

Briefing

Improvements to our air border, and isolation and quarantine system - third quarter omnibus amendments

Date due to MO: 26 July 2021 **Action required by:** 2 August 2021

Security level: IN CONFIDENCE **Health Report number:** 20211080

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

Copy to: Hon Andrew Little, Minister of Health

Hon Nanaia Mahuta, Minister of Foreign Affairs

Hon Michael Wood, Minister of Transport

Contact for telephone discussion

Name	Position	Telephone
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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 Withdrawn | |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:

Improvements to our air border, and isolation and quarantine system - third quarter omnibus amendments

Security level: IN CONFIDENCE **Date:** 26 July 2021

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

Purpose of report

1. To support our COVID-19 Elimination Strategy and, as part of our ongoing efforts to continuously improve our COVID-19 public health measures at the border, this briefing seeks your approval to a range of amendments to the:
 - a. COVID-19 Public Health Response (Air Border) Order (No 2) 2020 (Air Border Order)
 - b. COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 (Isolation and Quarantine Order).

Summary

2. In this paper, officials propose several amendments to the Air Border Order and Isolation and Quarantine Order (the Orders) to strengthen and improve our air border and isolation and quarantine system. The proposals are in addition to those you agreed as part of our Quarter Two (Q2) amendments [HR 20210235 refers] and in other briefings.
3. The Q2 amendments included proposals for a wider range of exemptions for example, for ministerial delegations to and from quarantine-free travel (QFT) places, and for a wider range of Director-General exemption-making powers. You have also agreed to some additional changes the higher risk route provisions, and for air ambulance and medical attendants [HRs 20211057, 20211418 refer].
4. The proposals for change in this paper are set out in the table after paragraph 15. They include:
 - a. enabling the collection of more information from arrivals at the air border, to support their medical examination and public health screening
 - b. requiring New Zealand Defence Force (NZDF) personnel and ship crew members arriving on commercial flights to be subject to medical examination at the air border
 - c. redesigning the QFT prerequisite so that they can be used as prerequisites or conditions for other classes of travellers
 - d. creating an additional travel prerequisite, that a person has not been to a COVID-19 location named by an official of a public health authority within the past 14-days.
5. If agreed, travel prerequisites will still apply to QFT as per the status quo, but will be available for use in other circumstances, for other travellers. This will make the Air Border Order increasingly flexible and useful into the future, and reduce duplication.

6. We are recommending that the provision enabling early departure of New Zealand-domiciled aircrew and medical attendants from managed isolation and quarantine (MIQ) is extended to police escorts, along with ship crew arriving by air. This will support a proportionate public health response to the risk these people represent where they are not considered low risk on arrival because, for example, they arrive symptomatic.
7. Officials have consulted across government and with key stakeholders on the recommendations in this paper. This included with the Board of Airline Representatives New Zealand, Air New Zealand, Qantas Group and the New Zealand Airports' Association. We are also working with stakeholders to brief you on the recommendations for the treatment of aircrew and non-aircrew safety-critical operations staff when QFT is paused or suspended.
8. We are recommending you align the Q2, and these proposed Quarter Three (Q3) amendments. Most of these proposed Q3 amendments are about clarity, consistency and future-proofing the Orders. We also propose to consult with government and key external stakeholders on an in-confidence "exposure draft" of the amendments. Aligning the two amendments will enable us to:
 - a. work with Parliamentary Counsel Office (PCO) to get drafting right
 - b. reduce the workload on you, removing two required ministerial consultations
 - c. work with PCO to improve the Orders overall
 - d. better plan implementation of the Orders for and with our stakeholders.

Recommendations

We recommend you:

- a) **Agree** to the proposals to clarify, amend or include new provisions in the COVID-19 Public Health Response (Air Border) Order 2020 and COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 as set out in the table after paragraph 15 Yes/No
- b) **Agree** to the Ministry of Health issuing drafting instructions to the Parliamentary Counsel Office to make the agreed amendments including any associated consequential, minor and technical amendments to the: Yes/No
 - i. COVID-19 Public Health Response Act (Air Border) Order 2020
 - ii. COVID-19 Public Health Response (Isolation and Quarantine) Order 2020
- c) **Note** that officials have consulted with key government agencies, along with the Board of Airline Representatives New Zealand, Air New Zealand, Qantas Group, and the New Zealand Airports' Association **Note**
- d) **Agree** that officials can share an in-confidence "exposure draft" of the amendment Orders with key external stakeholders Yes/No
- e) **Agree** to aligning the two Order amendment processes currently in-train (quarters two and three) to enable a substantially improved Air Border Order to be ready for implementation in quarter four Yes/No

- f) **Note** that you will be provided with a further briefing with recommendations for the treatment of aircrew and non-aircrew critical operations staff when quarantine-free travel is paused or suspended for inclusion in the planned amendments. **Note**



Dr Ashley Bloomfield

Te Tumu Whakarae mō te Hauora

Director-General of Health

Date: 26/07/2021



Hon Chris Hipkins

Minister for COVID-19 Response

Date: 17/8/2021

PROACTIVELY RELEASED

Improvements to our air border, and isolation and quarantine system - third quarter omnibus amendments

Background

9. The Orders are part of the legal framework that supports our COVID-19 Elimination Strategy. They are used to limit the risk of COVID-19. They provide the legislative foundation for our border operations and MIQ system.
10. The Ministry of Health (the Ministry) continually reviews the settings in the Orders to ensure they remain appropriate, fit for purpose and are operationally sustainable. These reviews consider feedback from government stakeholders, and those in the airline and airport sector.
11. Since the Q2 omnibus amendment decisions were made, the Ministry has undertaken further work on how to give effect to the agreed ministerial delegations travelling to Australia and Australia Defence Force exemptions [HR20210235 refers]. You have also agreed to some additional changes to the Air Border Order, including to the higher risk route provisions, and for air ambulance and medical attendants [HRs 20211057, 20211418 refer].
12. All the agreed additional changes to the Orders have been advised to the PCO with the intent to incorporate them at the earliest opportunity. PCO's capacity has, however, been stretched with the changes made to QFT. As such, the Ministry has yet to receive a draft of the Q2 amendment order that can be review and consulted with key stakeholders. However, this provides the opportunity to combine the Q2 omnibus amendments with those agreed from this briefing for Q3. This would have multiple benefits.
13. Neither the Q2, or these proposed Q3, omnibus amendments are needed to address a substantive public health risk. Most of the changes are about clarity, consistency and future-proofing the Orders. Aligning the two amendments will:
 - a. reduce the workload on you, removing two required ministerial consultations
 - b. enable us to work with PCO to improve the Orders overall
 - c. enable better implementation planning for and with our stakeholders.
14. You will also soon be provided with a briefing making recommendations for the treatment of aircrew and non-aircrew safety-critical operations staff when QFT is paused or suspended. As recent experience has shown, aircrew are impacted by QFT pauses in ways not fully anticipated when QFT was initially established. Officials have been working across government and with the airline sector on proposals to reduce the need for exemptions for crew and to develop an enduring solution that can be used for future QFT pauses. It is intended that your decisions in relation to the crew are also incorporated into the current amendment process.

Recommended amendments to the Orders

15. The table below includes proposals to clarify, amend and include new provisions in the Orders. The proposals have been identified as necessary or useful by Ministry officials, government agencies or other stakeholders such as the airline sector.

Proposed amendment	Issue and rationale for change
<p>We recommend amending the definition of medical examination to support the collection of information relevant to the examination and the collection of information necessary for public health screening purposes. This includes, for example, information about locations of interest, close and casual contacts, and vaccination status.</p> <p>Minister's decision: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO</p>	<p>Issue: The term "medical examination" is specifically defined to ensure reasonable limits on peoples' rights and privacy. This includes the right to refuse medical treatment. No person is required to submit to the medical examination but where they do not, they may be subject to an extended period of MIQ to ensure that they are not at risk of transmitting COVID-19 into New Zealand.</p> <p>With the introduction and operation of QFT, increased vaccination rates, and the constantly evolving and changing rates of COVID-19 prevalence in different countries, <i>there is a need to expand the definition of medical examination to enable the collection of information necessary to undertake a public health screening of arrivals at our air border.</i></p> <p>The examination and screening are New Zealand's primary mechanism for mitigating the risk of transmission of COVID-19. They support decisions at the border about compliance with QFT conditions and any associated risk, MIQ and whether a person may need to be referred to managed quarantine especially if they are symptomatic. This decision-making process is especially important where certain classes of people may be exempt from the full 14-day MIQ period or able to self-isolate at a suitability appropriate location outside MIQ.</p> <p>Rationale: Suitably qualified health professionals will ask travellers a range of question as part of their medical examination. <i>This proposal will provide a legal foundation for requesting additional information necessary to support a public health screening</i> and decision making about risk at the border.</p>

Proposed amendment	Issue and rationale for change
<p>We recommend that the Air Border Order clearly establish the requirement that aircraft land at a security designated aerodrome, unless exempt, and that, where he holds an exemption-making power, the Director-General exempt a person from landing at such a place.</p> <p>Minister's decision: <input type="checkbox"/> YES / <input type="checkbox"/> NO</p>	<p>Issue: In the Air Border Order, an airport is defined as a 'security designated aerodrome' so that flights can only land in these places, unless exempt. You have an exemption power, and you have agreed that air ambulances be exempt from this requirement, but it is hard to give this legal effect with the current drafting. It is also consistent with the intent that where the Director-General has an exemption making power, that power enables them to exempt an arrival from the requirement to land at a security designated aerodrome.</p> <p>Rationale: The intent behind this obligation is to ensure people arrive at our main international airports where there are the necessary public health resources available to undertake the required medical examination and referral to MIQ.</p>
<p>We recommend that ship crew and New Zealand Defence Force personnel (NZDF) arriving on commercial aircraft, are subject to a medical examination and public health screening.</p> <p>Minister's decision: <input type="checkbox"/> YES / <input type="checkbox"/> NO</p>	<p>Issue: We have reviewed the Air Border Order to ensure an appropriate and consistent approach to medical screening, as it is our primary mechanism for mitigating the risk of transmission of COVID-19. There are few arrivals who are exempt from the requirement, including those who remain airside and diplomats and consular officials. NZDF returning from service are also exempt, and we recommend that exemption remains in place where they return on military craft but not where they return on a commercial craft.</p> <p>Rationale: The Ministry is aware that you are concerned about the risk presented by ship crew and this recommendation would complement your decision that all maritime crew are to be tested for COVID-19 on arrival in New Zealand.</p>
<p>We recommend that where a ship crew member is arriving by air, to relocate to a departing ship, they can be referred into MIQ until such time as it can be ascertained that they are low risk (similarly to aircrew).</p> <p>Minister's decision: <input type="checkbox"/> YES / <input type="checkbox"/> NO</p>	<p>Issue: Ship crew members must enter MIQ if their ship is not scheduled to depart as soon as reasonably practicable. Ship crew members must remain in MIQ until the departure of the ship or up to 14 days. But, if a ship crew member arriving by air presents as high-risk, it is appropriate that they are referred into MIQ until such time as it can be ascertained that they are low risk (similarly to aircrew).</p>

Proposed amendment	Issue and rationale for change
<p>We recommend that New Zealand-domiciled aircrew members who are outside New Zealand for more than seven days, who have travelled domestically in another country, and who travel for flight simulator training, are treated the same in the Air Border Order.</p> <p>Minister's decision: YES / NO</p>	<p>Issue: One of your Q2 omnibus decisions was that New Zealand-domiciled aircrew members who are outside New Zealand for more than seven days, or who travel domestically in another country for work, are to be exempt from mandatory MIQ as long as:</p> <ul style="list-style-type: none"> • a Medical Officer of Health has undertaken a risk assessment to determine the risk of exposure to COVID-19 during their most recent absence from New Zealand; and • a Medical Officer of Health has assessed and determined an alternative type and period of isolation or quarantine (if any) based on the risk of exposure to COVID-19 and the risk of having or transmitting COVID-19. <p>You also agreed that the Air Border Order should clarify that these aircrew members must comply with the Key Safety Standards during their time overseas.</p> <p>Rationale: We have identified that aircrew who travel for flight simulator training should also be exempt from MIQ requirements as long as they meet the same conditions as apply above for other NZ-domiciled aircrew who have been outside the country for more than seven days. The aim of this change is to avoid creating a perverse incentive for air crew travelling for flight simulator training to adjust their travel plans to be captured by the other criteria.</p> <p>This change means there will be 3 classes of New Zealand-domiciled aircrew, who will all be treated in the same way, namely:</p> <ol style="list-style-type: none"> 1. those who travel domestically overseas 2. those to travel overseas for more than seven days 3. those who travel overseas for flight simulator training.

Proposed amendment	Issue and rationale for change
<p>We recommend there is a single consolidated clause in the Air Border Order that enables a Medical Officer of Health or a suitably qualified health professional to direct the use of personal protective equipment (PPE), and another clause in the Isolation and Quarantine Order that also allows the chief executive of the Ministry of Business, Innovation and Employment to direct the use of PPE in the case of transfers to and from MIQ.</p> <p>Minister's decision: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO</p> <p>We recommend there are also single clauses setting out the requirement for the use of face coverings and masks (as applicable):</p> <ul style="list-style-type: none"> • during a flight • while transiting New Zealand • while in an airport. <p>Minister's decision: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO</p>	<p>Issue: There is currently a lack of clarity, and some inconsistency in the provisions and requirements for PPE, and face coverings and masks in the Orders that can be addressed through the amendment process.</p> <p>Rationale: This is a technical amendment that is intended to create single provisions that can be cross-referenced as needed.</p>
<p>We recommend setting out the QFT prerequisites in the schedule of the Air Border Order, so that they can be used as prerequisites or conditions for other international travel situations, such as those from lower-risk or very high risk countries.</p> <p>We recommend that an additional prerequisite is added; that a person has not been to a COVID-19 location named by an official of a public health authority within the past 14-days.</p> <p>Minister's decision: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO</p>	<p>Rationale: The QFT prerequisites set out a useful range of conditions that can be used to manage the public health risk associated with international travellers in various circumstances, such as those associated Ministerial delegations or air ambulance flights.</p> <p>The prerequisites will still apply to QFT travel but will be available for use in other circumstances without the need for duplication in the Air Border Order.</p>

Proposed amendment	Issue and rationale for change
<p>We recommend that the Key Safety Standards (the Standards) are amended so that where dedicated travel corridors are available at airports outside New Zealand, aircrew must use these corridors.</p> <p>Minister's decision: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO</p>	<p>Issue: The Standards support aircrew safety and wellbeing to manage risk of them contracting and transmitting COVID-19.</p> <p>Rationale: The Standards do not currently require the use of dedicated travel corridors, but should where available to aircrew at certain airports. The use of such corridors, where available, can help crew limit their interaction with others while they are overseas.</p>
<p>We recommend that the provision enabling early departure of New Zealand-domiciled aircrew and medical attendants from MIQ is extended to cover all 'relevant workers' in the Isolation and Quarantine Order, meaning the provision would also apply to police escorts.</p> <p>Minister's decision: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO</p>	<p>Issue: You recently agreed that New Zealand-domiciled aircrew and medical attendants who are subject to MIQ will be able to depart early after a Medical Officer of Health determines they meet low-risk indicators. These are two of the three classes of 'relevant workers' under the Isolation and Quarantine Order. The third class is police escorts who, under the status quo, are required to complete a full 14-day MIQ period if they are symptomatic after returning from an extradition or supporting a deportation to New Zealand.</p> <p>Rationale: It would be preferable to apply a consistent approach to these workers, all of whom must comply with the Key Safety Standards while overseas (except in a QFT place while QFT flights are operating).</p>

Equity

16. Based on the Ministry's definition, there are no equity implications associated in this paper, which is focussed on proposals for the ongoing improvement of the Orders.

Minor and technical amendments

17. In addition to the amendments outlined above, officials recommend you agree to PCO making minor and technical amendments to the Orders. Such amendments will clarify understanding in some areas and will not involve changes in policy or intent.
18. One example of a technical amendment is that we recommend moving the definition of a multi-leg journey in clause 8(4AA) of the Air Border Order to the interpretation section, and using a single term to describe such flights as we current use multi-leg journey and multi-leg flight.

Mechanism for making the proposed amendments

19. If you agree, the proposed amendments outlined above will be made to the Orders, which are issued under the COVID-19 Public Health Response Act 2020 (the Act). Under section 15(4) of the Act, to make an amendment to an Order, you must be satisfied that the amendment is appropriate to achieve the purpose of the Act and:

- a. have had regard to advice from the Director-General of Health 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
- b. have had regard to any decision by the Government on the level of public health measures appropriate to respond to those risks and avoid, mitigate or remedy the effect of the outbreak or spread of COVID-19
- c. be satisfied that the amendment does not limit, or is a justified limit on, the rights and freedoms in the New Zealand Bill of Rights Act 1990 (NZBORA)
- d. have consulted on the draft amendments with the Prime Minister, the Minister of Justice and the Minister of Health, and any other Minister thought fit.

Justification for making the proposed amendments

20. The proposed amendments to the Orders are consistent with the purposes of the Act. They support the Government’s Elimination Strategy and have the purpose of preventing COVID-19 reaching and being transmitted in our community. These amendments will improve our tools to managing the public health risk of COVID-19. They will enable us to better tailor our approach to emerging trends in the global COVID-19 landscape.

Public health justifications

- 21. COVID-19 is a highly infectious disease which may be spread by people who are not showing symptoms. The risk presented by the virus provides the justification for taking appropriate measures to identify potential cases of COVID-19 and reduce the risk of any transmission in New Zealand and overseas.
- 22. You are receiving ongoing advice about the risks associated with COVID-19 transmission in New Zealand. In accordance with section 9(2) of the Act, you may have regard to that advice without it being repeated in this briefing. However, any specific and relevant public health justification(s) for the proposed amendments are set out in this briefing.

Consistency with the New Zealand Bill of Rights Act 1990

- s 9(2)(h)
[Redacted]
- [Redacted]
 - [Redacted]
 - [Redacted]
- [Redacted]
 - [Redacted]
 - [Redacted]
- [Redacted]
 - [Redacted]
 - [Redacted]

- s 9(2)(h)
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

■ [REDACTED]

Consultation and engagement on these proposals

27. Officials have consulted with the Department of Prime Minister and Cabinet, Treasury, the Ministries of Foreign Affairs and Trade, Justice, Transport, Primary Industries and the Ministry of Business, Innovation and Employment, the New Zealand Customs Service and the Civil Aviation Authority on these proposals. Officials have also engaged with the Office of the Privacy Commissioner on the definition of medical examination, the Board of Airline Representatives New Zealand, Air New Zealand, Qantas Group and New Zealand Airports' Association.

Next steps

28. Official are working to brief you on the recommendations for the treatment of aircrew participating in QFT, and aircrew and non-aircrew critical operations staff where QFT is paused or suspended in the next fortnight. This is so any agreed changes to the approach can be made at the same time as the recommendations in this briefing.

Aligning the Quarter 2 and Quarter 3 Order amendment processes

29. Officials also propose aligning the Q2 and Q3 two amendments. This will enable us to work with PCO to get the drafting right, potentially preventing future issues with the Air Border Order. If agreed, we would have a substantially improved Air Border Order ready for implementation in quarter four. To reach this milestone, we propose to consult with government and key external stakeholders on an in-confidence "exposure draft" of the amendment Orders, before preparing a further briefing and ministerial consultation draft for you to consult with the Prime Minister and your Ministerial colleagues.

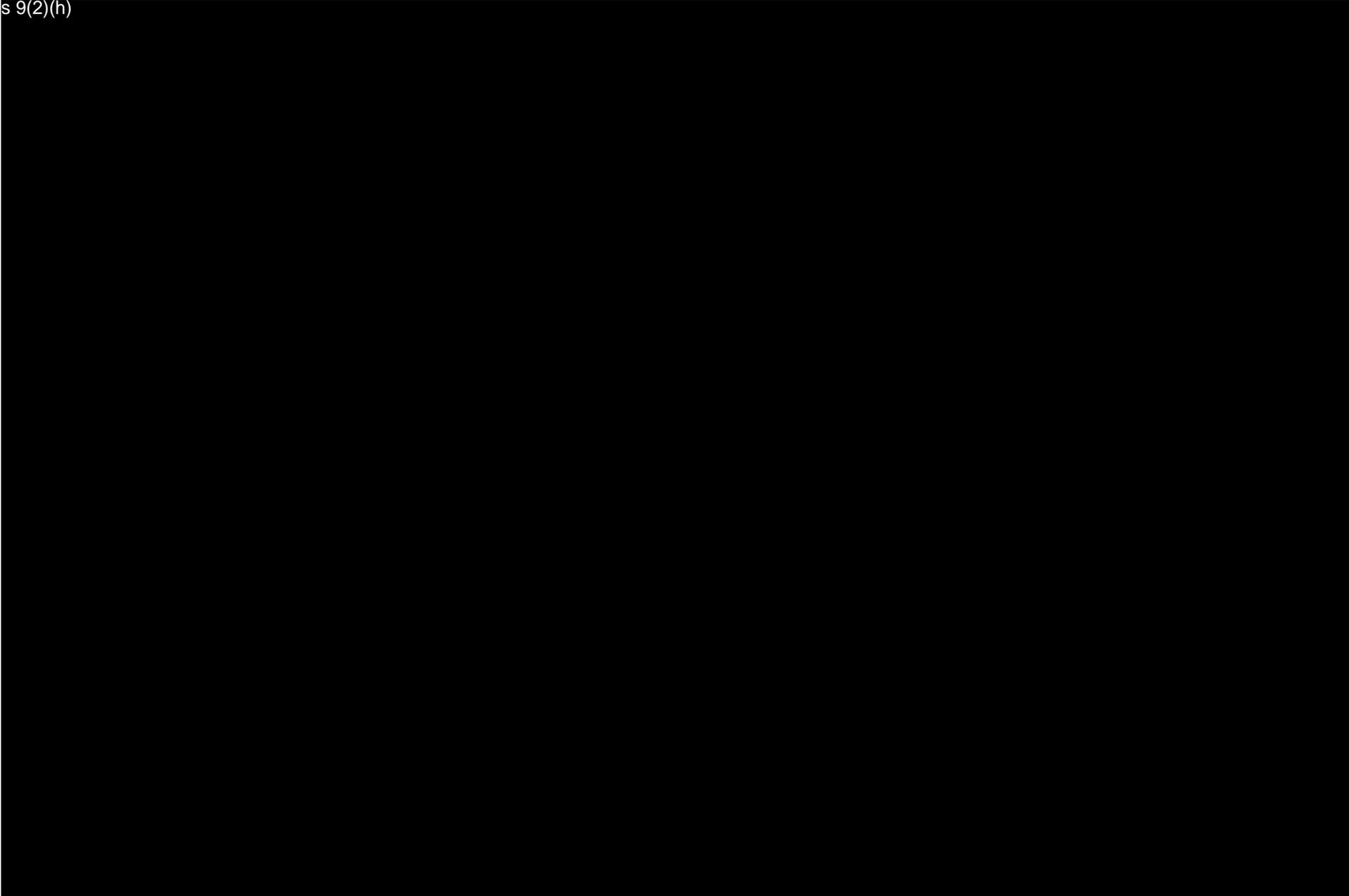
ENDS

Appendix One: New Zealand Bill of Rights Act 1990 Analysis

s 9(2)(h)

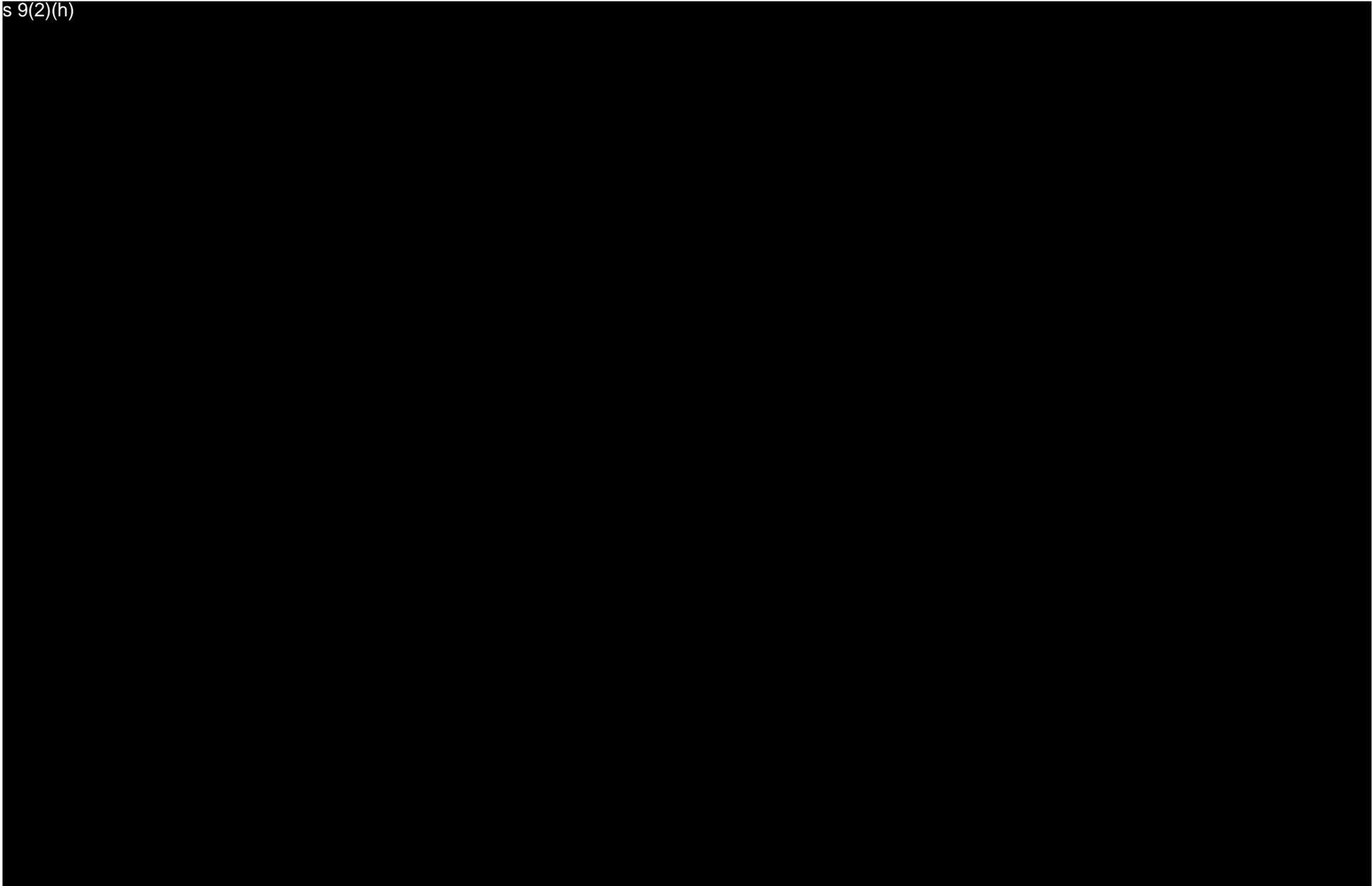


s 9(2)(h)



s 9(2)(h)

s 9(2)(h)



s 9(2)(h)



PROACTIVELY REVIEWED