



Education Report: Applications for Education related exemptions from the COVID-19 Public Health Response (Vaccinations) Order 2021

To:	Hon Chris Hipkins, Minister for COVID-19 Response		
Date:	16 November 2021	Priority:	Urgent
Security Level:	Sensitive	METIS No:	1277236
Drafter:	N/A	N/A	N/A
Key Contact:	Tom Dibley Group Manager, Government, Executive Services	DDI:	9(2)(a)
Messaging seen by Communications team:	No	Round Robin:	No

Purpose of Report

This paper makes recommendations for your decision on four applications from registered schools for an exemption from provisions of the COVID-19 Public Health Response (Vaccinations) Order 2021. You have the ability to agree to these exemptions as Minister for COVID-19 Response.

The Ministry of Education assessment of each exemption application is included as Annex two, copies of the applications themselves are attached as Annex four, and our recommendation to you on each application is listed below.

Recommended Actions

The Ministry of Education recommends you:

- a. **note** that the Ministry for Education has contacted registered schools where there may be disruption caused by the requirement to have a first dose of Vaccine by 15 November.

Noted

- b. **note** that the Ministry has worked with registered schools to identify options to alleviate the disruption and this has meant that the majority of schools will be able to operate without significant disruption.

Noted

- c. **note** that the applications for exemption have been assessed by the Ministry for your decision making on the basis that the exemption you would consider is from clause 7 of the Order (the duty not to work unless vaccinated). This would mean the person

remains obliged to be vaccinated, but is exempted from the requirement not to work on site until that happens.

Noted

- d. **note** four applications have been received from registered schools and hostels for you to consider an exemption under your powers in Clause 12A of the COVID-19 Public Health Response (Vaccinations) Order 2021.

Noted

- e. **note** five additional registered schools used the Ministry of Health process and form to apply for an exemption. Each of these schools has been contacted and they will not be continuing with an application.

Noted

- f. **note**, the criteria that you are required to take into account are outlined in paragraphs 9 to 12 of the paper below.

Noted

- g. **note** the Ministry of Education has assessed each application against the criteria you need to consider before making a decision and our advice on this is included as Annex two.

Noted

- h. **consider** each application and:

- 1) **decline** the application from 9(2)(ba)(i) (Ministry recommendation) as:

- i. The disruption to learning would not be significant.
- ii. An alternative option is available to reduce the disruption to learning where no unvaccinated workers will be on site.
- iii. The Ministry and NZSTA will support the school to further explore the option of an emergency resourcing principal.

Agree / Disagree

- 2) **decline** the application from 9(2)(ba)(i) (Ministry recommendation) as:

- i. 9(2)(ba)(i)
- ii. Alternative options are available to reduce the disruption to learning where no unvaccinated workers will be on site.

Agree / Disagree

- 3) **decline** the application from 9(2)(ba)(i) (Ministry recommendation) as:

- i. This school is well staffed with a sufficient number of teachers to enable the school to operate safely and support students for the remainder of this term

Agree / Disagree

- 4) **decline** the application from 9(2)(ba)(i) (Ministry recommendation)

- i. Alternative options are available to reduce the disruption to learning where no unvaccinated workers will be on site.

Agree / Disagree

- i. **approve** the attached letters communicating your decisions

Agree / Disagree

- j. **agree** to not proactively release the paper at this time.

Agree / Disagree

Iona Holsted
Secretary for Education

Hon Chris Hipkins
Minister for COVID-19
Response

16/11/2021

 / /

Background

- 1 The COVID-19 Public Health (Vaccinations) Order 2021 (the Order) came into force at 11.59pm on 30 April 2021. It requires certain work only be undertaken by vaccinated people. On 25 October 2021 the Order was amended to add groups in relation to affected education services to the "Groups of affected persons" who are not to carry out work until vaccinated.
- 2 To be compliant with the Health Order, workers in affected education services need to have received their first dose of vaccine by 15 November 2021. If they are non-compliant on 16 November 2021 workers will be unable to undertake work where they:
 - a. May have contact with children or students in the course of carrying out that work; or
 - b. Will be present at the affected education service at a time when children or students are also present.
- 3 On 5 November 2021 registered school and hostels were added to Clause 12A (set out in full at Annex 1) of the Order which allows you to grant exemptions to workers from any provision of the order where this would prevent significant disruption to:
 - a. The operation of learning in registered schools; or
 - b. The essential operations of a hostel.
- 4 This power (as it related to registered schools and hostels only) expires on 1 January 2022.
- 5 The power in Clause 12A allows you to exempt a person from any provision of the order. The applications for exemption have been assessed by the Ministry for your decision making on the basis that the exemption you would consider is from clause 7 (the duty not to work unless vaccinated). This would mean the person remains obliged to be vaccinated, but is exempted from the requirement not to work until that happens.

Support for schools and hostels

- 6 The Ministry of Education has directly contacted those registered schools who may be disrupted by the requirement for workers to have their first dose of vaccine by 15 November. Our regional teams have worked with each of these schools to identify options to continue learning operations without needing unvaccinated workers to be physically on site.
- 7 There are a range of solutions that have been identified for schools who have identified an issue. These include considering (where relevant and appropriate to Alert level settings):
 - a. Use of relievers
 - b. Increasing class sizes
 - c. Using new ITE graduates
 - d. Collaboration between schools
 - e. Using RTLBs
 - f. Learning Support Coordinators
 - g. Remote and digital teaching.
- 8 Four schools have chosen to apply to you for an exemption from provisions of the Health Order. Each of the schools have been contacted by the Ministry of Education to review the level of disruption and to identify options to address such issues.

What you are required to Assess

- 9 The purpose of an exemption is to prevent significant disruption the operation of learning in registered schools or the essential operations of a hostel. Each exemption must strike a balance between upholding the public health response of requiring vaccination for those working in higher-risk settings, with the need to mitigate the adverse consequences that may arise if workers in critical roles cannot or choose not to be vaccinated.
- 10 The decision you are being asked to make is whether you are satisfied:
 - a. the exemption is necessary or desirable –
 - i. to promote the purposes of the Act; and
 - ii. to prevent significant disruption to the operation of learning in a registered schools or the operation of a Hostel; and
 - b. the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.
- 11 You also must take into account (CL 12A(5)(b) and(c):
 - c. 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 the work; and
 - ii. Performed by other persons who have been vaccinated.
 - d. The public Health risk associated with the work
- 12 You may ask for further evidence if you reasonably require it. You may also impose conditions on the exemptions as necessary.

Assessment approach

- 13 The Ministry has considered each application against the criteria of Clause 12A and our advice from this assessment is included in Annex 2 to assist you with your decision making.
- 14 Clause 12A(5)(c) requires you to take into account the public health risk associated with the work. There are a number of public health measures that schools must meet to ensure everyone onsite is as safe as possible. With these health measures in place, the risk of infection at school is low. This recognises the complex situation, and the balancing education outcomes with the need to protect the health of young people and school staff. To understand the health aspects of the applications we have required that the registered school:
 - a. The school undertakes a health and safety assessment (similar to that they would undertake if they has a worker on site with a medical exemption from the vaccine)
 - b. The worker/s involved commit to regular testing
 - c. The school/Hostel operates consistent with the requirements of the Alert level area and the additional public health measures that apply to schools.
- 15 Where the Ministry considers any of these elements are inadequately covered in the application this has been noted in our assessment.

Next Steps

- 16 The Order requires that both the School and the workers are advised of the outcome of this process. A series of letters reflecting the Ministry's recommendations is attached as Annex three.
- 17 If you disagree with the Ministry's recommendations new letters will be provided for your signature.

Annex

- | | |
|----------|-------------------------------------|
| Annex 1: | Clause 12A |
| Annex 2: | Ministry assessment of applications |
| Annex 3: | Response letters. |
| Annex 4: | Applications from four schools |

Annex 1: Health Order Clause 12A Power of Minister to grant exemption

- (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—
 - (A) essential supply chains, in the case of an application to exempt from any provision of this order a person belonging to a group specified in any of Parts 1 to 6 of the table in [Schedule 2](#); or
 - (B) health services, in the case of an application to exempt from any provision of this order a person belonging to a group specified in Part 7 of the table in [Schedule 2](#); or
 - (C) the essential operations of a corrections prison, in the case of an application to exempt from any provision of this order a person belonging to a group specified in Part 8 of the table in [Schedule 2](#); or
 - (D) the operation of learning in registered schools, in the case of an application to exempt from any provision of this order a person belonging to a group specified in Part 9 of the table in [Schedule 2](#); or
 - (E) the essential operations of a hostel in the case of an application to exempt from any provision of this order a person belonging to a group specified in Part 9 of the table in [Schedule 2](#); 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) if applicable, 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.
- (9) Subclause (4)(a)(ii)(D) and (E) are revoked on 1 January 2022.