

PITCAIRN, HENDERSON

DUCIE & OENO ISLANDS

No 2 of 2022



LM
7/7/22

Enacted by the Governor of the Islands
of Pitcairn, Henderson, Ducie and Oeno

COVID-19 RESPONSE ORDINANCE

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COVID-19 RESPONSE ORDINANCE 2022

An Ordinance to provide for reasonable measures to protect Pitcairn from the impacts of Covid-19

PART I – PRELIMINARY

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| Short title | 1. This Ordinance is the Covid-19 Response Ordinance 2022. |
| Commencement | 2. This Ordinance shall come into force the day after it is published. |
| Purpose | 3. The purpose of this Ordinance is to protect the health and safety of Pitcairn Island residents against the risks arising from Covid-19. |
| Interpretation | 4. In this Ordinance—

vaccinated , in relation to a person, means the person has satisfied the requirements for Covid-19 vaccination applicable for the time being in either New Zealand or the United Kingdom.

exempt from vaccination , means the person has been granted an officially-recognised medical exemption from Covid-19 vaccination in either New Zealand or the United Kingdom, or holds an equivalent exemption to the satisfaction of the Governor in his or her discretion. |

PART II – REQUIREMENT FOR TRAVEL ON GOVERNMENT VESSEL

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| Application to certain vessels | 5. This Part applies to any person traveling on the ship known as M/V Silver Supporter (IMO number 9165944). |
| Vaccination requirement | 6. A person over the age of 5 must, before they board the vessel to which this section applies:

(a) be vaccinated; or

(b) be exempt from vaccination. |
| Waiver | 7. (1) A person may apply to the Governor or Administrator to waive the requirement in section 6.

(2) The Governor or Administrator must not waive the vaccination requirement in section 6 unless they are satisfied that:

(a) there are exceptional circumstances of a humanitarian nature; and |

(b) the waiver is not broader than is reasonably necessary to address the matters giving rise to the exemption.

(3) The Governor or Administrator may impose conditions on the exemption as they consider necessary.

PART III –TESTING AND ISOLATION REQUIREMENTS

Policy for testing, isolation and vaccination

8. The Governor may, by policy published on the Pitcairn government website, impose reasonable requirements for:

(a) testing and isolation for any person travelling to Pitcairn Island on any vessel;

(b) vaccination for any person who does not have the right of abode.

Non-compliance with requirements

9. Any person who does not comply with reasonable requirements contained in a policy made under section 8 may be prohibited from landing on Pitcairn.

COVID-19 RESPONSE ORDINANCE 2022

EXPLANATORY NOTE AND LEGAL REPORT

This Ordinance responds to the Covid-19 pandemic, which has caused significant illness, death and disruption globally since it began in 2020.

Pitcairn closed its borders to tourists in 2020 and remains one of the few places globally to have had zero infections. The population has a high vaccination rate, but because of limited health care facilities, is very vulnerable should infection be brought to Pitcairn.

This Ordinance is aimed at reducing the risk of infection arriving on Pitcairn or disrupting the service of the supply vessel on which Pitcairn depends.

Part 2 of the Ordinance relates to travel on the Pitcairn Government Supply Vessel, the Silver Supporter. Any person over the age of 5 must be vaccinated before they board the vessel, unless they have an exemption for medical purposes officially recognised in either New Zealand or the United Kingdom (or equivalent). The vaccination must meet the requirements applicable for the time being in either New Zealand or the United Kingdom.

The requirement applies to all people, regardless of whether they have the right of abode on Pitcairn. Any person may apply for a waiver of the requirement if there are exceptional circumstances of a humanitarian nature.

Part 3 of the Ordinance relates to people travelling to Pitcairn on any vessel. It allows the Governor to create and publish further reasonable requirements for isolation and testing of any person travelling to Pitcairn, and vaccination of any person other than those with the right of abode. Any person who does not comply with such requirements may be prohibited from landing on Pitcairn.

CONSISTENCY WITH CONSTITUTION

This Ordinance imposes restrictions on the ability of people to travel on to Pitcairn, including those with right of abode that wish to travel on the Government supply vessel.

I have considered its consistency with the constitutional right of freedom of movement under s 18, and in particular with the right under s 18(4) that “no one who has the right of abode shall be arbitrarily deprived of the right to enter Pitcairn”, and the related guarantee under s 22(1) that no person with the right of abode shall be arbitrarily deprived of that right.

The restriction in this case addresses a need to protect the population of Pitcairn from a disease that has serious consequences including death, and the Supply Ship from disruption of an essential service due to sickness of crew or passengers. It does not prevent a person with right of abode from exercising his or her right to enter Pitcairn if travelling on another

vessel, nor if they are vaccinated or exempt from vaccination. The requirement can be waived in exceptional circumstances of a humanitarian nature, which ensures that it does not have disproportionate effect.

I have also considered the impact of the Ordinance on freedom of movement of those without the right of abode (s 18), and on freedom from discrimination on the grounds of political opinion (s 23). Neither of these rights are absolute. Section 18(3) provides that the freedom of movement may be subject to restrictions which are provided by law, and are necessary to protect public health (among other things). Section 23(4) provides that a law or action is not in breach of that right if it has an objective and reasonable justification and there is a reasonable proportion between the provision of law and the aim which that provision seeks to realise. It is my view that any restriction on these rights created by this Ordinance is justifiable and proportionate for the aim of protecting public health of Pitcairners.

I am therefore of the view that the Ordinance is consistent with the Constitution.

Simon Mount QC

Attorney General

6 July 2022

