

Document 1

From: [Andy Jackson](#)
To: 9(2)(a); [Isabel Evans](#); 9(2)(a)
9(2)(a)
[Coralanne Child](#); [Katrina Stutch](#); 9(2)(a)
Cc: 9(2)(a)
Subject: FW: Education - COVID settings
Date: Wednesday, 6 October 2021 12:50:13 pm
Attachments: [image001.png](#)

Kia ora team

I've attached the draft of the paper as it stands. Thanks so much to 9(2)(a) for getting us to this point. 9(2)(a) will now pick this up and will find additional drafting support within policy. 9(2)(a) and 9(2)(a) if would help if you could talk about the policy-specific bits of drafting that will need to be done.

Everyone else if you could please get your contributions back to 9(2)(a) by 9am tomorrow.

Also see the commissioning that has come from 9(2)(a). This largely reflects the discussion earlier but there is more on the operational implications in particular access to testing. 9(2)(a) is having a think about who is best placed to work on that.

Note the commissioning is more open than 9(2)(a) earlier email in terms of what kind of testing and when.

In terms of management of this, 9(2)(a) will call internal and sector meetings as required except for tertiary which Katrina S will handle.

9(2)(a) will liaise with DPMC on the related papers (AL3 for Auckland, CVC, traffic lights).

Andy

Andy Jackson | Hautū / Deputy Secretary | Te Puna Kaupapare / Policy
Mobile 9(2)(a)
National Office Mātauranga House

From: 9(2)(a) <@dpmc.govt.nz>
Sent: Wednesday, 6 October 2021 11:50 AM
To: 9(2)(a) <@parliament.govt.nz>
Cc: Sean Teddy <Sean.Teddy@education.govt.nz>; Andy Jackson <Andy.Jackson@education.govt.nz>
Subject: RE: Education - COVID settings

[IN-CONFIDENCE]

Thanks for the discussion this morning. Just confirming my understanding around the commissioning on this.

We 9(2)(a) will try and get agreement for a separate Education Cabinet paper for Monday that covers:

- Decisions on mandatory vaccination for education workforce (and consideration of exemptions (and protections) for those who can't get vaccinated due to health conditions)
- Testing requirements and regime for early learning and schools ahead of 18 October return in Auckland (high level requirements will be signposted in the Alert level paper as well)
- I think the tertiary settings can be picked up through traffic lights and vaccine certificates advice – but would be good to know if you think anything needs to be done as part of this paper.

Your email below covers the direction of travel but Minister Hipkins is looking for advice on implications and any risks/issues and how to operationalise. Requirements for vaccination for Education workforce should not get ahead of (but could go alongside) decisions on health workforce.

You understand that we need to separate out some of the advice below about what relates specifically to Auckland and stepping down restrictions at AL3 and what would be for the whole country. Key points in relation to this include:

- Bullet 1 - Early learning centres in Auckland and across New Zealand are already open (some may still be closed at AL3 but most won't be) therefore first bullet needs to be turned into regular testing regime (for not fully vaccinated) put in place for AL3 areas at a minimum
- Bullet 4 limiting bubbles until vaccination increased – can only relate to Auckland. Everywhere else all children are back.
- Schools Bullet 1 – Schools have already been open for essential workers in Auckland and everyone outside of Auckland. Possible to require a PCR test before going back after holidays in Auckland, but would suggest this plus ongoing testing regime for those who are not fully vaccinated. Testing may need to be prioritised for Auckland first, with a longer lead in for other areas if Ministers want to go beyond L3 areas.

From my perspective, the Education advice needs to cover:

- For vaccination, advice and implications by early learning type (Home-based, Maori medium, Parent led), and school type (kura) and potential workforce shortages.
- Vaccination – high level operationalisation and feasibility. Processes for redeployment etc. What will schools and early learning need to know when this announced? What needs to be decided now, what can follow and have more engagement on final details?
- Testing – feasibility for operationalising, what will early learning services and schools need and how will we know it has been done? What needs to be decided now, what can follow and have more engagement on final details?
- Who is covered by education workforce? My understanding is we are talking about all staff in early learning and compulsory. But will need to be clear about this and rationale.

It will also be important to keep closer to broader work on mandatory vaccination being led by MBIE. I understand that 9(2)(a) group is leading but I have not tracked down specific contact yet.

Thanks

9(2)(a)

9(2)(a)

Advisor
Policy Advisory Group
Department of the Prime Minister and Cabinet

P 9(2)(a)
M
E 9(2)(a) @dpmc.govt.nz



DEPARTMENT OF THE
PRIME MINISTER AND CABINET
TE TARI O TE PIRIMIA ME TE KOMITI MATUA

The information contained in this email message is for the attention of the intended recipient only and is not necessarily the official view or communication of the Department of the Prime Minister and Cabinet. If you are not the intended recipient you must not disclose, copy or distribute this message or the information in it. If you have received this message in error, please destroy the email and notify the sender immediately.

From: 9(2)(a) @parliament.govt.nz>
Sent: Tuesday, 5 October 2021 10:42 am
To: Iona Holsted <xxxx.xxxxxxx@xxxxxxxxx.xxx.xx>; Sean Teddy <xxxx.xxxxxxx@xxxxxxxxx.xxx.xx>; 9(2)(a) @dpmc.govt.nz>
cc: 9(2)(a) @parliament.govt.nz>; 9(2)(a) @parliament.govt.nz>; 9(2)(a) @parliament.govt.nz>; 9(2)(a) @parliament.govt.nz>; 9(2)(a) @parliament.govt.nz>; 9(2)(a) @parliament.govt.nz>; 9(2)(a) @parliament.govt.nz>
Subject: Education - COVID settings

Here are some thoughts from the Minister on how we move forward around COVID-19 and education settings:

Early childhood education:

- All centre staff required to have a negative PCR test before centre can re-open
- ECE staff required to have first dose of the vaccine by mid-November, and fully vaccinated by 1 Jan
- Any staff who are not vaccinated must undergo a weekly PCR test until they are vaccinated
- Until then, group sizes limited to 10 children. Once all ECE staff in a centre are vaccinated, they can increase group size to 20
- All visitors to ECE centres, including parents, must wear face coverings. Where possible, drop-off and pick-up should be done outdoors

Schools:

- All school staff required to have a negative PCR test before school can re-open
- All teachers and staff who interact with students required to have first dose of the vaccine by mid-November, and fully vaccinated by 1 Jan
- Any staff who are not vaccinated must undergo a weekly PCR test until they are vaccinated
- All visitors to schools, including parents, must wear face coverings. Where possible, drop-off and pick-up should be done outdoors
- Face coverings required in all secondary schools, and for students aged 12+ in other school settings. Schools with a 90+ percent vaccination rate amongst staff and students will be exempt from the face covering requirement.
- Schools will be required to keep a vaccination register (as they do now). Any students not producing evidence of vaccination will be counted as unvaccinated.

Tertiary education:

- Face coverings to be worn in all indoor settings until the overall population in the provider's region has a 90% vaccination rate
- Once vaccine certificate is available, all students attending a class with more than 50 people will be required to show it on entry. Any unvaccinated will be confined to remote participation.

Sent with BlackBerry Work
(www.blackberry.com)

In Confidence

Office of the Minister of Education

Cabinet

Education System Vaccination and Testing Requirements

Proposal

- 1 This paper seeks agreement to mandatory vaccination for the education workforce and testing requirements while vaccination levels are increasing.

Relation to government priorities

- 2 The proposals in this paper support the Government's response to the COVID-19 pandemic.

Executive Summary

- 3 COVID-19 vaccines are an important part of the New Zealand's COVID-19 response. They will protect an individual from more serious illness if they contract COVID-19, help prevent people from becoming infected, and/or reduce COVID-19 transmission. Since the start of this outbreak in August, vaccination rates have increased across the country, but particularly in Auckland.
- 4 The Government has developed the three-stage roadmap that gradually eases COVID-19 restrictions in Auckland. This may enable children, students, and educators to physically return to their places of learning sooner.
- 5 Everyone being able to attend onsite will benefit children and young people. Face-to-face teaching and learning works best for most learners, especially those that find it difficult to engage in their education over lockdowns. This will also benefit learners that are digitally and economically disadvantaged, some of whom have found lockdown conditions particularly challenging.
- 6 At this stage, children under the age of 12 are not eligible to be vaccinated. Young people between the ages of 12 and 18 were amongst the last group of New Zealanders to become eligible for the vaccination at the beginning of September, and are less likely to be vaccinated than adults. To increase the protections for children and young people, I am proposing to make vaccination mandatory for the education workforce that works with children and young people.
- 7 I propose the following requirements for the whole of New Zealand:
 - 7.1 Employees of education services and workers who may have contact with children and students when delivering an education service will be required to receive their first dose of the COVID-19 vaccine by 15 November and be fully vaccinated by 1 January 2022. This includes

home based educators and any other adult or young person over the age of 12 who lives in a home where homebased education and care is delivered.

- 7.2 From 1 January 2022, education services must only allow fully vaccinated employees and workers who may have contact with children and students, to deliver a service.
 - 7.3 From 1 January 2022, education services must, during opening hours, only allow those who are fully vaccinated to provide a service onsite or in a home, including those providing volunteer services, Initial Teacher Education students on practicum, learning support specialists and education advisors.
 - 7.4 Education services will be required to maintain an up-to-date register with the vaccine status for all staff and, for secondary schools, eligible students (fully, partially, exempt or no information provided). This information will be sought once schools restart, and is expected to be collected within two weeks.
- 8 A large number of the education workforce will already be partially or fully vaccinated from COVID-19. To manage the risk while the remainder are being vaccinated, I am introducing the following requirements for Auckland and any other Alert Level 3 areas:
- 8.1 weekly testing of education service staff or other people within the definitions above who are not fully vaccinated; and
 - 8.2 individual school staff will be required to return a negative COVID-19 result ahead of physically returning to a school, and early learning staff will be required to do so by 26 October.
- 9 The following decisions will be made through the companion paper on alert level change paper, but are included here for completeness:
- 9.1 All visitors to education services, including parents, must wear face coverings.
 - 9.2 In Alert Level 3 areas face coverings are currently required to be worn in all registered schools that provide secondary education. However, I propose that schools with a 90 percent or higher vaccination rate amongst staff and students be exempt from this face covering requirement.
 - 9.3 face coverings will be required on school transport for year 9 to 13 students (school transport services are currently exempt from public transport face covering requirements)
 - 9.4 time outdoors for students and staff will be maximised, including breaks, lunch, before and after school (unless the weather does not allow), and rooms will be aired during breaks;

- 9.5 exercising and singing will take place outdoors;
- 9.6 groups meeting indoors, including assemblies or staff meetings, will be avoided;
- 9.7 exams will go ahead, but physical distancing will be maximised within the space available, with a minimum of 1.5m between desks; and
- 9.8 schools or early learning services near suburbs and clusters of concern will be closed if required.
- 10 In this paper, education service refers to all early childhood services, including homebased education and care services, but excludes playgroups, and to all schools including Māori Medium and private schools, but excludes tertiary education organisations.
- 11 The situation for tertiary education is different. This sector has a very different student population, who are generally eligible for vaccination, and online and distance provision is already extensively used, alongside face-to-face provision. In addition, as with early childhood education, services are already able to operate with some restrictions and do not follow a shared term start date, so there is not the same urgency to provide clarity.
- 12 I will be taking further advice on how to manage vaccination and testing in the tertiary sector, and intend that these arrangements be aligned with the wider work on vaccinations in employment, CVCs and the traffic light framework. Officials will also be considering any impacts on secondary-tertiary transitions as part of this work.
- 13 To implement the proposals in this paper, an order or orders under the COVID-19 Public Health Response Act will be required. Further consultation with Parliamentary Counsel and the Crown Law Office, the Ministry of Health will be required. Further work will be undertaken to determine any appropriate exemptions that will be granted after 1 January 2022, when full vaccination will be required. Those who will not be fully vaccinated by this date, will not be able provide teaching or any other services to children and students face-to-face.

Background

- 14 Two months of Alert level 3 and 4 in the Auckland region have helped contain the Delta outbreak geographically and bought time to ramp up our vaccinations rates. Now 85 percent of Aucklanders have received one dose and 56 percent are fully vaccinated.
- 15 Vaccines have proven effective in combating COVID-19, with modelling showing that our current cases are 50 percent lower than what they could have been had we not had vaccines. The success of vaccines in combatting COVID-19 means we have more options available to us. We are now in a place where we can transition from only using heavy restrictions, like those

required under Alert Levels 3 and 4, to where we use vaccines alongside every day public health measures to combat and contain the virus.

- 16 In light of these developments, the Auckland region is currently being transitioned out of current restrictions carefully, with regular check-ins before stepping down a further stage. Alongside this paper, Ministers are considering when schools in the Auckland region and other Alert Level 3 areas will be able to open again and any changes to the operation of early learning services.

Analysis

- 17 There is a strong public health rationale for making it mandatory for the education workforce to be vaccinated. COVID-19 vaccines protect an individual from more serious illness if they contract COVID-19, help prevent people from becoming infected, and/or reduce COVID-19 transmission.
- 18 At this stage, children under the age of 12 are not eligible to be vaccinated. Young people between the ages of 12 and 18 were amongst the last group of New Zealanders to become eligible for the vaccination at the beginning of September, and are less likely to be vaccinated than adults. By making it mandatory for the education workforce to be vaccinated, we will be increasing the protections for children and young people who cannot.
- 19 Increasing the vaccination rates in schools may also enable schools to remain open if there has been a case, and for reduced public health control measures to be in place. Returning to places of learning will be beneficial to children and students in Auckland and will help facilitate good educational outcomes. International evidence shows that many students made little or no progress while learning from home during lockdowns. In New Zealand, whilst individual experiences of learners vary greatly, initial Ministry of Education data suggests that negative learning impacts may not be as widespread as expected.
- 20 It is possible that lockdowns in New Zealand have not been long enough to see negative achievement impacts. We have heard that staying engaged in education over lockdowns can be difficult for many students, particularly digitally and economically disadvantaged children and students.
- 21 Creating a safe pathway back to education for learners will differ by community and the learners who attend different education providers. For example, schools and early learning services which have significant proportions of their roles from communities with lower vaccination uptake rates or where students and their families are vulnerable to COVID-19 as a result of their underlying health status. There is also likely to be a regional variance, with lower vaccination uptake rates in rural communities in particular.
- 22 In the early learning sector, Kōhanga Reo have been particularly careful about re-opening in response to changes in alert levels as they are conscious of the health risks for kōhanga whanau arising out of COVID-19, particularly given the lower vaccination rates among Māori. In the current resurgence, many

kōhanga have chosen not to open at all in Alert Level 3, and the Kōhanga National Trust have indicated that getting kōhanga whanau vaccinated is its highest priority. Other early learning services that work with more vulnerable communities, for example, puna reo or Pacific Language services, may have similar reticence.

- 23 Māori and Pacific learners and whānau have reported mixed schooling experiences of COVID-19 lockdowns. In particular, some learners struggled to access on-line and distance learning, became disengaged from education and have been slower to return to education services than other learners. These circumstances underscore the importance of re-opening education services and supporting Māori and Pacific learners to re-engage with confidence.
- 24 It is likely that some parents may be reluctant to return their children to face to face learning if they are anxious that their children may be exposed to the Delta variant while at school, particularly where that child or young person is unable to be vaccinated themselves and in Auckland. After the Auckland August 2020 lockdown, Pacific and Māori children were the slowest to return to regular attendance. There is, therefore, potential for a more rapid return to regular attendance at school if students and their whānau are more comfortable that the adults around them are vaccinated.

National requirements

- 25 Being vaccinated is one of our greatest protections against COVID-19 and the best way to protect children and students who cannot be vaccinated is to vaccinate the adults around them. This is a proportionate response and so I propose that:
 - 25.1 Employees of education services and workers who may have contact with children and students when delivering an education service will be required to receive their first dose of the COVID-19 vaccine by 15 November and be fully vaccinated by 1 January 2022. This includes teacher aides, administration staff, maintenance staff, OSCAR providers etc. This also includes home based educators and any other adult or young person over the age of 12 who lives in a home where homebased education and care is delivered.
 - 25.2 From 1 January 2022, education services must only allow fully vaccinated employees and workers who may have contact with children and students, to deliver a service.
 - 25.3 From 1 January 2022, education services must, during opening hours, only allow those who are fully vaccinated to provide a service onsite or in a home, including those providing volunteer services, Initial Teacher Education students on practicum, learning support specialists and education advisors.
- 26 Additionally, I propose that education services be required to maintain an up-to-date register with the vaccine status for all staff and, for secondary schools, eligible students (fully, partially, exempt or no information provided). This

information will be sought once schools restart, and is expected to be collected within two weeks.

- 27 Having such a register will enable schools and early learning service to know the vaccination status of their staff and relevant students in the case of an outbreak and to respond accordingly. It was also be of use to schools and early learning services as of 1 January 2022 when they will be required to only allow fully vaccinated employees and works who may have contact with children and students, to deliver a service.
- 28 Officials will explore options for how schools and early learning services can best manage this requirement, with a preference for low-compliance options such as retaining records locally.

Additional Auckland specific requirements

- 29 A large number of the education workforce will already be partially or fully vaccinated from COVID-19. To manage the risk while the remainder are being vaccinated, I am introducing the following requirements for Auckland and any other Alert Level 3 areas:
- 29.1 weekly testing of education service staff or other people within the definitions above who are not fully vaccinated; and
- 29.2 individual school staff will be required to return a negative COVID-19 result ahead of physically returning to a school. A similar requirement will not apply to early learning services, as these are already operating.
- 30 Our approach is in line with other jurisdictions that have adopted mandatory COVID-19 vaccinations in education settings such as Washington, New York, and Victoria. Washington for example, requires all teachers and school personnel including, sports coaches, bus drivers and volunteers to be fully vaccinated as a condition of their employment.
- 31 Testing regimes are also seen in other jurisdictions such as Israel, which requires unvaccinated teachers to be tested twice weekly and to show a negative test before being allowed entry into educational facilities or to take part in in-person teaching.

Implementation

- 32 The schooling and early childhood workforce is large and diverse, with around 55,000 teachers and 41,000 specialist and support staff working in schools and kura, and 30,000 teachers working in early childhood settings, alongside non-teaching early learning support staff, and staff in school hostels. Education occurs in a wide variety of settings, from early childhood centres, kōhanga reo, schools and kura, to community facilities, and in homes.
- 33 This workforce is employed by a diverse range of employers, including school boards, community groups, large corporates and small businesses.

- 34 The shift to mandatory vaccination with an associated testing regime will be a significant change in employment settings for education sector workers. The new minimum standard around vaccination and testing exceed the current expectations of employers under their current health and safety policies and COVID-19 response plans.
- 35 I am aware that there have been stronger calls from the sector for mandated vaccinations.
- 36 The Ministry of Education will work closely with providers and the workforce to support them through these changes and give practical guidance on how to implement them, including scoping of the different education settings, and requirements of those who enter education sites for a range of reasons, including visitors, property maintenance and construction, emergency services, as well as requirements for staff in school hostels.
- 37 It is noted that implementation of vaccinations and testing regimes may be particularly challenging in some rural or isolated communities and settings, which may have further impact on Māori education providers and ākonga. Consideration could be given for either exemptions from the Director General for Health to allow these communities to continue operation if they cannot meet the timeline for implementation, or to seek additional supports from iwi and health to work with impacted communities to meet vaccination and testing requirements.
- 38 As part of a package of initiatives focused on promoting and supporting vaccination amongst the education workforce, work is underway to connect with Māori communities by using social media and other channels to promote vaccination. The Ministry is producing products aimed at whānau Māori and Māori medium communities, which would feature Māori education and iwi leaders, and other high profile individuals, including rangatahi and kapa haka leaders who have influence with hapu and iwi. Messages will focus on empowerment, whakapapa and houora and will reflect the korero that is already occurring in communities.
- 39 We will work closely with the Ministry of Health to co-ordinate on this, and to identify areas where greatest uptake is needed. We will work to connect with events such as Super Saturday and Vaxathon.
- 40 In addition the Ministry are hosting a series of webinars for teachers across the motu, to engage with a well known expert to discuss the science behind vaccinations. These will start from the last week of the school holidays and will run for as long as there is demand.
- 41 In situations where a person cannot be vaccinated, or chooses not to do so, employment law applies in determining their outcomes. Options such as leave, changes to work arrangements or redeployment can be considered. In some cases, this could result in the ending of employment, either by mutual agreement, or by an employer. This is consistent with the approach that applies to workers at the border and in MIQ facilities.

- 42 The requirements of an employer who is seeking to enforce the requirements of the Order remain unchanged under the Employment Relations Act 2000 in the pandemic environment. In essence, this means that decisions must be fair and reasonable, and the employer must run a fair process before deciding to terminate an employee's employment, including giving an employee an opportunity to comment before the employer makes any decisions. The Ministry will not prescribe the process for employers and employees to have these conversations as it is for the parties themselves to choose the course of action appropriate to their individual circumstances.
- 43 It is not yet clear if compensation for the ending of employment due to requirements of a COVID-19 Order will be required. This was recently tested before the Employment Relations Authority which found in favour of the employer, in part because of the robust approach the employer had taken to assessing the health and safety risks involved, and the process taken to seek to identify alternatives to dismissal. However, this remains a largely untested area of law, and there is the possibility that it will be determined that compensation for severance of employment should apply, in which case the costs may be significant.
- 44 The Ministry of Education will work with all early learning peak bodies, kōhanga reo and schooling peak bodies, including the Kōhanga Reo National Trust Board and New Zealand School Trustees Association (NZSTA) and to support education providers as they make employment decisions relating to those who refuse to get vaccinated.
- 45 The size and nature of the education workforce and the high level of public interest mean the implementation of these proposals will be complex and require careful consideration and support. Accordingly, the Ministry and NZSTA will provide detailed advice to education services and workers to help them to understand their roles and responsibilities.
- 46 Initially it is likely to be challenging for education providers to understand and implement the revised requirements. The changes are likely to be disruptive and compliance may be slow initially but will build quickly as understanding grows.
- 47 There are a number of other considerations that the Ministry will work through with the education sector and relevant community/stakeholder groups to support the implementation of these proposals, including:
- 47.1 Possible delays for employers in issuing advice to workers during this term break.
 - 47.2 Smaller education services and those in rural or isolated settings will find it challenging to meet requirements for all staff to be tested to allow on site learning.
 - 47.3 Employers may need to provide paid time off work for employees to receive a vaccination or test. This may also include the period of time that an employee is waiting for the result of a test.

- 47.4 Where an education service is unable to meet minimum staffing requirements, they will be required to remain closed, provide distance learning or employ temporary workers who meet the necessary requirements at additional cost.
- 47.5 Vaccination and testing attestation processes and information sharing systems.
- 48 It is likely that some workers will object to the requirement to be fully immunised, or tested, or face coverings. They may consider this is to be an unreasonable expectation from their employer, or that their inability to attend the workplace until requirements are met as an unlawful and unreasonable suspension of their employment. This will be partially mitigated through communications which make clear the public health evidence and rationale for these requirements. However, it is highly likely that some employees will raise a personal grievance with their employer, and this may in due course be tested in the Courts.

Financial Implications

Schooling

- 49 Compulsory vaccination and testing will incur significant additional costs for the schooling sector. Employers (boards) will be required to provide leave for employees to be vaccinated or tested, which will mean covering some teaching and non-teaching staff time during term four. Schools have continued to receive their operational grant funding during Alert Levels 3 and 4; however, these new leave requirements may be well in excess of that funding.
- 50 While many staff may choose to be vaccinated or tested outside of teaching hours, the effect of the staffing entitlement is that if boards choose to provide leave, then the payroll effects of this must be covered by the Ministry of Education. Therefore the change creates a cost pressure for the Crown.
- 51 It is difficult to estimate costs as vaccination rate among teaching and non-teaching staff is not currently known. The Ministry has estimated the following maximum costs:
- 51.1 Vaccinations - \$6m for all teaching and non-teaching staff across New Zealand. This assumes vaccination rates align with current regional averages with a 10 percent uplift before term 4 begins.
- 51.2 Testing - \$12m for teaching and non-teaching staff in Auckland and Waikato who are not fully vaccinated to be tested weekly. This assumes a steady reduction in the number of staff requiring testing each week, as more become fully vaccinated.
- 52 While the change will put pressure on the relevant appropriations, we will not know until closer to the year-end how significant the effect is relative to other movements in the appropriations.

- 53 As the change is a policy change it cannot be treated as a forecast adjustment. However, due to the uncertainty of the costs, I propose that Cabinet agree that a funding source be identified with the Minister of Finance once the full costs are known.
- 54 We will also brief Ministers on any other unforeseen costs arising from implementation of the changes, including creation of a vaccination register if required. I have not provided for these costs in this paper as officials are not yet in a position to advise on the full costs of implementation at this stage.

Early learning

- 55 As for schooling, in the early learning sector the shift to compulsory vaccination with an associated testing regime will come with additional financial cost to services, such as, teacher release time. While the options presented above, provide a pathway towards some early learning services in Alert Level 3 areas being able to accommodate more children, many will still not be operating at full capacity. They are therefore facing additional costs at a time where they also face a loss of their non-government revenue (i.e., parent fees).
- 56 To date we have supported early learning services through ensuring continuity of Government funding (both education and childcare subsidy funding) through the various lockdown periods. Consideration needs to be given to what additional support should be provided to early learning services to offset the costs involved in administering the new requirements and taken into the loss of income they have incurred.
- 57 Using a similar methodology to schooling above, the estimated cost in the early learning sector would be around \$8.5M. I am seeking your approval to meet this cost out of the Early Learning Sustainability Fund we set up through the original CRRF.

Legislative Implications

- 58 To implement these proposals, an order or orders under the COVID-19 Public Health Response Act will be required. Further consultation with Parliamentary Counsel and the Crown Law Office, the Ministry of Health will be required. Further work will be undertaken to determine any appropriate exemptions that will be granted after 1 January 2022, when full vaccination will be required.

Impact Analysis

Regulatory Impact Statement

- 59 The Regulatory Impact Analysis Team at the Treasury has determined that the proposal requiring mandatory vaccination for the education workforce and testing requirements while vaccination levels are increasing is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it is intended to manage, mitigate or alleviate the short-term impacts of the declared emergency event of the COVID-19 pandemic, and

implementation of the policy is required urgently to be effective (making a complete, robust and timely Regulatory Impact Statement unfeasible).

- 60 The RIA Team notes that the policy issue around vaccination of high-risk frontline workers, including the education workforce has been known for some time such that impact analysis supporting this proposal would have been feasible.

Climate Implications of Policy Assessment

- 61 The Climate Implications of Policy Assessment team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

- 62 As Māori and Pacific peoples are likely to be disproportionately affected by (a) a widespread epidemic and (b) prolonged disconnection from education services, the proposals are likely to have a positive effect on reducing their exposure to COVID-19 and related socio-economic impacts.
- 63 However, as Māori and Pacific peoples also have traditionally lower vaccination rates, Māori and Pacific people working in the education workforce may be disproportionately affected by the proposed restrictions. We propose to address this through: (a) a bespoke communications campaign aiming at this part of our education workforce and (b) targeted vaccination measures that will be developed in conjunction with Māori and Pacific Education Peak Bodies and Social Service providers.

Te Tiriti o Waitangi implications

- 64 The Government has Kāwanatanga and Ōritetanga responsibilities to support health and socio-economic outcomes for Māori. The proposed measures in this paper support those responsibilities.
- 65 Iwi and Māori organisations have played a significant role in supporting Māori through COVID-19 lockdowns and in encouraging and administering vaccination. This work should be implemented in ways that support Iwi and Māori to continue to exercise agency and authority over how Māori are supported to become vaccinated and return to education. The Ministry will work closely with Māori education providers and related groups in implementing the measures. In particular, the Ministry will work closely with Te Kōhanga Reo in implementing these measures, including assessing what impact the measures will have on Kōhanga Reo and how these can be best managed.
- 66 It will be important to ensure clear, constant and consistent information is provided to Māori in English and Māori through appropriate channels.

Human Rights

- 67 Section 9(ba) of the COVID-19 Public Health Response Act 2020 explicitly requires that orders made under section 11 of the Act be made consistently with the Bill of Rights Act 1990. If an order limits a right or freedom affirmed in the Bill of Rights Act, all or part of the order may be invalid unless the limitation can be demonstrably justified in a free and democratic society (s 5).
- 68 Mandating vaccines in the education workforce engages the right to refuse to undergo medical treatment (s 11 of the Bill of Rights Act). Workers who are affected by the requirement must choose between getting vaccinated and, at best, redeployment, and at worst, loss of their employment. Given the limited opportunities for redeployment that many schools will have, termination is a real possibility for workers who do not wish to be vaccinated. Where the coercion to get vaccinated overwhelms the worker's choice, the right to refuse to undergo medical treatment is limited. It is also possible that it engages the right to be free from discrimination on the basis of disability and, potentially, of sex (pregnancy) or religious belief (s 19 of the Bill of Rights Act, s 21 of the Human Rights Act 1993, ss 104 and 105 of the Employment Relations Act 2000).
- 69 The limitation on those rights are, however, likely justified. While not guaranteed by the Bill of Rights Act, there is a right to education at international law. That right cannot be given full effect until educational institutions open. While remote learning is possible it is sub-optimal and access to the necessary learning tools is not evenly distributed across society. But if schools are to reopen they must open safely. For as long as children under 12 are not able to be vaccinated there is an acute risk of them being infected with COVID-19, and once there is transmission within a school community it is likely to spread quickly. The risk for children over 12 and other users of the education system can be mitigated by becoming vaccinated themselves, but there is still an unavoidable risk of transmission to on-site users of education services and some of them may still be vulnerable to severe health consequences from infection.
- 70 More generally, because of COVID-19's capacity to induce a severe respiratory condition that will require ICU care, there is the risk that widespread community transmission will compromise the capacity of the health system to respond to those who need intensive care. The ECE and school environments are such that should the virus enter, widespread community transmission is likely.
- 71 Given what we know about the effectiveness of the vaccine at this stage, it is unlikely that other, non-vaccination measures will sufficiently reduce that risk. Early childhood education centres and primary schools are likely to have more difficulty implementing PPE and testing requirements than secondary schools. But nonetheless vaccination of staff in secondary schools is important. It appears that in the Delta variant environment, PPE and testing will not be sufficient to stop the spread among groups of people together in enclosed spaces, such as classrooms.

- 72 In the period prior to 1 January 2022, it is proposed that education workers who are not fully vaccinated in Auckland and other Alert Level 3 areas are subject to mandatory weekly COVID-19 testing. Mandatory testing constitutes a search for the purpose of s 21 of the Bill of Rights Act. A provision requiring mandatory testing will be unlawful if it is unreasonable. In the circumstances of Alert Level 3 where there is community transmission of the virus, testing of staff who are potential vectors for transmission in the education environment, with unvaccinated children, close contact with large groups and enclosed spaces, is not unreasonable.

Consultation

- 73 The Department of the Prime Minister and Cabinet and the Treasury were consulted.

Communications

- 74 I will develop a communications plan following Cabinet's decisions.

Proactive Release

- 75 I intend to proactively release this Cabinet paper subject to redaction as appropriate under the Official Information Act, once Cabinet decisions have been made.

Recommendations

The Minister of Education recommends that Cabinet:

1. **agree** that the definition of education services used in this paper refers to all early childhood education services, including homebased education and care services, but excludes playgroups, and to all schools including Māori Medium and private schools, but excludes tertiary education organisations
2. **agree** that employees of education services, and workers who may have contact with children and students when delivering an education service, will be required to receive their first dose of the COVID-19 vaccine by 15 November and be fully vaccinated by 1 January 2022. This includes home based educators and any other adult or young person over the age of 12 who lives in a home where homebased education and care is delivered
3. **agree** that from 1 January 2022, education services must only allow fully vaccinated employees and workers who may have contact with children and students, to deliver a service
4. **agree** that from 1 January 2022, education services must, during opening hours, only allow those who are fully vaccinated to provide a service onsite or in a home, including those providing volunteer services, Initial Teacher Education students on practicum, learning support specialists and education advisors

5. **agree** that education services will be required to maintain an up-to-date register with the vaccine status for all staff and, for secondary schools, eligible students (fully, partially, exempt or no information provided) This information will be sought once schools restart, and is expected to be collected within two weeks
6. **agree** that for Auckland and any other Alert Level 3 areas, weekly testing of education service staff or other people within the definitions above, who are not fully vaccinated, is required
7. **agree** that for Auckland and any other Alert Level 3 areas, individual school staff be required to return a negative COVID-19 result ahead of physically returning to a school, regardless of vaccination status
8. **agree** that for Auckland and any other Alert Level 3 areas, individual early learning staff are required to return a negative COVID-19 result by 26 October or before they physically return to the service, regardless of vaccination status
9. **note** that the policy decisions in the recommendations above related to schools create a significant fiscal risk for the Ministry of Education, estimated at up to \$18m in 2021/22
10. **agree** that the Minister of Education will discuss and agree funding options with the Minister of Finance when the full costs are known and after options for absorbing the increased costs within baseline have been further explored
11. **agree** that the \$8.5m to fund leave support for staff and to give effect to the policy decisions in the recommendations above related to Early Learning be funded from the Early Learning Sustainability Fund
12. **note** that this will largely exhaust funding remaining in the Early Learning Sustainability Fund so additional funding may be required from the COVID-19 Response and Recovery Fund to further support sustainability of the early learning network at a later date
13. **agree** to direct the Minister for Covid-19 Response to issue drafting instructions to the Parliamentary Counsel Office for one or more Orders to be made under the Covid-19 Public Health Response Act 2020 to give effect to the above recommendations
14. **agree** to authorise the Minister for COVID-19 Response to make minor and technical decisions during the drafting of the Order/s that are consistent with the intent of the proposals in this paper.

Authorised for lodgement

IN C O N F I D E N C E

Hon Chris Hipkins

Minister for Education

Released under the Official Information Act 1982

IN C O N F I D E N C E