

# Briefing

## Exemption from the COVID-19 Public Health Response (Maritime Border) Order (No 2) 2020 for Returning Kaiarahi Interislander Crew Members

<b>Date due to MO:</b>	04 May 2021	<b>Action required by:</b>	06 May 2021
<b>Security level:</b>	IN CONFIDENCE	<b>Health Report number:</b>	20210991
<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 Withdrawn |  |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) 2020 for Returning Kaiarahi Interislander Crew Members

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**Security level:** IN CONFIDENCE      **Date:** 03 May 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 an exemption for New Zealand based sea crew members of the Kaiarahi, an Interislander Ferry, arriving from Sydney, Australia on or around the 9<sup>th</sup> May 2021 from clauses 17 and 19, of the COVID-19 Public Health Response (Maritime) Order (No 2) 2020 (Maritime Border Order).

## Summary

2. The Maritime Border Order prescribes the isolation and quarantine requirements for all ships arriving in New Zealand. Under the Maritime Border Order all arrivals must meet the low risk indicators of completing 14-days isolation and producing a negative COVID-19 test prior to disembarking into New Zealand. The required isolation period may be completed while in transit, on board the ship or in a managed isolation or quarantine facility (MIQF) upon arrival.
3. The Interislander ferry Kaiarahi departed New Zealand on 7 April with 29 New Zealand-based crew on board to conduct maintenance in Sydney, Australia. The ship is due to return to New Zealand on the 9<sup>th</sup> of May and is seeking an exemption from the isolation and quarantine requirements prescribed in the Maritime Border Order.
4. Despite Trans-Tasman quarantine free travel (TT-QFT) being in place for arrivals by air, the QFT framework does not extend to the maritime border, and the Maritime Border Order does not contain a legal mechanism to negate the requirement of the crew to isolate on their return to New Zealand.
5. Officials are undertaking policy and consultation work on the maritime border settings to align the existing controls with quarantine free travel (QFT) settings. In addition, several existing requirements may be retained for ships traveling from QFT countries to maintain an acceptable level of public health risk. The Maritime Border Order Amendment will include these agreed policy settings and will align the QFT provisions for crew members with the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 (Air Border Order).

6. To address this issue in the interim, we recommend you provide an exemption for crew members of the Kaiarahi arriving on approximately the 9th of May 2021 from clause 24(2) of the Maritime Border Order.
7. Officials have assessed this exemption request from a public health perspective and conclude the risk of granting the exemption is low. This accounts for the fact that TT-QFT is already happening and as such this exemption introduces no additional public health risk.

## Recommendations

We recommend you:

- a) **Note** that under section 31a of 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** that on or around the 9th of May 2021 the Kaiarahi Interislander ferry will be returning from Sydney, Australia, the crew on board will be required to undertake a 14 quarantine and isolation period unless exempted from the requirements of the Maritime Border Order. **Noted**
- d) **Note** that there are currently no legal mechanisms within the Maritime Border Order to negate the requirement for the Kaiarahi crew to isolate on their return to New Zealand. **Noted**
- e) **Note** we intend to address these circumstances by amending the Maritime Border Order but there is significant policy work required before we can amend, and we require an interim solution. **Noted**
- f) **Agree** to grant a one-off exemption for the crew of the Kaiarahi arriving on the 9 of May from clauses 17 and 19 of the Maritime Border Order. **Yes/No**
- g) **Note** that that the exemption will be published in the Gazette and on the Unite Against COVID-19 All of Government website. **Noted**



Dr Ashley Bloomfield  
**Director-General of Health**  
Date:

Hon Chris Hipkins  
**Minister for COVID-19 Response**  
Date:

# Exemption from the COVID-19 Public Health Response (Maritime Border) Order (No 2) for Returning Kaiarahi Interislander Crew Members

## Background and context

8. The COVID-19 Public Health Response (Maritime Border) Order (No 2) (Maritime Border Order) prescribes the isolation and quarantine requirements for all ships arriving in New Zealand from a foreign origin. These provisions have not changed since Trans-Tasman Quarantine Free Travel (TT QFT) was established at 11:59pm on 18 April 2021.
9. The Kaiarahi Interislander ferry departed New Zealand 7 April with 29 New Zealand-based crew on board to conduct maintenance in Sydney, Australia. The vessel is due to return to New Zealand on approximately 9 May 2021.

## All crew members arriving via sea 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 TT-QFT framework has not yet been adopted for maritime arrivals. This results in all maritime arrivals, including those who would meet eligibility requirements to travel on a QFT flight if they were arriving by air, continuing to be subject to the isolation and quarantine requirements prescribed in the Maritime Border Order.
11. Currently, under the Air Border Order, passengers on QFT flights from Australia have full freedom of movement around New Zealand. Without the proposed exemption this disparity between the Maritime Border Order and the Air Border Order could result in inequitable outcomes for those seeking to travel to New Zealand via sea in comparison to air. This will be resolved when the consequential QFT amendments to the Maritime Border Order are made.

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

12. Officials are undertaking further policy and consultation work on the maritime border settings to align with QFT settings in other Orders (notably the Air Border Order). However, there are a number of factors to consider, including:
  - 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 outside New Zealand.
  - d. There are multiple different stakeholders, including shipping companies, private vessels and external agencies, who must be properly consulted prior to making changes to the Maritime Border Order.
- 13. Because of the above factors, it was not feasible to include the Maritime Border Order amendment in the COVID-19 Public Health Response (Air Border, Isolation and Quarantine, and Required Testing) Amendment Order 2021.
- 14. Until we can amend the Maritime Border Order, there is a need to make one-off exemptions on a case by case basis for ships that pose a low public health risk while travelling within the bounds of the QFT framework. There are likely to be a small number of circumstances that require these exemptions before we can amend the Maritime Border Order.
- 15. If this exemption is not made, all 29 crew members of the Kaiarahi will be required to enter a MIQ facility to complete their isolation period of 14-days prior to disembarking into the New Zealand community.

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

- 16. A public health risk assessment for the crew of the Kaiarahi was undertaken when officials considered exempting the crew from the isolation and quarantine requirements prescribed by the Maritime Border Order. Based on this assessment, officials concluded the risk of granting this exemption was low.
- 17. The last incidence of community transmission in Australia was in the Western Australia region on 1 May 2021. As of the date of this briefing Australia is considered a low risk country and is not experiencing community transmission at this time.
- 18. COVID-19 risk will be managed through 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 of the Kaiarahi travelling to New Zealand:
  - 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.
- 19. On arrival in New Zealand, the crew 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.
- 20. On balance, I have concluded that, by following the above steps, the public health risk of the requested exemption for crew members of the Kaiarahi is low.

## **We recommend you exempt crew members of the Kaiarahi from clauses 17 and 19 of the Maritime Border Order**

21. To temporarily address the lack of QFT provisions in the Maritime Border Order, I recommend you exempt the crew members of the Kaiarahi from clauses 17 and 19 of the Maritime Border Order. The exemption is attached to this briefing for your signing.
22. One-off exemptions from the Order will no longer be needed to address this issue when the Maritime Border Order is amended but this exemption is needed in the interim to allow the Kaiarahi crew members to have the same freedoms in New Zealand as normal QFT travellers.
23. 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
  - b. the extent of the exemption is not broader than is reasonably necessary to address the matters giving rise to the exemption.
24. 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 following conditions:
  - a. all crew have not travelled outside of Australia in the past 14 days
  - b. all crew have not been to any places of interest or hot-spots in relation to any current community clusters of COVID-19 in the last 14 days
  - c. all crew have not been identified as a close or casual contact of any cases of COVID-19
  - d. all crew are not experiencing symptoms of COVID-19 at time of departure
  - e. there is no contact with crew of international ships at any time prior or during transit to New Zealand
  - f. all crew are tested for COVID-19 and receive notification of a negative result prior to arrival in New Zealand
25. 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**

- 26. 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.
- 27. I consider this exemption is unlikely to create a significant risk of spreading COVID-19 to the New Zealand community.

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

- 28. The exemption discretion must be exercised consistently with the New Zealand Bill of Rights Act 1990 (NZBORA).
- 29. s 9(2)(h)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

### **Next steps**

- 30. 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 Persons from clauses 17 and 19 of the COVID-19 Public Health Response (Maritime Border) Order (No 2) 2020**

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, hereby make an exemption for the New Zealand based crew members of the Kaiarahi Ferry scheduled to arrive in New Zealand on or around 9 May 2021 from clause 17 and 19 of the Order.

This exemption is subject to the following conditions:

- a) All crew have not travelled outside of Australia in the past 14 days; and
- b) All crew have not been to any places of interest or hot-spots in relation to any current community clusters of COVID-19 in the last 14 days; and
- c) All crew have not been identified as a close or casual contact of any cases of COVID-19; and
- d) All crew are not experiencing symptoms of COVID-19 at time of departure; and
- e) There is no contact with crew of international ships at any time prior or during transit to New Zealand; and
- f) All crew are tested for COVID-19 and receive notification of a negative result prior to arrival in New Zealand.
- g) In the event of a locally acquired case of COVID-19 in the port of origin (Sydney) the Director General of Health may revoke this exemption and require the crew to isolate for 14 days on their return to New Zealand.

The exemption will begin on 9 May 2021.

Dated at Wellington this 9 day of May 2021.

Hon CHRIS HIPKINS, Minister for COVID-19 Response.