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30 August 2024

Sarah

By email: fyi-request-27507-bc2182b3@requests.fyi.org.nz
Ref: H2024046481

Tēnā koe Sarah

Response to your request for official information

Thank you for your request under the Official Information Act 1982 (the Act) transferred from Crown Law – Te Tari Ture o te Karauna to the Ministry of Health – Manatū Hauora (the Ministry) on 15 July 2024 for information relating to the Bill of Rights Act (BoRA) assessments and vetting documents. You requested:

“Can you please provide all BORA assessments/vetting documents, or any documents referencing these, that relate to Covid-19 vaccination mandates.”

A number of documents were prepared which included BoRA advice. A summary of the BORA advice is provided below that is drawn from the paper *Briefing: COVID-19 Public Health Response (Vaccinations) Order 2021 for signature*. Please note, some information is withheld under section 9(2)(a) of the Act, to protect the privacy of natural persons. I have considered the countervailing public interest in release and consider that it does not outweigh the need to withhold at this time. The summary is provided in accordance with section 16(1)(e) of the Act and is a representative summary of advice provided:

- Before making the proposed s 11 order, the Minister must be satisfied that there is a robust and credible public health rationale to justify limiting the rights and freedoms of high-risk workers affirmed by the New Zealand Bill of Rights Act 1990. The fact that vaccination benefits the personal health of those vaccinated is irrelevant for this purpose.
- We understand the Ministry of Health considers there is a public health rationale for requiring specified high-risk work only be undertaken by vaccinated people in response to the current pandemic. This is because there is a risk that those individuals may be exposed to, and infected by, COVID-19 in the course of their work and may transmit the virus into the community.
- They consider vaccination of high-risk workers will materially reduce this risk, and other less-intrusive measures have failed to do so. Based on the Ministry of Health’s public health advice the Crown Law Office is of the opinion that requiring vaccinated people to fulfil high risk roles is a justified limitation of the right to refuse to undertake medical treatment (s 11) and of discrimination (s 19). Crown Law Office’s advice is reliant on public health advice, and it is the quality of that public health advice that would likely determine any challenge in a Court.

As you may know, there have been several legal proceedings regarding whether the vaccination mandates were consistent with BoRA. As part of these proceedings, the Crown has provided evidence setting out the BoRA consideration applied by decision makers. Decisions setting out this evidence provided by the Crown and the Crown's BoRA justification in significant detail are already publicly available, for example:

[workspace SpacesStore 6da9015b a976 4ce0 8f85 7b34a40405f2.pdf \(justice.govt.nz\)](#),

If you wish to discuss any aspect of your request with us, including this decision, please feel free to contact the OIA Services Team on: oiagr@health.govt.nz.

Under section 28(3) of the Act, you have the right to ask the Ombudsman to review any decisions made under this request. The Ombudsman may be contacted by email at: info@ombudsman.parliament.nz or by calling 0800 802 602.

Please note that this response, with your personal details removed, may be published on the Manatū Hauora website at: www.health.govt.nz/about-ministry/information-releases/responses-official-information-act-requests.

Nāku noa, nā

A handwritten signature in blue ink, appearing to be 'Phil Knipe', written over a faint circular stamp.

Phil Knipe
Chief Legal Advisor
Government and Executive Services | Te Pou Whakatere Kāwanatanga