

Briefing

Draft COVID-19 Public Health Response (Required Testing) Amendment Order 2021 for Ministerial Consultation

Date due to MO: 1 March 2021 **Action required by:** 3 March 2021

Security level: IN CONFIDENCE **Health Report number:** 20210345

To: Hon Chris Hipkins, Minister for COVID-19 Response

Contact for telephone discussion

Name	Position	Telephone
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Maree Roberts	Deputy Director-General, System Strategy and Policy	s 9(2)(a)

Minister's office to complete:

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|---|------------------------------------|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Decline | <input type="checkbox"/> Noted |
| <input type="checkbox"/> Needs change | <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn | |

Comment:

Draft COVID-19 Public Health Response (Required Testing) Amendment Order 2021 for Ministerial Consultation

Security level: IN CONFIDENCE **Date:** 1 March 2021

To: Hon Chris Hipkins, Minister for COVID-19 Response

Purpose of report

1. This report provides you with advice on the implementation of the COVID-19 Public Health Response (Required Testing) Amendment Order 2021 and a draft Order for Ministerial consultation.

Summary

2. On 18 February 2021 you agreed [HR20210284 refers] that the COVID-19 Public Health Response (Required Testing) Order 2020 (the Order) should be amended to:
 - add additional groups of border workers
 - clarify testing cycle requirements to reflect that workers should be tested as close to the end of their cycle as possible
 - allow the Director-General of Health to authorise different sampling methods for the purpose of compliance with the Order.
3. We provided you with advice for increasing the testing frequency for four groups of border workers [HR20210339 refers]. You advised us on 22 February 2021 that these changes to testing frequencies should be taken forward alongside the addition of new groups and other changes as a single amendment Order.
4. The Ministry consulted with relevant agencies on the proposals, and agencies led targeted engagement with key sector stakeholders, to the extent practicable. We have revised our initial definitions of some groups to ensure the testing requirements reflect a clear public health rationale.
5. Officials have undertaken further work on the possibility of including workers who handle objects that have been recently handled by international arrivals in the Order, as indicated in HR20210284. We have identified significant risks associated with including workers who handle objects that have been recently handled by international arrivals, including the risk of capturing a very large and variable group of workers and the possibility of driving unintended behavioural changes.

6. We do not recommend bringing workers who handle objects that have been recently handled by international arrivals into the Order. We recommend that a strong emphasis on infection prevention and control guidance for workplace environments where workers who come into contact with objects handled by international arrivals, is an appropriate alternative to including this group of workers in the Order.
7. However, officials have developed an option that would include workers who handle objects that have been recently handled by international arrivals in the Order, should you wish to progress with this option.
8. The attached draft Order:
 - a. adds new groups of workers to the Order
 - b. increases the testing frequency of certain groups of workers
 - c. lays the groundwork for saliva testing to be used to meet testing requirements, once this method is accredited and deemed appropriate for routine testing of border workers
 - d. clarifies the intervals during which affected border workers must be tested.
9. We are working towards having a final Order ready for your signature on Thursday 4 March 2021, that could come into force at 11:59 pm on Monday 8 March 2021. We recommend that some of the new requirements commence on Wednesday 10 March 2021 to allow sufficient time for implementation.

PROACTIVELY RELEASED

Recommendations

We recommend you:

- a) **Note** that advice from the Director-General of Health on the prerequisites for making an Order under the COVID-19 Public Health Response Act 2020, including:
- the risks of an outbreak or spread of COVID-19
 - the nature and extent of measures appropriate to address those risks
- b) **Note** that, as the Director-General of Health, I advise that it is necessary for the groups of border workers set out in recommendation (j) to be tested routinely for COVID-19, to protect New Zealand from further spread or outbreak of COVID-19
- c) **Note** that officials have undertaken further work on the possibility of including workers who handle objects that have been recently handled by international arrivals in the Order, as we indicated in HR20210284
- d) **Note** that we have identified significant risks associated with including workers who handle objects that have been recently handled by international arrivals, including the risk of capturing a very large and variable group of workers and the possibility of driving unintended behavioural changes
- e) **Note** that officials do not recommend including workers who handle objects that have been recently handled by international arrivals in the Order
- f) **Note** that significant efforts have been taken to ensure that workers who handle objects that have been recently handled by international arrivals have appropriate access to Infection Prevention and Control measures and Personal Protective Equipment
- g) **Note** that workers who handle objects that have been recently handled by international arrivals can be included in the Higher Index of Suspicion criteria to prioritise voluntary access to testing
- h) **Agree** that a strong emphasis on infection prevention and control guidance for workplace environments where workers who come into contact with objects handled by international arrivals is an appropriate alternative to including this group of workers in the Order **Yes/No**
- OR
- i) **Agree** that you would like to receive an updated Order that includes workers who come into contact with objects handled by international arrivals **Yes/No**
- j) **Consult** with the Prime Minister, Minister of Finance, Minister of Justice, Minister of Customs, and the Minister of Transport on the COVID-19 Public Health Response (Required Testing) Amendment Order 2021, which:
- extends mandatory testing to workers at accommodation services where New Zealand-based international air crew travelling from higher-risk routes who are self-isolating, every 14 days **Yes/No**

- extends mandatory testing to health practitioners at accommodation services where New Zealand-based international air crew returning from designated higher-risk routes are self-isolating, every seven days Yes No
 - extends mandatory testing to all landside workers who interact with New Zealand-based international air crew travelling from higher-risk routes, every 14 days Yes No
 - extends mandatory testing to workers who spend any time in an enclosed space on board an aircraft that arrived from overseas, every 14 days Yes No
 - increases the frequency of mandatory testing of health practitioners at managed isolation facilities to every seven days Yes No
 - increases the frequency of mandatory testing of airside health practitioners at affected airports to every seven days Yes No
 - increases the frequency of mandatory testing of persons who transport crew to or from an affected ship to every seven days Yes No
 - allows the Director-General of Health to authorise different saliva sampling methods for the purpose of compliance with the Order Yes No
 - clarifies testing cycle requirements to reflect that the time between tests must not exceed the length of the relevant testing cycle Yes No
- k) **Note** that following the outcome of Ministerial consultation, we will provide you with a signing copy of the Order on 4 March 2021 Yes No
- l) **Note** that if you sign the COVID-19 Public Health Response (Required Testing) Amendment Order 2021 on 5 March 2021, it can come into force at 11:59 pm on Monday 8 March 2021 Yes No
- m) **Agree** that the new testing requirements will apply from Wednesday 10 March to allow greater time for implementation and communication to affected workers Yes No



Dr Ashley Bloomfield
Director-General of Health
 Date: 2/03/2021



Hon Chris Hipkins
Minister for COVID-19 Response
 Date: 3/03/21

Draft COVID-19 Public Health Response (Required Testing) Amendment Order 2021 for Ministerial Consultation

Background

1. The COVID-19 Public Health Response (Required Testing) Order 2020 (the Order) has been in place since 29 August 2020. The purpose of the Order is to prevent, and limit the risk of, the outbreak or spread of COVID-19, by ensuring specified border workers at risk of exposure to COVID-19 are tested on a regular basis.
2. On 18 February 2021, you agreed that the Order should be amended to expand testing to additional groups of workers, to allow the Director-General of Health to authorise different sampling methods for the purpose of compliance with the Order, and to clarify testing cycle requirements to reflect that workers should be tested as close to the end of their cycle as possible [HR20210284 refers].
3. We provided you with further advice on testing frequency of affected workers on 19 February 2021 [HR20210339 refers]. On 22 February 2021 you agreed to a single amendment Order process for both sets of changes to the Order.

Making an Order under the COVID-19 Public Health Response Act 2020

4. Under the COVID-19 Public Health Response Act 2020 (COVID-19 Act), an order may be made or amended if either:
 - a. a state of emergency has been declared (under the Civil Defence Emergency Management Act 2002),
 - b. an epidemic notice is in force (under the Epidemic Preparedness Act 2006), or
 - c. it has been authorised by the Prime Minister.
5. There is currently an Epidemic Notice in place, which allows orders to be made under section 11 of the COVID-19 Act.
6. As the Minister for COVID-19 Response, you may make orders under section 11 of the COVID-19 Act.
7. In order to make an order under section 11 you must have received advice from the Director-General about:
 - a. the risks of the outbreak or spread of COVID-19, and
 - b. the nature and extent of measures that are appropriate to address those risks.
8. You must have regard to any decision by the Government on how to respond to those risks and avoid, mitigate or remedy the effects of the outbreak or spread of COVID-19 (including taking into account any social, economic or other factors) and you must have consulted with the Prime Minister, and the Minister of Justice as required under the Act. You must be satisfied that this order is appropriate to achieve the purpose of that Act. The Order must be consistent with the New Zealand Bill of Rights Act 1990.

9. My advice about the risks of the outbreak or spread of COVID-19 and the nature and extent of measures that are appropriate to address those risks is set out below.

Public health evidence must support any expansion of the Order to new groups of workers

10. New Zealand has an evidence-based approach to developing and maintaining our COVID-19 elimination strategy. Testing border workers is part of the first of four pillars of the strategy to 'keep it out'.
11. Basing decisions on public health evidence allows us to focus our resources on the actions that will have the best chance of helping us 'keep it out'. It also helps ensure that any actions we take are lawful and do not limit, or represent justified limitations on, the rights and freedoms afforded under the New Zealand Bill of Rights Act 1990 (BORA). This is a key consideration for any mandatory requirements such as testing of border workers.

We have reviewed the risk settings for workers currently included in the Order

12. The Order is underpinned by a risk-based framework that aims to ensure testing requirements are proportionate to different workers' risk of exposure to COVID-19 [HR20201513 refers]. Those in higher risk occupations and settings are tested more often than those who work in lower risk occupations and settings. Workers are not tested when they are considered at no greater risk of exposure to those in the general community because this is difficult to justify from a public health perspective [HR20201636 refers].
13. Since the Order was developed there have been important changes in the COVID-19 context, including:
 - a. more transmissible variants of COVID-19 (first identified in the United Kingdom and South Africa) were detected in New Zealand in December 2020. Increased transmissibility means one positive COVID-19 case may infect more individuals in comparison to other variants in the same timeframe. This may increase the risk of a community outbreak of COVID-19 and make that outbreak potentially more difficult to contain. There is also some evidence of new variants of the virus having a different incubation period.
 - b. pre-departure and day 0/1 testing of most internationally arriving passengers was introduced in late December 2020 and January 2021 (international air crew are also subject to pre-departure testing requirements). Pre-departure testing is expected to reduce the risk of exposure to border workers by reducing the number of COVID-19 positive individuals arriving in New Zealand.
 - c. internationally arriving passengers are required to stay in their rooms until they return a negative day 0/1 test to further reduce the risk to managed isolation and quarantine workers (and other managed isolation facility guests) of exposure.
 - d. a new requirement for all returnees in managed isolation facilities to stay in their rooms following their day 12 COVID-19 test and changes to the managed isolation and quarantine Operations Framework to further reduce risk of transmission.

14. We advised you on 17 February 2021 that this changing context has changed the nature of border worker testing, to align it more with screening rather than surveillance. This shift has informed the new groups of lower-risk workers proposed to be included in the Order [HR20210284 refers] as well as changes to the testing frequency of some groups [HR20210339 refers].

Agency and sector feedback on proposed changes to the Order

15. The Ministry sought feedback from Crown Law, the Ministry of Justice, Ministry of Transport, Ministry of Business, Innovation and Employment (including Immigration New Zealand and Managed Isolation and Quarantine Policy), Ministry for Primary Industries, the Treasury, the New Zealand Customs Service, Maritime New Zealand, New Zealand Defence Force, New Zealand Police, Civil Aviation Authority, Aviation Security, and WorkSafe New Zealand.
16. General feedback from engagement reflected that extending the testing requirements may cause alarm to PCBUs, their staff and their families who previously did not consider themselves to be at heightened risk. Feedback also reflected that some of the groups could potentially capture a large number of workers who may not consider themselves 'border workers' as they do not work anywhere near a port or airport. Concerns were also raised about staff welfare risks from repeated testing and further stigmatisation of those subject to the testing requirements.
17. This feedback from engagement reinforces the importance of providing clear advice on the public health rationale for extending testing to new groups of workers, as well as clear, balanced, factual and accessible information for workers and the PCBUs that employ them. In particular, any new groups of workers to be brought into the Order need to be made aware that testing does not prevent them from getting COVID-19, it may just help it to be identified earlier if they have no or mild symptoms and therefore protect others from transmission of the virus. Workers need to be made aware of other measures put in place to protect them, such as clear and consistent guidance on the use of Personal Protective Equipment (PPE) and infection prevention and control (IPC) protocols.
18. Agencies also reinforced that regular testing is difficult for some cohorts of workers in airport settings as their working hours have been reduced/have become inconsistent in response to the reduction in flights. Concerns have also been expressed about whether current testing capacity will be sufficient to manage the new groups of workers to be tested, especially when the new requirements coincide with the vaccination roll-out.

Routine testing of workers who handle objects that have been recently handled by international arrivals

19. On 18 February 2020 you agreed in principle that workers who handle objects that have been handled by internationally arriving or internationally transiting passengers, aircrew or ship crew within the previous 72 hours should be included in the Order [HR20210284 refers]. The proposed 72 hour limitation reflects that any risk of transmission via surfaces ("fomite transmission") is likely to be low and short lived.
20. We noted that the absence of evidence to support this option carries a risk that it would not justify the limitations under BORA [HR20210284 refers]. Furthermore, the potentially large size of this group would make implementation of the testing requirements difficult.

21. Officials have done further work to identify groups of border workers who handle objects that have been recently handled by international arrivals that could be included in the Order. This has included engagement with the Ministry's public health and legal teams, as well as border agencies.

There are significant risks associated with mandatory testing for this group of workers

22. Officials consider that there are risks associated with bringing this group of workers into the Order.
23. We previously advised that it would be very difficult to define a group of workers who interact with others who interact with international arrivals [HR20210284 refers]. You raised concerns that this group could potentially be very large, if for example the testing requirement extended to everyone who handles goods that come off a ship. The agencies we consulted with agreed, with their main concern being whether the definition of this group of workers would be specific and narrow enough to only capture a small group of workers. There was concern about where the testing 'chain' would end, with the possibility of workers far-removed from border contexts being required to complete regular tests.
24. The potential size of this group could be reduced by defining it as workers who handle specific objects that have been removed for certain activities, i.e. cleaning, disposal or re-use. We do not anticipate this would capture a large number of workers, but given the complexity of airports, ports and MIQFs and the number of workers in these settings, it is possible that this definition may require mandatory testing of more workers than anticipated.
25. There is also risk that this approach may drive unintended behavioural changes such as workers refusing to touch specific objects, and further stigmatisation of these workers by the public. The Ministry of Business, Innovation and Employment (MBIE) also noted a potential risk to the operation of managed isolation and quarantine facilities, that third party contractors may refuse to service these facilities in future if they do not want their workforce to be subject to mandatory testing.
26. There has been limited engagement to date with some of the PCBUs whose workers may be captured by bringing these workers into the Order, in particular laundry and catering providers.

In light of the LSG SkyChefs case, we have worked to ensure appropriate PPE and other infection prevention and control measures are used in environments where workers handle objects that have recently been handled by international arrivals

27. Public health and infection prevention and control advice is that the most effective way to mitigate a possible risk of fomite transmission is to ensure that the infection prevention and control measures, including cleaning and disinfection (using the appropriate chemicals), hand hygiene and appropriate use of PPE, dependent on the setting is utilised. Agencies and aviation sector stakeholders also noted that if the risks of fomite transmission cannot be ruled out at this stage, the PPE requirements for workers receiving and handling objects recently handled by international arrivals need to be clear.

28. We previously advised you that an infection prevention and control expert audited LSG SkyChefs' processes to determine if their safety procedures were appropriate [HR20210284 refers]. The audit showed LSG Sky Chefs has comprehensive measures in place to reduce any potential risks of COVID-19 transmission.
29. To build on the recent audit and investigation of LSG SkyChefs, officials are updating the guidance for infection prevention and control (IPC) requirements in different border environments. This includes workplace environments where workers are likely to come into contact with objects and/or surfaces handled by international arrivals. In particular:
 - a. the IPC guidance for the air border has been updated and is currently before the Ministry's Clinical Oversight Group for approval. Once approved, regular auditing will commence in April 2021
 - b. detailed IPC guidance for the maritime border is being developed and auditing of the ports will commence following the implantation of the IPC guidance
 - c. detailed IPC guidance for MIQFs was released to facilities on 1 March 2021 and will be audited regularly.
30. The IPC guidance provides specific guidance for the groups of workers who handle objects and items that have recently been handled by international arrivals. This includes specific procedures for workers such as laundry workers and baggage handlers. For example, staff handling laundry within cabins and at the receiving laundry facility must wear medical masks or N95/P2 particulate respirators, protective suit/gown, eye protection, and gloves.
31. IPC guidance is supported by detailed operating frameworks for border workers and their employers that set out the health and wellbeing requirements that must be met.

We do not recommend bringing workers who handle objects that have recently been handled by international arrivals into the Order

32. Officials do not recommend bringing workers who handle objects that have recently been handled by international arrivals into the Order. We consider that as the risks of fomite transmission are inconclusive, there is limited justification to bring people into the Order solely on the basis that they are likely to come into contact with anything that may have been handled by an international arrival. We also consider that IPC and PPE requirements for these workers are robust and offer the best protection against COVID-19.
33. We recommend including these workers in our Higher Index of Suspicion criteria to prioritise voluntary access to testing. This is the approach we have taken with cold storage workers who handle frozen goods directly from an international port, to acknowledge their higher risk of exposure compared to the general public while reflecting that their risk is not sufficient to justify fortnightly testing.

If you wish to proceed with mandatory testing for this group of workers, officials have identified an approach that would include workers who handle specific objects in the Order

34. If you do wish to proceed with mandatory testing of this group, we have been able to narrow down the group of people who handle objects recently handled by international arrivals by being specific about the objects they handle that would bring them into a

potentially higher category of risk. This approach would include the following groups of workers:

- a. workers who handle affected objects, where the handling occurs within 24 hours of the aircraft arriving in New Zealand, and where an affected object is an item that has been removed for cleaning, disposal, and/or re-use removed from an enclosed space on board an aircraft that has arrived from a location outside New Zealand
 - b. workers who handle affected objects that have been used within a managed isolation or quarantine facility, if that handling occurs within 72 hours of the items being removed from the facility
 - c. workers who handle affected objects that have been used on an affected ship, if that handling occurs within 72 hours of the items being removed from the affected ship, where an affected object is an item that has been removed for cleaning, disposal and/or re-use
 - d. workers who handle the baggage of internationally arriving or internationally transiting passengers or other persons on board an affected aircraft.
35. In all of the above definitions, 'affected objects' are items that have been removed for cleaning, disposal, and/or re-use.
36. The above definitions are intended to capture workers who receive items such as laundry, food trays, and cutlery used by international arrivals that are removed for cleaning, disposal or re-use, as well as passenger and crew baggage. It would apply to workers who handle these items off-site. For example, this definition would capture workers who launder blankets used on aircraft.
37. Although there is a risk that these items come into contact with workers elsewhere in the chain (for example, delivery drivers who move the items from an affected airport to the off-site laundry facility), the approach is intended to capture workers who are in more prolonged contact with these items. We have narrowed the definition of this group to best reflect known activities that, if we cannot rule out the possibility of fomite transmission, are most likely to carry a risk of exposure.
38. If you wish to proceed with this approach, officials recommend undertaking a rapid review of this group after two testing cycles have been completed (28 days), given the uncertainty about how many workers may be captured by this testing requirement. The rapid review would consider:
- a. evidence on the increased number of workers who have been captured by the Order and any information available about how many of these workers have come into the Order due to their contact with objects
 - b. whether the definition used in the Order has captured the workers that we intended to capture
 - c. any impacts on testing capacity
 - d. any known impacts on workers and PCBUs.
39. If the rapid review were to find unintended consequences of including this group in the Order we would then provide you with further advice.
40. A further alternative we considered would be to bring this group of workers into the Order on a time-limited basis (such as for two 14-day testing cycles). This would reflect a

precautionary approach until more is known about the likely risks of fomite transmission and the source investigation of recent cases, noting we have as yet not been able to confirm whether Case B, a laundry worker at LSG SkyChefs, was the source case. It remains unlikely but possible that she was exposed to COVID-19 from handling laundry. The short-term testing requirements could help confirm the actual risk faced by this group, that could then determine whether they should remain in the Order on an ongoing basis (if person-to-person transmission originating from the higher-risk setting cannot be established as the likely source of any positive case). The risk of this approach is that given the operational implications for PCBUs and workers to meet their obligations under the Order, there is a real risk of non-compliance with a short-term requirement.

41. Officials are able to update the Order that you will receive for signing, should you wish to pursue any of these alternative approaches.

Routine testing of all workers at accommodation services where New Zealand-based air crew travelling from designated higher-risk routes are self-isolating

42. New Zealand-based international air crew who are not travelling on higher-risk routes (e.g. flights from Australia) are exempt from the 14 day isolation or quarantine period as long as they meet certain conditions. These conditions include undergoing a health assessment to confirm they do not have symptoms of COVID-19 on arrival in New Zealand.
43. The COVID-19 Public Health Response (Air Border) Order (No 2) 2020 states that air crew members are not exempt from isolation and quarantine requirements if they have travelled on a higher-risk route within the seven days immediately before arriving in New Zealand by air. There are currently two designated higher-risk routes, Los Angeles and any airport in New Zealand and San Francisco and any airport in New Zealand. Air crew travelling on these higher-risk routes must remain in self-isolation for 48 hours, have a test for COVID-19 and continue to self-isolate until a negative COVID-19 test is provided (usually 1-2 days).
44. Although air crew travelling on designated higher-risk routes were previously able to self-isolate at home, these air crew are now isolating in an Air New Zealand-contracted hotel, as per the arrangements set out in your letter of 15 December 2020 to the Air New Zealand Chief Executive. In a further letter from you to the Air New Zealand Chief Executive in early January, you noted that you would direct officials to review the existing risk assessment framework for air crew layover locations.
45. On 19 February 2021, officials briefed you on a revised draft risk assessment framework for determining the risk of COVID-19 exposure to New-Zealand-based air crew flying scheduled international routes [HR20210342 refers]. One potential outcome from reviewing the risk assessment framework is that more air crew members will need to stay in self-isolation hotels. There may also be changes to the expectations of air crew and staff in self-isolation hotels.
46. As these self-isolation arrangements are in place to reflect the higher risk nature of this group of air crew who travel on designated higher-risk routes, we consider that it is appropriate to require workers at the relevant hotels to be subject to routine testing as their risk of exposure is likely equivalent to workers at managed isolation facilities (who are on a 14-day testing cycle).

47. This option received limited feedback from aviation stakeholders, other than the definition needing further refinement. We understand that Air New Zealand are currently offering voluntary testing for workers at these hotels through their testing contractor, and the hotel manager has expressed a desire for their workers to be included in mandatory testing as well as having access to vaccinations.
48. The attached draft Order brings in all workers at accommodation services where NZ-based international air crew travelling from designated higher-risk routes are self-isolating. It explicitly excludes workers at private homes (for example, a cleaner working at an apartment complex).
49. We recommend that this group is tested on a 14-day cycle, to align with the testing of workers at managed isolation facilities.
50. The attached draft Order also brings in health practitioners at these accommodation services as a separate group, on a 7-day cycle. This reflects our advice on testing frequency changes, that identified the higher risk of exposure faced by health practitioners in both managed isolation facilities and facilities used for self-isolation [HR20210339 refers].

Routine testing of all landside workers who interact with New Zealand-based air crew travelling from designated higher-risk routes

51. We already test all landside workers who interact with internationally arriving/transiting passengers. This option is intended to capture all landside workers who interact with New Zealand-based air crew travelling from higher-risk routes.
52. We advised you that this option represents a small, definable population where there is evidence of some risk of exposure. Landside workers who interact with New Zealand-based air crew travelling from higher-risk routes are considered to have a similar risk of exposure to landside workers who interact with international arriving or international transiting passengers.
53. We are no longer proposing to include interactions with ship crew as part of this new group, as an equivalent group of port workers is already captured by the Order under the group 'all other port workers (other than excluded port persons) who interact with persons required to be in isolation or quarantine under COVID-19 order', on a 14-day testing cycle.
54. Feedback from agencies and aviation stakeholders was generally supportive, and those consulted with did not anticipate that many more people would be captured by this requirement. However, some from the aviation sector expressed concern about the possibility of capturing crew on domestic flights that transport passengers to managed isolation and quarantine facilities, as the group of workers that interact with these air crew members is potentially quite wide. This group of air crew are unlikely to be captured by our proposed definition. There are also processes and systems in place to manage risks associated with these flights and crew.
55. The policy intent is to capture air crew at higher risk, as recognised by other arrangements (such as self-isolation requirements). The current designation of higher-risk routes (flights from Los Angeles and San Francisco) means that it should be straightforward for PCBUs and workers to identify which interactions trigger the testing requirement.

56. The attached draft Order brings in landside workers who interact with New Zealand-based international air crew travelling on designated higher-risk routes.
57. Since there is some risk of exposure to COVID-19 but this risk is low, we recommend this group is tested every 14 days.

Routine testing of persons who spend any time in an enclosed space on board an aircraft that arrives from a location outside New Zealand

58. We already test persons (other than excluded airport/port persons) who spend more than 15 minutes in an enclosed space on board an aircraft that arrives from a location outside New Zealand or an affected ship, on a seven day cycle. We advised you that there is a public health rationale for testing these persons every seven days [HR20210284 refers].
59. The public health rationale for this new group of people who spend any time in an enclosed space on board an aircraft arriving from outside New Zealand is weaker when the time on board is less than 15 minutes. However, there is still a public health rationale for testing this group due to increasing evidence around airborne transmission. We recommended that this group be added to the Order on a 14-day testing cycle [HR20210284 refers].
60. As previously noted, having the two similar groups on different testing cycles may cause implementation issues [HR20210284 refers]. While there may be some confusion over which testing cycle someone is subject to, it will be clear that everyone is subject to testing. Some people may either under-report the time spent on board or sacrifice quality for time to reduce the frequency of testing they are subject to, but if this is the case then it is likely already occurring so that people can avoid testing altogether.
61. We are no longer proposing to include time on board an affected ship as a descriptor of this new group, as an equivalent group of port workers is already captured by the Order under the group 'persons (other than excluded port persons) who board, or have boarded, affected ship'. This group is already on a 14-day testing cycle.
62. Agencies and stakeholders noted that this may be difficult to monitor as activities triggering this requirement could be intermittent rather than routine. This means our guidance will need to clarify how the requirements apply to 'one-off' exposure events, and to keep guidance on use of PPE consistent with the testing requirements.
63. The attached draft Order brings in routine testing of persons who spend any time in an enclosed space on board an aircraft that arrives from a location outside New Zealand.

Clarifying testing cycle requirements to reflect that the time between tests must not exceed the length of the relevant testing cycle

64. The intent of the Order was for affected workers to get tested as close to the end of the cycle as possible to increase the chances that spacing between testing cycles picks up any positive results. We have issued guidance to PCBUs, in line with this position to ensure the best chance of picking up any positive cases through routine testing.
65. However, the Order allows individuals to get tested at any point in their cycle, and we are aware that this is happening despite the guidance provided. This introduces a risk that affected workers may be getting tested before the test can detect infection, or that an asymptomatic individual on a 14-day cycle might not be tested for up to 27 days.

66. There are good reasons to maintain some flexibility around the date workers must get tested. Many individuals do not work standard Monday to Friday, 8 am to 5 pm roles, are on rosters, and/or may only be getting sporadic work at this time. Our testing workforce have implemented hours to try and capture as many workers as possible but there are some who struggle to access testing facilities because of their hours and shifts. This particularly impacts night shift workers, workers who live a long way from work or workers who have non-standard rosters (eg seven days on, seven days off), many of whom may have to come in on their time off when they should be sleeping which is a health and safety concern. It is important that no one goes longer than the length of their testing cycle without undergoing a test. However, it is acceptable to shorten the cycle slightly and reset it from an earlier day to give workers the flexibility they need.
67. Some individuals need to get tested earlier in their cycle, for example because of difficulties in accessing testing facilities or because someone else who works in the same facility has tested positive for COVID-19. Any changes made to when individuals must get tested in their cycle should encourage individuals to continue to report for necessary additional testing. This can be addressed by amending the Order to be clear that the testing cycle resets when a test is performed. This will provide some flexibility without compromising the public health measures.
68. We received the following feedback from agencies on the proposal to amend the description of the testing cycles in the Order in line with the original intent:
- a. flexibility needs to be retained to account for operational realities of working environments, for example at airports
 - b. concerns were raised that the proposal might further complicate the recording and reporting requirements of the Order and increase the administrative burden, potentially creating a compliance barrier. Other avenues, such as education, were suggested instead.
69. The attached draft Order specifies that, when reoccurring testing is required, the interval of days from one test to the next test that an affected worker is required to undergo may not exceed the length of the testing period that applies to them. Based on our stakeholders' need for flexibility we do not recommend specifying a window within which individuals must get tested (eg, the last two days of their cycle).
70. We will continue to promote the guidelines that state that individuals should be tested as close to the end of the relevant testing cycle as is possible.

Allowing the Director-General of Health to authorise different sampling methods for the purpose of compliance with the Order

71. Clause 9 of the Order currently specifies that testing and medical examination must involve taking nose swabs or mouth swabs (or both).
72. It is possible that other testing methods that are less invasive but suitably sensitive may become appropriate as a means of complying with the Order in future.
73. Agency feedback made it clear that the change needs to manage expectations of how use of alternative sampling methods would fit in with the existing testing methods, as well as managing any future risks of complacency about getting the nose swab if workers have completed any saliva testing required. Agencies noted that a less invasive test would be welcomed by stakeholders.

74. If saliva testing were to be accredited and deemed appropriate for routine testing of border workers, it may be preferable to prioritise this test type for workers with the highest testing frequency requirements.
75. Agencies also noted that record-keeping could become more complex when individuals had to complete different types of testing to fulfil the requirements. This issue can be considered when we are in a position to authorise saliva testing as a method that complies with the Order, as it will be clearer at that stage how saliva testing is likely to be used alongside existing methods.
76. The draft provision in the Amendment Order would limit the Director-General's authorisation to saliva testing methods only. This may require further amendment if different testing methods (such as pinprick testing) were to be considered in future as an appropriate option for the mandatory testing regime. However, limiting the current amendment to saliva testing methods is narrow in scope to reflect the most likely testing methods to be authorised in future. It may also provide reassurance to workers that only less invasive methods of testing such as saliva are likely to be introduced, rather than more invasive methods (such as blood tests).
77. The attached draft Amendment Order allows the Director-General to issue a notice to specify the method by which saliva samples may be collected and authorise this method for the purpose of compliance with the Order.

Increasing the testing frequency for groups of workers who have a higher risk of exposure

78. To increase the testing frequency of workers we would need to be satisfied that the level of risk faced by border workers has increased since they were brought into the Order or our risk tolerance for border workers becoming infected has lowered. Public health advice is that the overall risk to border workers, despite the emergence of more virulent strains and in light of recently introduced safety measures (eg, pre-departure and day 0/1 testing), has not changed sufficiently since the Order took effect to justify large scale changes to the testing frequency for all border workers. Our risk tolerance has not lowered.
79. We reviewed the Order and identified additional groups of people, who are mostly subsets of existing groups covered by the Order, whose risk of exposure is more in line with those on a seven-day cycle [HR20210339 refers].
80. Agencies were largely supportive of the proposal to increase the testing frequency for these specific groups of individuals. We received the additional following feedback from agencies:
 - a. there needs to be a clear risk-based rationale to justify increasing the testing burden on workers
 - b. we need to consider whether the changes are justified in light of other initiatives that aim to reduce the risk of exposure currently in progress (eg, infection prevention measures including the use of personal protective equipment, vaccination, saliva testing, a review of MIQFs and 'cohorting' arrivals into separate facilities based on arrival date, and pre-departure testing)
 - c. some workers are subject to a very high level of stress and dealing with capacity issues, and there is reluctance to add to that. Specifically, there is a risk that

increasing testing frequency for health practitioners may affect the ability to retain an already pressured workforce

- d. appropriate lead in times and a planned implementation approach that does not compromise the vaccination programme is necessary
- e. the increased administrative burden and operational implications (eg, testing facility capacity and availability) that an increase in testing frequency will have on some PCBUs
- f. the definition of New Zealand-based air crew needs to capture only those who are normally resident in New Zealand and are returning from a higher-risk international route as this is where the greatest risk of exposure lies.

81. Following agency consultation, the public health rationale for the proposed changes stands but we need to make sure that rationale is very clear to affected workers. We took other risk reduction initiatives into account when reviewing the frequency of testing and consider that the public health rationale has not materially changed in light of these initiatives.
82. You agreed to a slightly longer timeframe for the making of the Order in anticipation of the operational impacts to be worked through and are working with agencies on implementation. We also now recommend that the new testing frequencies and new groups apply from Wednesday 10 March 2021, two days after the Order comes into force, to ease implementation for PCBUs. We will continue to encourage PCBUs to use the Border Worker Testing Register as we know from the review of the Order that most PCBUs found it fairly easy to meet their obligations under the Order by using the Order and very few PCBUs found it made their life harder [HR20210284 refers].
83. After considering the feedback received, we recommend narrowing the definition of 'New Zealand-based air crew' to 'New Zealand-based international air crew returning from designated higher-risk routes'.
84. The attached draft Order increases the testing cycle for the following groups of workers from 14 days to seven days:
- a. health practitioners at managed isolation facilities
 - b. health practitioners at accommodation services where New Zealand-based international air crew returning from designated higher-risk routes are self-isolating (note these workers are being added as a new group in the Order, as they are a subgroup of the other new group of workers at these facilities being added to the Order as part of this amendment)
 - c. airside health practitioners at affected airports
 - d. workers who transport crew to or from an affected ship (noting workers who transport persons who are not ship crew to or from an affected ship continue to be tested every 14 days).

New Zealand Bill of Rights Act 1990 considerations – legally privileged

■ s 9(2)(h) [Redacted]
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■ s 9(2)(h)

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■ [REDACTED]

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■ [REDACTED]

■ [REDACTED]

Estimated costs

98. If you agree to the recommended new groups, we estimate that an additional 300-400 workers will be required to be tested every 14 days,¹ and 600 to 800 workers will have their testing frequency increased from 14 days to seven days.² The total cost of these changes is expected to be around \$4.68m-\$6.24m per annum.³
99. If you agree to the recommended new groups, and if you choose to include workers who handle objects that have been handled by international arrivals, we estimate that an additional 1000-1200 workers will be required to be tested every 14 days,⁴ and 600 to 800 workers will have their testing frequency increased from 14 days to seven days.⁵ The total cost of these changes is expected to be around \$8.32m-\$10.4m per annum.⁶
100. These estimates exclude the cost of testing of persons who spend any time in an enclosed space on board an aircraft that arrives from a location outside New Zealand or on board an affected ship, as we have not been able to estimate the number of workers who may be affected.
101. These additional costs would be met from the existing baseline funding in the National Response to COVID-19 Across the Health Sector multi-category appropriation, agreed in December 2020.

Equity

102. The impacts of COVID-19 are felt differentially across New Zealand communities. Māori and Pacific communities and those living with disabilities, in lower socio-economic groups and crowded or institutional settings bear a greater portion of both health and economic impacts and risks. The mandatory border worker testing regime has been a key part of the response to prevent the outbreak or spread of COVID-19 to the community, particularly those communities with many workers in border settings.
103. Any changes to the mandatory testing requirements need to be preceded by engagement with Māori, Pacific and wider groups mandating and supporting workers covered by the Order and unions to ensure issues, risks and concerns are captured and addressed through implementation arrangements.

Timing of implementation

104. In our engagement with border agencies, they and the sector have noted that it would be preferable for the Amendment Order to come into force on Wednesday 10 March 2021 to allow greater implementation time.

¹ 300 tests x 26 weeks x \$200 per test = \$1.56m. 400 tests x 26 weeks x \$200 per test = \$2.08m.

² 300 additional tests x 52 weeks x \$200 per test = \$3.12m. 400 additional tests x 52 weeks x \$200 per test = \$4.16m.

³ Total estimated cost is \$1.56m + \$3.12m = \$4.68m on the lower end, or \$2.08m + \$4.16m = \$6.24m on the higher end.

⁴ 1000 tests x 26 weeks x \$200 per test = \$5.2m. 1200 tests x 26 weeks x \$200 per test = \$6.240m.

⁵ 300 additional tests x 52 weeks x \$200 per test = \$3.12m. 400 additional tests x 52 weeks x \$200 per test = \$4.16m.

⁶ Total estimated cost is \$5.2m + \$3.12m = \$8.32m on the lower end, or \$6.24m + \$4.16m = \$10.4m on the higher end.

105. We recommend that the Amendment Order comes into force on Monday 8 March, with changes to the testing frequencies and groups to apply from Wednesday 10 March.

Next steps

106. We recommend that you commence Ministerial consultation on the attached draft Amendment Order.
107. We recommend that you:
- a. consult the Prime Minister, Minister of Finance, Minister of Justice, Minister of Customs, and the Minister of Transport on the attached draft Order
 - b. forward a copy of this report to the Prime Minister, Minister of Finance, Minister of Justice, Minister of Customs, and Minister of Transport
 - c. return the signed report to the Ministry of Health.
108. If you wish to include workers who come into contact with objects handled by international arrivals in the Order, officials will provide you with an updated Order that reflects this.
109. Following the outcome of Ministerial consultation, we will provide you with a signing copy of the Order on Thursday 4 March 2021, or at late date to allow for longer Ministerial consultation as advised by your office.
110. If you sign the amended Order by Friday 5 March 2021, it can be gazetted and published. We are planning for the amended Order to come into force at 11:59 pm on Monday 8 March 2021, and for the new testing frequencies and groups to apply from Wednesday 10 March 2021. As mentioned above, timeframes can be adjusted to allow for a longer period of Ministerial consultation.

ENDS.

**Appendix 1: Draft COVID-19 Public Health Response (Required Testing)
Amendment Order 2021**

PROACTIVELY RELEASED

IN CONFIDENCE

COVID-19 Public Health Response (Required Testing) Amendment Order 2021

This order is made by the Minister for COVID-19 Response under sections 11 and 15(1) of the COVID-19 Public Health Response Act 2020 in accordance with section 9 of that Act.

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6	Clause 9 amended (Scope of testing and medical examination)	2
7	Schedule 2 amended	3

Order

1 Title

This order is the COVID-19 Public Health Response (Required Testing) Amendment Order 2021.

2 Commencement

This order comes into force at 11.59 pm on 8 March 2021.

3 Principal order

This order amends the COVID-19 Public Health Response (Required Testing) Order 2020 (the **principal order**).

4 Clause 4 amended (Interpretation)

In clause 4, insert in their appropriate alphabetical order:

affected aircraft means an aircraft that has arrived from a country or place outside New Zealand

higher-risk route means a route designated as a higher-risk route in accordance with a COVID-19 order

relevant aircrew member means any person—

- (a) who—
 - (i) is identified as a crew member on the crew manifest for the aircraft on which they arrive in New Zealand; or
 - (ii) is not identified as a crew member on that manifest but is on the aircraft at the direction of an airline for which they work as a pilot, co-pilot, or flight attendant; and
- (b) who—
 - (i) travelled on a higher-risk route within the 7 days immediately before their arrival by air in New Zealand; or
 - (ii) on arrival by air in New Zealand, was returning from a period of flight simulator training in Australia that is not available in New Zealand

5 Clause 7 amended (Affected person must undergo testing and medical examination)

After clause 7(2), insert:

- (3) Where recurring testing is required, the interval of days from one test to the next test that an affected person must undergo may not exceed the length of the testing period that applies to the affected person.

Example

If the applicable testing period is every 7 days, and a person becomes an affected person on 10 March, the affected person's first test must be no later than 17 March. If recurring testing is required, and the affected person was first tested on 15 March, the second test may not be later than 22 March. If the second test was on 19 March, the third test may not be later than 26 March.

6 Clause 9 amended (Scope of testing and medical examination)

- (1) Replace clause 9(a) with:

- (a) must involve any of, or a combination of any of, the following:
 - (i) taking nose swabs;
 - (ii) taking mouth swabs;
 - (iii) taking saliva by a specified method; and

- (2) In clause 9, insert as subclause (2):

- (2) In this clause, **specified method**, in relation to saliva, means the method or methods by which saliva may be taken and analysed, including any conditions, that the Director-General has authorised in a notice published—

- (a) on a publicly accessible Internet site maintained by or on behalf of the New Zealand Government; and
- (b) in the *Gazette*.

7 Schedule 2 amended

- (1) In Schedule 2, item 1.1, second column, replace “facility” with “facilities”.
- (2) In Schedule 2, item 2.1, second column, replace “facility” with “facilities”.
- (3) In Schedule 2, after item 2.2, insert:

2.3	Health practitioners working at managed isolation facilities	Community testing centre, testing centre at isolation facility, or other healthcare facility	Once every 7 days starting on 10 March 2021
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- (4) In Schedule 2, item 3.1, replace “aircraft that arrives from location outside New Zealand” with “affected aircraft”.
- (5) In Schedule 2, after item 3.10, insert:

3.11	Persons (other than excluded airport persons) who spend no more than 15 minutes in enclosed space on board affected aircraft	Community testing centre, testing centre at affected airport, or other healthcare facility	Once every 14 days starting on 10 March 2021
3.12	Health practitioners carrying out work airside	Community testing centre, testing centre at affected airport, or other healthcare facility	Once every 7 days starting on 10 March 2021

- (6) In Schedule 2, items 4.1 to 4.5, replace “ship” with “ships”.
- (7) In Schedule 2, item 4.5, replace “persons” with “persons (other than crew)”.
- (8) In Schedule 2, after item 4.6, insert:

4.7	Workers who transport crew to or from affected ships	Community testing centre, testing centre at affected port, or other healthcare facility	Once every 7 days starting on 10 March 2021
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- (9) In Schedule 2, item 5.1, replace “airport” with “affected airport”.
- (10) In Schedule 2, after item 5.1, insert:

5.2	Health practitioners working at accommodation services (other than private dwellinghouses) where relevant aircrew members are self-isolating	Community testing centre, testing centre at affected airport, or other healthcare facility	Once every 7 days starting on 10 March 2021
5.3	Workers at accommodation services (other than private dwellinghouses) where relevant aircrew members are self-isolating	Community testing centre, testing centre at affected airport, or other healthcare facility	Once every 14 days starting on 10 March 2021

**COVID-19 Public Health Response (Required Testing)
Amendment Order 2021**

Explanatory note

5.4	All landside workers who interact with relevant aircrew members	Community testing centre, testing centre at affected airport, or other healthcare facility	Once every 14 days starting on 10 March 2021
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Dated at this day of March 2021.

Minister for COVID-19 Response.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order, which comes into force at 11.59 pm on 8 March 2021, amends the COVID-19 Public Health Response (Required Testing) Order 2020 to—

- clarify the intervals at which an affected person must be tested:
- permit the taking of saliva by a specified method for the purposes of testing and medical examination:
- adjust the groups of affected persons to be tested and increase the frequency of testing for certain groups.

A failure to comply is an infringement offence under section 26(3) of the COVID-19 Public Health Response Act 2020 (the **Act**) for which a person is liable to an infringement fee of \$300 or a fine not exceeding \$1,000.

This order must be approved by a resolution of the House of Representatives before the end of the relevant period described in section 16(2) of the Act. If that does not happen, the order is revoked at the end of that period.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*:
This order is administered by the Ministry of Health.