



# Report of the Petitions Committee

## Petition of Bob McCoskrie: Allow Rapid Antigen Testing for Unvaccinated Kiwis

September 2022

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Hon Jacqui Dean  
Chairperson

## Petition of Bob McCoskrie

### Recommendation

The Petitions Committee has considered the petition of Bob McCoskrie—Allow Rapid Antigen Testing for Unvaccinated Kiwis—and recommends that the House take note of its report.

### Request for rapid antigen testing in certain circumstances

The petition was presented to the House on 10 February 2022. It requests:

That the House of Representatives allow the use of COVID-19 rapid antigen testing as an alternative way for unvaccinated Kiwis to access workplaces, schools, maraes, large gatherings, places of worship, etc, and note that 87,268 people have signed a petition to this effect.

### Background to the petition

On 30 April 2021, the COVID-19 Public Health Response (Vaccinations) Order 2021 (the vaccinations order) came into force. The vaccinations order required work at specified places to be carried out only by vaccinated persons. The purpose of the order was to prevent and limit the risk of the outbreak or spread of COVID-19.

The order initially required vaccines for border workers and staff at managed isolation and quarantine facilities. It was extended over the following months to include health and disability workers, workers in the education sector, prison workers, and workers at food and drink services, events, close proximity services, and gyms. If a business or workplace was not covered by a government vaccination mandate, an employer could determine for themselves whether they required work be done only by vaccinated workers. During 2022, the order was amended to narrow the types of workers who had to be fully vaccinated against COVID-19. By July 2022, only certain health and disability workers had to be vaccinated. In September, the Government announced that all remaining vaccine mandates would end on 26 September 2022, including for health and disability workers.

The COVID-19 Public Health Response (Specified Work Vaccinations) Order 2021 required personnel to be vaccinated to work in the Defence Force and Police. It came into force on 15 December 2021 but was overturned in the High Court in February 2022.<sup>1</sup>

The COVID-19 Public Health Response (COVID-19 Vaccination Certificate) Order 2021 came into force in late 2021 and required people to show a vaccine certificate for admission to certain places that were considered to be of high risk for COVID-19 transmission. After 4 April 2022, the vaccine pass system ended and vaccine certificates were not required at any venue.

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<sup>1</sup> *Yardley v Minister for Workplace Relations and Safety [2022] NZHC 291 [25 February 2022]*.

## **View that limits to human rights imposed by vaccine mandates were unjustified**

The petitioner considers that the vaccinations order conflicted with several fundamental human rights. One is the right of every person to refuse to undergo any medical treatment as specified in section 11 of the New Zealand Bill of Rights Act 1990. Another is found in Article 23(1) of the Universal Declaration of Human Rights 1948, which states that, “Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.”<sup>2</sup> The petitioner also mentioned Articles 6 to 8 of the International Covenant on Economic, Social and Cultural Rights.<sup>3</sup> He also noted that some workers may have refused the vaccine because of their religious beliefs. He said that this would engage section 15 of the New Zealand Bill of Rights Act, that every person has the right to manifest that person’s religion or belief in worship, observance, practice, or teaching.

Considering the limitations to human rights imposed by the mandates, the petitioner argued that the mandates needed to secure a very high threshold of public good in order to be justified. However, he believes they did not. He made the following submissions:

- The petitioner cited the February 2022 High Court decision that overturned the vaccine requirement for Defence Force and Police personnel. He believed it demonstrated that the vaccinations order unjustifiably limited the human rights of people to refuse medical treatment and exercise their religious beliefs.<sup>4</sup>
- He said that although vaccination is beneficial in reducing the severity of COVID-19, it does not prevent workers contracting or transmitting the disease. This is especially true for later variants of COVID-19, he said.
- The petitioner said that thousands of New Zealanders have lost their jobs, from fruit pickers to university staff, truck drivers, nurses, and cleaners. Loss of employment has had catastrophic effects for families and workplaces.
- We also heard that the vaccine mandates created divisions in society that could be felt in many workplaces, families, and communities.
- As of 9 March 2022, certain nurses with COVID-19 could return to work. The petitioner said that this is not fair to healthy, work-able nurses whose employment was terminated because they were not vaccinated. The petitioner also considers that this policy is not consistent with the vaccinations order’s purpose: to prevent and limit the risk of the outbreak or spread of COVID-19.
- He also said that most New Zealanders do not support an employer being able to terminate an unvaccinated staff member’s employment. Additionally, he submitted that most New Zealanders agree that unvaccinated employees should be able to keep their jobs if they undergo regular testing for COVID-19.

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<sup>2</sup> The UN Declaration of Human Rights is available at <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

<sup>3</sup> The International Covenant on Economic, Social and Cultural Rights is available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

<sup>4</sup> *Yardley v Minister for Workplace Relations and Safety [2022] NZHC 291 [25 February 2022]*.

## **Regular RAT testing as an alternative to vaccination mandates**

Rapid antigen tests (RATs) are currently New Zealand's primary testing tool for COVID-19. RAT results are available quickly—usually in 20 minutes or less. The petitioner submits that people who have left employment or have been refused access to a place because they are unvaccinated should be able to regain their employment or access by showing a negative RAT.

The petitioner submits that this approach would:

- uphold the vaccinations order's intent to prevent and limit the spread of COVID-19
- ensure that New Zealanders can continue to exercise their human rights
- preserve the unity of workplaces, families, and communities.

## **Comments from the Ministry of Health**

The Ministry of Health noted that responding to the COVID-19 pandemic is a shifting landscape. Public health measures, including vaccination requirements, are regularly reviewed in response to a number of factors. These include new variants of COVID-19, pressure on the health system and other sectors, risks to vulnerable populations, and vaccination levels. The reviews aim to ensure that vaccine requirements remain reasonable, justified, and proportionate. Over time, the reviews have amended the vaccinations order by narrowing the groups to which it applies.

## **Limits to human rights imposed by the mandates are justified**

The ministry agreed that the vaccinations order does represent a limitation on human rights. However, the ministry noted that these rights are not absolute and may be subject to reasonable limits.

The ministry acknowledged the February 2022 High Court decision referenced by the petitioner: the overturning of vaccine mandates for Defence Force and Police personnel after a ruling that the vaccination order for these workers unjustifiably limited their human rights. However, the ministry noted that, in a separate ruling, the court found that the same limitations placed on health and disability and education sector workers were justified. In that High Court ruling, Justice Cooke confirmed that

The right to be free to refuse medical treatment is a significant one which is based on individual autonomy... But I do not accept that it is an absolute right. It is subject to reasonable limits, prescribed by law, that are demonstrably justified in a free and democratic society under s 5 of the Bill of Rights. That view is not only consistent with international authority, but is consistent with the approach that has been adopted in New Zealand in separating out the right to refuse medical treatment from other more absolute rights in the Bill of Rights.<sup>5</sup>

The High Court's rulings, said the ministry, show the nature of the changing risk profile of COVID-19 to various sectors and the importance of regular reviews of vaccine requirements.

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<sup>5</sup> Judgment of Cooke J, *NZDSOS Inc v Minister for COVID-19 Response* [2022] NZHC 716 [8 April 2022].

They also confirm that the limitations to human rights are justified for the public good in the contexts in which they are currently operating, considering the likelihood and impact of transmission and given the vulnerability of certain populations.

### **Efficacy of the vaccinations order**

The petitioner had also asserted that vaccination does not prevent workers contracting or transmitting COVID-19. This is especially true for later variants of COVID-19, he maintained. The ministry confirmed that the vaccinations order was enacted in the context of the Delta variant of COVID-19. It agreed with the petitioner that vaccinations are less effective at reducing transmission of the now-widespread Omicron variant. However, it asserted that vaccinations are still effective at preventing severe infection and death and, consequently, reducing the effect of COVID-19 on the health system.

### **RATs do not provide the same level of protection as vaccination**

The ministry reported that negative RATs do not provide the same level of protection as vaccination. This is because RATs work best at detecting COVID-19 when people have symptoms. Although convenient, they can return false negative results, especially in the early stages of a person's infection when they may be asymptomatic but are most infectious. This presents a significant risk for those working with New Zealand's most vulnerable populations, including the elderly, the immunocompromised, people who are impoverished, and those who suffer from chronic illnesses, said the ministry. If transmission occurs in these high-risk contexts, the health consequences for vulnerable individuals are severe, as are the subsequent effects on the health system.

Vaccination remains a key pillar in reducing the overall pressure on the health system and protecting vulnerable populations, according to the ministry. A fully vaccinated workforce is less likely to transmit COVID-19 to vulnerable populations, is less likely to suffer severe infection and death, and reduces pressure on the health system.

### **Our response to the petition**

Responding to the pandemic has required unprecedented measures. Determining these measures and developing a reasonable, justified, proportionate, and effective public health response has been made more difficult by the evolving nature of COVID-19, the capacity of our public health system, and the risks to vulnerable populations in New Zealand. We recognise that many New Zealanders have made sacrifices and shouldered hardship in the implementation of the public health measures and in protecting themselves and their families and communities from COVID-19.

We note that, when the Government considered it appropriate to do so, restrictions were removed and the vaccinations order was narrowed to require fewer groups of workers to be vaccinated. The vaccinations order has now been revoked entirely, effective 26 September 2022.<sup>6</sup> We consider that this addresses the petitioner's concerns and we have no further matters to draw to the attention of the House.

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<sup>6</sup> COVID-19 Public Health Response (Revocations) Order 2022.

## **Appendix**

### **Committee procedure**

The petition was referred to us on 10 February 2022. We met between 31 March and 29 September 2022 to consider it. We received written submissions from the petitioner and the Ministry of Health.

### **Committee members**

Hon Jacqui Dean (Chairperson)  
Rachel Boyack  
Steph Lewis  
Nicole McKee  
Todd Muller  
Sarah Pallett  
Teana Tuiono

### **Evidence received**

The documents we received as evidence in relation to this petition are [available on the Parliament website](#).