedule 4 sets out *new Schedule 3A* of the Employment Relations Act 2000, which contains provisions relating to COVID-19 vaccinations, as follows:

Clause 1 defines terms for the purposes of *new Schedule 3A*.

Clause 2 provides that an employee is entitled to reasonable paid time off during their normal working hours to be vaccinated unless providing the time off would unreasonably disrupt their employer's business or the performance of the employee's employment duties.

Clause 3 enables an employer to terminate an employee's employment agreement in circumstances where the employee must not carry out work unless the employee has received a dose of a COVID-19 vaccine. *Clause 3* applies to the following employees:

- an employee who has a duty imposed by or under the COVID-19 Response Act 2020 not to carry out the work of the employee unless they are vaccinated, are required to undergo medical examination or testing for COVID-19, or are otherwise permitted to perform the work under a COVID-19 order;
- an employee whose employer has determined under *clause 3(1)(b)* that the employee must be vaccinated by a specified date to carry out the work of the employee.

If the employee is not vaccinated in compliance with that duty or determination, the employer may terminate the employment agreement by—

- giving the employee 4 weeks' written notice of the termination (subject to any longer notice period specified in the employee's employment agreement); and
- paying the employee an amount equivalent to 4 weeks of the employee's wages or salary (or any greater amount specified in the employee's employment agreement relating to termination of the agreement) and any other amounts owing to the employee in respect of the employee's service-related entitlements, whether legislative or otherwise.

Hon Chris Hipkins

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Schedule 4
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2000

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the COVID-19 Response (Vaccinations) Legislation Act **2021**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent. 5

Part 1

Amendments to COVID-19 Public Health Response Act 2020

3 Principal Act

This Part amends the COVID-19 Public Health Response Act 2020. 10

4 Section 5 amended (Interpretation)

(1) In section 5(1), insert in their appropriate alphabetical order:

affected worker means a worker who is employed or engaged by a PCBU to carry out specified work

authorised enforcement person means a person authorised under section 18 15

COVID-19 vaccination authorisation, in relation to a person, means an authorisation granted to the person under a COVID-19 order to carry out specified work despite being unvaccinated

COVID-19 vaccination certificate means a certificate that is issued to a person in accordance with a COVID-19 order made under section 11 certifying that the person is— 20

(a) vaccinated; or

(b) an exempt person

COVID-19 vaccination exemption, in relation to a person, means a COVID-19 vaccination exemption granted to the person under a COVID-19 order on the ground that the person meets the specified COVID-19 vaccination exemption criteria 25

document has the same meaning as in section 4(1) of the Evidence Act 2006

exempt person means a person who has been granted a COVID-19 vaccination exemption 30

- PCBU** has the meaning given to it by section 17 of the Health and Safety at Work Act 2015
- representative** has the same meaning as in section 16 of the Health and Safety at Work Act 2015
- specified COVID-19 vaccination exemption criteria** means the criteria for determining whether a person may be granted a COVID-19 vaccination exemption that the Director-General specifies in a notice made under **subsection (3)(a)** 5
- specified work** means work, or classes of work, specified in a COVID-19 order made under **section 11AB** 10
- vaccinated**, in relation to a person, means the person has received all the required doses of a COVID-19 vaccine or combination of COVID-19 vaccines that—
- (a) the Minister or Director-General specifies in a COVID-19 order:
- (b) the Director-General specifies in a notice made under **subsection (3)(b)** 15
- worker** has the meaning given to it by section 19 of the Health and Safety at Work Act 2015
- workplace** has the meaning given to it by section 20 of the Health and Safety at Work Act 2015 20
- (2) In section 5(1), replace the definition of **authorised person** with:
- authorised person**, in relation to COVID-19 vaccinations, means a person who is authorised by a COVID-19 order to carry out work despite being unvaccinated
- (3) In section 5(1), definition of **COVID-19 order**, replace “section 11” with “section 11 or **11AB**”. 25
- (4) In section 5(1), replace the definition of **Minister** with:
- Minister** means,—
- (a) for the purposes of **sections 11AA, 11AB, and 33AA**,— 30
- (i) the Minister for Workplace Relations and Safety; or
- (ii) the Minister who, under the authority of any warrant or with the authority of the Prime Minister, is responsible for the administration of those sections:
- (b) for the purposes of any other section,— 35
- (i) the Minister for COVID-19 Response; or
- (ii) the Minister who, under the authority of any warrant or with the authority of the Prime Minister, is responsible for the administration of this Act
- (5) After section 5(2), insert:

- (3) The Director-General may make a notice specifying (for the purposes of all or any legislation in, or made under, this Act)—
- (a) COVID-19 vaccination exemption criteria:
 - (b) for the purposes of a COVID-19 vaccination, the required doses for each COVID-19 vaccine or combination of COVID-19 vaccines. 5
- (4) A notice made under **subsection (3)** is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

5 Section 9 amended (Minister may make COVID-19 orders)

- (1) Replace the heading to section 9 with “**Requirements for making COVID-19 orders under section 11**”. 10
- (2) In section 9(1), after “COVID-19 order”, insert “under section 11”.

6 Section 11 amended (Orders that can be made under this Act)

- (1) Replace section 11(1)(b)(i) with:
 - (i) stay in any specified area, place, or premises or refrain from going to any specified area, place, or premises (including in specified circumstances or unless in compliance with specified measures): 15
 - (ia) permit entry to any specified areas, places, or premises only in specified circumstances or in compliance with specified measures:
- (2) Replace section 11(1)(b)(iv) with:
 - (iv) refrain from travelling to or from any specified area or place, or refrain from travelling to or from any specified area or place in specified circumstances or unless in compliance with specified measures (for example, refrain from leaving an area unless the person has a COVID-19 vaccination certificate): 20
- (3) After section 11(1)(g), insert: 25
 - (h) requiring persons to permit individuals to enter a place or receive a service whether or not those individuals are vaccinated, have a COVID-19 vaccination certificate, or are otherwise able to produce evidence of their vaccination status:
 - (i) specifying the evidence that may be required to be produced, and the person to whom the evidence may be required to be produced to, to demonstrate compliance with a specified measure (for example, specifying that a COVID-19 vaccination certificate is required to be produced to enter certain premises) and providing for any prohibitions or duties that apply in respect of the use or production of that evidence: 30
 - (j) specifying, for the purposes of a COVID-19 vaccination, the required doses for each COVID-19 vaccine or combination of COVID-19 vaccines: 35
 - (k) in relation to COVID-19 vaccination certificates,—

- (i) specifying who is eligible to be issued with a COVID-19 vaccination certificate:
 - (ii) specifying how an application for a COVID-19 vaccination certificate must be made, and the information required to accompany that application: 5
 - (iii) providing for the issue, renewal, and extension of COVID-19 vaccination certificates by the Director-General or by the use of automated electronic systems (which certificates are to be treated as if they were issued, renewed, or extended by the Director-General):
 - (iv) providing for the form and content of COVID-19 vaccination certificates to be determined by the Director-General: 10
 - (v) specifying the period for which COVID-19 vaccination certificates are valid, or the conditions under which COVID-19 vaccination certificates may expire.
- (4) In section 11(5), after “order”, insert “made under this section”. 15

7 New sections 11AA and 11AB inserted

After section 11A, insert:

11AA Requirements for making COVID-19 orders under section 11AB

- (1) The Minister may make a COVID-19 order under **section 11AB** in accordance with the following provisions: 20
- (a) the Minister must be satisfied that the order does not limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990; and
 - (b) the Minister—
 - (i) must have consulted the Prime Minister, the Minister for COVID-19 Response, the Minister of Justice, and the Minister of Health; and 25
 - (ii) may have consulted any other Minister as the Minister thinks fit; and
 - (c) before making the order, the Minister— 30
 - (i) may consult the Director-General; and
 - (ii) must be satisfied that the order is in the public interest and is appropriate to achieve the purpose of this Act.
- (2) For the purposes of **subsection (1)(c)(ii)**, **public interest** includes (without limitation)— 35
- (a) ensuring continuity of services that are essential for public safety, national defence, or crisis response:

- (b) supporting the continued provision of lifeline utilities or other essential services:
- (c) maintaining trust in public services:
- (d) maintaining access to overseas markets.

11AB Orders that can be made under this Act relating to specified work 5

- (1) The Minister may, in accordance with **section 11AA**, make an order for 1 or more of the following purposes:
 - (a) specifying work, or classes of work, that may not be carried out by an affected worker unless the affected worker is vaccinated, an exempt person, or an authorised person: 10
 - (b) specifying work, or classes of work, that may not be carried out by an affected worker unless the affected worker reports for and undergoes medical examination or testing for COVID-19, or is otherwise permitted to do the work—
 - (i) at any specified place or time: 15
 - (ii) in any specified way or specified circumstances:
 - (c) imposing further duties or obligations relating to specified work carried out by affected workers:
 - (d) prescribing how duties imposed under **subpart 2A** or a COVID-19 order made under this section are to be performed: 20
 - (e) prescribing record-keeping requirements for the purposes of **subpart 2A** or a COVID-19 order made this section, including the content of the records and the manner in which records must be kept.
- (2) An order made under this section may specify which breaches of the order are infringement offences for the purposes of section 26(3), and may specify that a breach of an order is a particular class of infringement offence (with the corresponding penalties) for the purposes of regulations made under section 33(1)(b). 25
- (3) To avoid doubt, nothing in this section limits the purposes for which an order may be made under section 11.
- (4) If a conflict arises between an order made under this section and an order made under section 11, the order made under section 11 prevails unless specified otherwise in the order made under this section. 30
- (5) A COVID-19 order made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

8 Section 12 amended (General provisions relating to COVID-19 orders) 35

- (1) In section 12(1)(a), after “things”, insert “(for example, different restrictions may be imposed on persons depending on whether they have a COVID-19 vaccination certificate or on their vaccination status)”.

- (2) After section 12(1)(a), insert:
- (aa) specify the evidence (including any particular form of evidence) that may be required to be produced to demonstrate compliance with a requirement, restriction, direction, or condition:
- (3) In section 12(1)(d)(i), after “provision of”, insert “this Act or”. 5
- (4) In section 12(1)(d)(ii), after “provision of”, insert “this Act or”.
- (5) In section 12(1)(e), replace “section 11” with “section 11 or **11AB**”.
- 9 New subpart 2A of Part 2 inserted**
- After section 16, insert:
- Subpart 2A—Duties in relation to specified work 10
- 17A Application of this subpart**
- (1) The duties set out in this subpart apply only if a COVID-19 order is made under **section 11AB(1)(a)**.
- (2) Nothing in this subpart applies to a person to whom the same, or substantially the same, duty is imposed in relation to COVID-19 vaccinations by an order made under section 11. 15
- Duties of PCBUs*
- 17B Duty to keep vaccination records**
- (1) A PCBU must, for each affected worker who carries out specified work for the PCBU, keep a record of the affected worker’s vaccination status. 20
- (2) The record must contain the information and be kept in the manner prescribed by a COVID-19 order made under **section 11AB**.
- (3) If an affected worker provides the PCBU with updated information under **section 17F**, the PCBU must update the vaccination record as soon as practicable after being provided with the information. 25
- (4) A failure to comply with this section is an infringement offence.
- 17C Duty to prevent affected worker from carrying out specified work unless vaccinated**
- (1) A PCBU must not allow an affected worker (other than an exempt person or an authorised person) to carry out specified work unless satisfied that the affected worker is vaccinated. 30
- (2) A PCBU—
- (a) must notify each affected worker who carries out specified work for the PCBU of the affected worker’s duty not to carry out that work unless they are vaccinated, an exempt person, or an authorised person; and 35

- (b) must not prevent the affected worker from being vaccinated during their normal working hours, if vaccinations are available during those hours.
- (3) A failure to comply with this section is an infringement offence.

Duties of affected workers

17D Duty not to carry out specified work unless vaccinated, exempt, or authorised 5

- (1) An affected worker must not carry out specified work unless they are—
 - (a) vaccinated; or
 - (b) an exempt person; or
 - (c) an authorised person. 10
- (2) A failure to comply with **subsection (1)** is an infringement offence.

17E Duty to provide information of vaccination status

- (1) For the purposes of ensuring compliance with the duties set out in **sections 17B and 17C**, a PCBU may request an affected worker to provide information (whether in written or electronic form on a device) that verifies the affected worker’s vaccination status (for example, a COVID-19 vaccination certificate, a COVID-19 vaccination exemption, or a COVID-19 vaccination authorisation). 15
- (2) If a document that is provided under **subsection (1)** is handed over to a PCBU, the PCBU must immediately return it to the affected worker after— 20
 - (a) inspecting the document; and
 - (b) taking any copies or images of the document, or extracts from the document, that may reasonably be required for the purpose of verifying compliance with the duties referred to in **subsection (1)**.
- (3) If the affected worker fails to comply with the requirement in **subsection (1)**, the PCBU may treat the affected worker as being unvaccinated or not otherwise permitted to perform their work. 25

17F Duty to update information

If an affected worker has provided information to a PCBU under this subpart, the affected worker must ensure that the information is updated as soon as practicable after it changes. 30

10 Cross-heading above section 18 replaced

Replace the cross-heading above section 18 with:

Authorised enforcement persons

11 Section 18 amended (Authorised persons)

- (1) In the heading to section 18, replace “**Authorised**” with “**Authorised enforcement**”.
- (2) In section 18(2)(b)(i) and (ii), (4)(b), and (5), replace “authorised person” with “authorised enforcement person” in each place.

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12 New section 23A inserted (Power to direct person to produce evidence of compliance with specified measure)

After section 23, insert:

23A Power to direct person to produce evidence of compliance with specified measure

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- (1) This section applies if **subpart 2A** of this Part or a COVID-19 order permits a person to do anything or go anywhere (for example, enter any areas, places, or premises) only if 1 or more specified measures are complied with.
- (2) For the purpose of enforcing any specified measure under **subpart 2A** of this Part or contained in the order, an enforcement officer may direct a person to produce evidence (whether in written form or in electronic form on a device) that verifies compliance with the specified measure (for example, produce a COVID-19 vaccination certificate or a test result).
- (3) If a document that is produced as evidence of compliance with a specified measure is handed over to an enforcement officer, the enforcement officer must immediately return it to the person who produced it after—
 - (a) inspecting the document; and
 - (b) taking any copies or images of the document, or extracts from the document, that may reasonably be required for the purpose of enforcing the specified measure.

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13 New sections 33AA and 33AB inserted

After section 33A, insert:

33AA Regulations may prescribe assessment tool

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing an assessment tool that a PCBU may use to ascertain whether it is reasonable to require workers of the PCBU not to carry out work for the PCBU unless either or both of the following apply:
 - (a) the workers are vaccinated;
 - (b) the workers are required to undergo medical examination or testing for COVID-19.
- (2) The assessment tool may provide—

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- (a) the means of assessing the risk and adverse effects of COVID-19 in respect of ensuring the health and safety of workers and workplaces to support the public health response to COVID-19;
 - (b) for any other matters that the Minister considers relevant for a PCBU to take into account when assessing the risk and adverse effects of COVID-19. 5
- (3) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

33AB PCBU may conduct work assessment

- (1) To assist a PCBU in meeting their primary duty of care under section 36 of the Health and Safety at Work Act 2015, the PCBU may, in accordance with the assessment tool, conduct an assessment of the work carried out by workers of the PCBU to ascertain whether it is reasonable to require those workers not to carry out that work unless either or both of the following apply: 10
- (a) the workers are vaccinated: 15
 - (b) the workers are required to undergo medical examination or testing for COVID-19.
- (2) In conducting the assessment, the PCBU may, in the PCBU's absolute discretion, decide whether to conduct the assessment in accordance with the assessment tool. 20
- (3) If the assessment is conducted in accordance with the assessment tool, the PCBU must, so far as is reasonably practicable, consult the PCBU's workers and, if those workers are represented by a representative, the engagement must involve that representative.
- (4) However, a PCBU— 25
- (a) must not allow a representative to have access to any personal information concerning a worker without the worker's consent unless the information is in a form that—
 - (i) does not identify the worker; and
 - (ii) could not reasonably be expected to identify the worker; and 30
 - (b) may refuse, on reasonable grounds, to grant access to the workplace to a representative or a person assisting a representative.
- (5) In this section, **assessment tool** means the assessment tool prescribed by regulations made under **section 33AA**.

14 Section 34A amended (Protection of contact tracing information) 35

Replace section 34A(1) with:

- (1) Despite anything in the Privacy Act 2020, personal information about an identifiable individual that is collected or obtained for the purpose of contact trac-

ing under this Act (such as through QR scans or paper forms) may not be held, stored, used, or disclosed by anyone except for the purpose of—

- (a) contact tracing under this Act; or
- (b) enforcing the Act or a COVID-19 order (including for the purposes of proceedings against a person for non-compliance); or
- (c) the Health Act 1956.

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15 New sections 34B and 34C inserted

After section 34A, insert:

34B Protection of evidence collected or obtained for purpose of determining whether person is vaccinated or has complied with Act or COVID-19 order

10

(1) Despite anything in the Privacy Act 2020, personal information about an identifiable individual that is collected or obtained by any person for the purpose of determining whether the individual is vaccinated, has been issued with a COVID-19 vaccination certificate, or has complied with this Act or a COVID-19 order may not be held, stored, used, or disclosed by the person except for the purposes of—

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- (a) ascertaining whether the individual is vaccinated or has been issued with a COVID-19 vaccination certificate; or
- (b) demonstrating or ascertaining compliance with this Act or a COVID-19 order; or
- (c) enforcing the Act or a COVID-19 order (including for the purposes of proceedings against a person for non-compliance); or
- (d) the Health Act 1956.

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(2) Nothing in this section limits the right of an individual to access information about them under the Privacy Act 2020 or any other Act.

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(3) A person who intentionally fails, without reasonable excuse, to comply with **subsection (1)** commits an offence.

(4) A person who commits an offence against **subsection (1)** is liable on conviction to,—

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- (a) for an individual,—
 - (i) imprisonment for a term not exceeding 6 months; or
 - (ii) a fine not exceeding \$12,000;
- (b) for any other person, a fine not exceeding \$15,000.

34C	Breach of section 34A or 34B constitutes interference with privacy of individual under Privacy Act 2020	
	A breach of section 34A or 34B constitutes an action that is an interference with the privacy of an individual under section 69 of the Privacy Act 2020.	
16	Schedule 1 amended	5
	In Schedule 1,—	
	(a) insert the Part set out in Schedule 1 of this Act as the last Part; and	
	(b) make all necessary consequential amendments.	
17	Schedule 3 amended	
	In Schedule 3, forms 1 and 2, replace “ <i>authorised person</i> ” with “ <i>authorised enforcement person</i> ”.	10
18	Consequential amendments	
	Amend the legislation specified in Schedule 2 as set out in that schedule.	
Part 2		
	Amendments to Employment Relations Act 2000	15
19	Principal Act	
	This Part amends the Employment Relations Act 2000.	
20	New section 238A inserted (Provisions relating to COVID-19 vaccinations)	
	After section 238, insert:	
238A	Provisions relating to COVID-19 vaccinations	20
	Schedule 3A contains provisions relating to COVID-19 vaccinations.	
21	Schedule 1AA amended	
	In Schedule 1AA,—	
	(a) insert the Part set out in Schedule 3 of this Act as the last Part; and	
	(b) make all necessary consequential amendments.	25
22	New Schedule 3A inserted	
	After Schedule 3, insert the Schedule 3A set out in Schedule 4 of this Act.	

Schedule 1
New Part 3 inserted into Schedule 1 of COVID-19 Public Health
Response Act 2020

s 16

	Part 3	5
	Provisions relating to COVID-19 Response (Vaccinations) Legislation Act 2021	
8	Interpretation	
	In this Part,—	
	Act means the COVID-19 Public Health Response Act 2020	10
	amendment Act means the COVID-19 Response (Vaccinations) Legislation Act 2021	
	commencement day means the day on which the amendment Act comes into force.	
9	Transitional provision for COVID-19 vaccination documents issued before commencement day	15
	The following documents issued by the Ministry of Health before commencement day must on and from commencement day be treated as COVID-19 vaccination certificates issued in accordance with a COVID-19 order made under section 11 of the Act (as amended by the amendment Act):	20
	(a) My Vaccine Pass;	
	(b) International Travel Vaccination Certificate.	
10	Savings provision for COVID-19 Public Health Response (Vaccinations) Order 2021	
	Despite section 5(1) of the Act (as amended by section 4 of the amendment Act), the following definitions in clause 4 of the COVID-19 Public Health Response (Vaccinations) Order 2021 continue to apply for the purposes of that order until revoked:	25
	(a) COVID-19 vaccination exemption:	
	(b) exempt person:	30
	(c) vaccinated.	
11	Savings provision for COVID-19 Public Health Response (Air Border) Order (No 2) 2020	
(1)	Despite section 5(1) of the Act (as amended by section 4 of the amendment Act), the following definitions in clause 7E(5) of the COVID-19 Public Health	35

	Response (Air Border) Order (No 2) 2020 continue to apply for the purposes of that order until revoked:	
	(a) COVID-19 vaccine:	
	(b) exempt person:	
	(c) vaccination requirement.	5
(2)	For the purposes of the definition of vaccination requirement in clause 7E(5) of the COVID-19 Public Health Response (Air Border) Order (No 2) 2020, the definition of vaccinated in section 5(1) of the Act (as amended by section 4(1) of the amendment Act) does not apply until the definition of vaccination requirement is revoked.	10
12	Transitional provision for specified COVID-19 vaccination exemption criteria	
(1)	This clause applies to the specified COVID-19 vaccination exemption criteria (the criteria) approved by the Director-General under clause 9B(12) of the COVID-19 Public Health Response (Vaccinations) Order 2021 and published under that provision in the <i>Gazette</i> on 12 November 2021 (2021-go4910).	15
(2)	The criteria must be treated as having been made under section 5(3)(a) of the Act (as inserted by section 4(5) of the amendment Act) for the purposes of legislation made in or under the Act.	
13	Penalties for infringement offences committed before commencement of section 26(4)	20
(1)	This clause applies if an order made under section 11AB(1)(a) (as inserted by the amendment Act) is in force before the date on which section 26(4) of the Act comes into force.	
(2)	A person who commits an infringement offence under subpart 2A of Part 2 (as inserted by the amendment Act) before the commencement of section 26(4) of the Act is liable to—	25
	(a) an infringement fee of \$300; or	
	(b) a fine imposed by a court not exceeding \$1,000.	

Schedule 2

Consequential amendments

s 18

COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 (LI 2020/241) 5

In clause 15GA, revoke the definition of **vaccinated**.

COVID-19 Public Health Response (Required Testing) Order 2020 (LI 2020/230)

In clause 12A, revoke the definition of **vaccinated**.

COVID-19 Public Health Response (Vaccinations) Order 2021 (LI 2021/94)

In clause 4, insert in its appropriate alphabetical order: 10

specified COVID-19 vaccination exemption criteria means the criteria for determining whether a person may be granted a COVID-19 vaccination exemption that are specified in a notice made by the Director-General under **section 5(3)(a)** of the Act.

Revoke clause 9B(12). 15

Schedule 3
New Part 4 inserted into Schedule 1AA of Employment Relations Act 2000

s 21

Part 4	5
Provisions relating to COVID-19 Response (Vaccinations) Legislation Act 2021	
17 Transitional provision relating to termination of employment agreement for failure to comply with relevant duties or determination	
Clause 3 of Schedule 3A (as inserted by the COVID-19 Response (Vaccinations) Legislation Act 2021) applies only to an employee who receives a notice under that clause after the commencement of that clause.	10
18 Repeal of provisions relating to COVID-19 vaccinations	
(1) Section 238A and Schedule 3A (as inserted by the COVID-19 Response (Vaccinations) Legislation Act 2021) are repealed on the date on which the COVID-19 Public Health Response Act 2020 is repealed.	15
(2) The repeals in subclause (1) do not affect—	
(a) an existing right under the repealed legislation:	
(b) the completion of any process or proceedings started but not completed by the close of the day immediately before the repeal:	20
(c) the previous operation of the repealed legislation or anything done or suffered under it.	

Schedule 4
New Schedule 3A inserted into Employment Relations Act 2000

s 22

Schedule 3A
Provisions relating to COVID-19 vaccinations

5

s 238A

1 Interpretation

In this schedule, unless the context otherwise requires, **COVID-19 order** and **vaccinated** have the same meanings as in section 5(1) of the COVID-19 Public Health Response Act 2020.

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Paid time off for COVID-19 vaccination

2 Employee entitled to paid time off to be vaccinated

(1) An employee is entitled to reasonable paid time off during their normal working hours to receive a dose of a COVID-19 vaccine if providing the time off would not unreasonably disrupt—

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- (a) their employer's business; or
- (b) the performance of the employee's employment duties.

(2) Before taking paid time off under **subclause (1)**, the employee must notify their employer of—

- (a) the date and time on 1 or more days on which the employee intends to receive a dose of a COVID-19 vaccine; and
- (b) the amount of time that the employee expects to take as paid time off in order to receive that dose, including any time spent travelling to or from a location to receive the dose.

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(3) An employer may refuse to allow an employee to take paid time off under **subclause (1)** only if satisfied, on reasonable grounds, that providing the paid time off would unreasonably disrupt the employer's business or the performance of the employee's employment duties.

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(4) Paid time off must be paid at the rate of pay that the employee would otherwise have received if the employee were performing their ordinary employment duties during that time.

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Termination of employment agreement for failure to comply with relevant duties or determination

3 Termination of employment agreement for failure to comply with relevant duties or determination

- (1) This clause applies to the following employees: 5
 - (a) an employee who has a duty imposed by or under the COVID-19 Public Health Response Act 2020 not to carry out work (however described) unless they are—
 - (i) vaccinated; or
 - (ii) required to undergo medical examination or testing for COVID-19; or 10
 - (iii) otherwise permitted to perform the work under a COVID-19 order:
 - (b) an employee whose employer has determined the employee must be vaccinated to carry out the work of the employee. 15
- (2) For the purposes of **subclause (1)(b)**, the employer must give the employee reasonable written notice specifying the date (the **specified date**) by which the employee must be vaccinated in order to carry out the work of the employee.
- (3) If the employee is unable to comply with a duty referred to in **subclause (1)(a)** or a determination made under **subclause (1)(b)** because they fail to comply with the relevant requirements of the COVID-19 Public Health Response Act 2020 or a COVID-19 order, or they are not vaccinated by the specified date, their employer— 20
 - (a) may terminate the employee’s employment agreement by giving the employee 4 weeks’ paid written notice of the termination or the period of notice specified in the employee’s terms and conditions of employment relating to termination of the agreement, whichever is the longer; and 25
 - (b) if **paragraph (a)** applies, must pay the employee— 30
 - (i) an amount equivalent to 4 weeks of the employee’s wages or salary (or any greater amount specified in the employee’s terms and conditions of employment relating to termination of the agreement); and
 - (ii) any other amount or amounts owing to the employee in respect of their service-related entitlements, whether legislative or otherwise. 35
- (4) Before giving a termination notice under **subclause (3)(a)**, the employer must ensure that all other reasonable alternatives that would not lead to termination of the employee’s employment agreement have been exhausted.

- (5) A termination notice given under **subclause (3)(a)** is cancelled and is of no effect if, before the close of the period to which the notice relates, the employee becomes—
- (a) vaccinated; or
 - (b) otherwise permitted to perform the work under a COVID-19 order. 5
- (6) **Subclause (5)** does not apply if cancelling the notice would unreasonably disrupt the employer’s business.
- (7) Nothing in this clause—
- (a) prevents an employee whose employment agreement is terminated under **subclause (3)(a)** from bringing a personal grievance or legal proceedings in respect of the dismissal: 10
 - (b) prevents the parties to the employment relationship from mutually agreeing—
 - (i) to terminate the employee’s employment agreement; and
 - (ii) that the employer will pay the employee in accordance with **subclause (3)(b)**. 15
- (8) To avoid doubt, payment for work done by the employee during the relevant notice period is to be deducted from the amount paid under **subclause (3)(b)**.