



Contract management guidance for government agencies requiring COVID-19 vaccinations for access to their premises

New Zealand has moved from an elimination strategy to one of minimise and protect. The Government has introduced a new COVID-19 Protection Framework (traffic light system) to replace the Alert Level system.

Government agencies are undertaking their own health and safety risk assessments to determine if COVID-19 vaccinations are required for their people and for any people (including contractors and suppliers) who access their premises.

Health and safety risk assessments and the decisions made as a result of those assessments are the responsibility of individual government agencies.

Requirements for COVID-19 vaccinations for access to your agency's premises may impact your suppliers and service delivery. This guidance will help you identify and manage these impacts.

Managing existing contracts and suppliers

General principles

- You should seek to be fair, reasonable and proportionate when managing your commercial contracts during the COVID-19 environment
- This can include being flexible and accommodating to suppliers, while ensuring accountability for decisions and the expenditure of public funds. This aligns with government's public law obligations and the concept of 'public value' under the Government Procurement Rules
- Speak with your suppliers regularly to understand how they (and their supply chains) are being impacted by the COVID-19 environment generally, the COVID-19 vaccination requirements for the supplier's industry and your agency's COVID-19 vaccination policy (if applicable)

Implications of COVID-19 vaccination requirements

As a first step, consider how your suppliers will be impacted by any COVID-19 vaccination requirements your agency has.

You should consider:

- what COVID-19 vaccination policies (if any) will apply to your contractors and suppliers who need to access your agency's premises
- where the suppliers are required to work to provide the goods or services (on-site or remotely)
- the implications where a key/nominated personnel of your supplier who needs to access your premises is not vaccinated or exempt

- whether the rules at each traffic light level and your agency's COVID-19 vaccination policies will adversely affect the supplier's provision of goods or services
- how the supplier's health and safety plans and business continuity plans, where provided to your agency under the applicable supply contracts, manage issues arising from the continuing COVID-19 environment.

If one of your suppliers raises any issues with providing goods and services to your agency because of your agency's COVID-19 vaccination policy, you should adopt, where appropriate, a pragmatic and balanced approach to performance by affected suppliers. The health and safety of your agency's people, and of the supplier's personnel, should remain the priority.

If delivery by the supplier is and continues to be impacted, consider the following principles:

- Be flexible with which of the supplier's personnel can perform the services (for example, agreeing to alternative personnel)
- Take into account that the supplier may need some lead time in order for its personnel to be vaccinated
- Consider the contractual rights and obligations of both parties if the supplier is unable to perform its obligations, on an ongoing basis, under its contract with your agency due to your agency's COVID-19 vaccination policy. You could discuss with the supplier whether there are any alternative means for the supplier to perform its obligations and mitigate any impacts
- Consider learnings and improvements relating to managing issues arising from the continuing COVID-19 environment. Are updates required to the supplier's health and safety plans and business continuity plans, where agreed or permitted under the contract, to incorporate the learnings and improvements?

Evidence of vaccination

Refer to Ministry of Health information on proof of vaccination status where there is a requirement for persons to be vaccinated before being able to access any of your agency's premises.

[My Covid Record: Proof of vaccination status \(Ministry of Health\)](#)

New contracts

You should ensure that prior to entering into a new contract, the delivery method for the goods or services to be procured can be given effect to within the requirements of your agency's COVID-19 vaccination policy and the different traffic light levels.

You should also consider what tools are available (or should be available) under your contract terms for managing risks in the COVID-19 environment, including obligations to undertake health and safety assessments, comply with health and safety laws and guidance, and maintaining, updating and implementing business continuity plans.

At the procurement stage, you should consider including in your RFX documents and template contract form obligations for respondents / the successful supplier to:

- undertake a COVID-19 risk assessment as part of their health and safety plan for their own business and in order to inform their business continuity planning for the supply of goods and services being procured;
- comply, and require its personnel to comply, with your agency's COVID-19 vaccination policy (if applicable) when performance will involve (or is likely to involve) entry into your agency's premises; and
- comply, and require its personnel to comply, with reasonable directions from your agency regarding health and safety measures required in response to COVID-19 risks.

Seek legal advice

Speaking with your suppliers is the starting point to understand how to achieve outcomes that work for both parties.

If you want to suspend or terminate a contract, or if you think the force majeure clause has been triggered, or if the supplier is failing to meet material obligations under its contract with your agency, then we strongly encourage you to obtain legal advice before taking any further action.

All-of-Government contracts

This guidance also applies to any secondary procurement (e.g. via a Services Order or Statement of Work) you have under an All-of-Government (AoG) contract.

If you need any further advice regarding a secondary procurement engagement with an AoG supplier, please contact us.