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NEW ZEALAND

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See Distribution

CDF DIRECTIVE 13/2022

APPLICATION OF NZDF VACCINE SCHEDULE – MEMBERS OF THE ARMED FORCES

Authority

1. Issued by the Chief of Defence Force pursuant to the Defence Act 1990.

Applicability

2. This Directive constitutes a general order to members of the Armed Forces and instructions to the Civil Staff.
3. Non-compliance with this Directive may result in disciplinary action being taken in accordance with the *Armed Forces Discipline Act 1971*.

Purpose

4. The purpose of this Directive is provide direction to all members of the NZDF, regarding the requirement for members of the Armed Forces to be vaccinated for COVID-19 in accordance with the NZDF Vaccination Schedule.

Context

5. Unvaccinated members of the Armed Forces were to be discharged on 1 Mar 22 in line with the mandate issued in the COVID-19 Public Health Response (Specified Work Vaccinations) Order 2021. However, on 25 Feb 22 a decision in the High Court¹ deemed the COVID-19 Public Health Response (Specified Work Vaccinations) Order 2021 ('the mandate') to be no longer valid. As a result, the discharge process for unvaccinated members of the Armed Forces was rescinded.
6. Members of the Armed Forces are required to meet individual readiness requirements,² which includes vaccinations as specified in the NZDF Vaccination Schedule. Members of the Armed Forces who are unable to maintain their individual readiness for reasons within or beyond their control, are to have their continued service reviewed.³

¹ *Yardley v Minister of Workplace Relations and Safety* [2022] NZHC 291 [25 February 2022].

² DFO 3, Part 9, Chapter 6—*Individual Readiness Requirements*.

³ DFO 3, Part 11, Chapter 8—*Departing the NZDF (Military)*.

Situation

7. Since mid-2021, the COVID-19 vaccine has been part of the NZDF Vaccination Schedule; in mid-Feb 22 the booster/third dose was added. For members of the Armed Forces, meeting the vaccination schedule by being fully vaccinated⁴ is a condition of service. This requirement goes beyond health and safety and extends to their ability to serve where required by the NZDF, both domestically and internationally.
8. The rationale for including the COVID-19 vaccination as a baseline vaccination requirement for members of the Armed Forces included consideration of the following key factors:
 - a. Imposed national and international vaccine mandates that relate to border entry and limit national and international border movement of any person not now triple vaccinated.
 - b. Available clinical evidence that COVID-19 vaccinations reduce the risk of serious illness or poor health outcomes if a person is infected with COVID-19. Even when robust force health protection measures are in place, the nature of NZDF duties means that avoiding exposure to the COVID-19 health threat is not achievable.
 - c. Vaccines also reduce the chance of onward transmission. Given that members of the Armed Forces live and work closely together, infectious diseases can spread rapidly and could render large numbers of people unwell or having to isolate. Such a situation would quickly impact critical outputs, including safety related components of duty tasks.

Cancellation of CDF Directive 31/2021 and CPO Administrative Instruction 05/2021

9. CDF Directive 31/2021⁵ and CPO Administrative Instruction 05/2021⁶ are cancelled with effect the date of this Directive.
10. All members of the Armed Forces who are not vaccinated with their first, second and booster COVID-19 vaccinations and are under a process of review, discharge or waiver in accordance with CDF Directive 31/2021 and CPO Administrative Instruction 05/2021, are to have that process stopped. The orders in this Directive take precedence and are to be applied.

Management of members of the Regular Force

11. Members of the Regular Force have been aware since mid-2021, that being vaccinated against COVID-19 is a requirement of continued service in the Regular Force. Every effort has been made by the NZDF to educate and reassure members as to the need for the vaccine. This has included, use of work time to attend vaccination and medical appointments and educational information via command chains, Defence Health Centres and via internal and external communication channels.

⁴ Fully vaccinated for COVID-19 includes the initial two vaccinations and booster.

⁵ CDF Directive 31/2021 – Vaccination Mandate – Members of the Armed Forces dated 20 Dec 21.

⁶ CPO Administrative Instruction 05/2021 – Implementation of Vaccination Mandate – Members of the Armed Forces, dated 17 Dec 21.

12. It has also been communicated to members of the Regular Force that failure to meet individual readiness requirements may lead to a review of retention in the Service.⁷
13. Any member of the Regular Force who is not fully vaccinated for COVID-19 pursuant to the NZDF Vaccination Schedule, is to have their continued service reviewed.⁸
14. In reviewing a member's continued service, the following variations to the Discharge (category Performance) process detailed in DFO 3 and DFO 4⁹ are to be applied for members of the Regular Force who are not vaccinated against COVID-19:
 - a. **Not vaccinated or one dose received.**¹⁰ There is no requirement to issue the member with a formal written warning as prescribed in DFO 4, Chapter 16, paragraphs 16.111 - 16.114.
 - b. **Has received primary dose(s), but no booster.** Where a member is issued a formal warning, the formal written warning period (specified in DFO 4, Chapter 16, paragraph 16.112 d.) is to be no more than two weeks in duration.
 - c. **For all members subject to the Discharge (category Performance) process as a result of not being vaccinated in accordance with the NZDF Vaccination Schedule:**
 - (1) The Commanding Officer is not authorised to approve retention in accordance with DFO 4, Chapter 16, paragraph 16.119 and must forward the retention report to the relevant Approving Authority.
 - (2) The approving authority is the single Service Chief.

Management of members of the Territorial Force¹¹

15. Members of the Territorial Force who are not fully vaccinated for COVID-19 pursuant to the NZDF Vaccination Schedule are not permitted to:
 - a. enter Defence areas, or
 - b. attend any training.
16. Members of the Territorial Force who are not fully vaccinated after 30 Jun 22 are to have their continued service reviewed.

Implementation time frame

17. The implementation time frame for members of the Regular Force (excluding members on parental leave and members subject to disciplinary proceedings who are suspended from duty¹² or under arrest,¹³ but including members on sick leave, medically

⁷ DFO 3 Part 9, Chapter 6 – *Individual Readiness Requirements*.

⁸ DFO 3, Part 11, Chapter 8—*Departing the NZDF (Military)*.

⁹ DFO 4, Chapter 16, Section 7 – *Discharge – Inefficient or Ineffectual (Category DE)*.

¹⁰ This excludes the Janssen (Johnson & Johnson) vaccine which is a single dose vaccination.

¹¹ More commonly referred to as the Reserve Force. The Territorial Forces (TF) consists of the following, collectively: The Royal New Zealand Naval Reserve, The Royal New Zealand Naval Volunteer Reserve, The Territorial Force of the New Zealand Army, and The Territorial Force of the Royal New Zealand Air Force.

¹² DM 69 (2 ed), Volume 1, paragraph 3.5.1.

¹³ AFDA 1971, Section 88.

downgraded, or on leave without pay) is as follows:

- a. Members of the Regular Force who are not fully vaccinated for COVID-19 are to be notified NLT 29 Apr 22 that they do not meet their individual readiness requirement.¹⁴ In addition:
 - (1) Members of the Regular Force who are either unvaccinated or have only received one COVID-19 vaccination,¹⁵ are to be advised that they are now subject to Discharge (category Performance).
 - (2) Members of the Regular Force who have received their primary COVID-19 vaccination(s)¹⁶, but have not yet received their booster vaccination, are to be advised that if the time frame since receiving their second vaccination is:
 - (a) six months (183 days) ago or longer,¹⁷ the member is to obtain their booster vaccination NLT 15 May 22, or they will be subject to Discharge (category Performance); or
 - (b) less than six months ago, the member is to obtain their booster vaccination within three weeks of becoming eligible to receive the booster vaccination or they will be subject to Discharge (category Performance).
18. Members of the Regular Force who are overseas (on posting, deployment or flexible working arrangement) and are not fully vaccinated are to be managed in accordance with paragraph 17 above. If they become subject to Discharge (category Performance) for not being fully vaccinated for COVID-19 then they are to be:
- a. notified that their overseas posting, deployment or flexible working arrangement is cancelled; and
 - b. returned to New Zealand as soon as is practicable.
19. The implementation time frame for members of the Regular Force on parental leave is as follows:
- a. **No later than 29 Apr 22.** Members of the Regular Force who are on parental leave and not fully vaccinated for COVID-19 are to be notified that:
 - (1) they do not meet their individual readiness requirements,¹⁸ and
 - (2) Discharge (category Performance) will be initiated if they are not fully vaccinated for COVID-19 by their last day of parental leave.
20. The implementation time frame for unvaccinated members of the Regular Force who are subject to disciplinary proceedings and are suspended from duty¹⁹ or under

¹⁴ DFO 3, Part 9, Chapter 6, Paragraph 9.6.36—*Vaccinations*.

¹⁵ This excludes the Janssen (Johnson & Johnson) vaccine which is a single dose vaccination.

¹⁶ This comprises COVID-19 vaccinations that consist of either one or two doses.

¹⁷ The Deployability Status Report in MSS provides commanders and managers with a breakdown of a member's Individual Readiness criteria. The vaccination schedule is set to display red (expired) if the member is unvaccinated, or the date of the last vaccination is six months ago or longer.

¹⁸ DFO 3, Part 9, Chapter 6, Paragraph 9.6.36—*Vaccinations*.

¹⁹ DM 69 (2 ed), Volume 1, Paragraph 3.5.1.

arrest,²⁰ is to be managed on a case-by-case basis under the direction of the single Service approval authorities. Discharge (category Performance) is to be initiated at the point where their suspension or arrest period ceases.

Member initiated release

21. Members of the Regular Force who are either unvaccinated or have only received one COVID-19 vaccination²¹ may initiate their own release,²² provided that their requested Terminal Date is no later than 24 Jun 22. Any subsequent request for a withdrawal of their release is not to be approved.

Member of the Armed Forces advises their intention to be vaccinated

22. If an unvaccinated member of the Armed Forces advises that they intend to be vaccinated, the discharge process is to continue. The discharge process is to stop only when confirmation is received from the Defence Health Directorate that the member has been fully vaccinated for COVID-19.

Responsibilities

23. Service Chiefs are the approval authority for Discharge (category Performance). This delegation may not be sub-delegated.
24. CPO is responsible for co-ordinating the implementation of this Order.

Administration

25. Annex A provides direction regarding the application of this Directive.

Cancellation and disposal instructions

26. This Directive will be cancelled with effect 31 Dec 22.



KR SHORT

for Air Marshal, AOD
Chief of Defence Force

Annex

- A. Administration process – NZDF Vaccination Schedule

²⁰ AFDA 1971, Section 88.

²¹ This excludes the Janssen (Johnson & Johnson) vaccine which is a single dose vaccination.

²² DFO 3, Part 11, Chapter 8, Section C.

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ADMINISTRATION PROCESS – NZDF VACCINATION SCHEDULE

Introduction

1. The Discharge (category Performance) process is to be applied to members of the Regular Force who are not fully vaccinated for COVID-19, and undertaken in accordance with the direction in this Directive, and the provisions of DFO 3, Part 11, Chapter 8, paragraph 87 and DFO 4, Chapter 16, Section 7.
2. Members of the Territorial Force are to be managed in accordance with paragraph 15 and 16 of this Directive.
3. The guidance and direction in this annex is to be read and applied in conjunction with the Discharge (category Performance) process detailed in DFO 4, Chapter 16, Section 7.

Members of the RF who are unvaccinated, or have received only one dose of COVID-19 vaccine²³

4. The Commanding Officer is to follow the process detailed in this annex and DFO 4, Chapter 16, Section 7, with the following exceptions:
 - a. There is no requirement to issue the member with a formal written warning as prescribed in DFO 4, Chapter 16, paragraphs 16.111 – 16.114.
 - b. The Commanding Officer is not authorised to approve retention in accordance with DFO 4, Chapter 16, paragraph 16.119 and must forward the retention report to the relevant Approving Authority.
5. **Raising the report.** The Commanding Officer is to raise a report for Discharge (category Performance) in accordance with DFO 3, Part 11, Chapter 8, paragraph 87 and DFO 4, Chapter 16, Section 7.
6. When interviewing the member, the member is also to be advised that advice regarding the COVID-19 vaccination is available through the Defence Health Directorate.
7. The report is also to include the following information:
 - a. Confirmation that the member has been advised that a recommendation for Discharge (category Performance) is being considered as a result of the member failing to meet their COVID-19 individual readiness requirement.
 - b. A summary of the action taken by the Service to engage with the member to date regarding the NZDF requirement to be vaccinated for COVID-19.
 - c. The current COVID-19 vaccination status of the member. If the member is unwilling to divulge their current vaccination status, the current NZDF recorded vaccination status is to be provided.

²³ This excludes the Janssen (Johnson & Johnson) vaccine which is a single dose vaccination.

8. The member is to acknowledge the report, by signing a statement that states–
'I, (*member's service description*), acknowledge that on (*date*) I was given a copy of my Commanding Officer's report advising that my retention in the Service is under consideration due to not meeting my individual readiness requirements in respect of the COVID-19 vaccination. I acknowledge that I have until (*insert date*²⁴) to provide a written submission regarding this report.'

Note: Should the member refuse to sign a statement, this is to be noted on the report and signed by the Commanding Officer, and the process is to continue. If the member decides not to comment, then they are to write 'No Comment' on the report and then sign and date the report.

9. **Final Report recommending discharge.** The member is to acknowledge the final report, by signing a statement that states –
"I, (*member's service description*), acknowledge that on (*date*) I was given a copy of my Commanding Officer's final report advising that my discharge is being recommended due to my not meeting my individual readiness requirements in respect of the COVID-19 vaccination. I acknowledge that I have until (*insert date*²⁴) to provide a written submission to accompany the final report to the Approving Authority."
10. **Submission of final report to the Approving Authority.** The Commanding Officer is to forward the final report to the Approving Authority, including any submissions provided by the member.
11. The member is to be provided a copy of the report that is forwarded to the Approving Authority.
12. **Approving Authority decision.** The Approving Authority is to review the report from the Commanding Officer and either:
 - a. authorise Discharge (category Performance), with a Discharge Date no later than 24 Jun 22; or
 - b. where the Approving Authority chooses not to discharge the member, advise CDF of the reason and the proposed course of action with respect to that unvaccinated member.
13. **Key Dates:**
 - a. NLT 29 Apr 22 – Member is to be notified of the intent to discharge them under the discharge category Performance for not being fully vaccinated.
 - b. NLT 6 May 22 – Discharge (category Performance) process is to be initiated.
 - c. NLT 10 Jun 22 – Approving Authority decision is to be made and outcome is to be advised back to the member.
 - d. NLT 24 Jun 22 – Member is discharged (if approved by the Approving Authority).

²⁴ Seven days from the date the report is signed and issued to the member.

Members of the Regular Force who have received their primary COVID-19 vaccination(s), but have not yet received their booster vaccination

14. **Raising the report.** The Commanding Officer is to raise a report for Discharge (category Performance) in accordance with this annex, DFO 3, Part 11, Chapter 8, paragraph 87 and DFO 4, Chapter 16, Section 7, paragraph 16.105.
15. When interviewing the member, the member is also to be advised that advice regarding the COVID-19 vaccination is available through the Defence Health Directorate.
16. The report is to include the following additional information:
 - a. Confirmation that the member has been advised that a recommendation for Discharge (category Performance) is being considered as a result of the member failing to meet their COVID-19 individual readiness requirements.
 - b. A summary of the action taken by the Service to engage with the member to date regarding the NZDF requirement to be vaccinated for COVID-19.
 - c. The current COVID-19 vaccination status of the member. If the member is unwilling to divulge their current vaccination status, the current NZDF recorded vaccination status is to be provided.
17. The member is to acknowledge the warning, by signing a statement that states–
'I, (*member's service description*), acknowledge that on (*date*) I was given a copy of my Commanding Officer's report advising that my retention in the Service is under consideration due to not meeting my individual readiness requirements in respect of the COVID-19 vaccination. I acknowledge that I have until (*insert date*²⁴) to provide a written submission regarding this report.'

Note: Should the member refuse to sign a statement, this is to be noted on the report and signed by the Commanding Officer, and the process is to continue. If the member decides not to comment, then they are to write 'No Comment' on the report and then sign and date the report.

18. **Issue of formal written warning.** When issuing the formal written warning,²⁵ the Commanding Officer is to include the following information:
 - a. A summary of the action taken by the Service to engage with the member to date regarding the NZDF requirement to be vaccinated for COVID-19.
 - b. The current COVID-19 vaccination status of the member. If the member is unwilling to divulge their current vaccination status, the current NZDF recorded vaccination status is to be provided.
 - c. A warning that if the member is not fully vaccinated by (*insert date*) a recommendation will be made to discharge them for failing to meet their COVID-19 individual readiness requirements.

²⁵ FWW period is to be no more than two weeks in duration in accordance with para 15 b. of this Directive.

19. The member is to acknowledge the warning, by signing a statement that states–
“I, (*member’s service description*), acknowledge that on (*date*) I was given a copy of my Commanding Officer’s formal written warning advising that my retention in the Service is under consideration due to not meeting my individual readiness requirement in respect of the COVID-19 vaccination. I acknowledge that I have until (*insert date*²⁴) to provide a written submission regarding this warning.”

Note: Should the member refuse to sign a statement, this is to be noted on the warning and signed by the Commanding Officer, and the process is to continue.

20. **Booster vaccination received.** If the member subsequently receives their booster vaccination, the Commanding Officer is to end the formal warning and inform the member.
21. **Booster vaccination not received.** If the member has not received their booster vaccination by the end of the formal written warning period and an extension of the warning period is not justified, the Commanding Officer is to raise a final report recommending discharge.
22. When interviewing the member and providing them with a copy of the final report, the member is to acknowledge the final report by signing a statement that states –
“I, (*member’s service description*), acknowledge that on (*date*) I was given a copy of my Commanding Officer’s final report advising that my discharge is being recommended due to my not meeting my individual readiness requirements in respect of the COVID-19 vaccination. I acknowledge that I have until (*insert date*) to provide a written submission to the Approving Authority.”
23. **Final report to the Approving Authority.** The Commanding Officer is to forward the final report to the Approving Authority, including any final submission provided by the member.
24. The member is to be provided a copy of the report that is forwarded to the Approving Authority.
25. **Approving Authority Decision.** The Approving Authority (single Service Chief) is to review the report from the Commanding Officer and either:
- a. authorise Discharge (category Performance), or
 - b. advise CDF where the Approving Authority has chosen not to discharge the member, the reason and the proposed course of action with respect to that unvaccinated member.
26. **Key Dates:**
- a. **For members where the date of their last primary dose is six months (183 days) ago or longer.**
 - (1) NLT 29 Apr 22 – Member is to be informed of the requirement to get their booster vaccination.
 - (2) NLT 15 May 22 – Member is to have received their booster vaccination.

- (3) NLT 20 May 22 - Discharge (category Performance) action is initiated if the member has not received their booster vaccination.
 - (4) NLT 30 Jun 22 - Final report is to be with the Approving Authority (where the member has not received their booster vaccination by the end of the formal written warning period).
 - (5) The member's terminal date (where discharge is approved) is to be NLT 14 days after the member has been notified of the Approving Authority's decision.
- b. **Members who are not yet eligible to receive the booster vaccination.**
- (1) Within three weeks of member becoming eligible – the member has received their booster vaccination.
 - (2) Within four weeks of the member becoming eligible – Discharge (category Performance) action is to be initiated if the member has not received their booster vaccination.
 - (3) Within six weeks of the discharge process commencing – Final report is to be with the Approving Authority (where the member has not received their booster vaccination by the end of the formal written warning period).
 - (4) The member's terminal date (where discharge is approved) is to be NLT 14 days after the member has been notified of the Approving Authority's decision.