

# Briefing

## Exemption from the COVID-19 Public Health Response (Maritime Border) Order (No 2) for crew members arriving by Quarantine Free Travel flights

|                        |   |                              |               |
|------------------------|---|------------------------------|---------------|
| <b>Date due to MO:</b> | 22 April 2021                                     | <b>Action required by:</b>   | 23 April 2021 |
| <b>Security level:</b> | IN CONFIDENCE                                     | <b>Health Report number:</b> | 20210938      |
| <b>To:</b>             | Hon Chris Hipkins, Minister for COVID-19 Response |                              |               |
| <b>Copy to:</b>        | Hon Michael Wood, Minister of Transport           |                              |               |

### Contact for telephone discussion

| Name                        | Position  | Telephone |
|-----------------------------|---|-----------|
| <b>Dr Ashley Bloomfield</b> | Director-General of Health                          | s 9(2)(a) |
| <b>Maree Roberts</b>        | Deputy Director-General, System Strategy and Policy | s 9(2)(a) |

### Minister's office to complete:

- |   |                                    |  |
|---|------------------------------------|--|
| <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 Withdrawn |  |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:

# Exemption from the COVID-19 Public Health Response (Maritime Border) Order (No 2) for crew members arriving by Quarantine Free Travel flights

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**Security level:** IN CONFIDENCE      **Date:** 22 April 2021

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

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## Purpose of report

1. This briefing recommends you grant a class exemption for shipping crew members arriving from Quarantine Free Travel (QFT) countries on aircraft undertaking QFT flights from clauses 17(3)(c), 24(2), 27 and 28 of the COVID-19 Public Health Response (Maritime Border) Order (No 2) 2020.

## Summary

2. The COVID-19 Public Health Response (Maritime Border) Order (No 2) (Maritime Border Order) specifies the conditions that apply for the safe transfer of shipping crew members to avoid the need for them to do 14 days in Managed Isolation and Quarantine (MIQ). This includes crew members who arrive by aircraft, who must be transferred directly to their departing ship or are placed in MIQ until their ship departs.
3. Despite QFT being in place, sea crew arriving into New Zealand on QFT flights are legally subject to the Maritime Border Order (the MBO). The MBO requires sea crew arriving by air to be directly transferred to their departing ship or to be placed in MIQ until the ship departs. This is the result of a misalignment between the MBO and the Air Border Order (ABO) which occurred when QFT amendments to the MBO were removed from the COVID-19 Public Health Response (Air Border, Isolation and Quarantine, and Required Testing) Amendment Order 2021. This was an intentional decision at the time, reflecting the speed and complexity of the rest of the QFT legal arrangement and the most urgent need to put them in place first.
4. Work is currently underway to make consequential amendments to the MBO that will re-align it to the new provisions of the ABO. This work is complex because a number of existing requirements may need to be retained for ships and sea crew traveling from QFT countries to maintain an acceptable level of public health risk at the maritime border. Finding the right balance between the old and new provisions is required to ensure that the MBO and ABO create a consistent line of defence against COVID-19 at our borders will take some time, and officials are currently working on a timeline and plan for delivery of the required amendments to the MBO.

5. In the interim, the misalignment between the ABO (which allows passengers from QFT flights to move freely throughout New Zealand) and the MBO (which restricts the movements of sea crew arriving by air from QFT places) remains.
6. To address this misalignment in the interim, we recommend you exempt crew members arriving on QFT flights from QFT countries (currently Australia, Cook Islands and Niue) from clauses 24(2), 27 and 28 of the Maritime Border Order. This is the simplest and most flexible solution in the short term, and will be legally robust until the MBO can be amended.
7. Officials have assessed this exemption from a public health perspective and conclude the risk of granting the exemption is low. This accounts for the fact that Trans-Tasman Quarantine free Travel (TT QFT) is already happening, and it was always intended for QFT rules to include sea crew arriving in New Zealand on QFT flights. The exemption poses no additional public health risk.

## Recommendations

We recommend you:

- a) **Note** that under the COVID-19 Public Health Response (Maritime Border) Order (No 2) 2020 (Maritime Border Order) you may exempt any person or class of persons from the requirement to comply with any provision of the Order **Noted**
- b) **Note** under the Maritime Border Order, you must take into account the advice of the Director-General of Health when deciding whether to grant an exemption and what, if any, conditions to impose on an exemption **Noted**
- c) **Note** there is a misalignment between the Maritime Border Order and the amended Air Border Order (enabling QFT), meaning sea crew members arriving via QFT flights from QFT countries will have to travel directly to their departing ship or be placed in Managed Isolation and Quarantine until their ship departs **Noted**
- d) **Note** we intend to address this alignment issue by amending the Maritime Border Order but there is significant policy work required before we can deliver that amendment, and we require an interim solution **Noted**
- e) **Agree** to grant a class exemption for crew members arriving on QFT flights from QFT countries from clauses 17(3)(c), 24(2), 27 and 28 of the Maritime Border Order **Yes/No**
- f) **Note** given it was the intention that sea crew members arriving on QFT flights would be treated the same as other QFT passengers, I consider this exemption would present a low risk of transmission of COVID-19 into the community **Noted**

- g) **Note** that that the exemption will be published in the Gazette and on the Unite **Noted**  
Against COVID-19 All of Government website.



Robyn Shearer

**Acting Director-General of Health**

Date:



Hon Chris Hipkins

**Minister for COVID-19 Response**

Date: [22/4/2021](#)

PROACTIVELY RELEASED

# Exemption from the COVID-19 Public Health Response (Maritime Border) Order (No 2) for crew members arriving by Quarantine Free Travel flights

## Background and context

8. The COVID-19 Public Health Response (Maritime Border) Order (No 2) (Maritime Border Order) specifies the conditions that apply to shipping-crew members who are exempt from 14 days of Managed Isolation and Quarantine (MIQ), including for those who arrive from overseas by aircraft to work on a departing ship. These conditions allow for the safe transfer of crew whilst ensuring that goods can continue to be imported and exported freely. These provisions have not changed since Trans-Tasman Quarantine Free Travel (TT QFT) was established at 11:59pm on 18 April 2021.
9. In order to be exempt from 14 days MIQ, crew members arriving by aircraft must either:
  - a. Travel directly to the departing ship (for situations where the ship is departing New Zealand as soon as is reasonably practical) – Buses/vehicles used to transport MIQ arrivals are used to transport crew members to their departing ship (with strict Infection Prevention and Control measures); or
  - b. Travel from their security designated aerodrome to a place of isolation or quarantine to either remain in isolation or quarantine for 14 days or remain there until the ship departs, whichever occurs first (for situations where the ship is not departing New Zealand as soon as is reasonably practical).

## Crew members arriving via QFT flights are legally subject to the requirements of the Maritime Border Order

10. TT-QFT is intended to provide a level of freedom for travellers that resembles the pre-COVID-19 restrictions. However, the requirements for safe transfer of crew in the Maritime Border Order have not yet been updated to reflect TT-QFT provisions in the Air Border Order.
11. Currently, crew members on QFT flights are not allowed out in the community while ordinary passengers on QFT flights have full freedom of movement around New Zealand. This inequity represents a misalignment between the Maritime Border Order (MBO) and the Air Border Order (ABO) and will be resolved when the QFT amendments to the MBO are made.
12. The recent QFT amendments to the ABO were intended to remove the requirements for crew members arriving by air from QFT places. But because of the decision to prioritise delivering the ABO amendments in a timely manner, meaning the MBO amendments could not be progressed at the same time, there is now a misalignment between the two orders. This was an intentional decision at the time, reflecting the speed and complexity of the rest of the QFT legal arrangement and the most urgent need to put them in place first.

## **Granting a class exemption provides a short-term solution until we can amend the Maritime Border Order**

13. Officials are currently aware of five circumstances involving crew members arriving by air who meet the criteria to qualify for QFT, apart from them being crew members (as defined by the MBO) who are boarding departing ships. We expect more of these situations will arise in the short-term before we can amend the Maritime Border Order.
14. Officials are undertaking further policy and consultation work on the maritime border settings to align with QFT settings in other orders (notably the ABO). However, the following factors make this policy work complex, and drive the need for adequate consultation with key stakeholders which will take time:
  - a. There are multiple points of entry across the maritime border and not all of them are easily monitored or controlled. It is more difficult to get standard processes and systems in place to mitigate risk at seaports than at airports.
  - b. There is a high risk of intermingling between crews with people from non-QFT places making the risk of importing COVID-19 at the maritime border harder to control than the air border.
  - c. We must be careful about how we draft the provisions relating to ships arriving from QFT places. This is to prevent inadvertently re-opening the border to cruise ships that have originated from international ports that are not in a QFT place.
  - d. There are multiple different stakeholders, including shipping companies, private vessels and external agencies, who must be properly consulted prior to making these changes, to guard against the risk of unintended consequences.
15. Because of the above factors, it was not feasible to include the MBO amendment in the COVID-19 Public Health Response (Air Border, Isolation and Quarantine, and Required Testing) Amendment Order 2021. This work is ongoing, and we expect to provide you with a plan to deliver amendments to the MBO shortly.
16. Until we can amend the MBO, there is a need to make a class exemption for sea crew members arriving on QFT flights as a temporary fix. The attached exemption covers all crew members in this circumstance.
17. If this exemption is not made, there is the risk that crew members may self-declare as regular travellers from Australia (subject to meeting the QFT pre-travel requirements) to circumvent the MBO requirements, which is contrary to the intent of the Maritime Border Order and could undermine the intent of the law.

## **The public health risk of granting this exemption is low**

18. It would be inequitable to have different rules for one cohort of people on QFT flights without a strong public health justification.
19. A public health risk assessment was undertaken when officials considered including removing the requirements for crew members arriving by air from QFT places, alongside other Maritime Border Order changes, in the COVID-19 Public Health Response (Air Border, Isolation and Quarantine, and Required Testing) Amendment Order 2021, which introduced QFT provisions. Based on this assessment, officials concluded the risk of granting the exemption was low from a public health perspective.

20. Currently Australia is considered a low risk country and, as of the date of this briefing, is not experiencing community transmission.
21. The main COVID-19 exposure risk is during commercial air travel between Sydney and Auckland. However, QFT pre-travel requirements help to mitigate this risk.
22. Any residual risk can be managed through meticulous attention to infection prevention and control measures (IPC). The following TT QFT requirement from the Air Border Order will need to be met, prior to crew members travelling to New Zealand on QFT flights:
- a. they have not travelled outside of Australia in the past 14 days
  - b. they have not been to any places of interest or hot-spots in relation to any current community clusters in the last 14 days
  - c. they have not been identified as a close or casual contact of any cases
  - d. they are not experiencing symptoms of COVID-19 at time of departure.
23. On arrival in New Zealand, the cohort will comply with the following further conditions:
- a. a health declaration will be filled out (any crew members displaying symptoms upon arrival will be transferred to MIQ)
  - b. the COVID-19 tracker app must be downloaded and used
  - c. if symptoms develop, Healthline will be called, with the individual self-isolating while awaiting a test and a test result.
24. On balance, I have concluded that, by following the above steps, the public health risk of the requested exemption for crew members arriving on QFT flights is low.

**We recommend you exempt crew members arriving on QFT flights from clauses 17(3)(c), 24(2), 27 and 28 of the Maritime Border Order**

25. To temporarily address the misalignment between the ABO and MBO as they relate to sea crew arriving into New Zealand on QFT flights, we recommend you exempt crew members arriving on QFT flights from QFT countries (currently Australia, Cook Islands and Niue) from clauses 24(2), 27 and 28 of the Maritime Border Order. The exemption is attached to this briefing for your signing.
26. This exemption will no longer be required when the Maritime Border Order is amended, but is needed in the interim to allow crew members arriving by QFT flights to have the same freedom of movement in New Zealand as other QFT travellers.
27. Under clause 31A of the Maritime Border Order, you may exempt any person or class of persons from the requirement to comply with any provision of the Air Border Order if you are satisfied that:
- a. the exemption is necessary and desirable in order to promote the purposes of the COVID-19 Public Health Response Act 2020 (the COVID-19 Act) or Maritime Border Order; and
  - b. the extent of the exemption is not broader than is reasonably necessary to address the matters giving rise to the exemption.
28. When deciding whether to grant an exemption and what (if any) conditions to impose, you must take into account my advice on the public health implications. This exemption

is to be subject to the condition that, once they have boarded the ship, sea crew members must comply with the requirements in the Maritime Border Order applying to persons who arrive in New Zealand on board a ship referred to in clause 17(1) of the Maritime Border Order, as if they were such a person.

29. Section 4 of the COVID-19 Act outlines the Act's purpose as supporting a public health response to COVID-19 that:
- a. prevents, and limits the risk of, the outbreak or spread of COVID-19 (taking into account the infectious nature and potential for asymptomatic transmission of COVID-19)
  - b. avoids, mitigates, or remedies the actual or potential adverse effects of the COVID-19 outbreak (whether direct or indirect)
  - c. allows social, economic and other factors to be taken into account where it is relevant to do so
  - d. is economically sustainable and allows for recovery of Managed Isolation and Quarantine Facilities (MIQF) costs
  - e. has enforceable measures, in addition to the relevant voluntary measures and public health and other guidance that also supports that response.

**Alignment with the purpose of the Act: preventing the spread of COVID-19**

30. The risk of spreading COVID-19 to the community is evaluated taking into account whether:
- a. the group seeking an exemption is at a lower risk of having been exposed to COVID-19
  - b. there are appropriate measures in place to reduce the risk of the spread of COVID-19 to the New Zealand community
  - c. any conditions or mitigation measures are likely to be complied with and the associated risk if conditions are not complied with.
31. I consider this exemption is unlikely to create a significant risk of spreading COVID-19 to the New Zealand community. The exemption is required in order to ensure that crew members arriving on QFT flights can fully participate in the TT QFT arrangement and operate under the same rules. This introduces no additional public health risk to the TT QFT regime and fulfils the intent of the QFT.

**Alignment with other purposes under the Act**

32. Other purposes under the Act may also be relevant when you are considering an exemption request, including the economic impact of the exemption. In particular, section 4(ca) allows social, economic, and other factors to be taken into account where it is relevant to do so.
33. The social and economic benefits achieved through ensuring that QFT crew members can transit through New Zealand under regular QFT rules includes enabling them to interact with New Zealand businesses and people before they depart. This aligns with the Government's intention of properly achieving TT QFT. It also aligns with the next stages of the Elimination Strategy, which is to establish ways in which New Zealand can



operate international commercial travel while also preventing the risk of COVID-19 spread.

### **Other factors to be taken into consideration**

34. The exemption discretion must be exercised consistently with the New Zealand Bill of Rights Act 1990 (NZBORA).

35. s 9(2)(h)

### **Next steps**

36. If you agree to this exemption and sign the notice, the Ministry will arrange for the notice to be Gazetted and published.

ENDS.

## Exemption of Crew from clauses 17(3)(c), 24(2), 27 and 28 of the COVID-19 Public

### Health Response Maritime Border) Order (No 2) 2020

1. Pursuant to clause 31A of the COVID-19 Public Health Response (Maritime Border) Order (No 2) 2020 ("Order"), I, Hon Chris Hipkins, Minister for COVID-19 Response, having taken into account the advice of the Director-General of Health ("the Director-General"), declare that any crew member (within the meaning of the Order) who arrives in NZ on an aircraft undertaking a QFT flight (within the meaning of the COVID-19 Public Health Response (Air Border) Order (No 2) 2020) is exempt from clauses 24(2), 27 and 28 ("the relevant provisions") of the Order.

This exemption is subject to the condition that, once they have boarded the ship, the crew member must comply with all requirements in the Order applying in relation to persons who arrive in New Zealand on board a ship as referred to in clause 17(1), as if they were such a person.

2. Pursuant to clause 31A of the Order, having taken into account the advice of the Director-General, I further declare that--

(a) any person who arrives in New Zealand on board a ship and to whom clause 17(1) applies is exempt from the application of clause 17(3)(c) if the new person concerned is a crew member who is exempted by this instrument from the relevant provisions of the Order; and

(b) any crew member who is exempted by this instrument from the relevant provisions of the Order is exempt from the application of clause 17(3)(c) if the new person concerned is also a crew member who is exempted by this instrument from the relevant provisions of the Order.

The exemption will begin at 11.59pm on 23 April 2021.

Dated at Wellington this 22nd day of April 2021.

HON CHRIS HIPKINS, Minister for COVID-19 Response.

