

The COVID-19 domestic vaccine pass: Implications for Māori

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Summary

The New Zealand government has introduced a COVID-19 domestic vaccine pass to be used in conjunction with the COVID-19 Protection Framework. The Framework is likely to be activated soon after Cabinet meets on 29 November 2021. The pass will be necessary to access places and events that require proof of vaccination under the Framework.

This brief does not argue for or against the introduction of a domestic vaccine pass, but rather discusses key issues that it raises for Māori, and suggests actions to address them. We see four key issues:

- the lack of Māori involvement, as a Tiriti partner, on either the design or implementation of the COVID-19 domestic vaccine pass;
- disproportionate restriction on Māori mobility due to lower Māori vaccination rates;
- privacy and data security concerns;
- uneven implementation that could increase discrimination against Māori and other groups considered to pose a risk to others' safety.

To respond to these issues we recommend that the implementation of the pass be designed in partnership with Māori and comply with Māori data sovereignty requirements. As Tiriti partners, Māori should expect that the pass will keep their communities safe, while providing opportunities to enact manaakitanga in the matrix of care, and the mana to manage their own affairs.

Context

The New Zealand government has introduced a COVID-19 domestic vaccine pass¹ to be used in conjunction with the COVID-19 Protection Framework² (the 'traffic light' system) and vaccine mandates.³ The pass will be necessary to access places and events that require proof of vaccination under the Framework. Recent mandates have been applied to large parts of the health and disability, corrections, and education sectors,⁴ and will likely be extended to include employees at hospitality and close-contact businesses.⁵

The government intends to activate the Framework for the entire country soon after Cabinet meets on 29 November 2021.⁶ Previously it was planning to activate the system in Auckland once all three DHB populations reached a target of 90% fully vaccinated (two doses of the Pfizer-BioNTech COVID-19 vaccine), and in the rest of the country when all remaining DHB regions reached 90%. At the time of writing only one DHB out of 20 (Auckland) had reached 90% fully vaccinated and half had not yet reached 80%.⁷

This brief does not argue for or against the introduction of a domestic vaccine pass, but rather discusses key issues that it raises for Māori, and suggests actions to address them.

What is being proposed

'My Vaccine Pass' is an official record of a person's COVID-19 vaccination status stored in a QR code that can be downloaded or printed out.⁸ It is now available through the 'MyCovidRecord' platform which stores detailed information on individuals' COVID-19 vaccinations.⁹ The information in the pass will be limited to name, date of birth, and pass expiry date. The pass does not show vaccination status per se, but having the pass indicates the holder meets the vaccination requirements (this includes the small number of individuals granted an exemption on medical grounds).

The government has indicated that the pass will be used in high-risk settings including large gatherings (e.g., festivals, sporting and cultural events), hospitality, and close-contact businesses. The pass will not be used for entry into essential services or places that everyone needs to access, like supermarkets.¹⁰ Businesses, events, organisations, marae, and communities may legally choose to implement a vaccination entry requirement for customers/visitors, and the vaccine pass will also be used for that purpose. The Employers and Manufacturers Association has indicated that it supports the use of vaccination status certificates in workplaces.¹¹ From mid-December, Air New Zealand will require proof of either full vaccination against COVID-19 or a negative pre-departure test before checking into a domestic flight.¹²

How the domestic COVID-19 vaccine pass works

The pass contains a QR code with a digital signature that is unique to each individual and verifies that the holder has been fully vaccinated. For those without smartphones, it will be possible to download and print a paper alternative. The Ministry of Health is also developing a phone support line where individuals can call and request a vaccine pass to be mailed to them.

When an individual is asked to provide a pass - either in a digital form or hard copy - the QR code is scanned to verify the signature using the public key of the issuing health authority (Ministry of Health). A free government verifier app will be made available on the App Store and Google Play, for anyone to use to scan and verify passes. Verification can be undertaken offline, if needed, and individuals are not centrally tracked by default. The official government app will not store data about passes or pass scans (e.g. which pass was scanned by who and when). However, it is likely that third-party verifiers will be developed for specific applications (e.g. large-scale events or places dealing with frequent repeat customers), where storing pass data and status may be necessary.

The vaccine pass does not contain biometric information, so some form of external validation, such as photo identification, may be required at the time of verification if the individual is unknown. Domestic passes will only be valid for a specified period¹³ before a new one will need to be generated.

A separate vaccine pass, which contains more information, will be required when travelling internationally.

Purpose of the pass

Vaccine certificates, passes, and passports are currently in use in a significant number of countries including many within the European Union, Canada (Quebec), Israel, China, Indonesia, Singapore, Saudi Arabia and the United Arab Emirates. Public acceptance has varied significantly across different jurisdictions.¹⁴

In many of those countries, the justification appears to be that it enables people to return to pre-pandemic activities while managing transmission risks by reducing exposure to unvaccinated individuals.¹⁵ Clinical and observational trials show that vaccines can provide a high level of protective immunity against severe and symptomatic COVID-19 illness, at least until six months after full vaccination.¹⁶ A rapid review of COVID-19 vaccine passports by the Royal Society (United Kingdom) has stated that passports should be able to accommodate differences between vaccines in their efficacy, and changes in vaccine efficacy against emerging SARS CoV-2 variants.¹⁷ The evidence is still evolving with regard to efficacy in preventing infectiousness and transmission. Fully vaccinated people are significantly less likely to transmit COVID-19 than unvaccinated people, but by how much is uncertain¹⁸ due, in part, to variability in vaccine types, exposure levels, and exposure environments.

Vaccine passes are also widely seen as a way of incentivising unvaccinated individuals to become vaccinated, particularly after the national population has reached a critical vaccination threshold (e.g., 90%), although this is rarely promoted as the primary reason for its implementation.¹⁹

Regardless of the stated goal, in practice the domestic use of vaccine passports controls the movements of individuals, enabling a wider range of freedoms for those who are vaccinated, compared to those who are not.²⁰ Indeed Prime Minister Jacinda Ardern has stated that the system: “rewards the rapidly growing number of vaccinated New Zealanders with more freedoms to go about their lives safely.”²¹

In Aotearoa New Zealand it is not entirely clear whether the main goal of the domestic pass is to increase vaccination levels, or stop the transmission of COVID-19 by reducing exposure to unvaccinated individuals, or both. If the first, then one might expect the use of the pass system to be finite (i.e., once enough people are vaccinated, there is no longer the need to incentivise vaccination). If the second, one might reasonably expect passes to remain in place for longer (i.e., even when enough people are vaccinated, the pass is used to reduce the public health risk by restricting the movement of unvaccinated individuals).

Te Tiriti o Waitangi and Māori data sovereignty

As far as we can tell, the design and implementation plan for the COVID-19 domestic vaccine pass has not involved meaningful Māori input. Even if the system is evenly implemented, Māori will be disproportionately impacted by the vaccine pass system. This is because Māori vaccination rates are significantly lower than the national average owing to a vaccination rollout that was not designed with an explicit equity focus, despite ample forewarning from Māori and Pacific health experts.²² Related issues include lower vaccination access,²³ lower trust in government,²⁴ and prolonged exposure to misinformation and disinformation.²⁵ As at 16 November 2021, the unadjusted Māori vaccination rate was 776 (per 1,000) for dose 1 and 618 for dose 2 compared to 906 and 818 per 1,000, respectively, for the eligible population (12 years and over) nationally.²⁶ The vaccination rates for Māori are overestimates due to an unknown number of Māori not being included in the Health Service User population used in the calculation of these rates.

Aotearoa New Zealand has a number of important considerations that ought to be explicitly accounted for in the design and implementation of a domestic vaccine pass. These include rights and obligations arising from te Tiriti o Waitangi, systemic ethnic health inequities,²⁷ including pandemic-related inequities, digital exclusion,²⁸ and Māori data sovereignty requirements.²⁹

Given that Māori were not involved in the design of the pass (or the COVID-19 Protection Framework), there are issues that impact Māori that likely have not been appropriately considered or addressed. The High Court recently held that Tiriti principles apply in the context of the Ministry Health’s roll out of the COVID-19 vaccines and so would also, by extension, apply to the roll-out of the vaccine pass.³⁰ Those principles include the principles of partnership and equitable outcomes.

A key principle of Māori data sovereignty is that Māori should have governance and oversight of Māori data.³¹ Data may be classified as Māori data if it derives from Māori individuals,³² regardless of whether an explicit ethnic or Māori identifier is included in the data collection. As such, Māori should have a key role in the oversight and implementation of the vaccine pass system. This will provide external checks and balances, and go some way towards building Māori trust and confidence in the system. Māori input into the design and implementation of the pass system would also more effectively identify the resources and strategies needed to support Māori communities and businesses to use it in ways that work within the specific contexts of their communities.

Under the COVID-19 Protection Framework, most Māori businesses, organisations and marae will be able to choose whether they implement the pass system but those that do not, will face greater restrictions. Under the green level, for example, there is no limit on the number attending tangihanga (funerals) if the pass is used, but numbers are limited to 100 if it is not. Likewise, at amber there is no limitation if the pass system is used, but the number is limited to 50 if it is not. At red, tangihanga can accommodate up to 100 if the pass is used and only 10 if not.

The enduring importance of tangihanga in Te Ao Māori, and of gatherings that recognise and enhance whakapapa (kinship connections), means that Iwi, hapū, and Māori communities are much more likely than most other groups to regularly hold and participate in large gatherings. As such, Māori are more likely to be affected by rules that cap numbers at large gatherings. Moreover, where gatherings involve whānau who are related, rather than strangers attending an event (e.g, music festival),

there are additional sensitivities to negotiate when implementing a COVID-19 vaccine pass, particularly in communities where a significant number may be unvaccinated. It is vital that Māori have the authority to govern how the pass system will work in practice, including the impacts that challenges might have on COVID-19 control and health equity, and the delivery of appropriate resourcing to ensure that communities are prepared and protected.

In such contexts it is important to maintain a balance between keeping others safe, and not imposing unnecessary restrictions on those who are not vaccinated. The European Union Digital COVID Certificate also covers test certificates and certificates for persons who have recovered from COVID-19.³³ This is seen as a way of minimising unfair discrimination against those who have not been, or cannot be, vaccinated.³⁴ The flexibility to include additional options in the pass may help mitigate the disproportionate impact of restrictions on populations and communities with low vaccination coverage.

Finally, an individual's vaccination status can be influenced by a range of factors including vaccination accessibility, low trust in government and in government services, exposure to racism, and exposure to misinformation and disinformation. This cautions against simplistic interpretations of vaccination status as being solely a matter of individual choice, and a mindset of indiscriminately sanctioning or stigmatising those who 'choose' not to be vaccinated. Having the capacity to apply tikanga Māori (protocols for what is appropriate in a given context), including values of manaakitanga (generosity and care for others) and mana (authority), according to context and need, is important moving forward.

Privacy and data security considerations

The Privacy Act 2020 and Health Information Privacy Code 2020 permit the collection, use and disclosure of health information (such as vaccination status) where certain requirements are met. Significantly, with regard to privacy, the recent High Court case (Te Pou Matakana Limited vs Attorney-General) found that the Ministry of Health's power to disclose information under 11(2)(d) of the Code in the context of the COVID-19 vaccination programme must be exercised in accordance with te Tiriti and its principles.

As noted, information included on the pass will be limited to an individual's name, date of birth, and pass expiry date. When an individual's certificate is scanned, it inevitably creates a record on the device of an individual being at the same place as the device at a specific time.³⁵ QR codes are plaintext-readable so any information linked to the code can potentially be revealed when the QR code is shown, even if the official verification app doesn't display it.

There will need to be clear rules in place that prevent verifiers from retaining individuals' scanned information, and using it for their own purpose, or sharing it with third parties.³⁶ The regulatory framework should set limitations around this rather than leaving it open for big businesses or institutions to build databases of vaccinated individuals, and how this can be meaningfully enforced. Of relevance here is section 34A of the COVID-19 Public Health Response Amendment Bill (No 2) which prohibits the collection, use, or disclosure of contact tracing data for any other purpose, and enforces criminal penalties for misuse (stronger than what is currently offered by the Privacy Act).³⁷

However, even with rules about who can retain data from the vaccine pass, and who has to delete it, it is still possible for the data to be retained. This will need to be well-defined and clearly communicated to Māori communities and the wider public.

Discrimination and implementation

There are significant ethical considerations around how the pass might be used.³⁸ Given ethnic inequities in vaccination coverage, it is crucial that the pass does not create additional inequities for those who are already disadvantaged. The Ministry of Health has already commissioned work on the importance of equity and te Tiriti for contact tracing technologies³⁹ and so should be proactively thinking about how to operationalise these approaches in the vaccine pass.

There is potential for the uneven implementation of the pass in ways that could increase discrimination against certain populations.⁴⁰ Māori already carry higher risks of data harms and misuse, and a history of over-surveillance by the state.⁴¹ There is a risk that racially biased practices will carry over into the context of a vaccine pass. For example, it is likely that the pass may in future be paired with photo identification for verification.⁴² This requirement may not be applied evenly in all contexts and individuals from groups perceived to pose a higher risk may be more likely to be asked for photo identification. In Aotearoa New Zealand, this group is most likely to be Māori, particularly given the well-documented lower rates of vaccination. In addition, those without a current passport or driver licence will struggle to be able to provide acceptable identification, even with a valid

pass. There would need to be processes in place that would ensure the even implementation of photo identification as part of the verification process⁴³ that does not place an additional compliance burden on Māori.

Recommendation

In Aotearoa New Zealand, best practice ought to enable Māori to co-design, co-lead, and co-implement the COVID-19 response as Tiriti partners, as tangata whenua, and as one of the groups most impacted by sustained, persistent inequities. Indeed, addressing these inequities is the ostensible basis of Aotearoa New Zealand's pending health reforms.

Our recommendation is that the government engage with Māori, as Tiriti partners, in the design, implementation and evaluation of the vaccine pass.⁴⁴ Continuing to side-line Māori in the pandemic response risks creating further division and entrenching low trust.

To date, both the vaccine pass and the COVID-19 Protection Framework have had little to no meaningful Māori input. This is despite Māori being disproportionately affected by COVID-19 in the recent outbreak and carrying the greatest risk of infection and hospitalisation,⁴⁵ amplified by lower vaccination rates.

Individuals and communities need to have the right information in the right way so that they fully understand the utility of vaccine passes and are able to implement it appropriately, if and when desired. There needs to be a transparent and accountable way of monitoring their acceptance and experiences to build and demonstrate trust in the system.

Finally, we urge the government to be clearer about what it thinks the pass system will achieve, and for whom. As Tiriti partners, Māori should be able to expect that the pass will keep their communities safe, while still providing opportunities to enact manaakitanga in the matrix of care, and the mana to manage their own affairs.

Tikanga in Technology

The Tikanga in Technology (TiNT) research programme seeks to advance Indigenous approaches to transforming data ecosystems, and is funded by the Endeavour Fund (UOWX2003). Our team collectively has expertise in Māori data sovereignty and governance, data privacy, cybersecurity, te Tiriti o Waitangi and mātauranga Māori. For more about our TiNT research theme, visit: <https://www.waikato.ac.nz/nidea/research/tikanga-in-technology-indigenous-data-and-governance>

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- ⁴⁰ Section 19(1) of the New Zealand Bill of Rights Act requires that everyone has the right to freedom from discrimination.
- ⁴¹ Kukutai, T. & Cormack, D. 2020. ‘Pushing the space’: Data sovereignty and self-determination in Aotearoa NZ. In Walter, M., Kukutai, T., Carroll, S. R., & Rodriguez-Lonebear, D. (eds), *Indigenous data sovereignty and policy* (pp. 21-35). London: Routledge; Waitangi Tribunal. (2011). *Ko Aotearoa tēnei: A report into claims concerning New Zealand law and policy affecting Māori culture and identity*. (WAI 262 Volume 1); Science for Technological Innovation National Science Challenge, Data ILG, & Victoria University of Wellington. (2018). *Māori Data Futures: Hui Report*. Retrieved 12 November 2021 from https://www.sftichallenge.govt.nz/sites/default/files/2018-09/Ma%CC%84ori_Data_Futures_Report.pdf
- ⁴² The Privacy Impact Assessment (see fn 35) notes: “if required by an Order (no Orders were currently in force at the time this PIA was written) the event organiser would be able to request and view another form of matching ID, so the person presenting the My Vaccine Pass could demonstrate they are the person the pass was issued to” (p. 67).
- ⁴³ It is a state duty to provide mechanisms that enable individuals to get updated identification easily.
- ⁴⁴ This could include the National Iwi Chairs Forum, as well as Māori health providers and Whānau Ora collectives, and Māori medical associations.
- ⁴⁵ Steyn, N., Binny, R., Hendy, S., James, A., Kukutai, T., Lustig, A., McLeod, M., Plank, M., Ridings, K., & Sporle, A. 2020. Estimated inequities in COVID-19 infection fatality rates by ethnicity for Aotearoa New Zealand. *New Zealand Medical Journal*, 133(1521), 28-39.

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