

Regulatory Impact Analysis: Removing prison workers from the COVID-19 Public Health Response (Vaccinations) Order 2021

Purpose of document

Decision sought:	Agree to remove prison workers from the COVID-19 Public Health Response (Vaccinations) Order 2021
Advising agencies:	Department of Corrections
Proposing Ministers:	Minister of Corrections and Minister for COVID-19 Response
Date finalised:	15 June 2022

Background

In October 2021, Cabinet agreed to include all staff members of a corrections prison, and contractors or subcontractors who provide services in respect of a corrections prison in the Vaccination Order. Health and disability workers, which included health workers in prisons, were also included in the Vaccination Order. This meant that these workers are required to be fully vaccinated against COVID-19 in order to work in prisons.

This decision was made because people in prison are some of the most vulnerable to COVID-19, due to the ease of transmission that COVID-19 can have in prisons, and the existing health vulnerabilities of the prison population.

From March 2020, Corrections successfully pursued an elimination strategy for COVID-19 in prisons and vaccination requirements for staff supported this approach. However, since February 2022, Corrections has been managing COVID-19 transmission in prisons among staff and people in prison.

Problem definition

Prison workers and health workers in prisons are required to be fully vaccinated against COVID-19, under the COVID-19 Public Health Response (Vaccinations) Order 2021 (the Vaccination Order).

The inclusion of prison workers in the Vaccination Order may no longer be justified and proportionate to the risks posed by COVID-19 in prisons.

Mandatory vaccination requirements impose limitations on rights under the New Zealand Bill of Rights Act 1990 (NZBORA), the Human Rights Act 1993 and the Employment Relations Act 2000.

Regulatory Impact Analysis: Removing prison workers from the COVID-19 Public Health Response (Vaccinations) Order 2021

Coversheet

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The inclusion of prison workers in the Vaccination Order may no longer be justified and proportionate to the risks posed by COVID-19 in prisons.

Mandatory vaccination requirements impose limitations on rights under the New Zealand Bill of Rights Act 1990 (NZBORA), the Human Rights Act 1993 and the Employment Relations Act 2000.

Executive Summary

In October 2021, Cabinet agreed to include all staff members of a corrections prison, and contractors or subcontractors who provide services in respect of a corrections prison in the Vaccination Order. Health and disability workers, which included health workers in prisons, were also included in the Vaccination Order. This meant that these workers are required to be fully vaccinated¹ against COVID-19 in order to work in prisons.

This decision was made because people in prison are some of the most vulnerable to COVID-19, due to the ease of transmission that COVID-19 can have in prisons, and the existing health vulnerabilities of the prison population.

From March 2020, Corrections successfully pursued an elimination strategy for COVID-19 in prisons and vaccination requirements for staff supported this approach. However, since February 2022, Corrections has been managing COVID-19 transmission in prisons among staff and people in prison.

¹ Fully vaccinated means having received two primary doses and a booster of a COVID-19 vaccine by certain dates. Not all staff have reached the date where they are due to have received their booster. Staff who have passed the date for receiving their booster and have not received it are referred to as double vaccinated, rather than fully vaccinated.

As a result of the Vaccination Order requirements, all staff currently working in prisons are either fully vaccinated or have a temporary medical exemption from receiving their booster dose because they have recently contracted COVID-19. Corrections has had an ongoing focus on promoting vaccination uptake by people in prison, and other operational controls are in place to manage the risks from COVID-19 in prisons. This includes the use of PPE and isolation and quarantine protocols for people arriving in prison.

Mandatory vaccination requirements infringe on the rights of workers impacted to refuse medical treatment and to be free from discrimination. Limitations on these rights can be imposed in order to mitigate the impact of COVID-19 on vulnerable people and to protect the capacity of the health system. However, these infringements must be justifiable and proportionate to the public health risks from COVID-19. Corrections is now managing COVID-19 in prisons, with all staff fully vaccinated and good rates of prisoner vaccination². There are also other operational controls in place to mitigate the health risks from COVID-19. Therefore, it may no longer be justifiable to include prison workers in the Vaccination Order.

Public health advice is that there is likely to be a second wave of Omicron infections over winter 2022, and that vaccination continues to provide lasting protection against severe infection and death. Options for change therefore need to balance ongoing health protection for staff and people in prison with creating the least infringements on rights possible in the circumstances.

Three options were considered:

- Option one: status quo
- Option two: to remove prison workers from the Vaccination Order
- Option three: to remove prison workers from the Vaccination Order and instead impose operational vaccination requirements on these workers.

The preferred option is Option two, as it best balances protecting the health of vulnerable people in prison with removing infringements on rights where this is no longer justifiable. Under option two, prison workers would be removed from the Vaccination Order, but health staff would remain covered s 9(2)(f)(iv)

Option two would support the safe operation of prisons, as it is less likely to exacerbate staffing shortages from workers who are not fully vaccinated needing to be placed on leave.

Impacted staff were consulted on possible changes, and approximately 52 per cent supported removing vaccination requirements in June 2022, 36 per cent supported a vaccination requirement until the end of September 2022, and five per cent supported an ongoing vaccination requirement beyond September 2022.

Limitations and Constraints on Analysis

The option to permanently maintain the Vaccination Order requirements was discounted, because a permanent limitation on people's rights would not be justifiable as the country moves out of an emergency response to the pandemic and towards a state of living with COVID-19. In addition, the Vaccination Order cannot remain in place beyond May 2023, when the COVID-19 Public Health Response Act 2020 will be repealed.

² As of 29 May 2022, 78.7 per cent of people in prison had received their first dose, with 73.6 per cent having received their second dose, and 48.6 per cent having received their booster.

Response rates to staff consultation on changes to vaccination requirements were very low, indicating a lack of engagement from staff, and are therefore of limited value in representing the views of all staff. 224 responses were recorded from prison workers, representing roughly 3.5 per cent of all prison workers. Unions and Health and Safety However, representatives were involved in workshops as part of completing a COVID-19 risk assessment and their views were captured. Wider public consultation and consultation with people in prison was not carried out due to time constraints on completing the risk assessment.

Responsible Manager(s) (completed by relevant manager)

Marian Horan

Manager

Corrections Policy

Department of Corrections



15 / 06 / 2022

Quality Assurance (completed by QA panel)

Reviewing Agency: Department of Corrections and the Ministry for Primary Industries

Panel Assessment & Comment: A joint Department of Corrections and Ministry for Primary Industries Regulatory Impact Analysis Panel has reviewed the Regulatory Impact Assessment (RIA) "*Removing prison workers from the COVID-19 Public Health Response (Vaccinations) Order 2021*" produced by Department of Corrections, dated 15 June 2022. The review team considers that it **partially meets** the Quality Assurance criteria.

This RIA is complete, clear and concise, and convincing. The narrow focus of the consultation undertaken for this proposal raises potential risks in its communication and implementation.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

Legislation support New Zealand's response to the COVID-19 pandemic

1. The COVID-19 Public Health Response Act 2020 supports a public health response to COVID-19 and COVID-19 Orders can be made under this Act. The COVID-19 Public Health Response (Vaccinations) Order 2021 (the Vaccination Order) is secondary legislation which sets out groups of affected workers who must be vaccinated. It also sets out requirements on relevant Persons Conducting a Business or Undertaking (PCBU) to not allow affected groups to work unless they are vaccinated.
2. PCBUs have duties under the Health and Safety at Work Act 2015 to protect the health and safety of workers. WorkSafe New Zealand has developed guidance for employers on managing risks from COVID-19.
3. Workers have rights under the New Zealand Bill of Rights Act 1990 (NZBORA) to refuse medical treatment and the right to be free from discrimination under NZBORA, the Human Rights Act 1993 and the Employment Relations Act 2000.

Cabinet has previously made decisions that require prison workers to be vaccinated against COVID-19

4. In October 2021, Cabinet agreed to include all staff members of a corrections prison and contractors or subcontractors who provide services in respect of a corrections prison (together "prison workers") in the Vaccination Order [CAB-21-MIN-0422].
5. Health staff in prisons were also included in the Vaccination Order, by decisions made by Cabinet on 11 October 2021 to include health and disability workers [CAB-21-MIN-0413]. The Vaccination Order was amended in late 2021 to include the requirement for affected workers to receive a booster in order to be considered fully vaccinated.
6. These decisions had the effect of requiring all prison workers, including health workers, to receive two primary doses and a booster of an approved COVID-19 vaccine by certain dates, in order to work in a prison.
7. This decision was made because people in prison are some of the most vulnerable to COVID-19, due to the ease of transmission that COVID-19 can have in prisons, and the existing health vulnerabilities of the prison population. In 2021, Corrections completed a risk assessment, which found that all areas of prison environments and work undertaken within them should be considered "very high" risk for COVID-19. Vaccinations were considered a critical tool for reducing the risk and impact of COVID-19 outbreaks in prison because existing controls, such as the use of personal protective equipment (PPE), would not sufficiently reduce the risk.

Mandatory vaccination creates infringements on the rights of impacted workers

8. s 9(2)(h)

9.

10. The rights of other groups such as people in prison and the wider public are not limited by the Vaccination Order. However, the risks to the health of these groups will be impacted by decisions relating to which workers are required to be fully vaccinated.

Staff vaccination has supported Corrections to manage transmission of COVID-19 in prisons

11. Supported by the Vaccination Order requirements, all staff currently working in a prison, including contractors, are either fully vaccinated or have a temporary medical exemption from receiving their booster dose because they have recently contracted COVID-19. Temporary medical exemptions can be given because public health advice is not to receive a booster dose until three months after having contracted COVID-19.
12. No staff currently have a full medical exemption from being vaccinated. Full medical exemptions can be granted if there are genuine medical reasons why someone cannot receive a vaccine. However, these exemptions are rare.
13. Following prison workers being included in the Vaccination Order, 78 prison workers had their employment terminated because they were not double vaccinated by the mandated date of 8 December 2021.⁵
14. From March 2020, Corrections pursued an elimination strategy for COVID-19 in prisons and vaccination requirements for staff supported this approach. From February 2022, the first COVID-19 outbreak was recorded in the general prison population and Corrections has since been managing COVID-19 transmission in prisons amongst staff and prisoners. Cases in prisons peaked at 802 per day on 18 March 2022 and have declined since then. As of 15 June 2022, there were 41 active cases nationally in prisons.

Public health advice indicates there will be a second wave of infections over winter 2022

15. Current public health advice is that there is likely to be a second wave of Omicron infections over winter. While Omicron is more transmissible than earlier variants, a two-dose primary course and a booster provide lasting protection against severe infection and death. The government will soon roll out a second booster to certain groups more

³ Section 21 of the Human Rights Act sets out prohibited grounds of discrimination, which includes disability and religious beliefs.

⁴ Sections 104 of the Employment Relations Act sets out that an employee is discriminated against if the employer refuses to offer the same terms or conditions or employment as other employees, or dismisses that employee, on the grounds set out in section 105. Section 105 sets out the same prohibited grounds of discrimination as the Human Rights Act, including disability and religious belief.

⁵ There were 12 prison workers who agreed to a vaccination plan with Corrections and were placed on leave until they were vaccinated. One person had their employment terminated as they did not meet the requirements of their vaccination plan and two people remain on leave as they have not completed a vaccination plan from the original mandate.

at risk of serious illness from COVID-19. Regardless of any Vaccination Order requirements, Corrections will encourage and provide this second booster to relevant staff and prisoners.

Since mandatory vaccination requirements for staff were introduced, Corrections has also focused on increasing the vaccination rates of people in prison

16. Corrections has had an ongoing focus on promoting vaccination uptake by people in prison. For example, in February 2022, Corrections prioritised a focus on COVID-19 vaccinations and infection control management for a period of four weeks. A focus was placed particularly on vaccination rates of Māori in prison. This reprioritisation delivered a 47 per cent increase in the number of vaccinations administered in prison in a two-week period. Of the vaccinations delivered in this period, 54 per cent were to Māori, 12 per cent to Pacific people and 33 per cent to non-Māori, non-Pacific people.
17. When the Vaccination Order was introduced, a key consideration for why this was considered justifiable was to protect the health of people in prison, who had low rates of vaccination. As of 11 October 2021, approximately 66 per cent of the prison population had received a first dose and approximately 44 per cent had received a second dose. As of 29 May 2022, 78.7 per cent of people in prison have received their first dose, 73.6 per cent have received their second dose, and 48.6 per cent have received their booster. The proportion of people in prison who have received their first and second doses has been sustained as people come in and out of prisons. The promotion of boosters for people in prison continues to be a priority for Corrections.

Corrections also has other operational controls in place to manage risks from COVID-19

18. Since March 2020, Corrections has adapted its operating model to manage the impacts of COVID-19. Currently, Corrections has a comprehensive COVID-19 Custodial Resilience Operating Framework (COVID-19 Operating Framework) in place, the purpose of which is to move prison operating environments towards standard operating procedures in a safe and sustainable way. The Framework includes controls for minimising the risks of transmission in prisons. Corrections' operating model can adapt to increasing and decreasing risks when new variants emerge.
19. Within the Framework, controls will continue to be used to manage the risks from COVID-19, such as the use of personal protective equipment (PPE) and encouraging prison staff to take Rapid Antigen Tests before coming on site to work. New prisoners are screened on arrival into prison for COVID-19. If they are symptom-free and test negative, they are separated for seven days from the general prison population, but able to mix within a group. New arrivals who are symptomatic or test positive for COVID-19 are quarantined separately but can be mixed with others in quarantine.
20. Should it be needed in the future, Corrections could introduce operational vaccination requirements for staff, contractors and certain visitors to prisons. Such requirements have been used for Corrections community and corporate environments in 2021/2022.

Corrections updated its COVID-19 risk assessment in May 2022 in light of the changing situation with COVID-19 in prisons

21. Corrections updated its COVID-19 risk assessment for prisons in May, taking into account the Omicron variant, the latest public health advice, vaccination rates for staff and people in prison, and the changing context of COVID-19 transmission now occurring in prisons.
22. The risk assessment was informed by public health advice and by guidance from WorkSafe New Zealand about the duties of PCBUs under the Health and Safety at Work Act. The four key questions that were answered by the risk assessment were:

- a. Is there a greater risk of the workers being exposed to new variants at work than they would be in the community?
 - b. Does the worker regularly, as part of their work, interact with people who are at greater risk of severe illness should they contract COVID-19?
 - c. Does the worker regularly interact with people who are less likely to be vaccinated against COVID-19?
 - d. Does the worker work in a confined indoor space (of less than 100m²) and involve close and sustained interactions with others (i.e. closer than 1m distance, for periods of more than 15 continuous minutes)?
23. The risk assessment found that it would be a reasonably practicable control to continue mandatory vaccinations for health staff in prisons. The risk assessment also found that it may be a reasonably practicable control to require mandatory vaccination for a narrower range of prison workers, for roles where workers have regular, face-to-face contact with prisoners arriving into prisons, such as working in the Custodial Receiving Office. However, operationally it is very difficult to implement a requirement that applies to only some prison workers, given that many prison workers work across different areas and roles within prisons, and may be required to work in different areas of a prison at short notice. It is not possible to accurately calculate how many prison workers would have been captured by a narrower application of vaccination requirements.
24. Corrections consulted with staff in May 2022 about the outcomes of the risk assessment and the ongoing need for vaccination requirements. Response rates to staff consultation were low, indicating a lack of engagement from staff. 224 responses were recorded from prison workers, representing roughly 3.5 per cent of all prison workers. However, unions and Health and Safety Representatives were involved in workshops as part of completing a COVID-19 risk assessment and their views were captured.
25. Of staff working in affected prisoner-facing roles in custodial environments who responded to consultation, which included health staff in prisons, approximately 52 per cent supported removing vaccination requirements in June 2022, 36 per cent supported a vaccination requirement until the end of September 2022, and five per cent supported an ongoing vaccination requirement beyond September 2022. Wider public consultation and consultation with people in prison was not carried out due to time constraints with completing the risk assessment.
26. Of the staff who supported removing vaccination requirements in June, some felt that vaccination should be an optional choice, others felt that the use of other controls such as Rapid Antigen Tests and PPE were sufficient to manage risks, and others felt it was more important that safe staffing levels were maintained by allowing prison workers who were not fully vaccinated to work in prisons.

There may be operational impacts from continuing to require prison workers to be vaccinated

27. As of 27 May 2022, 85 frontline prison workers were not working in prisons as they had not received their booster and had reached their required date for receiving a booster under the Vaccination Order. A further 85 staff had not yet received their booster and would reach their dates for having a booster by mid-June 2022. 305 frontline prison workers have received a temporary medical exemption as a result of contracting COVID-19 before receiving a booster and have individual dates from May to August 2022 to receive a booster. It is unknown whether all of these staff will comply with requirements to receive a booster. There are around 6,400 staff working in prisons, so

these staff who have not yet received a booster represent approximately 7 per cent of prison workers.

28. Ongoing mandatory vaccination requirements for staff could put pressure on the safe operation of prisons if more staff need to be placed on leave and cannot work in prisons due to refusing to be fully vaccinated. Certain staffing levels are required in prisons to provide for safe unlocks, movements of people in prison and operation of programmes and activities. The safe operation of prisons could also be impacted if significant numbers of prison workers contracted COVID-19.

Ministers will report back to Cabinet in June 2022 on removing prison workers from the Vaccination Order

29. s 9(2)(f)(iv)

30. On 20 June, the Minister of Corrections will report back to Cabinet on removing prison workers from the Vaccination Order. The Minister for COVID-19 Response can make decisions to amend the Vaccination Order. This regulatory impact analysis will be provided to the Minister of Corrections and Minister for COVID-19 Response to inform their decisions.

What is the policy problem or opportunity?

The inclusion of prison workers in the Vaccination Order may no longer be justified

31. The inclusion of prison workers in the Vaccination Order may no longer be justified to respond to the current COVID-19 risks in prisons. This is due to the changing context of COVID-19 in prisons compared to when prison workers were included in the Vaccination Order in October 2021.
32. All prison workers are now fully vaccinated, vaccination rates for people in prison have improved, Corrections has developed its COVID-19 Operating Framework. There are also other operational controls in place, such as testing and screening of new arrivals to prisons and encouraging staff to take Rapid Antigen Tests before coming on site to work, which can all mitigate the impacts from COVID-19 transmission in prisons.
33. Corrections has managed the transmission of COVID-19 in prisons since February 2022 and is now using the COVID-19 Operating Framework to transition towards standard operating procedures in prisons.

Mandatory vaccination requirements impose limits on human rights and must be justifiable

34. There is an opportunity to review whether there is an ongoing need for prison workers to be included in the Vaccination Order. Mandatory vaccination requirements raise issues of consistency with the right to refuse medical treatment (section 11 of NZBORA) and the right to be free from discrimination on the grounds of disability or (potentially) religious beliefs (section 19 of NZBORA, section 21 of the Human Rights Act 1993⁶ or sections 104 and 105 of the Employment Relations Act 2000⁷).

⁶ Section 21 of the Human Rights Act sets out prohibited grounds of discrimination, which includes disability and religious beliefs.

⁷ Sections 104 of the Employment Relations Act sets out that an employee is discriminated against if the employer refuses to offer the same terms or conditions or employment as other employees, or dismisses that

35. s 9(2)(h)

36. As noted above, the context in prisons has changed since prison workers were included in the Vaccination Order in October 2021.

What objectives are sought in relation to the policy problem?

- 37. The primary objective is to protect the health of staff and people in prison, while minimising any infringements upon the rights of prison workers.
- 38. A secondary objective is to ensure the continued safe operation of prisons, including that activities for people in prison can be delivered.

employee, on the grounds set out in section 105. Section 105 sets out the same prohibited grounds of discrimination as the Human Rights Act, including disability and religious belief.

s 9(2)(h)

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

39. The criteria used are:
- Protects health of staff and people in prison
 - Supports rights under NZBORA, the Human Rights Act and the Employment Relations Act
 - Supports the safe operation of prisons
 - Gives effect to Corrections' Treaty of Waitangi responsibilities (e.g. equitable health and rehabilitation outcomes).

What scope will options be considered within?

40. We have considered regulatory and non-regulatory options. The option to permanently maintain the Vaccination Order was discounted, because a permanent limitation on people's rights would not be justifiable as the country moves out of an emergency response to the pandemic and towards a state of living with COVID-19. The Vaccination Order also cannot last beyond 13 May 2023, when the COVID-19 Public Health Response Act 2020 will be repealed.⁹

What options are being considered?

Option One – Status Quo

41. The status quo is for prison workers to remain covered by the Vaccination Order through winter 2022. Health workers in prisons would also continue to be covered by the Vaccination Order requirements for health and disability workers to be fully vaccinated.

42. s 9(2)(f)(iv) [REDACTED] Until then, all prison workers and health workers in prisons would continue to be required to be fully vaccinated.

Option Two – Remove prison workers from the Vaccination Order

43. Option two is to amend the Vaccination Order to remove prison workers. Health workers would continue to be covered by the Vaccination Order s 9(2)(f)(iv) [REDACTED]

44. While all prison workers currently working in prisons are fully vaccinated, some prison workers who do not receive a booster dose and are therefore not fully vaccinated would be able to return to work in prisons once the Vaccination Order was amended. Any new prison workers employed by Corrections following amendments to the Vaccination Order would not be required to be vaccinated. However, all workers would be coming from a highly vaccinated general population so would be likely to be vaccinated.

⁹ [Section 3\(3\) COVID-19 Public Health Response Act 2020.](#)

Option Three – Remove prison workers from the Vaccination Order and implement operational vaccination requirements

45. Option three would also amend the Vaccination Order to remove prison workers. However, Corrections would introduce operational requirements for these workers to be fully vaccinated. This would mean that these workers would still need to have received two primary doses of the vaccine and a booster in order to work in prisons.

Key:

- ++** much better than doing nothing/the status quo/counterfactual
- +** better than doing nothing/the status quo/counterfactual
- 0** about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- much worse than doing nothing/the status quo/counterfactual

How do the options compare to the status quo/counterfactual?

	Option One – Status Quo	Option Two – Remove prison workers from the Vaccination Order	Option Three – Implement operational vaccination requirements for prison workers
Protects health of staff and people in prison	<p>0</p> <p>All prison workers and health workers in prisons, are required to be fully vaccinated. This reduces the risk of COVID-19 transmission in prisons and protects the health of staff and people in prison.</p>	<p>-</p> <p>Prison workers who are not fully vaccinated will be able to work in prisons. This will increase risks to the health of staff and people in prison from the transmission of COVID-19. However, this risk will be small as the numbers of staff who are not fully vaccinated are expected to be small and dispersed across prison sites. All prison workers are coming from a highly vaccinated general population so are likely to be voluntarily vaccinated, and Corrections will continue to educate and encourage prison workers to be vaccinated, along with implementing other operational controls to manage risks from COVID-19.</p>	<p>0</p> <p>Implementing operational requirements would mean that all prison workers, including health staff, would still need to be fully vaccinated. This option would offer similar health protection compared to the status quo.</p>
Supports rights under NZBORA, the Human Rights Act and the Employment Relations Act	<p>0</p> <p>Mandatory vaccination requirements infringe on the rights of affected workers.</p>	<p>+</p> <p>The removal of prison workers from the Vaccination Order will remove human rights implications in respect of those workers.</p>	<p>0</p> <p>Implementing operational vaccination requirements would raise similar issues of infringements on rights compared to the status quo.</p>
Supports the safe operation of prisons	<p>0</p> <p>Staff who refuse to be fully vaccinated cannot work in prisons and must be placed on leave. This will continue to place some pressure on the safe operation of prisons due to some staff refusing to be fully vaccinated.</p>	<p>+</p> <p>This option reduces the risk of prison workers needing to be placed on leave because they refuse to be fully vaccinated, meaning staffing pressures are less likely to negatively impact on the safe operation of prisons. While there is an</p>	<p>0</p> <p>Implementing operational vaccination requirements would mean that staff who refuse to be fully vaccinated would be unable to work in prisons.</p>

**Gives effect to
Corrections'
Treaty of
Waitangi
responsibilities**

increased risk that greater numbers of prison workers contracting COVID-19 will place pressure on the safe operation of prisons, this is a smaller risk as most prison workers will still be fully vaccinated.

0

While this option will slightly increase health risks to Māori from COVID-19 transmission in prisons, this risk is not significantly greater than the status quo because the vaccination rates of prison workers will remain high, other operational controls will manage risks from COVID-19, and vaccination will continue to be provided to people in prison. This option is more likely to ensure that Māori continue to have access to rehabilitation programmes.

0

This option will continue to protect the health of Māori in prison by requiring all prison workers to be fully vaccinated. Any impacts on reduced staffing could negatively impact on long-term rehabilitation outcomes if access to programmes is reduced.

0

The status quo provides high health protection for staff and people in prison but imposes limitations on the rights of prison workers which may no longer be justifiable in the circumstances. It may also lead to staff shortages if prison workers refuse to receive a booster and are unable to continue working in a prison, which could impact on the safe operation of prisons.

+

This option strikes a balance between protecting health, having the least possible infringements on rights, and supporting the continued safe operation of prisons.

0

This option does not significantly differ from the status quo, as a mandatory vaccination requirement would still apply via an operational mechanism.

**Overall
assessment**

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

46. Option two, to remove prison workers from the Vaccination Order, is the best option to address the problem compared to the status quo.
47. Currently, all prison workers are fully vaccinated, and under option two, the majority of prison workers will continue to be fully vaccinated. However, this option would remove the infringements on the rights of prison workers that had been imposed by the Vaccination Order, which is necessary as these infringements may no longer be justifiable given the changing risks presented by COVID-19 in prisons.
48. While some prison workers may refuse to be fully vaccinated and will be able to work in a prison, this is likely to be a small number that would be dispersed across all prison sites. In addition, all prison workers are coming from a highly vaccinated general population so are likely to be voluntarily vaccinated. Corrections will continue to educate and encourage prison workers to be vaccinated, along with implementing other operational controls to manage risks from COVID-19. For these reasons, the health risks from option two remain relatively low compared to the status quo.
49. Option two also continues to provide protection for the health of the most vulnerable people in prison, as health staff will continue to be required to be fully vaccinated under the Vaccination Order s 9(2)(f)(iv). This is important as public health advice indicates that there is likely to be a second wave of Omicron infections. s 9(2)(f)(iv)
This is considered justifiable because health workers interact with the most vulnerable people in prison.
50. Enabling staff who are not fully vaccinated to work in prisons will reduce the likelihood of staffing shortages impacting on the safe operation of prisons. This would better support the wellbeing of people in prison, as it means that there is less likely to be any reductions in activities such as education and rehabilitation programmes due to staffing shortages.
51. Corrections has Treaty of Waitangi obligations to actively protect the health of Māori in prison and provide for equitable outcomes. Māori are over-represented in the prison population and have been disproportionately impacted by the COVID-19 pandemic. Option two provides a balance between continuing to protect the health of Māori, while ensuring access to activities such as rehabilitation programmes are not impacted. Operational approaches to meeting treaty responsibilities and protecting the health of all people in prison include educating on, encouraging and providing vaccination to people in prison, requiring staff to wear PPE, and screening new arrivals to prisons to minimise the likelihood of transmission of COVID-19 in prisons.

What are the marginal costs and benefits of the option?

Affected groups <i>(identify)</i>	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Prison workers	Some prison workers not being fully vaccinated could increase the risk that other prison workers will contract COVID-19 at work.	Low Only a small number of prison workers would not be fully vaccinated, and these staff would be dispersed across prison sites.	High There are currently 85 staff not working in prisons because they have refused to receive their booster and a further 85 staff who will have reached the due date for receiving their booster by mid-June 2022. A further 305 workers have a temporary medical exemption and will reach the due date for receiving their booster in the coming months. Many of these workers will voluntarily be vaccinated so the numbers of prison workers not fully vaccinated will be low.
People in prison	People in prison would likely face slightly higher risks from COVID-19 transmission from some prison workers not being fully vaccinated.	Low	As above.
Department of Corrections	There may be costs from managing an increase in the number of staff who contract COVID-19. However as most prison workers will continue to be fully vaccinated, this is expected to be low.	Low	As above.
Public health system	If greater transmission occurs in prisons from prison workers not being required to be fully vaccinated, this could contribute to pressure on the public health system from COVID-19.	Low	As above, most prison workers will be fully vaccinated and health workers in prisons, who interact with the most vulnerable people in prison, will continue to be covered by the Vaccination Order.

Total monetised costs	N/A	
Non-monetised costs	Low	<i>(High, medium or low)</i>

Additional benefits of the preferred option compared to taking no action

Prison workers	<p>Limitations on the rights of prison workers would be removed.</p> <p>Prison workers who refuse to be fully vaccinated would be able to continue working in prisons.</p> <p>The safe operation of prisons would be supported by avoiding staff shortages caused by prison workers who are not fully vaccinated being placed on leave. This would increase the safety of staff working in prisons.</p>	Low	Only a small number of prison workers (as discussed above) have not received their booster dose and may return to work in a prison without being fully vaccinated.
People in prison	This option would reduce the likelihood of staff shortages, meaning activities, such as education and rehabilitation programmes, are less likely to be disrupted.	Low	As above.
Department of Corrections	This option would reduce the likelihood of staff shortages, supporting the safe operation of prisons.	Low	As above.
Total monetised benefits	N/A		
Non-monetised benefits	Low	<i>(High, medium or low)</i>	

Section 3: Delivering an option

How will the new arrangements be implemented?

52. Option two would require an amendment to the Vaccination Order to remove prison workers from Schedule 2.
53. Corrections would continue its approach of educating, encouraging and providing vaccinations to all staff and people in prison, in order to minimise the risks from COVID-19. Given the high vaccination rates of prison workers, there will be an ongoing focus on educating and encouraging people in prison, particularly those who may be most vulnerable to the impacts of COVID-19, to be vaccinated.
54. To meet its Treaty of Waitangi responsibilities, Corrections will also continue to focus on encouraging vaccinations for Māori in prison. As of 29 May 2022, 78.3 per cent of Māori prisoners have received a first dose, 72.5 per cent have received a second dose and 45.1 per cent have received a booster. This compares to 79.5 per cent of non-Māori, non-Pacific people who have received a first dose, 75.5 per cent who have received a second dose and 55.2 per cent who have received a booster.
55. Corrections would also continue to use other controls to manage the risks from COVID-19, such as PPE, screening and testing people when they arrive into prison, and encouraging prison staff to take Rapid Antigen Tests before coming on site to work.
56. Corrections has a comprehensive COVID-19 Operating Framework in place to help move prison operating environments towards standard operating procedures in a safe and sustainable way. This includes controls for minimising the risks of transmission in prisons. Corrections' operating model can adapt to increasing and decreasing risks when new variants emerge. In addition, should it be needed in the future, Corrections could introduce operational vaccination requirements for staff, contractors and certain visitors to prisons.

57. s 9(2)(g)(i)

58.

How will the new arrangements be monitored, evaluated, and reviewed?

59. s 9(2)(f)(iv)

60. Corrections would continue to monitor statistics on the transmission of COVID-19 in prisons weekly and continually review operating protocols, to manage the transmission of COVID-19 in prisons.