



24 March 2022

Tēnā koe

On 23 February 2022, you emailed the Ministry of Social Development (the Ministry) requesting, under the Official Information Act 1982 (the Act), the following information:

- *How many MSD staff were Covid 19 unvaccinated at 7 January 2022?*
- *How many MSD staff were delivered preliminary notices of termination between 15 February and 22 February 2022?*
- *How many of those were advised the preliminary decision was to terminate?*
- *How many were made redundant?*
- *How many were offered Work From Home as an alternative?*
- *How many were offered leave without pay?*
- *Has the MSD carried out a risk analysis to justify terminating Covid 19 unvaccinated staff?*
- *Does the risk analysis focus on the risk of the Omicron variant specifically?*
- *Who carried out the risk analysis?*
- *Was the analysis shared with affected staff and were they or their representatives given the opportunity to respond?*

For clarity, I will provide a response to each part of your request in turn. Some parts of your request will be grouped together.

- *How many MSD staff were Covid 19 unvaccinated at 7 January 2022?*

As at 7 January 2022, the Ministry has approximately 9400 staff, 96% of which are fully vaccinated (others are either partly vaccinated, not currently at work due to long term leave or unvaccinated etc).

- *How many MSD staff were delivered preliminary notices of termination between 15 February and 22 February 2022?*
- *How many of those were advised the preliminary decision was to terminate?*

- *How many were made redundant?*
- *How many were offered Work From Home as an alternative?*
- *How many were offered leave without pay?*

A total of 220 preliminary decision letters were sent to affected Ministry staff. Please note, these decision letters were only preliminary and not reflective of final decision letters.

In relation to those who have received final decision letters of notice of termination this is refused under section 9(2)(a) of the Act in order to protect the privacy of Ministry staff. The employment matters in train are inherently private to the individual staff. The need to protect the privacy of these individuals outweighs any public interest in this information.

Information concerning the individual options considered in each case, and outcomes, is highly private to individual Ministry staff. This information is refused under section 9(2)(a) of the Act. The the need to protect the privacy of Ministry staff outweighs any public interest in this information.

The Ministry has not made anyone redundant.

- *Has the MSD carried out a risk analysis to justify terminating Covid 19 unvaccinated staff?*
- *Does the risk analysis focus on the risk of the Omicron variant specifically?*
- *Who carried out the risk analysis?*
- *Was the analysis shared with affected staff and were they or their representatives given the opportunity to respond?*

In line with section 16(1)(e) of the Act, I will provide a summary of the assessments taken by the Ministry of the risks associated with COVID-19 for our staff, contractors, providers, visitors and members of the public.

Under the Health and Safety at Work Act 2015 (HSWA), the Ministry is required to ensure so far as is reasonably practicable, the health and safety of its workers, those workers whose activities are influenced or directed by the Ministry such as providers and contractors, and other persons such as the public or visitors, while they are carrying out work.

As the public health advice and response to the COVID-19 pandemic has changed over time, the Ministry has continually reviewed the Health and Safety risks faced by our people and the controls we have in place to ensure we are doing everything that is reasonably practicable to protect Ministry staff, contractors, visitors and clients.

We have an obligation to eliminate risks so far as is reasonably practicable, and if elimination is not possible, minimise those risks so far as is reasonably practicable. The Ministry must also consider how COVID-19 may disrupt our services and how this can be minimised.

Throughout the pandemic, the Ministry has followed advice from the Ministry of Health (MoH), the Ministry of Business, Innovation and Employment (MBIE), Te Kawa Mataaho (Public Service Commission or PSC) and WorkSafe to ensure we have the safest working environment for our people based on the knowledge available to us at the time.

While most COVID-19 controls in place have been mandated by the Government through the implementation of public health measures, the Ministry has conducted our own risk assessments to ensure the safety of our staff, contractors, visitors and clients. Any changes in legislation, public health measures, virus strains, risk or work environment, prompts the Ministry to review the controls in place to continue to ensure the health and safety of our people.

Health and Safety risk assessments are not a static process, and the Ministry has, and will continue to assess and monitor the controls we have in place in response to managing COVID-19 in our workplaces. The Ministry must consider, based on a health and safety risk assessment, whether existing controls are sufficient and if not, what additional controls would be appropriate to either eliminate or help minimise risk and protect people from exposure to COVID-19 both in the workplace and for the public visiting our sites. Vaccination is one of those controls.

As the Ministry has continuously reviewed the health and safety risk faced and the controls in place to protect our people, we have made changes to most protocols and controls over time in line with public health advice as the response to the pandemic has changed.

The management of risk needs to be appropriate and/or proportionate to the scale of the risk. This means that risks with potentially significant consequences (e.g. chronic ill-health, serious injury or death) may require additional effort and resources to determine the most effective way to eliminate or minimise the risk.

Ministry staff are not medical professionals, and as such the Ministry relies on official medical and health advice. We must also ensure our controls are safe, and just as we would for any other hazards at the Ministry when considering controls, we talk to the subject matter experts. For COVID-19 risks and controls, the Ministry relies on MOH advice and MedSafe Safety Reports.

A number of health and safety risk assessments/workshops were carried out during September, October and November 2021 and January 2022. Regular reviews of the risk of COVID-19 were required as the Delta variant was identified and had started to spread within the community in New Zealand. Following the arrival of this variant, the Government announced and prepared to move towards the COVID-19 Protection Framework (also known as the Traffic Light System).

The move to the COVID-19 Protection Framework indicated that the New Zealand Government's approach to COVID-19 had changed from elimination of the virus in the community to minimisation and protection from the virus.

The Ministry has carried out a number of separate health and safety risk assessments relevant to COVID-19 vaccination as a control covering both the Delta and Omicron variants of COVID-19. Workshops have, at various times, involved internal and external participants and representatives.

The representation for the health and safety risk workshops was across as wide a range of roles as possible. Those attending brought their experience of their roles and business units to the process, as well as expertise across a wide range of environments. The consultation period also gave everyone in the Ministry the opportunity to comment on the November 2021 risk assessment and provide feedback. This feedback was taken into consideration by the Leadership Team before making the final decision on the Ministry's COVID-19 Vaccination Policy.

The primary tools used to guide the Ministry on the Health and Safety risk assessments are:

- The Ministry's internal Health Safety and Security Risk Framework.
- WorkSafe: www.worksafe.govt.nz/managing-health-and-safety/novel-coronavirus-covid/how-to-decide-what-work-requires-a-vaccinated-employee; and,
- MBIE: www.employment.govt.nz/leave-and-holidays/other-types-of-leave/coronavirus-workplace/covid-19-vaccination-and-employment/.

The Ministry is providing our internal Health Safety and Security Risk Framework as **Appendix One**.

September 2021

On 6 September 2021, as staff were returning to the office following the lockdown in August due to the Delta variant entering our community, a risk assessment workshop was held to identify the Ministry's COVID-19 exposure risk. This health and safety risk assessment also considered where there was a high risk of contracting and transmitting COVID-19 to others in the business, and whether there was any particular work that Ministry staff completed that must only be carried out by workers who are vaccinated.

At the time of this risk assessment:

- a) the Government had adopted a policy of elimination of COVID-19 in the community and this was reflected in the public health measures put in place, including the Alert Level System, border controls and vaccination.

In the Alert Level System, the government had established behaviours calculated by public health experts to eliminate COVID-19 from NZ.

- b) the primary control in place to manage the Critical Risk was to comply with the Government's public health measures reflected in the Alert Level System.
- c) the Government vaccine mandates only applied to workers who come into close physical contact with people who have or are most likely to have COVID-19, such as border workers.
- d) Two Ministry roles were covered by the border vaccine mandate.

The outcome of the September 2021 risk assessment was that no additional roles, other than the two roles already identified, would require Ministry staff to be in close physical contact with people who have or are most likely to have COVID-19. Accordingly, no changes to the controls in place were identified as being required.

In receiving this assessment, the Leadership Team were also advised that the risk was changing rapidly and accordingly, it was recommended that the Ministry reviews its assessment as new events occurred – including when any changes were made to the Government public health measures or Alert Levels.

October 2021

On 11 October 2021, the Government announced that the Government vaccine mandates would extend to a wide range of frontline 'high-risk' workers, which affected some Ministry workers (Health and Disability, Education sectors and Corrections prisons). Those mandates applied to workers who are most likely to work with unvaccinated people, vulnerable communities, or people at higher risk of serious illness or death if they caught COVID-19.

On 22 October 2021, the Government announced the COVID-19 Protection Framework and that New Zealand would transition from the existing Alert Level System, which was aimed at elimination of COVID-19, to a 'Minimise and Protect' strategy using vaccination as the key tool. This transition would mean that COVID-19 would be in the community, and as such this increased the likelihood of the virus also being in workplaces.

Under the COVID-19 Protection Framework, Ministry sites would remain open and providing face-to-face services at all levels unlike during the Alert Level system.

These changes meant that the Ministry would need to consider the increased likelihood of the risk of exposure to COVID-19 in our workplaces, as Government health measures would no longer be as effective as under the Alert Level framework.

At this time, Te Kawa Mataaho also advised that each public service agency must conduct a health and safety risk assessment to determine whether, and to what level, vaccination is required to work in the public agency workplace.

On 28 October 2021, the Ministry held a risk assessment workshop based upon the new COVID-19 Protection Framework and extended mandates, and to review the risk assessment conducted on 6 September 2021.

The workshop considered whether Ministry workers undertake activities that carry a sufficiently high risk of contracting and/or transmitting COVID-19, and whether it would be deemed reasonably practicable to implement any of the following controls:

- a) vaccinations for workers who undertake high-risk activities.
- b) vaccine certificates for clients to present before entering our sites.
- c) additional health and safety controls to those already established.

The workshop started by looking at the nature of the exposure, the likelihood, the consequences, the inherent rating, the mitigations in place, then the residual rating, the additional planned mitigations and finally the impact of vaccinated versus non-vaccinated workers.

During the discussion with workshop participants, employees were grouped into five main groups as follows:

- Workers who interact with Ministry clients both on and off-site
- Workers who interact with the public in the course of their work, excluding clients
- Workers who work in controlled environments without any interaction with the public
- Ministry workers who work from non-Ministry controlled premises, where vaccines are mandated for their workers
- Contracted providers' workers – where overlapping duties exist

The outcome of the October 2021 health and safety risk assessment workshop highlighted five different categories of worker activities (listed above). Some of these categories were considered at-risk in that vaccination, as a reasonably practicable control, should be required. Other categories needed further consideration for broader business risks.

At this workshop, the focus was on the risk of COVID-19 infection and transmission in the work environment caused by interaction between staff and external people. The general consensus was that:

- a) Ministry workers faced similar risks as workers under existing mandates, which aim to protect vulnerable groups of people in the community; and,
- b) in undertaking the assessment, the number of interactions with people with an 'unknown' vaccination status was highly important, and, where a risk of cross-contamination between groups of people existed.

The workshop outcomes and considerations were used to inform discussions already underway across Government about workplace vaccination settings, to support government decision making about guidance for businesses and agencies on undertaking HWSA risk assessments, and whether any further Government vaccine mandates were required.

In late November 2021, announcements were made by the Government on additional mandates, along with introducing four weeks' paid notice of termination and paid time off to get vaccinated. The Government also issued further workplace vaccination decision making guidance through WorkSafe on 15 December 2021 (in addition to its earlier guidance which we utilised in November – see below).

The workshop outcomes were also used to inform the Ministry's further risk assessment process undertaken in mid-November 2021.

November 2021

On 17 November 2021, the Health, Safety and Security Team completed a risk assessment, using the then recently issued WorkSafe guidance.

The Risk Statement that was applied to the risk assessment is: (Primary duty of care) – *In relation to the risk posed by COVID-19 (and variants) is the Ministry ensuring, so far as is reasonably practicable, the health and safety of its workers, those workers whose activities are influenced or directed by the Ministry (e.g. providers and contractors), and other persons (e.g. the public and visitors) while they are carrying out work.*

Based on previous health and safety risk assessments, consultation with internal and external stakeholders and risk assessments completed by similar agencies, the Ministry was aware that there are various Ministry roles where there is the potential for exposure to COVID-19 and the risk of a Ministry worker transmitting to a client and other workers. For the purpose of this risk assessment, workers performing these roles were grouped into two categories, based on the nature of their activities:

- Group 1: Front-facing staff including regional and national staff who regularly engage with people in the community (work and have contact with either the public, Ministry clients, community providers and other agencies, including those who are vulnerable and at high risk of the consequences of contracting COVID-19).

- Group 2: National Office staff, contact centre staff, processing staff and a number of other groups of staff, who do not regularly engage with people in the community and are primarily working from their office environment (work in offices with a high volume of staff, and in roles that are critical to business continuity and the Ministry's ability to maintain the welfare system).

The Ministry considered this to be a reasonable approach given the vast number of individual job descriptions across the Ministry, and instead focussed on characteristics of roles and types of interactions that may occur. We set out the work areas covered in each group and assessed the work areas as having similar characteristics. The risk of exposure for these roles is different but still significant if COVID-19 is present in the workplace. The indirect health risks to the public, if our ability to deliver services is impacted because of COVID-19 infection leading to staff becoming severely ill and unable to work for long periods, was also a factor.

The risk assessment looked at, in order:

1. The category of workers against all health and safety risk factors from WorkSafe, giving them a rating of either low, medium or high risk of occurrence.
2. Whether requiring vaccinations for Ministry staff meets the reasonably practicable criteria – particularly considering the right to refuse to undergo medical treatment under the New Zealand Bill of Rights Act 1990.
3. The operational impacts of COVID-19 infection or transmission in the workplace or during work activities, considering the controls in place and compliance with these controls.
4. Other controls and whether they would be reasonable additional controls.

The outcome of the November 2021 risk assessment found that Group 1 were considered to meet a number of high-risk criteria, requiring greater controls than we currently had in place to protect both workers and clients from contracting or transmitting COVID-19. Requiring vaccinations for workers in this setting would be proportionate to the risk of workers and clients contracting and spreading COVID-19 in that setting.

While Group 2 did not meet all of the same high-risk criteria as Group 1, the volume and proximity to others for extended periods of time as well as the operational impacts were considered. As such, additional controls to those already in place were also necessary for Group 2.

The November 2021 risk assessment and related advice was considered by the Leadership Team on 23 November 2021. They made a decision to release the

risk assessment and proposed draft Vaccination Policy for consultation with all staff.

In addition to current controls, further controls were considered at that time, such as potentially implementing the use of Perspex screens, N95 masks, face shields and Rapid Antigen Testing (RAT). These controls are continually being reviewed and assessed – however, the particular usage of RAT to keep staff safe is not considered an alternative to vaccination, which decreases the likelihood of someone being infected and developing severe illness, as testing does not prevent infection.

As noted in the outline of the risk assessments, under the HSWA, the Ministry must ensure so far as is reasonably practicable, the health and safety of its workers, those workers whose activities are influenced or directed by the Ministry such as providers and contractors, and other persons such as the public or visitors, while they are carrying out work.

The Ministry has considered the viability of the vaccine as a health and safety measure and considered it a reasonably practicable step that we can implement to keep our staff, contractors, visitors and clients safe.

January 2022

Following a decision by Government in late December 2021 that Ministry premises were included in the list of prohibited premises where vaccine passes cannot be required for clients or their support people, and alongside the movement of New Zealand into phases two and three of the Omicron outbreak – widespread community transmission – the Ministry considered it was appropriate to review the controls in place to help ensure the health and safety of staff, contractors, visitors and clients.

In mid-January 2022, the Ministry undertook a further health and safety risk assessment related to the impacts of the Omicron variant of COVID-19 on our staff and how this would impact the ability of staff to deliver our services to clients.

The outcome of this risk assessment noted that vaccination remains a reasonably practicable step to take, and it is accepted that it is still the best tool available to the Ministry to manage the impact of the global pandemic on our people, contractors, clients and visitors.

The risk assessment also determined that whilst we know we cannot eliminate contraction, transmission and illness from COVID-19, including the Omicron variant, we can minimise the likelihood and consequence for our staff, clients and visitors. Vaccination can, based on official medical advice from MoH, reduce transmission and severity of contracting COVID-19. This was important both from an individual perspective and slowing transmission to others, but also to ensure we have a healthy workforce who are not absent from work due to sickness for long period of time, given our essential service provision.

This assessment was referenced in Chief Executive messages to all Ministry staff on three separate occasions in January 2022 and was reflected in updated COVID guidance to all staff released on 31 January 2022.

Consultation Process

As part of our duties under HSWA, the Ministry must so far as is reasonably practicable, engage with its workers on health and safety matters that may directly affect them.

The Ministry has established processes for undertaking engagement with its staff on health and safety matters. We have specifically engaged regularly with staff representatives, and in particular the PSA, through an established process on all COVID-19 related matters, and we provide regular opportunities for feedback through our normal employee engagement processes.

In light of the importance of this decision, the proposed draft vaccination policy, including the risk assessment which informed the draft policy, were shared with all Ministry employees via the Ministry's intranet to give everyone the opportunity to engage on the risk assessment and the proposed approach.

The consultation and decision documents made available to all staff clearly set out all information relevant to the proposal and the decision of the Leadership Team that was communicated to all staff on 16 December 2021.

Please find attached the Decision Document provided to staff on 16 December 2021 as **Appendix Two**.

As stated, the Ministry continues to update our health and safety risk assessments in line with the changing environment of the pandemic. It will continue to use its established processes for undertaking engagement with its staff on health and safety matters.

You can find a copy of the Ministry's Vaccination Policy introduced on 16 December 2021 available on our website at the following link: www.msd.govt.nz/documents/about-msd-and-our-work/covid-19/msd-covid-19-vaccination-policy.pdf.

The principles and purposes of the Official Information Act 1982 under which you made your request are:

- to create greater openness and transparency about the plans, work and activities of the Government,
- to increase the ability of the public to participate in the making and administration of our laws and policies and
- to lead to greater accountability in the conduct of public affairs.

This Ministry fully supports those principles and purposes. The Ministry therefore intends to make the information contained in this letter and any

attached documents available to the wider public. The Ministry will do this by publishing this letter on the Ministry's website. Your personal details will be deleted, and the Ministry will not publish any information that would identify you as the person who requested the information.

If you wish to discuss this response with us, please feel free to contact OIA_Requests@msd.govt.nz.

If you are not satisfied with this response, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Ngā mihi nui



Melissa Gill

**Deputy Chief Executive
Organisational Assurance and Communication**