

Minister for COVID-19 Response

Cabinet

COVID-19 VACCINATION CERTIFICATES: IMPLEMENTATION IN DOMESTIC SETTINGS

Proposal

- 1 This paper provides detail related to the high-level decisions made by Cabinet on 18 October 2021, and by delegated Ministers on 21 October on the use of COVID-19 Vaccination Certificates (CVCs) in domestic settings and seeks agreement to proposals to operationalise CVCs.

Alignment with Government Priorities

- 2 This proposal relates to the ongoing response to COVID-19. It strengthens domestic measures for access to discretionary activities and settings, in light of the risks posed by more transmissible variants such as Delta.

Executive Summary

- 3 This paper outlines advice relating to the operational consideration for the use of CVCs in various settings, specifically addressing:
 - 3.1 exemptions from vaccine requirements in CVC settings;
 - 3.2 implementation and operationalising CVCs; and
 - 3.3 compliance and enforcement considerations.
- 4 The proposals previously agreed by Cabinet on Monday 18 October were subject to further consideration by Ministers, specifically relating to their application in the COVID-19 Protection Framework. On Thursday 21 October delegated Ministers approved the final settings about where a vaccine requirement could be introduced.
- 5 I propose that further work must also be undertaken (where not in train already) to:
 - 5.1 develop industry specific guidance to support businesses and other parties to enable, appropriately limit, and implement a vaccination requirement if they choose to put one in place;
 - 5.2 confirm the extent to which CVCs would be prohibited in teaching and transport settings (e.g. school transport services), and
 - 5.3 identify how CVCs apply to government services that are provided to members of the public.
- 6 Proposals on worker vaccination in certain settings and to undertake certain types of work have been prepared by MBIE and are being presented to Cabinet separately.

- 7 Given the potential for vaccination rates and the risk of community transmission to change over time, I propose that the policy is reviewed in early 2022. A review would recognise that CVCs are considered as a temporary measure. It would also provide an opportunity to monitor the effectiveness and wider impacts of the policy, as well as assess whether any equity concerns related to the use of CVCs have eventuated.

Background

- 8 COVID-19 Vaccination Certificates (CVCs) have been identified as a tool to help support the broader public health response to COVID-19. CVCs can also be used as an additional measure to ensure people in certain settings can demonstrate that they are either fully vaccinated, or medically exempt from vaccination, with the exception of children under 12 years and 3 months, as CVC requirements do not apply to them.
- 9 On Monday 18 October, Cabinet considered high level advice relating to the use of CVCs in domestic settings, noting broad categories to define settings for the application of vaccine requirements, and agreeing high level settings in which to mandate a required use of CVCs [CAB-21-MIN-0421]. Cabinet also agreed to issue drafting instructions to support the introduction of CVCs and to prohibit their use in certain settings.
- 10 Delegated Ministers agreed the final settings for the introduction of CVCs as part of a revised COVID-19 Protection Framework on 21 October. Further detail setting out final decisions on the application of vaccine requirements where they are expected to be used can be found in Appendix 1.
- 11 The settings where CVCs are expected to be used were announced publicly on 22 October.
- 12 The Ministry of Health has provided public health advice on the introduction and application of CVCs in four briefings to the Minister for COVID-19 Response, including on the effectiveness of CVC as a tool to help manage COVID-19.

Proposed application for COVID-19 Vaccination Certificates

- 13 This paper includes implementation proposals for the use of CVCs, to support the transition to the COVID-19 Protection Framework. Some of these proposals, and those agreed to by Cabinet on 18 October, require amendments to the COVID-19 Public Health Response Act 2020 (the Act).
- 14 The Act was initially developed with the purpose to prevent the risk of an outbreak or spread of COVID-19. While this is still our intention, the emergence of new variants and higher vaccination rates mean we have shifted our approach to focus on avoiding and mitigating potential adverse effects of COVID-19 itself. I propose that purposes for which orders under the COVID-19 Public Health Response Act 2020 (the Act) can be made be broadened, to better reflect the new measures and intentions under the COVID-19 Protection Framework.

Settings where vaccine requirements will be prohibited

- 15 Cabinet agreed that that providers of life-preserving basic needs cannot introduce vaccine requirements (including by requiring CVCs) for patrons [CAB-21-MIN-0421], to ensure that unvaccinated people are not prevented from accessing basic services.
- 16 An initial proposed list of settings where patrons cannot be required to present a CVC to enter includes (but is not limited to):
 - 16.1 supermarkets;
 - 16.2 pharmacies;
 - 16.3 education entities - in teaching settings and for students only (except when part of the management of a case or outbreak connected with or in the facility);
 - 16.4 health providers; and
 - 16.5 public transport (excluding airline services).
- 17 I propose that these services are also not able to limit the type of service provided to customers/patrons based on a CVC. However, businesses and services may want to implement other reasonable health and safety policies to enable safe operations.
- 18 I propose that the primary legislation to support these decisions is developed to give power to the Minister for COVID-19 Response to prohibit settings for vaccine requirements and CVC use through an Order.
- 19 Given that prohibiting the use of CVC in specific venues and settings would apply to customers and attendees only, workers would be subject to any applicable vaccine requirements to undertake work in certain settings, including those where CVCs are not permitted for patrons.

Interface between CVCs and workplaces

- 20 The Minister for Workplace Relations and Safety has brought a corresponding paper on the approach to vaccination requirements to Cabinet on 26 October. This covers whether we should mandate vaccination for work in settings where a CVC is required from customers, recognising that businesses and workers need to be able to plan for this in advance. The alternative would be allowing employers and businesses the discretion to require vaccination if they decide they want to operate, or if they want to operate without capacity and distancing limits.
- 21 Below is a table which sets out the indicative interrelation between CVCs and workplaces:

	Patron	Worker

Mandated	✓	✓
Optional (if chosen)	✓	MBIE risk assessment
Prohibited	✗	MBIE risk assessment

Exemptions from vaccine requirements

22 Decisions on an exemptions framework for CVC have already been made by Cabinet, however I have provided more detail on the operational requirements behind the proposals presented on 18 October.

Operationalising exemptions

23 Following advice from the Ministry of Health, I propose that due to the very small number of people expected to be legitimately exempt, an alternative measure, such as a negative PCR test, is not recommended. There are also feasibility issues with enforcing a testing measure on children. At this stage, using proof of recovery from COVID-19 as an alternative measure is not recommended.

24 Existing exemptions, such as to do supply chain work, do not apply to CVC settings, as there is a different risk-profile and these exemptions are expressly connected to the type of work to be undertaken.

25 The Ministry of Health has consulted with the Office of the Privacy Commissioner who recommended that CVC confirmation is identical for both vaccinated and exempt people. This would:

25.1 avoid scanning staff seeing attendees' private medical information;

25.2 eliminate the possibility of scanning staff asking for further information about attendees' exemptions; and

25.3 prevent businesses from discriminating against exempted persons.

26 As a result, CVCs could not by proxy prove if an individual has been fully vaccinated. Rather, they would demonstrate that an individual is authorised to enter a setting. In settings where there may be a vaccine mandate, such as to undertake certain types of work, it is anticipated that alternative proof of vaccination could be presented.

27 In terms of granting exemptions, the Ministry of Health will be working through the detail of this in the coming weeks. The exemption process will likely be managed centrally, rather than directly through a primary care provider or general practitioner to ensure the narrow scope of the exemptions framework is maintained.

- 28 The legislation to support exemptions will be drafted with enabling provisions, with the detail on the process to be provided through secondary legislation once this has been agreed by the Ministry of Health.

Implementation and operational considerations

Operational considerations

- 29 The CVC provides a digitally verifiable record that the person the certificate was issued to is considered vaccinated for COVID-19. For the purposes of the CVC this includes:
- 29.1 people who have received a suitable schedule of a recognised COVID-19 vaccination, including vaccinations administered overseas, or
 - 29.2 a very limited number of people who are medically exempted from being vaccinated for COVID-19.
- 30 The Ministry of Health is developing a verifier app that will allow event organisers and venue security to scan the QR code on the vaccination certificate to confirm its validity. The QR code will be available digitally, with a paper option to ensure accessibility. The Ministry is exploring a range of options for making CVCs easy to access for people.
- 31 In settings where a CVC is required from patrons under an Order made under the COVID-19 Public Health Response Act, I propose that the Ministry of Health CVC is the only acceptable tool that a person can produce to prove they are considered vaccinated, providing certainty for both patrons and PCBUs¹. This proposal does not require legislation, which can be progressed following Cabinet agreement.

Data and verification

- 32 Primary legislation will need to be developed to make clear that verifiers are not able to store, process, or otherwise use data from a CVC except for the purposes of verifying the pass is valid. I propose that it will be an offence to store, process or manage data from the CVCs, and that legislation be drafted to give this effect.
- 33 Developing a one-size-fits-all verifier app is not feasible in the early stages of implementation, and it is expected that by supporting the uptake of CVCs in a way which works for businesses will have the greatest success.
- 34 We should not legislate that the only permitted verifier app would be the Ministry of Health Verifier App. The risk of verifiers mis-using data will be mitigated through the legislation proposed in paragraph 32. Further detail on how this will be supported and managed from a technical perspective will follow in the coming weeks. If COVID-19-related economic support for

¹ The term PCBU is used in this paper to also cover those who are also responsible for the place or gathering.

businesses becomes contingent on use of CVCs, work will need to be done to identify how to establish business compliance.

- 35 There is no explicit obligation on the PCBU to ensure that the CVC belongs to the holder, however verifiers may request secondary identification when verifying CVCs if they wish to.
- 36 I propose that it is not mandated to request identification, as it is difficult to require equitably. I recognise that with the proposed introduction of CVC mandates in broader settings, that a wider proportion of people will be impacted. Those without photo identification should not automatically be excluded on that basis.
- 37 By adopting a model which does not mandate additional identification to verify the identity of CVC holders, there is an associated risk of fraudulent CVCs being presented. There is a balancing act between ensuring easy, inclusive access to services for vaccinated people, and being able to conclusively identify people, particularly given the settings where CVCs may be requested.
- 38 Factors such as the type of event or setting, and the likelihood of fraudulent CVC being presented, could be considered by the verifier if requesting identification. For instance, it may be reasonable that a verifier request additional identification where certain types of identification may already be required to enter, such as bars and nightclubs. Additionally, by exempting those under 12 years and 3 months, we are assuming a high-trust model. Verifiers will need to use their discretion when asking for confirmation of the age of patrons.

CVC use case example

- 39 The following example steps out, at a high-level, the process of presenting and verifying a CVC:

Step 1	Patron presents their CVC at point of entry Either via smartphone or printed copy CVC will show name and date of birth of CVC holder
Step 2	Verifier scans with Verifier app This could be done by a worker on a smartphone or tablet or through an automated ticketing system
Step 3	Verifier app checks the signature is authentic If the details are valid, a green tick will appear If the details are invalid the verifier sees an error message
Step 4	Verifier may request additional information to corroborate The verifier may request additional information to confirm the identity of the CVC holder (e.g. additional identification)
Step 5	Patron is permitted to enter If CVC holder is authorised, patron permitted to enter setting If CVC holder is unauthorised, they are denied entry and obligation is with PCBU to ensure patron does not enter setting

Overseas vaccinations and issuing CVCs

- 40 Work is underway to establish policy and operational pathways for people who have been vaccinated overseas to obtain a domestic CVC. Key issues that need to be resolved are which overseas administered COVID-19 vaccines can be recorded against an individual's health record for people now living in New Zealand, and how domestic vaccination certificates can be issued to people who are visiting New Zealand for a short period.
- 41 Officials are seeking advice from the Ministry of Health's COVID-19 Vaccine Technical Advisory Group on which vaccines that would be acceptable for this policy. This advice will inform a policy position on these matters for early November.

Timeframes

- 42 The Ministry of Health advises that the earliest date for introducing and operationalising CVCs is the end of November. Both the legislation required to introduce CVCs, and the technological system to support their use, will be ready for wide use at that time.
- 43 The Ministry of Health is working to the following timeframes for implementing the CVC:

Phase 1 My COVID Record & interim period (12 Oct – early November)	<ul style="list-style-type: none">• Online portal to view COVID-19 vaccination records• Targeted invitations to domestic individuals with first or second vaccination• Manual support channels available
Phase 2 Piloted non-mandated use (early November)	<ul style="list-style-type: none">• Vaccination certificate via email in PDF form• Verifier app that can read certificates and communicate authorisation to enter venue• Operational framework for Verifier app usage• Pilot ticketed events
15 November	CAB approves Bill for introduction. Bill introduced.
Phase 3 General non-mandated use (late November)	<ul style="list-style-type: none">• Events and/or environments that meet defined Verifier requirements may participate
26 November	Royal assent and Orders gazetted to support introduction on CVCs

Phase 4 Ready for general mandated use following product testing (End of November)	<ul style="list-style-type: none">• Events and/or environments that meet defined Verifier requirements to participate
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Compliance and Enforcement

On whom should the obligation be placed?

- 44 In the context of CVCs, I propose that legal obligations are borne by both the PCBU and the individual (which includes workers).
- 45 This would mean that the PCBU has an obligation to check and verify CVCs of all attendees at the point of entry, as the harm of non-compliance is incurred by the act of entry. For workers, PCBUs may choose to check their CVC (or any other proof of vaccination) once, and rely on that for subsequent entries. PCBUs would also have an obligation to take reasonable steps to prevent unauthorised persons from entering an event or premises.
- 46 Officials note that the duty to check all attendees may result in additional compliance costs for PCBUs whereby additional staff may need to be employed to perform the entry checking function. It is also possible any additional costs for PCBUs may be passed on to patrons.
- 47 For the individual, the obligation would be to carry (and produce when requested by an authorised person) evidence of a CVC where it is a mandated condition of entry to an event or setting. The requirement to hold and produce a valid CVC would also cover any attempts to gain access with fraudulent documentation, and deliberately entering without evidence of a CVC.
- 48 For workers, they would be obliged not to do certain work without a CVC or having established that they are vaccinated to their employer or PCBU, or the employer or PCBU responsible for the setting.
- 49 In the context of (private and otherwise) gatherings, where there is both a facility owner and event organiser – the obligation on the PCBU is an either/or – only one of them is responsible for making sure attendees CVCs are checked upon arrival. In this case, it is up to the organiser and owner to decide between them who will carry out the obligation, and therefore who is responsible and subject to an infringement penalty, if they fail to carry out the obligation.
- 50 Breaching any of these obligations would be an offence under section 26 of the Act.

Penalties

- 51 I propose that the penalties for the proposed offences are aligned with the penalties as proposed by the COVID-19 Public Health Response Amendment Bill (No 2) 2021 (the Bill). With regards to the type of fine issued in the event

of non-compliance, I propose that both infringement and court-imposed fines could apply to both PCBUs and individuals.

- 52 It is important to note that the Bill only sets out maximum offence fees, whereby the scale of fees will be set out in regulations. The use of fines for businesses that fail to meet their CVC obligations, and for unvaccinated individuals who enter a CVC-controlled events, must be proportionate and evidence-based.

Enforcement

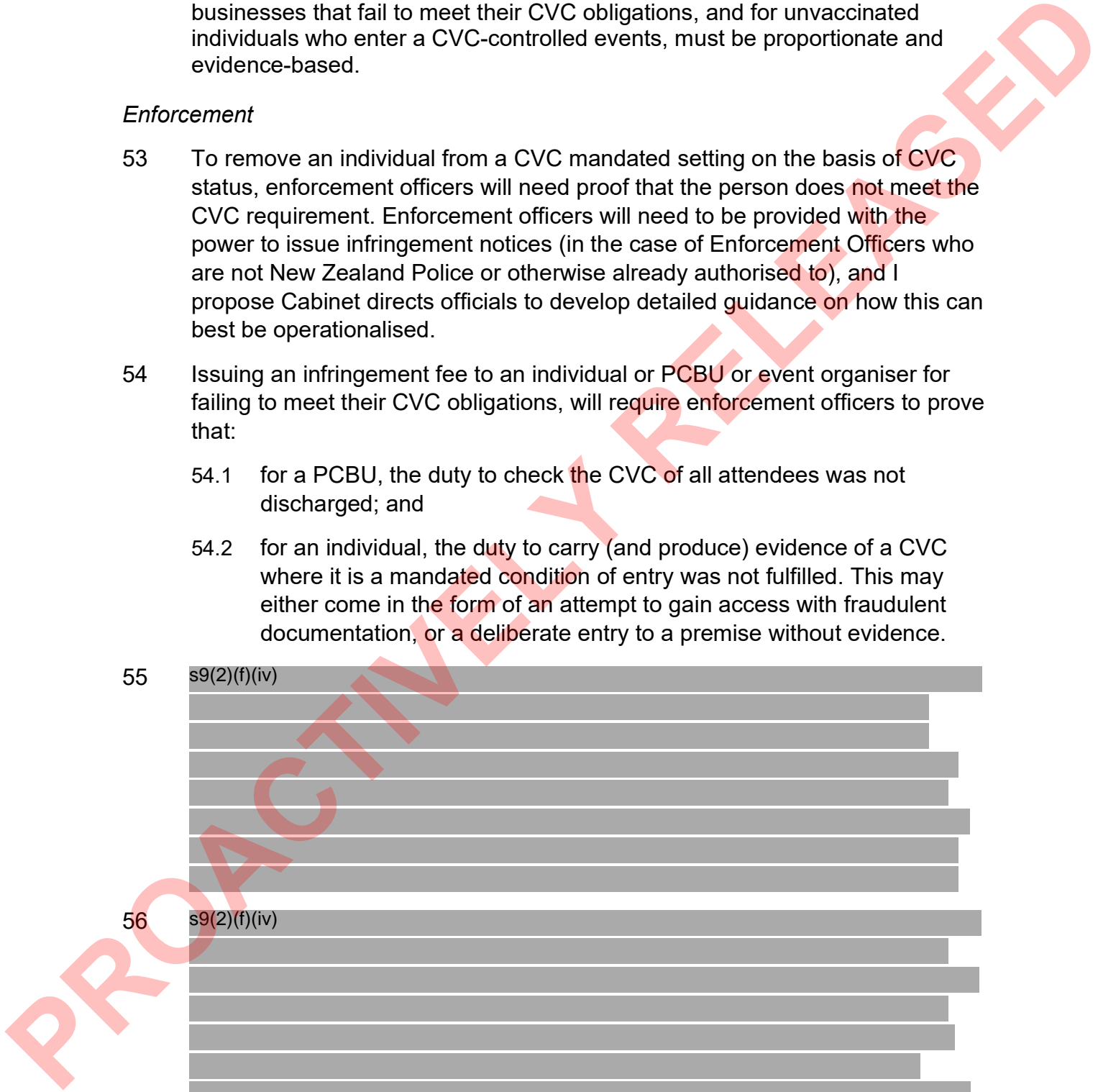
- 53 To remove an individual from a CVC mandated setting on the basis of CVC status, enforcement officers will need proof that the person does not meet the CVC requirement. Enforcement officers will need to be provided with the power to issue infringement notices (in the case of Enforcement Officers who are not New Zealand Police or otherwise already authorised to), and I propose Cabinet directs officials to develop detailed guidance on how this can best be operationalised.

- 54 Issuing an infringement fee to an individual or PCBU or event organiser for failing to meet their CVC obligations, will require enforcement officers to prove that:

- 54.1 for a PCBU, the duty to check the CVC of all attendees was not discharged; and
- 54.2 for an individual, the duty to carry (and produce) evidence of a CVC where it is a mandated condition of entry was not fulfilled. This may either come in the form of an attempt to gain access with fraudulent documentation, or a deliberate entry to a premise without evidence.

55 s9(2)(f)(iv) [Redacted]

56 s9(2)(f)(iv) [Redacted]



Broader considerations for CVC use

- 57 Experience overseas demonstrates the risk of loss of social licence if a CVC is applied too broadly, in a way that is seen as interfering too much in day-to-day affairs. It also has the potential to deny access to everyday services to people who are legally exercising their right to not be vaccinated.
- 58 It is preferable that all eligible people in New Zealand would have sufficient opportunity to be vaccinated before a CVC requirement is introduced, to avoid inequitable prevention of access to events to those who have not had the opportunity to be vaccinated due to the staged eligibility of the roll out. Given the progress of the vaccination programme to date, there has been sufficiently reasonable time from when the eligibility of vaccines was broadened to when the measures proposed in this paper would be implemented [CAB-21-MIN-0421].
- 59 While there has been a considerable lift in vaccinations for Māori, there is significant concern over the remaining number of vaccinations needed in the 12-40 year old age groups to achieve equity. The recently established \$120 million fund to accelerate Māori vaccination rates and support communities to prepare for the implementation of the new COVID-19 Protection Framework will seek to address this.

Next Steps

- 60 Further work is required to develop industry specific guidance prior to the introduction of CVCs. Officials will also confirm the extent to which CVCs would be prohibited in teaching and transport settings (e.g. school transport services), and government services and how best to differentiate settings in these contexts to ensure public safety. Officials will continue to report on progress of CVCs to the Vaccine Ministers group.
- 61 Officials will develop a process for engaging with government agencies to clarify which types of government services would or could be subject to CVC requirements and which ones would be exempt. I recognise there will be some agencies that will need clarity on this, so as not to have their ability to operate and deliver services impeded by CVC requirements.
- 62 I propose that officials review the policy in early 2022 and report back to me. This would recognise that CVCs are considered as a temporary measure. It would also provide an opportunity to monitor the effectiveness and wider impacts of the policy, as well as assess whether any equity concerns related to the use of CVCs have eventuated.

Financial Implications

- 63 There are no direct financial implications for the recommendations in this paper.

64 s9(2)(f)(iv) [Redacted]
[Redacted]

65 s9(2)(f)(iv) [Redacted]
[Redacted]
[Redacted]
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66 s9(2)(f)(iv) [Redacted]
[Redacted]
[Redacted]

Legislative Implications

67 New Orders will be made under the Act to bring the new framework into force.

68 With regard to vaccination requirements, it would be possible to introduce a requirement to be vaccinated to enter certain settings through secondary legislation, as such requirements are within the scope of powers provided to the Minister for COVID-19 Response under the Act, so long as the measures are consistent with the NZBORA.

69 s9(2)(h) [Redacted]
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[Redacted]
[Redacted]

70 s9(2)(h) [Redacted]
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71 Cabinet invited the Minister for COVID-19 Response to issue drafting instructions on these points on 18 October.

72 There are additional proposals in this paper which will require legislation. There will be additional legislation to be developed around the obligations and enforcement of the CVC mandates, as well as on the operations and application of CVCs as the only acceptable tool in CVC settings.

Impact Analysis

73 The Treasury's Regulatory Impact Analysis (RIA) Team has determined that the proposals in this Cabinet paper relating to COVID-19 Vaccination

Certificates for domestic use are exempt from the requirement to provide a Regulatory Impact Statement (RIS) on the grounds that they are intended to manage, mitigate or alleviate the short-term impacts of a declared emergency event of the COVID-19 pandemic, and the implementation of the policy is required urgently to be effective (making a complete, robust and timely RIS unfeasible).

- 74 Given the significance of the potential impacts of this proposal, the RIA Team strongly supports the review to be carried out in early 2022, which should assess wider impacts and policy lessons, including any equity concerns.

Population Impacts

- 75 Since the beginning of the response, groups such as older people, disabled people, Māori, Pacific peoples, some ethnic communities and rural communities have been more affected by both the health and non-health impacts of COVID-19 than others. Disabled people, Māori and Pacific peoples are more likely to experience these impacts, as they have higher rates of underlying health conditions and co-morbidities. Reducing the risk of COVID-19 spreading throughout the community will benefit these groups.
- 76 While at an aggregate level there remains strong trust in government, there are ongoing and increased concerns and anxieties among some Māori and other population groups around surveillance and low trust in government agencies. At the same time the demographic features of the population, particularly Māori and Pacific, has higher levels of structural disadvantage and currently has the lowest rate of uptake of the vaccination. These factors could lead to certain groups perceiving that CVCs confer privileges and that they are excluded from society by not accessing CVC settings. It is important that the introduction of CVCs does not create a barrier for people to access government services.
- 77 The measures in this paper centre on the vaccination status of an individual. This could exacerbate existing inequities in the vaccination coverage among different groups. Programmes such as the rapid vaccine acceleration programme for Māori communities may help address this risk. However, the use of vaccine requirements in some places could have the effect of increasing vaccination rates as people have further incentive to be vaccinated.
- 78 Transparent and outward facing engagement is likely to be critical to successful adoption of CVCs. Tailored, Māori-led communication strategies will also be required.
- 79 Disabled people consulted on the CVC provided strong feedback that people who were legitimately exempt from receiving vaccinations should not be prevented from attending events. It was important that the CVC should not identify whether people were exempt or otherwise in order to prevent event organisers interrogating the reason for vaccination exemption.

- 80 With the vaccination uptake varying across groups and some groups not being eligible (e.g. children under 12 and those for health reasons) for the vaccine, any access based on vaccination status could result in social, economic and cultural inequities for affected groups. This includes for young people who are the last eligible group to receive the vaccine and marginalised groups that are traditionally harder to reach (e.g. homeless people and those less likely to have identification material), who are all eligible to be vaccinated in New Zealand.

Risks related to social cohesion

- 81 The introduction of CVCs will likely have an impact on social cohesion. Revised settings for the introduction of CVCs are broader than what was originally considered by Cabinet on 18 November. Those without CVCs will potentially be excluded from a much wider range of social settings. This risks isolating the unvaccinated and increases the likelihood that we will see large-scale protests similar to those experienced in other countries that have introduced vaccine requirements.
- 82 There is also a risk that restrictions on where unvaccinated people may go could negatively impact the trust that has been built around the COVID-19 vaccination rollout and to address vaccine hesitancy that is linked to a wider mistrust of the health system. Targeted funding, programmes, communication and education could be important in mitigating this risk, and will be addressed in further advice on the implementation of CVCs. Continued focus on and increased resourcing to support, initiatives led by iwi/hapū, urban Māori, and Māori organisations involved in the communication design and delivery of approaches may also help address this risk.

Te Tiriti o Waitangi implications

- 83 Treaty principles require the Crown to do what is reasonable in the circumstances and do not necessarily require the Crown to adopt a particular course of action. In this context, if vaccination rates for Māori as a population group remain lower than for other groups, the countervailing considerations that have to be balanced are that CVCs might affect Māori disproportionately in terms of accessing certain facilities, but they will also protect Māori by lowering the risk of transmission. The health outcomes for the wider population are also an important consideration.
- 84 In developing approaches to CVCs, we have considered the distinct rights and interests of Māori to understanding the context of Te Tiriti o Waitangi considerations. We have obtained information as to where distinct Māori interests arise from through feedback from Te Arawhiti, Te Puni Kōkiri, DPMC's Community Panel and at a Ministerial level, the National Iwi Chairs Forum (NICF). The Crown's particular interests include the Crown's duty to protect Māori health equitably and actively, protect Māori cultural activities and the Crown's responsibility to address the disproportionately low vaccine uptake by Māori.

- 85 Currently, the disproportionately lower vaccination levels for Māori means that limiting access to domestic facilities based on vaccination status would have a greater effect on the personal freedom of Māori on an individual and collective basis. Further, CVCs would have an impact on large, Māori-organised events (e.g., Te Matatini, Waka Ama Sprint Nationals). This could negatively impact the trust that has been built for the COVID-19 vaccination rollout and could enhance vaccine hesitancy, if it further decreases trust (although it may also motivate some to obtain vaccinations).
- 86 To reduce the impact of this, a communication strategy could be developed to work with Māori to support the use of CVCs. Māori-led communications could better support trust and ability to build understanding about using CVC as a public health tool against COVID-19. The NICF and DPMC Community Panel recommended that Marae, Māori businesses and event organisers should decide how to operate with CVCs, for example through developing guidance, and how to communicate the use of CVCs. Te Matatini organisers have already been proactive by introducing vaccination requirements for attendees.

Human Rights

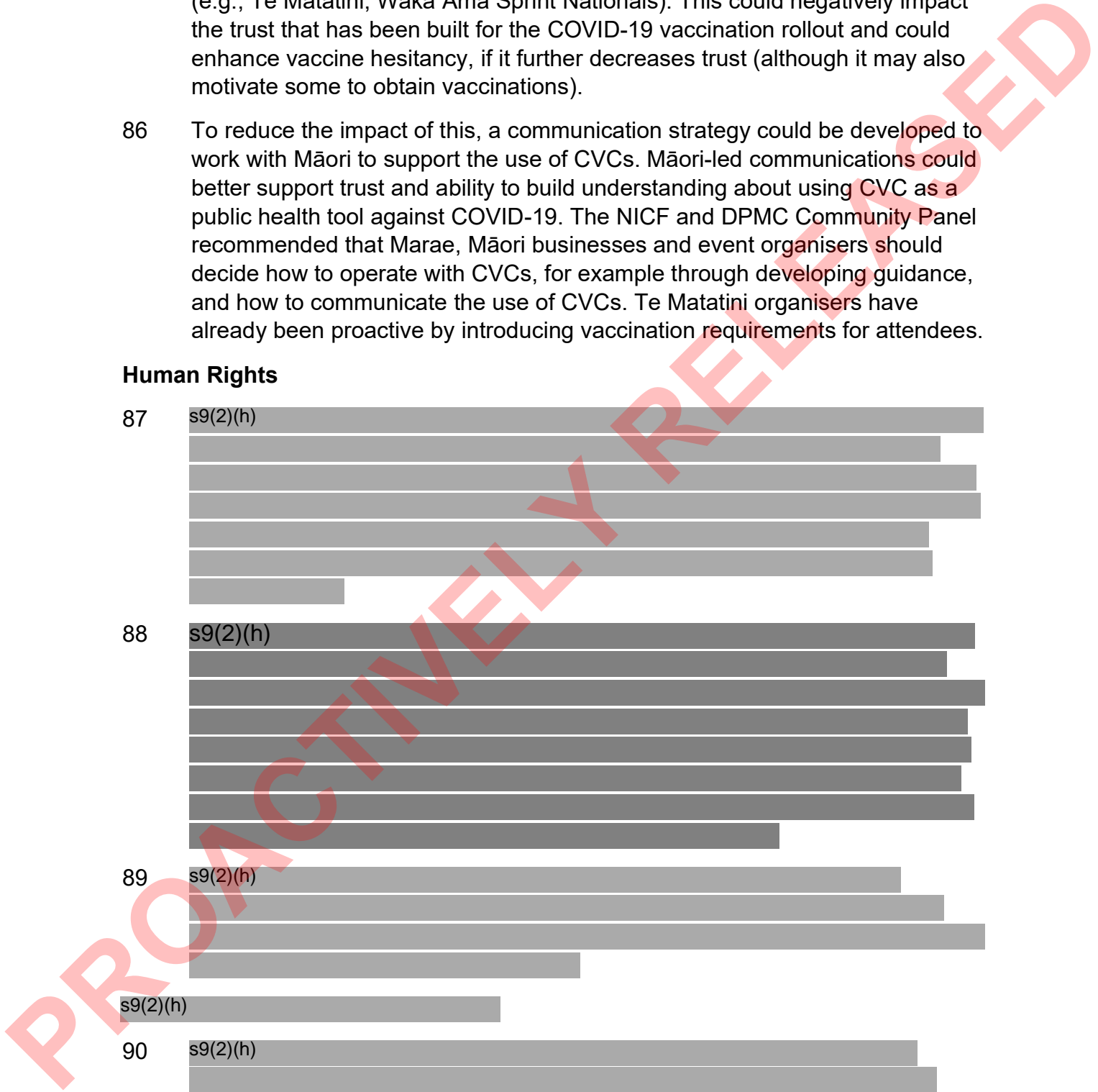
87 s9(2)(h) [Redacted]

88 s9(2)(h) [Redacted]

89 s9(2)(h) [Redacted]

s9(2)(h) [Redacted]

90 s9(2)(h) [Redacted]



s9(2)(h)

Consultation

- 91 Officials have undertaken targeted consultation on the use of CVCs with business and community representatives. During this process, feedback was also received from sectors on more detailed elements of CVCs. Officials also undertook limited engagement with the NICF.
- 92 This paper was prepared by the COVID-19 Group in the Department of the Prime Minister and Cabinet and the Ministry of Health. Crown Law advised on the Bill of Rights implications.
- 93 The following agencies were also consulted on the paper: Customs, Departments of Internal Affairs, Ministries of Education, Culture and Heritage, Foreign Affairs and Trade, Social Development, Justice, Primary Industries, Business, Innovation and Employment, Transport, Pacific Peoples, Te Arawhiti, the Treasury, the New Zealand Police, Te Puni Kōkiri, WorkSafe and the Public Service Commission.
- 94 The Office of the Privacy Commissioner and the office of the Government Chief Digital Officer were consulted in the development of the policy work on COVID-19 vaccination certificates. The Office for Disability Issues was also consulted on the accessibility of CVCs.

Communications

- 95 I propose that the Prime Minister and I announce Cabinet's further decisions on the new CVC framework after the Cabinet meeting on 26 October.
- 96 It will be important to publicly signal that the current policy is an interim measure, will be reviewed, and has been implemented against a specific risk profile that may change in future.

Proactive Release

- 97 I intend to proactively release this paper following any announcements of a change in policy, subject to any appropriate redaction where information would have been withheld under the Official Information Act 1982.

Recommendations

The Minister for COVID-19 Response recommends that Cabinet:

- 1 note that Cabinet agreed on Monday 18 October to mandate the use of CVCs for customers in the following circumstances [CAB-21-MIN-0421]:
 - 1.1 very large high-risk events of over 500 people at all levels;

- 1.2 high-risk indoor settings without capacity limits at Orange level; and
- 1.3 high-risk indoor settings with capacity limits applying at Red level.
- 2 note that delegated Ministers revised the settings where vaccine requirements would be introduced under the COVID-19 Protection Framework;
- 3 note that on Monday 18 October, Cabinet also noted that private bodies can limit the general public from accessing their premises, as long as this does not amount to unlawful discrimination [CAB-21-MIN-0421];
- 4 agree that the purposes for which orders under the COVID-19 Public Health Response Act 2020 (the Act) can be made be broadened, to better reflect the new measures and intentions under the COVID-19 Protection Framework;
- 5 note officials will undertake further work to:
 - 5.1 develop industry specific guidance to support businesses and other parties to enable, appropriately limit, and implement a vaccination requirement if they choose to put one in place;
 - 5.2 confirm the extent to which CVCs would be prohibited in teaching and transport settings (e.g. school transport services), and
 - 5.3 identify how CVCs apply to government services that are provided to members of the public.
- 6 note the Minister for Workplace Relations and Safety has brought a corresponding paper to Cabinet today on the approach to vaccination requirements, which covers whether vaccination should be mandated for workers in settings where a CVC is required from customers;
- 7 agree that life preserving basic needs providers are not able to limit the type of service provided to customers/patrons based on a CVC, however may introduce reasonable health and safety policies.
- 8 agree that no alternate measure for those legitimately exempt from CVC requirements, such as a negative COVID-19 test, should be introduced, as the narrower exemptions category does not present a significant public health risk at this time;
- 9 note that CVCs have been designed to maintain privacy of individuals, and may not automatically be considered digital proof of vaccination to prevent discrimination against those with legitimate exemptions;
- 10 agree that CVCs will be the only way of demonstrating ability to enter where vaccination is a requirement of entry for patrons under an Order made under the Act, with the exception of children exempt due to age;
- 11 agree that the Act be amended to allow for forms of acceptable evidence of compliance with COVID-19 Orders to be prescribed for in those Orders;

- 12 agree to make it an offence to store, process, use or manage data from CVCs through the verification process, except as necessary to demonstrate compliance with CVC requirements (for law enforcement purposes);
- 13 note that officials are working to an estimated date of the end of November for wide introduction of CVCs;
- 14 agree that the obligation for complying with CVC requirements is borne by both the PCBU and the individual (which includes workers);
- 15 agree to amend the Act to provide that enforcement officers can direct a person to produce evidence to demonstrate compliance with orders made under the Act;
- 16 agree that the penalties for non-compliance with CVC mandates will align with penalties as proposed by the COVID-19 Public Health Response Amendment Bill (No 2) 2021;
- 17 direct officials to develop detailed guidance on how best to provide enforcement officers with the power to issue infringement notices;
- 18 invite the Minister for COVID-19 Response to issue drafting instructions to give effect to the decisions in recommendations 4, 11, 12 and 15;
- 19 direct officials to report back to the Minister for COVID-19 Response in early 2022 on the outcomes of a review on the use of CVCs.

Hon Chris Hipkins

Minister for COVID-19 Response

Appendix 1: Agreed settings for the COVID-19 Protection framework

PROACTIVELY RELEASED

New Zealand COVID-19 Protection Framework

Factors for considering a shift between levels: vaccination coverage; capacity of the health and disability system; testing, contact tracing and case management capacity; and the transmission of COVID-19 within the community, including its impact on key populations.

Localised lockdowns: will be used as part of the public health response in the new framework across all levels, and there may still be a need to use wider lockdowns (similar to the measures in Alert Level 3 or 4).

Vaccination certificates: Requiring vaccination certificates will be optional for many locations. There are some higher-risk settings where they will be a requirement in order to open to the public. Some places won't be able to introduce vaccination requirements, to ensure everyone can access basic services, including supermarkets and pharmacies.

<p>GREEN</p>	<p>COVID-19 across New Zealand, including sporadic imported cases.</p> <p>Limited community transmission.</p> <p>COVID-19 hospitalisations are at a manageable level.</p> <p>Whole of health system is ready to respond – primary care, public health, and hospitals.</p>	<p>General settings</p> <ul style="list-style-type: none"> Record keeping/scanning required Face coverings mandatory on flights, encouraged indoors Public facilities – open Retail – open Workplaces – open Education (schools, ECE, tertiary) – open Specified outdoor community events – allowed
	<p>No limits if vaccination certificates are used for:</p> <ul style="list-style-type: none"> Hospitality Gatherings (e.g. weddings, places of worship, marae) Events (indoor/outdoor) Close contact businesses Gyms 	
	<p>If vaccination certificates are not used, the following restrictions apply:</p> <ul style="list-style-type: none"> Hospitality – up to 100 people, based on 1m distancing, seated and separated Gatherings (e.g. weddings, places of worship, marae) – up to 100 people, based on 1m distancing Events (indoor/outdoor) – up to 100 people based on 1m distancing, seated and separated Close contact businesses – face coverings for staff, 1m distancing between customers Gyms – up to 100 people, based on 1m distancing 	
<p>ORANGE</p>	<p>Increasing community transmission with increasing pressure on health system.</p> <p>Whole of health system is focusing resources but can manage – primary care, public health, and hospitals.</p> <p>Increasing risk to at risk populations.</p>	<p>General settings</p> <ul style="list-style-type: none"> Record keeping/scanning required Face coverings mandatory on flights, public transport, taxis, retail, public venues, encouraged elsewhere Public facilities – open with capacity limits based on 1m distancing Retail – open with capacity limits based on 1m distancing Workplaces – open Education – open with public health measures in place Specified outdoor community events – allowed
	<p>No limits if vaccination certificates are used for:</p> <ul style="list-style-type: none"> Hospitality Gatherings (e.g. weddings, places of worship, marae) Events (indoor/outdoor) Close contact businesses Gyms 	
	<p>If vaccination certificates are not used, the following restrictions apply:</p> <ul style="list-style-type: none"> Hospitality – contactless only Gatherings (e.g. weddings, places of worship, marae) – up to 50 people, based on 1m distancing Close contact businesses, events (indoor/outdoor) and gyms are not able to operate 	
<p>RED</p>	<p>Action needed to protect health system – system facing unsustainable number of hospitalisations.</p> <p>Action needed to protect at-risk populations.</p>	<p>General settings</p> <ul style="list-style-type: none"> Record keeping/scanning required Face coverings mandatory on flights, public transport, taxis, retail, public venues, recommended whenever leaving the house Public facilities – open with up to 100 people, based on 1m distancing Retail – open with capacity limits based on 1m distancing Workplaces – working from home encouraged Education – schools and ECE open with public health measures and controls Specified outdoor community events – allowed with capacity limits
	<p>With vaccination certificates, the following restrictions apply:</p> <ul style="list-style-type: none"> Hospitality – up to 100 people, based on 1m distancing, seated and separated Gatherings (e.g. weddings, places of worship, marae) – up to 100 people, based on 1m distancing Events (indoor/outdoor) – up to 100 people based on 1m distancing, seated and separated Close contact businesses – public health requirements in place Gyms – up to 100 people, based on 1m distancing Tertiary education – vaccinations required for onsite delivery, with capacity based on 1m distancing 	
	<p>If vaccination certificates are not used, the following restrictions apply:</p> <ul style="list-style-type: none"> Hospitality – contactless only Gatherings (e.g. weddings, places of worship, marae) – up to 10 people Close contact businesses, events (indoor/outdoor) and gyms are not able to operate Tertiary education – distance learning only 	



Cabinet

Minute of Decision

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COVID-19 Vaccination Certificates: Implementation in Domestic Settings

Portfolio COVID-19 Response

On 26 October 2021, Cabinet:

- 1 **noted** that on 18 October 2021, Cabinet agreed to mandate the use of COVID-19 Vaccination Certificates (CVCs) for customers in the following circumstances [CAB-21-MIN-0421]:
 - 1.1 very large high-risk events of over 500 people at all levels;
 - 1.2 high-risk indoor settings without capacity limits at Orange level; and
 - 1.3 high-risk indoor settings with capacity limits applying at Red level;
- 2 **noted** that delegated Ministers revised the settings where vaccine requirements would be introduced under the COVID-19 Protection Framework;
- 3 **noted** that on 18 October 2021, Cabinet also noted that private bodies can limit the general public from accessing their premises, as long as this does not amount to unlawful discrimination [CAB-21-MIN-0421];
- 4 **agreed** that the purposes for which orders under the COVID-19 Public Health Response Act 2020 (the Act) can be made be broadened, to better reflect the new measures and intentions under the COVID-19 Protection Framework;
- 5 **noted** that officials will undertake further work to:
 - 5.1 develop industry specific guidance to support businesses and other parties to enable, appropriately limit, and implement a vaccination requirement if they choose to put one in place;
 - 5.2 confirm the extent to which CVCs would be prohibited in teaching and transport settings (e.g. school transport services);
 - 5.3 identify how CVCs apply to government services that are provided to members of the public;
- 6 **noted** that the Minister for Workplace Relations and Safety has brought a corresponding paper to Cabinet on the approach to vaccination requirements, which covers whether vaccination should be mandated for workers in settings where a CVC is required from customers [CAB-21-SUB-0436];

- 7 **agreed** that life preserving basic needs providers are not able to limit the type of service provided to customers/patrons based on a CVC, however they may introduce reasonable health and safety policies;
- 8 **agreed** that no alternate measure for those legitimately exempt from CVC requirements, such as a negative COVID-19 test, should be introduced, as the narrower exemptions category does not present a significant public health risk at this time;
- 9 **noted** that CVCs have been designed to maintain the privacy of individuals, and may not automatically be considered digital proof of vaccination to prevent discrimination against those with legitimate exemptions;
- 10 **agreed** that CVCs will be the only way of demonstrating the ability to enter where vaccination is a requirement of entry for patrons under an Order made under the Act, with the exception of children exempt due to age;
- 11 **agreed** that the Act be amended to allow for forms of acceptable evidence of compliance with COVID-19 Orders to be prescribed in those Orders;
- 12 **agreed** to make it an offence to store, process, use or manage data from CVCs through the verification process, except as necessary to demonstrate compliance with CVC requirements (for law enforcement purposes);
- 13 **noted** that officials are working to an estimated date of the end of November 2021 for wide introduction of CVCs;
- 14 **agreed** that the obligation for complying with CVC requirements be borne by both the Person Conducting a Business or Undertaking (PCBU) and the individual (which includes workers);
- 15 **agreed** to amend the Act to provide that enforcement officers can direct a person to produce evidence to demonstrate compliance with Orders made under the Act;
- 16 **agreed** that the penalties for non-compliance with CVC mandates will align with penalties as proposed by the COVID-19 Public Health Response Amendment Bill (No 2) 2021;
- 17 **directed** officials to develop detailed guidance on how best to provide enforcement officers with the power to issue infringement notices;
- 18 **invited** the Minister for COVID-19 Response to issue drafting instructions to the Parliamentary Counsel Office to give effect to the decisions in paragraphs 4, 11, 12 and 15 above;
- 19 **directed** officials to report back to the Minister for COVID-19 Response in early 2022 on the outcomes of a review on the use of CVCs.

Michael Webster
Secretary of the Cabinet