

Border Worker Testing and Vaccination Maritime and Aviation- Phase Two Review



BORDER EXECUTIVE BOARD

9 December 2021

Final Report

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Executive summary

Background

Over the last 19 months the border has been our first line of defence against COVID-19.

Several thousand people work at New Zealand's maritime and aviation borders and managed isolation and quarantine facilities (MIQF). They are generally referred to as 'border workers'.

Two key COVID-19 border control measures have been implemented as part of New Zealand's COVID-19 response strategy.

Since September 2020, the COVID-19 Public Health Response (Required Testing) Order 2020 (the testing order) has required the routine testing of certain border workers for COVID-19 at MIQF, and the aviation and maritime borders.

On 1 May 2021, the COVID-19 Public Health Response (Vaccinations) Order 2021 (the vaccinations order) made it mandatory for a limited group of border workers carrying out certain types of work at the border or an MIQF to be vaccinated against COVID-19. From 15 July 2021, it also became mandatory for most maritime and aviation border workers to receive their first vaccination dose by 30 September 2021 and their second dose no later than 35 days later. After these dates, any new border workers covered by the vaccination order are required to be vaccinated before they perform that work.

About the review

The Border Executive Board (BEB)¹ commissioned a review of the border worker testing arrangements in April 2021. The first phase of the review looked at the border worker testing arrangements in MIQF, with the final report issued to the BEB in June 2021. The second phase of the review was commissioned in late July 2021.

The purpose of the second phase of the review was to assess the high-level arrangements to support compliance with the testing order and the vaccinations order at the maritime and aviation borders.

¹ The Border Executive Board was established as an Interdepartmental Executive Board on 11 January 2021 under the Public Service Act 2020 to deliver an integrated and effective border system. It is hosted by the NZ Customs Service.

The second phase of the review built on the work undertaken on the testing arrangements in the first phase of the review. It also looked at the planning for, and the implementation of the requirements of the vaccination order at the maritime and aviation borders. The focus was on compliance with the vaccination order for privately employed border workers. This was because most government workers had been vaccinated at the time the review was undertaken.

The fieldwork for review was carried out from mid-August through to early October 2021. Forty-six interviews were conducted with 73 people from 31 organisations.² They comprised the various government agencies who support the testing and vaccination arrangements, district health boards (DHBs), PCBUs³ with responsibilities under the orders and unions.

For the purposes of this report, the term 'border workers' is used to describe people working at the maritime and aviation borders.

Overview

The implementation of the vaccination order for the border workforce has been a significant step in New Zealand's COVID-19 response. It was the first group of workers that were required by law to be vaccinated for COVID-19.⁴ By 30 September 2021, 99% of active⁵ government border workers were reported to be fully vaccinated, and 98% of all privately-employed border workers had had at least one dose.⁶

Many aspects of the planning and implementation of the vaccination order worked well, but a number of challenges were experienced. It offers useful lessons for other mandatory vaccination rollouts. Areas that worked well included the effective and close collaboration between PCBUs, unions and DHBs to educate workers and facilitate easy access to vaccinations. However, this did not happen consistently across the country. Also, PCBUs that operate nationally needed better support to navigate the different

² A separate review of the maritime border COVID-19 measures is being undertaken. Some people were interviewed for both reviews.

³ Persons Conducting a Business and Undertaking. A 'relevant PCBU' is defined in the testing and vaccination orders as a PCBU within the meaning of section 17 of the Health and Safety at Work Act 2015 who employs or engages the affected person to carry out work for the PCBU.

⁴ The Government announced on 11 October 2021 that large parts of the health and disability and education workforces will also be required to be vaccinated over the coming weeks.

⁵ An active worker is defined in the border worker testing register as someone who has worked at the border within the last 14 days.

⁶ 90% had received two doses. These figures include the active maritime, aviation, MIQF and other border workers.

approaches taken by DHBs. Other areas that need improvement include providing clear and timely guidance on the requirements.

The arrangements to support the compliance with the testing order have improved considerably since the first phase of the review. These improvements reflect the attention to, and the greater maturity in, the various processes that operate to support compliance. However, the rollout of saliva testing has been slow and the uptake lower than expected. This provides lessons for understanding the barriers to, and the change management required to increase the adoption of different testing technologies and approaches. There is a level of testing fatigue in the border workforce.

The compliance monitoring and enforcement processes introduced from late April 2021 have been effective in supporting increasing compliance with the testing order. These processes have been extended to the vaccination order. However, an area of ongoing weakness in the system is the level of assurance that all border workers who should be tested and vaccinated are recorded and recorded accurately in the border workforce testing register (BWTR) maintained by the Ministry of Health. More work is needed to further develop the compliance and assurance approach to increase the confidence in this aspect of the system.

The demanding and fast-paced nature of the COVID-19 response environment continues to be a challenging context for all involved. The review has highlighted some overarching themes. They relate to sector engagement and communication processes, cross-agency working, and policy makers' understanding of the operational environment in which public health measures are implemented.

Key findings

The vaccination arrangements

- Effective and close collaboration on the ground between the PCBUs and district health boards (DHBs) to educate affected workers and provide easy access to vaccinations such as on-site clinics was key to achieving high vaccination rates. In some parts of the country, this was done well. In a few, it proved challenging.
- Vaccine supply was a constraint at the outset of the rollout which presented some barriers to the uptake. Border workers and the people they lived with were in Group 1 of the national vaccination programme (a much bigger group than those in scope of

the vaccinations order). The guidance for Group 1 status was not sufficiently clear. Some DHBs adopted a strict interpretation, others took a broader view.

- The different approaches taken by the DHBs to the vaccination rollout was particularly challenging for PCBUs that operate nationally. For these PCBUs, having one point of contact to deal with the DHBs would have been far more effective in supporting the vaccination rollout. Going forward, differentiated, needs-based assistance models would be beneficial.
- The government cross-agency programme implementation team's emphasis on engagement and education of the PCBUs and their workers was well-received. The direct access to medical experts, and good support from unions and leaders in the workforces often proved instrumental in overcoming vaccine hesitancy.
- Many PCBUs were concerned about potentially losing valuable staff who did not want to be vaccinated. They were also concerned about the legal implications of implementing the vaccinations order. Guidance was provided but viewed as coming too late in the process. PCBUs are looking for earlier and more active support from government to help provide more certainty and to navigate a complex and rapidly moving new area of the law.
- Ministry of Health guidance was provided on some grey areas in the orders, such as what is meant by 'on and around a ship' and clarifying what is considered a 'layover'. The issues took far too long to be resolved. The updated guidance was issued in mid and late September 2021. Many PCBUs were frustrated by the delays in the guidance, and the lack of sufficient understanding of policy makers about how the requirements could be operationally implemented. The timing was particularly difficult because of the employment processes they were working through with their staff.
- For many PCBUs, the public health risk assessment underpinning the workers considered in scope of the vaccination order and those who were not was not clear or coherent. This was particularly so where staff shared common work areas and interacted with each other. The rationale for the policy settings in the order did not align with the public health messages about the increased transmissibility of the Delta variant and importance of vaccinations. They found it difficult to explain the rationale to staff. Going forward, clear and simple communication about the risk-based reasons for the policy settings is needed.

The testing arrangements

- PCBUs have different approaches to the processes they use to maintain records of about those workers who need to be tested and how they use the BWTR. For some, the record-keeping relies on workers self-reporting that an interaction with a person or a certain work activity has taken place that triggers the testing requirement. Others do not upload full attendance records in the BWTR but only the records necessary to trigger the testing requirements. Better guidance is needed about the expectations for PCBU record-keeping, which is reinforced through compliance monitoring and assurance processes.
- The roll-out for saliva testing was slow. The initial prototype was considered to be poorly designed as it required both nasopharyngeal and saliva testing. The infrastructure to support the roll-out lagged the availability of the option. Many PCBUs appreciated the availability of the option. However, the uptake of saliva testing has been lower than expected. Technology, language, and the need to take more frequent tests are some of the barriers that were cited. The rollout offers lessons for the future rollout of different testing technologies and approaches.
- Several PCBUs reported testing fatigue in their workforces. They are concerned about the retention and recruitment of staff in a tight labour market. Earlier advice about future approaches to testing would be welcomed.
- Improvements made to testing processes such as the introduction of e-ordering in the collection of samples in some areas has improved the time-lag in reporting compliance. However the compliance reporting is still not real-time because of data matching and other issues.

Common findings

- The compliance monitoring and enforcement processes that have been operating since late April 2021 provide a greater level of confidence that workers are being tested. The compliance framework and processes have been extended to incorporate vaccination compliance. Further development of the compliance and enforcement approach should be considered to provide assurance about PCBU record-keeping and other responsibilities.
- Ongoing work is required to gain more assurance about the completeness and accuracy of the information captured in the BWTR about those workers in scope of

both orders. It will be particularly important to maintain a strong education and awareness programme to identify the contractors and sub-contractors who do not routinely operate at the border.

- The BWTR is generally seen as a good tool to support the visibility and assurance about testing and vaccination compliance. Data quality has improved but issues remain and continue to adversely impact the accuracy of reporting about testing and vaccination compliance. The issues are being worked on. The functionality continues to develop but typically lags the introduction of new requirements. Fundamental changes were needed for recording saliva testing and vaccination. The suitability of the BWTR for future developments in testing technologies and approaches will need to be considered.
- The two cross-agency senior officials groups that support the implementation and operation of the testing and vaccination requirements were viewed to, for the most part, work well. The testing group operated with a formal terms of reference but the vaccination one did not. Both groups are largely coordination and information sharing groups, with decision-making ultimately resting with individual agencies and their ministers. This can cause challenges with effective working together. Central guidance on the set-up and operation of these cross-agency groups would be beneficial.

Overarching themes

- Private sector organisations are seeking greater trust, and open, early and timely communication and collaboration with government agencies. The level of transparency in the provision of information and the lack of speed in decision-making processes have caused concern.
- Sector and industry forums set up by the Ministry of Transport and Maritime New Zealand are well-received. They provide a good basis for effective working together. Access to the right officials to progress and resolve issues with certainty and speed are central to the success of these forums.
- The insufficient understanding of health policy makers of the operational environment at the border, coupled with their perceived unwillingness to properly consult, have hampered collaboration efforts. The sentiment was best summed up by an industry representative as ‘an unfortunate mix of ignorance and arrogance’.

- Clear, concise and timely information is vital to support the effective implementation of requirements. PCBUs expressed significant difficulty dealing with the multiple guidance they receive, the various sources of information and the frequent changes. More thought needs to be given to how government agencies disseminate information to effectively support compliance.
- With the ongoing COVID-19 community outbreak, the recent move away from the elimination strategy and increasing rates of vaccination, many PCBUs are re-evaluating the changing risk profile. For them, the greater COVID-19 threat currently lies in the community outbreak. They are introducing controls to minimise the risk of disruption of business operations and supply chains. Some PCBUs wanted government mandates for 'proof of vaccination' physical site access controls. More generally, PCBUs are looking for early and clear advice and support from government about future border and national scenarios to allow them to plan with greater certainty.

Recommendations

The recommendations arising from the review are set out below. Suggested owners (lead agencies or groups) for the recommendations are noted in square brackets at the end of each recommendation.

The recommendations are categorised into two areas. The first relates to opportunities for further improvement to the testing and vaccination arrangements in line with the continuous improvement approach taken to the COVID-19 response. The second relates to opportunities for system-wide enhancements.

The recommendations were issued at the time of the draft report on 26 October 2021. It is recognised that the fast-moving and changing context for the pandemic response with recent significant changes in the public health settings may mean that some recommendations could be affected by or overtaken by events. As appropriate, this should be taken into consideration in the response to the recommendations.

Testing and vaccination arrangements

1. Capture the lessons learned from those involved in the border worker vaccination programme to share with those involved in the rollout of the other mandatory vaccination programmes. [Border Executive Board]
2. Review and update the guidance on border workforce testing and vaccination. In particular:
 - Rationalise the guidance and make it consistent between testing and vaccination. For example, add the guidance on what is meant by 'on and around a ship' to the testing guidance.
 - Make the guidance simpler, clearer and user-focused. The 'why' should be explained i.e. the risk-based reasons for policy settings.
 - Implement consistent and clear protocols for document management. The key changes made to documents should be clearly highlighted.
 - Where information is sent to the border sector, agree the channels of communication, the database and key points of contact to be used, with the aim of reducing the multiplicity of emails and messages that are sent out.[Border Workforce Senior Officials Group]

3. Review processes to ensure that where amendments to testing and vaccination orders are issued the related guidance is published at the same time or soon after. [Border Workforce Senior Officials Group]
4. Continue to work with PCBUs operating at the border to identify sources of information to find workers and PCBUs who are not recorded in the BWTR but should be. For example, physical site records, contractor databases, etc. Maintain a strong education and awareness raising amongst PCBUs to ensure that the orders and their requirements are well-publicised. [Border Workforce Senior Officials Group]
5. Further develop the testing and vaccination monitoring and compliance framework to provide greater confidence in the appropriateness of the record-keeping systems and processes PCBUs use to meet their obligations under the orders. [Border Workforce Senior Officials Group]
6. Complete the work underway to make further improvements to the BWTR. Review processes to find ways to reduce the lag between new requirements being introduced and the functionality of the BWTR to support the implementation of the requirements. Carry out work to determine the suitability of the BWTR for likely future developments in testing technologies and approaches. [Border Workforce Senior Officials Group]

System-wide enhancements

7. Review the operations of border sector and industry forums to find practical ways in which they can be improved. This could be achieved through structured debriefs with members of these forums. Work to provide early and timely advice through these forums about likely future border settings and changes to requirements [Ministry of Transport and Maritime New Zealand]
8. Review policy setting processes to identify strategies and structured ways to further improve the knowledge and understanding of the operational environment. For example, this could include information gathering processes that incorporate site visits, discussions with the appropriate personnel, user group testing, etc., as relevant. [Ministry of Health]

9. Carry out work to identify the centrally-issued guidance that would be useful to support cross-agency groups. For example, guidance on the different purposes for which they can be set up, appropriate membership, recommended operating processes and practices, and templates. Develop and provide the guidance. [Te Kawa Mataaho Public Service Commission]

Context and background

This part of the report sets out some context and background about the border worker testing and vaccination requirements and arrangements relevant to the review.

It also sets out the purpose, scope and approach to the review.

The testing order

The testing order came into effect in August 2020 and required one-off testing of higher risk workers at MIQ, Ports of Tauranga and Auckland and Auckland International Airport.

There has been a number of amendments to the testing order since then. Regular surveillance testing was introduced in September 2020 for all affected border workers at airports and ports (on either a 7 day or 14 day schedule as specified in the testing order).

The November 2020 amendment made a number of key changes, including new duties for PCBUs to facilitate the compliance of affected persons with testing requirements and keep records of compliance, and new duties for workers to provide certain information to PCBUs.

The 11 August 2021 amendment allows affected border workers to choose recurring saliva testing as an alternative to the nasopharyngeal testing (or oropharyngeal with bilateral anterior nares testing where used).

The vaccinations order

The vaccination order came into effect on 1 May 2021. It requires that certain type of work be undertaken only by vaccinated people because they risk being exposed to and infected by COVID-19 in the course of their work activities. It initially only applied to a limited group of border workers and government officials working at the border or MIQF.

In July 2021, the vaccinations order was broadened to cover most border workers who work at affected airports and ports.

Service workers⁷ were required to have had their first dose of the Pfizer/BioNTech COVID-19 vaccine before 26 August 2021, and privately employed workers by 30 September 2021. All affected workers are required to have their second injection no more than 35 days after their first.

Whilst the definitions of the 'affected person' in scope of the testing and vaccination orders are similar, a key difference is that under the vaccination order it includes people whose work 'could cause them to be part of that group'. In other words it is anticipatory in nature.

A snapshot of compliance

TABLE 1: ACTIVE AND INACTIVE BORDER WORKERS (EXCLUDING MIQF)

Month	Active workers	Inactive border workers	Total workers
June 2021	6,310	7,274	13,584
July 2021	7,057	7,756	14,813
August 2021	6,913	9,137	16,050
September 2021	9,083	9,418	18,501
October 2021	7,264	14,582	21,846

TABLE 2: AVERAGE TESTING COMPLIANCE FOR THE LAST FIVE MONTHS:

Testing compliance rates	20-Oct-21	22-Sep-21	25-Aug-21	28-Jul-21	30-Jun-21
All active workers	94%	96%	93%	88%	81%
Active workers at the aviation and maritime borders	94%	96%	93%	89%	81%

⁷ 'Service worker' as defined in the vaccination order as a person who carries out work for or on behalf of the State Services and Defence Force (also defined in the order).

TABLE 3: VACCINATION RATES FOR THE LAST FIVE MONTHS (AT THE END OF MONTH)

Vaccination rates for all active workers	20-Oct-21	22-Sep-21	25-Aug-21	28-Jul-21	30-Jun-21
No dose	0	3%	8%	13%	15%
One dose	2%	6%	5%	3%	2%
Two doses	98%	91%	87%	84%	83%

The main parties involved in the arrangements

The roles and responsibilities of the main parties involved in the testing and vaccination arrangements for the second phase of the review are outlined in Table 4.

TABLE 4: THE MAIN PARTIES INVOLVED IN THE ARRANGEMENTS

Name	Role and responsibilities
Ministry of Health	<ul style="list-style-type: none"> Develop COVID-19 related policy and advice. Oversee the rollout of testing options such as saliva testing, and support vaccination services. Keep, maintain and monitor the BWTR and provide PCBUs with access to it. Monitor and follow-up non-compliance of PCBUs and workers with the testing and vaccination orders. Work with other relevant agencies in doing so. Certain Ministry of Health staff are authorised under the COVID-19 Public Health Response Act 2020 to carry out the functions and powers of an enforcement officer for individual workers.
District Health Boards	<ul style="list-style-type: none"> Provide testing and vaccination services to border workers.
WorkSafe	<ul style="list-style-type: none"> New Zealand's primary workplace health and safety regulator. Certain WorkSafe staff are authorised under the COVID-19 Public Health Response Act 2020 to carry out the functions and powers of an enforcement officer for PCBUs regulated by WorkSafe.
Ministry of Transport	<ul style="list-style-type: none"> The government system lead on transport, and steward of the transport regulatory system.

Name	Role and responsibilities
	<ul style="list-style-type: none"> • Manages the supply chain exemption⁸ process for the vaccinations order. • Provides COVID-19 guidance to the aviation sector.
Maritime New Zealand	<ul style="list-style-type: none"> • National regulatory, compliance and response agency for the safety, security and environmental protection of coastal and inland waterways. • Workplace health and safety regulator for ships as places of work and work on board ships. • Provides COVID-19 health and safety guidance for maritime stakeholders.
PCBUs	<p>Testing order</p> <ul style="list-style-type: none"> • Keep records in the BWTR of their workers who must be tested. • Notify workers they must be tested and the required frequency. • Must not prevent their workers being tested during work hours, if testing is available during those hours. • Make their records in the BWTR available as soon as practicable to an enforcement officer who requests access. <p>Vaccination order</p> <ul style="list-style-type: none"> • Must assess if a worker is an 'affected person' for the purpose of the vaccination order. Affected workers cannot undertake certain roles if not vaccinated. • Notify, educate and support affected workers of their responsibility to get vaccinated.
Border workers	<ul style="list-style-type: none"> • Provide their PCBU with the specified information that will enable them to meet the duties of a PCBU. • Present themselves for testing every 7 or 14 days as applicable • Must get vaccinated if required by the vaccination order or not continue carrying the type of work that requires them to be vaccinated.

⁸ The vaccinations order allows PCBUs to apply for a supply chain exemption for a named worker. The PCBU must tell the worker of that application in writing. The Minister for COVID-19 Response (the Minister) decides if an exemption should be granted.

Purpose, scope and approach to the review

Purpose

The purpose of the review was to assess the high-level arrangements at the maritime and aviation borders to support compliance with the testing order and the Vaccinations Order, and to make recommendations for improvement.

The key questions for the second phase of the review were two-fold:

- Are the workers who are required to be tested, being tested?
- Are the workers who are required to be vaccinated if they carry out certain work, being vaccinated?

Scope

The review focused on the sufficiency of the high level arrangements to answer the key questions of the review. The particular areas in scope of the second phase of the review were:

- The arrangements for routine testing under the testing order at the maritime and aviation borders.
- The arrangements to plan and implement the requirements of the vaccination order at the maritime and aviation borders. The focus was on compliance with the vaccinations order by privately employed border workers. This is because most government employees had been vaccinated when the review was undertaken.

The review included the consideration of:

- accountabilities under the testing order and vaccinations order
- information, education and access
- technology systems (but not the system controls)
- data capture, use and access, and reporting for the relevant PCBUs
- monitoring, assurance and enforcement.

Out of scope

The following was out of scope of the review:

- individual organisations' compliance with the testing order, vaccinations order and the Health & Safety at Work Act 2015.
- the national vaccination programme.

Approach

The approach to the review was aimed at understanding and assessing the arrangements to support compliance with the testing and vaccination orders. The approach involved:

- Gathering, reviewing and analysing relevant documentation on the arrangements from the various government agencies involved.
- Interviewing various people from the government agencies involved in supporting compliance with the orders.
- Interviewing a cross-section of PCBUs to gain their perspectives on the arrangements. Mainly private sector PCBUs were interviewed given that was the focus of the review. In total, 15 PCBUs were interviewed.
- Progress meetings with the primary contact for the review.
- Providing a verbal update on the vaccination aspect of the review to the BEB on 29 September 2021.
- Providing real-time feedback to the vaccination implementation team as the review progressed to enable appropriate action to be taken, as needed.
- Preparing and issuing the draft report for feedback and comment from government agencies on 26 October 2021.
- Considering the feedback provided, and issuing the final draft report to the BEB on 12 November 2021.
- Issuing the final report on 9 December 2021.

The review was carried out with the assistance of the Principal Advisor, Assurance from Customs' Risk, Security and Assurance team.

The timeframes for the review were impacted by the Auckland community outbreak in August 2021 and lockdowns.

The terms of reference for the review are in appendix one. The organisations interviewed for the review are listed in appendix two.

Detailed findings and observations

The key questions for the review were:

- Are the workers who are required to be tested, being tested?
- Are the workers who are required to be vaccinated if they carry out certain work, being vaccinated?

The detailed findings and observations on these key questions and the arrangements to support compliance with the vaccination and testing orders are set out below. There were findings specific to testing and vaccination and some common findings across both requirements.

Some overarching themes also emerged from the review. These are discussed on page 29.

Findings - vaccination arrangements

Senior officials group

A cross-agency senior officials group (the vaccination SOG) was established in early July 2021 to oversee the implementation of the July 2021 amendment to the vaccinations order (the vaccination implementation programme).

By 30 September 2021, 95% of active aviation workers and 81% of active maritime workers were fully vaccinated, with a further 15% of these maritime workers receiving one dose. This is a good outcome, noting that the above data is for a sub-section of workers covered by the vaccination order.

A deliberate decision was taken to have a separate vaccination SOG separate from the testing SOG, given the significance of the programme.

The vaccination SOG was chaired by a representative of the BEB and included representatives from the Ministry of Health, Ministry of Transport, Ministry of Business, Innovation and Employment (MBIE), the Department of the Prime Minister and Cabinet (DPMC), Te Kawa Mataaho Public Service Commission (PSC), Maritime NZ, Civil Aviation Authority and the Ministry of Social Development (MSD).

The key focus areas of the vaccination implementation programme were stakeholder engagement and communication, the operational delivery of vaccinations, the development of policy and guidance material and the monitoring and compliance approach.

The vaccination SOG did not have formal terms of reference. The review was told it took an intentionally 'light' programme approach because of the need for speed and flexibility. A high-level draft programme plan was developed which was not finalised. Agendas and action logs from meetings were maintained but there were no minutes. There was good and regular reporting to the BEB and the Minister for COVID-Response on the progress with the implementation.

There were some challenges experienced with resourcing but members of the SOG felt that it largely worked well and cohesively to achieve positive outcomes in a fast-moving environment. Access to online collaboration tools such as MS Teams were considered a key enabler for effective and efficient programme management.

A key challenge experienced was in producing clear and timely guidance for the sector on some matters (discussed on page 21). This matter was on the action log since late July till the guidance was issued in mid-September 2021, with frequent slippage in due dates. It is not clear to what extent tighter programme disciplines would have assisted in achieving earlier dates.

The general challenges experienced with cross-agency working came up as an overarching theme across both the testing and vaccination SOGs and is discussed further on page 31.

Who is required to be vaccinated?

Affected persons under the vaccination order

Whilst the definitions of an 'affected person' in scope of the testing and the vaccination order are similar, there are some key differences between the two orders. Under the vaccination order, people are required to be vaccinated if they may, in future, be required to undertake certain types of work. Additionally, people in scope of the vaccinations order are not allowed to carry out work until they have received the first vaccine dose (after completion of the transition period of the order).

Early in the vaccination implementation programme, it was identified that further policy guidance was needed on some 'grey areas' in the vaccination order, in particular what was meant by 'on and around a ship'. Whilst the language was similar to the

testing order, the nature of the medical procedure and the consequences for non-compliance with the requirements i.e. the 'no jab, no job' scenario were vastly different under the vaccination order. Issues also needed to be clarified regarding the definition of layovers.

The guidance on these matters took far too long to be resolved. The guidance for the maritime border was issued on 17 September 2021 and the clarification regarding layovers on 29 September 2021. These delays were a source of significant frustration for PCBUs, as was the lack of understanding of policy makers about how the requirements could be operationally implemented. At the time many PCBUs were working through sometimes fraught employment processes with their staff.

For many PCBUs, the public health risk assessment underpinning workers who were in scope of the vaccination order and those who were not was not clear. This was particularly so where staff shared common work areas and interacted with each other. The rationale did not align with the public health messages about the increased transmissibility of the Delta variant. They found it difficult to explain the rationale to staff. Clear and simple communication about the risk-based reasons for policy settings is needed to support compliance.

There are differences in how PCBUs have interpreted the vaccination order. Some of these differences arise from the operational settings at the maritime and aviation borders, and workforce operating models. However it is likely there are inconsistencies in the interpretation.

A number of PCBUs expressed a preference for a broader interpretation given the public health and health and safety benefits from being vaccinated. At the time of fieldwork of the review, a few PCBUs were in the process of implementing a mandatory vaccination policy for the rest of their workforce based on a health and safety risk assessment. Other PCBUs were concerned about the implications of a wide definition on their business and the potential loss of valuable staff.

The completeness and accuracy of the information about affected persons

Good work has been undertaken to improve the completeness and accuracy of information held about affected persons in the BWTR. Ongoing work will be required to gain more assurance.

Efforts were made as part of the vaccination programme to reach out to PCBUs and workers who may be in scope of the vaccination order but who were not in the BWTR. For example, work was done to follow-up with people who received vaccinations as

Group 1 priority under the national vaccination programme but who were not in the BWTR.

Work has also been done to remove people from the BWTR who are not affected persons. Some PCBUs intentionally put workers not in scope of the vaccination order in the BWTR for a variety of reasons. These included getting priority access to vaccinations for their staff, being able to see their staff's vaccination status and to manage work rosters.

A number of new PCBUs have been added to the BWTR in recent months. This includes some national response organisations who may be called out to carry out the work in places in scope of the vaccination order.

A particular area of ongoing risk are the contractors and sub-contractors who may be in scope of the vaccination order but do not routinely operate at the border. From experience, they are less likely to know or understand their responsibilities. Maritime NZ has compiled a list of 400 possible contractors who from time to time may board ships. It will be particularly important to maintain a strong education and awareness programme about the legal requirements and to develop sustainable and effective strategies to identify ongoing changes to the border workforce.

The work that has been undertaken will also have helped to improve the accuracy of the information held about affected persons under the testing order. It highlights the challenges that officials have faced in building a complete and accurate picture of border workers under the two orders.

Are they being vaccinated?

The operational delivery of vaccinations

The review heard about a number of examples of effective and close collaboration on the ground between the PCBUs, unions and DHBs to educate affected workers and provide easy access to vaccinations. On-site clinics and a tailored approach to fit with worker shift patterns were often key to achieving high vaccination rates. The vaccination programme implementation team's assistance in facilitating this process was well-received.

Direct access to medical experts, and good support from unions and leaders in the workforces often proved instrumental in overcoming vaccine hesitancy.

There are excellent case studies where a clear focus on overall outcomes and true collaboration in problem-solving were the drivers of success. In one example, an emphasis on ‘what can we do to get everyone vaccinated’ rather than ‘we have provided access to vaccines for border workers’ allowed different thinking to emerge about the barriers to workers getting vaccinated and addressing them.

Not everything went well. Vaccine supply was a constraint at the outset of the rollout which presented some barriers to the uptake. The guidance for Group 1 status was not sufficiently clear. Some DHBs adopted a strict interpretation, others took a broader view. Some DHBs felt uncomfortable about being the ‘gate-keepers’ of who should be vaccinated. These inconsistencies led to some unusual and undesirable situations. For example, where border workers in one part of the country travelled to another region to get vaccinations.

The different approaches taken by the DHBs to the vaccination rollout was particularly evident to and very challenging for PCBUs that operate nationally. For these PCBUs, having one point of contact to deal with the DHBs would have been far more effective in supporting the vaccination rollout. Better strategies for future rollouts will be beneficial. For example, developing differentiated, needs-based centralised assistance models.

A number of PCBUs asked about the availability of booster shots. Early and effective planning should be undertaken for this rollout. The knowledge and relationships built through the vaccination implementation programme provide a sound base for the booster shot rollout.

The issue about whether Pfizer and other vaccines administered overseas would be recognised for work at the border was identified in the vaccination SOG action log in July 2021. However, it did not get resolved until the vaccination order was amended in October 2021.

Guidance and support for dealing with employment matters

Many PCBUs were concerned about potentially losing valuable staff who did not want to be vaccinated. PCBUs were advised that MSD support was available to support impacted workers to look for and prepare for other work. A few PCBUs noted that it was difficult to pass on this information without raising possible concern that they had pre-determined the outcome of an employment process.

PCBUs were also concerned about the legal issues arising from implementing the order. Guidance was provided but viewed as coming too late in the process. PCBUs were

looking for earlier and more active support from government to help navigate a complex and rapidly moving new area of the law.

Findings - testing arrangements

Senior officials group

The Border Workforce Senior Officials Group (BWSOG) is the cross-agency group with the responsibility to maintain oversight for the implementation of the testing order. Its overall responsibility is to maintain a governance focus for the design of services, the coordination of communication across organisations and the implementation of amendments to the testing order.

It is chaired by the COVID-19 Directorate Testing and Supply Group Manager at the Ministry of Health. The membership includes representatives from the other Ministry of Health groups (COVID-19 Testing & Supply, Legal, Policy and Border & Managed Isolation), MBIE, Ministry for Primary Industries, NZ Customs, Ministry of Transport, Maritime NZ, WorkSafe and DPMC.

This group was previously called the Border Testing Governance Group. The operation of this group was discussed in the report on the first phase of this review, with recommendations made to ensure that it had a clear mandate. Since then a formal terms of reference has been put in place.

The group is largely seen as providing a mechanism for cross-agency engagement and communication. There were mixed views about whether it worked well. Some found it an effective mechanism for coordination. Other comments were that it is largely an operationally focused group. The fast moving environment and tight timeframes put pressure on papers being available sufficiently early for proper engagement.

Who should be tested?

Affected persons under the vaccination order

There have been no particular challenges about interpreting the requirements of the testing order about who should be tested. Some PCBUs have interpreted the testing order more widely than is required so that their workers are tested. Generally, if people are not in scope of the testing order but want to be tested to provide confidence in the infection prevention controls, they are encouraged to do so.

As noted earlier, concerns about the meaning of some 'grey areas' in the same language used in the testing order and vaccination order have only arisen during the implementation of the vaccination order. The main reasons are attributed to the different nature of the medical requirement and the consequences if a worker does not want to be vaccinated. There are also differences in the accountabilities. The PCBU is responsible for not allowing an affected person to carry out certain work unless they are satisfied that they are vaccinated.

PCBUs take different approaches to the processes they use to maintain records of about those workers who need to be tested and how they use the BWTR. The different approaches mainly stem from the nature of the testing requirements for maritime and aviation border workers, and the differences in the physical working environment, work activities and the workforce operating models. For some, the record-keeping relies on workers self-reporting that an interaction with a person or a certain work activity has taken place that triggers the testing requirement. This is quite different to the MIQF environment which have physical site access controls that produce attendance datasets that are uploaded in the BWTR.

Some PCBUs do not upload full attendance records in the BWTR but only those necessary to trigger the testing requirements.

The expectations about record-keeping for attendance for upload in the BWTR should be clarified, and PCBUs should be educated about these requirements through the monitoring and assurance activities undertaken.

It is recognised that the requirement to regularly upload attendance data is an administrative burden. Easier and more automated ways of enabling this data to be uploaded have been investigated but have not been possible to implement.

Are they being tested?

Operational delivery of testing

The processes to ensure border workers have easy access to testing are now more mature and well-embedded. However, there are some sites where access to testing is an issue.

Improvements made to testing processes such as the introduction of e-ordering in some areas has improved the time-lag in reporting compliance. However the compliance reporting is still not real-time because of data matching and other issues.

The provision of saliva testing as an option was welcomed and considered long-overdue.

The rollout of saliva testing has been slow. The Ministry of Health only became confident in using it as an option in April 2021 with work starting then to begin preparing to roll it out to relevant border workers as an additional testing option.

The initial prototype requirement for saliva testing was considered to be poorly designed as it also required workers to continue with nasopharyngeal swab tests. Incompatibility with complex shift patterns was also an issue. Changes to the prototype were made. The phased rollout of saliva testing started on 11 August 2021.

The Ministry of Health undertook a structured engagement and communication process for the roll-out. The face-to-face engagement and guidance and support provided was appreciated.

The uptake of saliva testing has been lower than expected. The infrastructure to support the roll-out lagged the availability of the option and may have affected the uptake. Other common reasons provided for the low uptake were technology and language barriers and the administrative burden of needing to take tests more frequently. Saliva tests have to be taken twice every 7 days with 2 days in between, so for a person on a 14-day testing cycle, it requires four tests rather than one.

The experience to date has emphasised the need to make it really easy to comply – even a 12 minute walk to drop off the saliva sample is a barrier for some workers. The adoption of saliva testing is seen as a ‘slow-burn’ change management exercise as people have become accustomed to the routine of the seven or 14-day testing cycle.

A few PCBUs have not advised their staff of this option for their own convenience and have been advised that that they have a legal obligation to do so.

The rollout offers useful lessons for future rollout of different testing technologies and approaches.

Testing fatigue

Several PCBUs reported testing fatigue in their workforces. They are concerned about the retention and recruitment of staff in a tight labour market. Early advice about future approaches to testing would be welcome.

Common findings

Monitoring and compliance

The compliance monitoring and enforcement processes that have been operating since late April 2021 provide a greater level of confidence that workers are being tested and supporting increasing compliance with the testing order.

A monitoring and compliance framework was established in early May 2021 that outlines what action is taken, when, and by whom. The framework has recently been updated for monitoring compliance with the vaccination order.

Contact is regularly made with PCBUs and most frequently those with significant numbers of workers notably overdue for testing to correct information held and/or support compliance. PCBUs are referred to WorkSafe for follow-up as needed.

The team has progressively worked more directly with individual workers providing education and support. An 'escalation pathway' has been in operation to address persistent non-compliance by workers. This involves the issue of directive letters from a Ministry of Health enforcement officer. An infringement notice is issued if the non-compliance continues.

With regard to the vaccination order, the BWTR now has functionality to highlight active workers who are non-compliant for follow-up. Assurances were gained from PCBUs they would not have unvaccinated staff in scope of the vaccinations order working with effect from 1 October 2021. Going forward, a risk-based and proportionate response to non-compliance has been agreed between WorkSafe and the Ministry of Health.

The main sources of information used for potential non-compliance are the BWTR, the COVID-19 Immunisation Register (CIR), and notifications from unions, PCBUs and members of the public.

An area of ongoing weakness in the system is the level of assurance that all workers who should be tested and vaccinated are recorded and recorded accurately in the BWTR. This is particularly the case at the maritime and aviation borders where the nature of the public health requirements and the physical operations do not allow for level of physical site access controls that operate at MIQF.

Many PCBUs reported that the testing processes are now mature and integrated into their business-as-usual systems and processes. As noted earlier, there are a variety of

approaches taken by PCBUs in maintaining attendance records and uploading attendance in the BWTR. Better guidance is needed about the systems and processes PCBUs are expected to use to support accurate record-keeping.

Thought should be given to further developing the compliance and assurance approach to gain more confidence in the appropriateness of the record-keeping systems and processes that PCBUs use to meet their obligations under the orders. For example, the use of other assurance tools such as information requests, risk-based site visits and audits.

Border workforce testing register

The BWTR is generally seen as a good tool to provide visibility and assurance about testing and vaccination compliance, albeit with an administrative burden because of its functionality and data quality issues.

Many PCBUs commented on the proactive engagement and support they receive from the BWTR team in the Ministry of Health. They are seen as responsive and easy to work with.

The functionality has continued to develop to support new requirements and processes, but there is typically a lag before the functionality is fit for purpose.

Comments were made that the BWTR was never designed as a reporting tool. It was designed for testing and specifically for nasopharyngeal swabs. Significant work has been required to configure and make it fit for purpose for vaccinations and saliva testing. There is still a level of concern as to whether the BWTR will be fit for purpose for future border settings.

The data quality issues arise for a range of reasons including human error at the point of data entry, data matching issues from duplicate NHI numbers. Manual workarounds occur to align the information in the BWTR and the CIR. These issues impact the accuracy and real-time nature of the compliance reporting.

The BWTR is a critical platform in supporting the border controls. It will be important to ensure that appropriate contingency and business continuity plans are in place, should the system go down.

Overarching themes

Sector communication and engagement

Private sector organisations are seeking greater trust, and open, early and timely communication and collaboration with government agencies. They are looking for early and clear advice and support from government about future border and national scenarios to allow them to plan with greater certainty.

The level of transparency and the lack of speed in the government information provision and decision-making processes are of concern.

Communication channels and forums

Consistently positive feedback was received about the sector and industry forums run by the Ministry of Transport and Maritime New Zealand to collaborate, share information, identify and resolve issues. Access to senior officials when required was also seen as a significant benefit.

Having said this, the private sector is looking for more timely and effective results from some of these forums. The right officials from the relevant agencies with decision-making ability need to attend. Also, the consultation through these forums should be meaningful. A number of people interviewed expressed concern that in some situations the consultation was token in nature and it was patently clear that feedback would not be taken on board 'they were here to consult but were not interested in changing their mind'.

There is a level of 'talking to government' fatigue. This is perhaps unsurprising given the importance of border controls in New Zealand's COVID-19 response, and therefore the focus from and interaction with government on these matters. Some of this fatigue also stems from the lack of operational understanding discussed on page 30.

More effective ways need to be found to support government officials arranging and attending these forums.

Information and guidance material

Clear, concise and timely information is vital to support the effective implementation of legislation and other requirements.

There is a multiplicity of guidance material about border worker testing and vaccination available on a number of government websites. These include COVID-19.govt.nz, the Ministry of Health, Employment New Zealand, WorkSafe, Maritime NZ, and Ministry of Transport websites.

In addition PCBUs receive a lot of information through emails and newsletters. PCBUs expressed significant difficulty dealing with the multiple guidance they receive, the frequent changes and the dense nature of the guidance. Some PCBUs do not receive information from government agencies directly and have to rely on the lead PCBU at their site for the information. Others are sometimes omitted from email distribution groups. More thought needs to be given to how government agencies disseminate information to effectively support compliance.

Shorter, simpler and more visual guidance with clearer messaging of 'what is important and why' and 'what has changed' with access to previous versions of the guidance are some of the enhancements that people interviewed are looking for.

Work should be undertaken to look at how the border worker testing and vaccination guidance can be rationalised and made more consistent. For example the guidance on testing does not as yet include the clarifications provided about 'on and around a ship' in the vaccinations guidance.

Knowledge and understanding of the operational environment

A sound knowledge and understanding of the operational environment is key to developing fit for purpose public health policy, legislation and guidance.

It is clear that the operational knowledge of policy makers of border operations has improved over the course of the pandemic. This is particularly the case in the maritime border environment which is viewed as starting from a much lower base than the aviation border.

However, the lack of sufficient knowledge of health policy makers of the operational environment and/or a willingness to understand was often raised as a key challenge and a source of significant frustration. This is not a new theme. It has arisen in other reviews.

This has led to some fatigue amongst those attempting to provide the operational perspective - 'we spend the first 20 minutes of every meeting explaining the operations'. Frequent changes in staff in meetings and forums exacerbate this issue.

Better strategies and structures need to be found to equip staff to obtain this operational understanding. For example, briefing sessions with people with right operational expertise, site visits, etc.

Cross-agency working

There is an array of cross-agency working arrangements operating to support the COVID-19 response.

The two senior officials groups overseeing the testing and vaccination arrangements are largely consultation, coordination and information sharing groups to support the implementation and operation of legislative requirements. Decision-making ultimately rests with individual agencies and their ministers. This can cause challenges with effectively working together, particularly when views expressed are not perceived to be 'heard'. This issue was reported to be exacerbated when the membership of these groups is not appropriately balanced.

There does not appear to be any central guidance to support the set-up and operation of these cross-agency groups. This is unlike the wealth of information that supports the programmes and projects operating under the purview of the government's investment management system led by the Treasury.

The COVID-19 response started as a crisis response, but 19 months into the pandemic, a more sustainable future operating model is being built. In this context, it would be beneficial to have centrally issued, structured and practical guidance on the set-up and operation of cross-agency groups. This would enable a more effective, efficient and consistent approach.

Limitations and disclaimer

This report was prepared solely in accordance with the terms of reference for this engagement and for no other purpose. We disclaim any responsibility for the use of the work for a different purpose or in a different context.

The report is provided solely for the purpose of assisting the Border Executive Board with advisory services and is not to be used for any other purpose or distributed to any other party without our consent. Other than our responsibility to the Border Executive Board, we undertake no responsibility arising in any way from reliance placed by a third party on our work. Any reliance placed is that party's sole responsibility. Accordingly, we accept or assume no duty, responsibility, or liability to any other party in connection with this report or this engagement.

This report is based on information provided by the Border Executive Board and agencies and/or interviewees made available by it. We have considered and relied on this information. We have assumed that the information provided was reliable, complete, and not misleading.

The work was not performed in accordance with any generally accepted auditing, review or assurance standards in New Zealand and accordingly does not express any form of assurance. None of the advisory services constitute any legal opinion or advice. The work did not involve any form of inquiry to detect fraud or illegal acts.

Appendix one

Terms of Reference

Phase two review of border worker testing and vaccinations – maritime and aviation borders

Purpose

The purpose of the review is to assess the arrangements at the maritime and aviation borders to support compliance with the COVID-19 Public Health Response (Required Testing) Order 2020 (the Required Testing Order) and the COVID-19 Public Health Response (Vaccinations) Order 2021 (the Vaccinations Order).

The key questions for the review are:

- Are the workers who are required to be tested, being tested?
- Are the workers who are required to be vaccinated if they carry out certain work, being vaccinated?

The review will assess the arrangements and make recommendations for any improvements.

Background

The Required Testing Order requires the routine testing of workers for COVID-19 at managed isolation and quarantine facilities (MIQF), and the aviation and maritime borders. The mandatory routine testing requirements have been in place since September 2020.

The second phase of the review is to focus on the arrangements in place for compliance with the Required Testing Order at the maritime and aviation borders.

On 1 May 2021, the Vaccination Order made it mandatory for a narrow group of border workers and government officials working at the border or an MIQ facility to be vaccinated against COVID-19. From 15 July 2021, it also became mandatory for most border workers (maritime and aviation) to be vaccinated. All workers who are required

to be tested for COVID-19 on either a 7-day or 14-day schedule are now also required to be vaccinated before they perform that work.

All government employees are required to have their first vaccination dose by 26 August 2021. Similarly, privately employed border workers are required to have their first dose by 30 September 2021. The second doses are to be administered no later than 35 days after the first dose. After these dates, any new workers covered by the Vaccination Order will need to have their first dose before starting work. This applies to government and private business employees.

The second phase of the review will also look at the planning for and implementation of the requirements of the Vaccination Order at the maritime and aviation borders. This will enable real-time assurance to be provided about the arrangements to support compliance with the Vaccination Order as it is being implemented.

Scope

The review will focus on the sufficiency of the high level arrangements to answer the key questions of the review. The particular areas in scope of the second phase of the review are:

- The arrangements for routine testing under the Required Testing Order at the maritime and aviation borders.
- The arrangements to plan and implement the requirements of the Vaccination Order at the maritime and aviation borders. The focus is on compliance with the Vaccination Order by privately employed border workers. This is because most government employees have been vaccinated.

The review will build on the work undertaken in the first phase of the review. It will include the consideration of:

- accountabilities under the Required Testing Order and Vaccinations Order
- information, education and access
- technology systems (but not the system controls)
- data capture, use and access, and reporting for the relevant PCBUs⁹

⁹ A 'relevant PCBU' is defined in the testing order as 'the PCBU (within the meaning of section 17 of the Health and Safety at Work Act 2015) who employs or engages the affected person to carry out work for the PCBU'. A 'relevant PCBU' is defined under the vaccinations order as "the PCBU (within the meaning of section 17 of the Health and Safety at Work Act 2015) who employs or engages an affected person to carry out certain work'.

- monitoring, assurance and enforcement.

For the purpose of the review, the arrangements include the processes, information and systems that support compliance with the Required Testing Order and the Vaccinations Order.

Out of scope

The following is out of scope of the review:

- Individual organisations' compliance with the Required Testing Order, Vaccinations Order and the Health & Safety at Work Act 2015.
- The national vaccination programme.

Review arrangements

The review is commissioned by the BEB. The reviewer is Wendy Venter, supported by the Principal Advisor, Assurance, New Zealand Customs.

The project sponsors are Christine Stevenson (Chair of the BEB), Dr Ashley Bloomfield (Ministry of Health) and Peter Mersi (Ministry of Transport).

The primary point of contact for the rapid review is Sarah Holland, Deputy Executive Director, BEB.

Approach

The approach to the review is expected to include:

- The review of relevant documentation of the arrangements currently in place, including:
 - The Required Testing Order, Vaccinations Order and other relevant legislation, information and guidance from the Ministry of Health
 - PCBUs worker-facing documentation relating to worker testing and vaccinations
 - Process and system documentation
- Interviews with relevant representatives from:
 - Ministry of Health
 - Maritime New Zealand
 - WorkSafe New Zealand

- Ministry of Transport
- District Health Boards
- Any relevant cross-agency groups
- A selection of PCBUs who employ or engage affected persons who fall within Part 4 of Schedule 2 of the Required Testing Order and Vaccinations Order, such as port companies, airport companies, stevedore companies, port pilots and government agencies who operate at the maritime and aviation borders (particularly for the Required Testing Order)

Points of contact will be established in all relevant agencies to assist with accessing information and arranging interviews.

Timing and deliverables

The review will commence from 2 August 2021. Regular updates will be provided to the BEB on the progress of the work, and any emerging findings, to enable action to be taken.

A draft report for phase two will be provided by 15 September 2021, and a final report incorporating feedback, by 27 September 2021.

Funding

The first phase of the review was funded by the Ministry of Business, Innovation and Employment. Phase two will be funded by the BEB.

Approval of terms of reference

These terms of reference were agreed by the BEB on 29 July 2021.

A revised timeframe of 26 October 2021 was agreed for the issue of the draft report. This was because of the delays experienced from the impact of the COVID-19 community outbreak in New Zealand and the resulting lockdowns.

Appendix two

Interviews

People from the following organisations were interviewed for the review. The number of people interviewed from the organisation is noted in brackets. A separate review of the maritime border measures is also being undertaken. Some of the interviews were for both reviews.

Government agencies

- Border Executive Board (1)
- Ministry of Health (11)
- New Zealand Customs Service (2)
- Ministry of Transport (2)
- Ministry of Business, Innovation and Employment (3)
- Ministry of Primary Industries (3)
- Maritime New Zealand (2)
- Civil Aviation Authority (1)
- Te Kawa Mataaho Public Service Commission (1)
- Nelson Marlborough District Health Board (3)
- Canterbury District Health Board (5)
- Auckland District Health Board (1)

Private sector organisations

- Ports of Auckland (2)
- Port Taranaki (1)
- Eastland Port (2)
- Napier Port (2)

CentrePort (2)

Port Nelson (2)

Lyttelton Port Company (6)

Independent Chair of the Port Company CEO Group (1)

C3 Ltd (2)

Wallace Investments Ltd (4)

SSA NZ Ltd (3)

Independent Stevedoring (2)

Air New Zealand (3)

Auckland International Airport Ltd (1)

Swissport (1)

St John's (1)

Merchant Services Guild (1)

Maritime Union of New Zealand (1)

Rail and Maritime Transport Union (1)

In addition some people from a government agency, a port company, a DHB, a stevedoring company and two unions were given the opportunity to contribute but either declined or no response was received.