

Briefing

Advice on mandatory use of face coverings on international flights

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Action required by: 6 April 2021

Security level: IN CONFIDENCE

Health Report number: 20210790

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

Contact for telephone discussion

Name	Position	Telephone
Dr Ashley Bloomfield	Director-General of Health	s 9(2)(a)
Maree Roberts	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 Withdrawn | |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:

Advice on mandatory use of face coverings on international flights

Security level: IN CONFIDENCE **Date:** 31 March 2021

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

Purpose of report

1. This briefing responds to your request for advice on the mandatory use of face coverings on international flights, particularly in light of the forthcoming Quarantine-Free Travel (QFT) arrangements.

Summary

2. There is potential for COVID-19 transmission on international flights where people are coming from, or transiting through, countries where COVID-19 is circulating. There is also some evidence that mask wearing can reduce transmission in high-risk settings where COVID-19 is present in the community.
3. In short, there is likely to be some benefit in wearing masks in addition to other Infection Prevention and Control (IPC) precautions on international 'Red Zone' flights. However, the public health benefits are likely to be limited in 'Green-Zone' flights as part of quarantine-free travel arrangements.¹

Mandatory use of face coverings is not recommended on 'Red Zone' flights

4. From a public health perspective, we believe the risks of COVID-19 entering the country on all 'Red Zone' flights are already sufficiently managed through:
 - a. the requirement for airline staff to wear PPE and follow strict IPC guidelines;
 - b. the requirement for pre-departure testing for all passengers on such flights; and
 - c. the ongoing requirement that all passengers on all 'Red Zone' flights enter a Managed Isolation and Quarantine Facility (MIQF). There is strong confidence that our MIQF settings are fit for purpose given the large volume of passengers through the system and the proportionally small number of COVID-19 transmission events into our community.
5. These additional measures have been in place for some time and have proven effective in managing the risks posed by international travellers. I also recommend continuing to issue guidance and encouragement to international

¹ Green Zone' flights are those originating from quarantine-free travel (QFT) zones carrying only QFT eligible passengers and crew. All other international flights from non- QFT zones are considered to be 'Red Zone' flights.

airlines to use their conditions of carriage to require the wearing of face coverings on international flights.



6. In general, airlines are providing masks to passengers, and we are working with them and Air New Zealand to understand the specifications for the masks they are providing.
7. For 'Green Zone' flights the risk of COVID-19 transmission is greatly reduced already as the flights originate from locations with a lower risk of COVID-19 transmission. However, we recognise that the new QFT arrangements – and in particular the exemption from the requirement to enter MIQF for 14 days for passengers arriving from 'Green Zones' (such as Australia) - may generate new concerns from the public about importing COVID-19 into the community.

Options to mandate the use of face coverings on 'Green Zone' flights

8. Our first line of defence for addressing this risk is our ability to prevent flights arriving from locations with COVID-19 outbreaks from continuing under QFT arrangements. We are putting measures in place to provide for the quick suspension of 'Green Zone' status for jurisdictions if their risk of transmitting COVID-19 increases.
9. However, if you do wish to introduce a new requirement for all passengers on 'Green Zone' flights to wear a face covering, or mask, we have identified two options:
 - a. put the requirement for all arriving passengers to wear face coverings into a section 11 Order (such as the Public Health Response Air Border Order); or
 - b. vary the conditions of air services licences to require airlines to ensure their passengers wear face coverings whenever on a 'Green Zone' flight to New Zealand. Airlines may implement this by making wearing a face covering a condition of carriage. To vary a licence requires either the Minister of Transport (in the case of Air NZ) or the Secretary for Transport (for other airlines) to determine whether the variation is necessary or desirable in the public interest.

There are challenges with enforceability and operationalisation

10. s 9(2)(h) [REDACTED]
11. For option (b), the enforcement mechanism would be to suspend the licence if the airline were to be found in breach of the condition.
12. While the Civil Aviation Act 1990 does allow the licencing authority to add any new terms or conditions they must give the licensee 21 clear days' notice of their intention to do so, This option therefore would not be able to be operationalised quickly, and there some legal risks as noted below.
13. Additionally, air services licences are economic instruments. In effect they allocate frequency and capacity for air services to airlines. A typical licence will state what routes an airline may operate and with what frequency. Additionally,

adding a requirement around masks is inconsistent with the general tenor of these licences, which are about requirements on the airline, not passengers.

14. s 9(2)(h)
15. Finally, there remains a risk that using an economic/business instrument to make this change could have the effect of disincentivising international airlines from undertaking cargo and passenger flights to New Zealand.
- Preferred option: change air services licences to require airlines to ensure their passengers wear face coverings whenever on a 'Green Zone' flight to New Zealand*
16. s 9(2)(g)(i)
17. s 9(2)(g)(i)
18. A requirement to wear face coverings on 'Green Zone' flights would align with the public health rationale for requiring the use of face coverings on domestic flights, and will align with Australia's requirement for the use of face coverings on international flights. It will also align with requirements that passengers arriving on 'Green Zone' flights and domestic flights within New Zealand are required to wear a face covering while airside in the airport at which they arrived.
19. Additionally, from a public perception perspective, a requirement to wear face coverings could be considered to balance the removal of other Infection Prevention Control measures for 'Green Zone' flights, such as removal of the requirement to undergo Managed Isolation upon arrival in New Zealand.
20. Therefore, we are recommending that you discuss with the Minister of Transport and the Secretary for Transport whether it is appropriate to make a variation to air services licences for airlines to ensure their passengers wear face coverings whenever on 'Green Zone' flight to New Zealand.
21. The Ministry of Transport, which has responsibility for advising on variations to air services licences, has expressed concerns about this approach.

s 9(2)(h)

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

Recommendations

We recommend you:

- a) **Note** that on 'Red Zone' international flights (i.e. flights arriving from places not a party to Quarantine-Free Travel arrangements), there is evidence of benefit from wearing masks. **Noted**
- b) **Note** that some airlines have made the use of a face covering a requirement on all their international flights as a condition of carriage. **Noted**
- d) s 6(b)(i) [REDACTED] **Noted**
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- e) **Note** that we consider existing PPE requirements, pre-departure testing and the requirement to enter MIQF for 14 days to be sufficient to manage the COVID-19 risks to the community for all 'red zone' flights. **Noted**
- f) **Agree** that the status quo should be maintained for international 'Red Zone' flights, i.e., use of face coverings is not mandated but is encouraged along with other Infection Prevention Control measures. **Yes/No**
- g) **Agree** to discuss with the Minister of Transport and the Secretary for Transport whether it would be appropriate for a variation to be made to air services licences to require airlines to ensure passengers wear face coverings whenever on 'Green Zone' flights to New Zealand. **Yes/No**
- h) **Note** that a requirement to wear face coverings on 'Green Zone' flights would align with: **Noted**
- i. the current public health rationale for requiring the use of face coverings on New Zealand domestic flights;
 - ii. Australia's requirement for the use of face coverings on international flights; and

iii. requirements that passengers arriving on 'Green Zone' flights and domestic flights within New Zealand are required to wear a face covering while airside in the airport at which they arrived.

i) **Note** that a requirement to wear face coverings on 'Green Zone' flights may help address concerns about the removal of other Infection prevention control measures for 'Green Zone' flights, such as removal of the requirement to undergo Managed Isolation upon arrival in New Zealand. **Noted**

j) **Note** that this option will raise operational challenges and risks, such as the delay of 21 days for implantation, and the risk of disincentivising international airlines from undertaking cargo and passenger flights to New Zealand. **Noted**

k) s 9(2)(h) **Noted**

PP.



Dr Ashley Bloomfield
Director-General of Health

Date:



Hon Chris Hipkins
Minister for COVID-19 Response

Date: 6/4/2021

If Australia already has this requirement in place, and New Zealand puts a corresponding requirement in place at our end using an Order under the COVID-19 Public Health Response Act, what's the issue? CH

Advice on mandatory use of face coverings on international flights

Current state

1. There is potential for COVID-19 transmission on international flights where people are coming from, or transiting through, countries where COVID-19 is circulating. There is also some evidence that mask wearing can reduce transmission in high-risk settings where COVID-19 is circulating.

Face coverings on inbound international flights are strongly encouraged already

2. Currently passengers are strongly encouraged to use masks as a precautionary measure while on board inbound international flights, but use of masks is not legally mandated. There are some passenger groups for whom wearing a mask is not recommended, such as those whose breathing or comfort would be impacted, or young children under 6 years of age.

There is no international regulation to require the use of face coverings on international flights

3. There is a jurisdictional issue with legally requiring actions of individuals on international flights. Put simply, countries cannot make laws that bind the actions of people when they are not within the jurisdiction of that country.
4. Despite this, the Australian Department of Health has required through a Determination under their biosecurity legislation that passengers and crew on all international flights must wear a face mask during their flight and while in an Australian airport. However, because a country's ability to enforce a law is restricted to its own zone or territory, it is likely to be highly difficult for Australia to enforce this once passengers have left Australia. We have asked Australian officials about enforceability but have not received a response to date.
5. We have also requested Crown Law to liaise with their counterparts in Australia to further verify this from their perspective and can provide an update when we receive a response.

Face coverings may be required by the airlines as a condition of carriage

6. Notwithstanding the legal requirements, many airlines have adopted requirements for face coverings crew and passengers as part of their rules of carriage, such as:
 - a. Star Alliance (26 airlines), which require the use of face coverings during boarding and de-boarding and throughout the flight unless exempted;
 - b. Skyteam (19 airlines), which requires the use of face coverings on board; and
 - c. Oneworld (13 airlines), which recommends the use of face coverings but does not require their use.

7. Air New Zealand has made the use of a face coverings mandatory for passengers on all their international flights as a condition of carriage. Use of face coverings on all domestic flights is already required in New Zealand too. Before Alert Level Orders required this as a matter of law, Air New Zealand were already requiring it as a condition of carriage.

Current operational guidelines for airline and air border workers

8. There are additional Infection Prevention Control (IPC) measures in place in New Zealand to mitigate risk of COVID-19 spread from international travellers.
9. The Ministry has produced IPC guidance for airports, airlines and workers at the air border to assist passengers, crew and workers reduce the risk of contracting or transmitting COVID-19. The current guidance, released on 1 March 2021, is publicly available on the Ministry's website.
10. For aircrew, the key safety standards in the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 (Schedule 2) prescribe they should wear Personal Protective Equipment while at any place overseas other than a few exceptions. These exceptions will be outlined in the guidance.
11. Notably, this is not legally enforceable while overseas, but if breaches come to a Medical Officer of Health's attention, the individual will be required to go into a Managed Isolation and Quarantine Facility (MIQF) for 14 days on arrival back in New Zealand because their risk level has increased. The key safety standards will not apply to aircrew operating on the trans-Tasman QFT arrangements after commencement of those arrangements.

Mandating use of face coverings on 'Red Zone'² international flights is not recommended

12. There is potential for COVID-19 transmission on international flights where people are coming from, or transiting through, countries where COVID-19 is circulating. There is also some evidence that mask wearing can reduce transmission in high-risk settings where COVID-19 is circulating, such as flights.
13. However, the potential risk of transmission on a 'Red Zone' flight will continue to be minimised by:
 - a. the requirements for airline staff to wear PPE and follow strict IPC guidelines;
 - b. the requirement for pre-departure testing; and
 - c. the ongoing requirement that all red passengers go through Managed Isolation and Quarantine Facility (MIQF). There is strong confidence that our MIQF settings are fit for purpose given the large volume of passengers through the system and the proportionally small number of COVID-19 transmission events into our community.

² Green Zone' flights are those originating from quarantine-free travel (QFT) zones carrying only QFT eligible passengers and crew. All other international flights from non- QFT zones are considered to be 'Red Zone' flights.

14. These additional measures have been in place for some time and have proven effective in managing three risks posed by international travellers.

Mandating use of face coverings on 'Green Zone' international flights

'Green Zone' trans-Tasman flights are lower risk...

15. In the development of the Trans-Tasman Quarantine-Free Travel Zone (TTQFZ) and risk assessment behind decisions to implement quarantine free travel, there has been the primary assumption that travellers from Australia on 'Green Zone' flights pose a low risk of transmitting COVID-19 during flights.
16. However, we recognise that the new QFT arrangements – and in particular the exemption from the requirement to enter MIQF for 14 days for passengers arriving from 'Green Zones' (such as Australia) - may generate new concerns from the public about importing COVID-19 into the community.
17. A requirement to wear face coverings on these flights would align with the public health rationale for requiring the use of face coverings on domestic flights, and will align with Australia's requirement for the use of face coverings on international flights. It will also align with requirements that passengers arriving on 'Green Zone' flights and domestic flights within New Zealand are required to wear a face covering while airside in the airport at which they arrived.
18. Additionally, a requirement to wear face coverings could be seen to be balancing the perceived risk posed by the removal of other IPC measures for 'Green Zone' flights, such as exemption from the requirement to undergo Managed Isolation upon arrival in New Zealand.

... but there are mechanisms available to mandate mask use on 'Green Zone' international flights

19. There is difficulty in mandating the use of masks outside of New Zealand as countries cannot make laws that bind the actions of people when they are not within the jurisdiction of that country.
20. Despite this, Officials have identified two mechanisms that could be used to require face coverings to be worn on 'Green Zone' flights in specific circumstances:
- a. amending the COVID-19 Public Health Response (Air Border) Order 2020 (the Air Border Order) to state that the wearing of a face covering is required on international flights, while they are in New Zealand's jurisdiction (i.e. while the aircraft is located within New Zealand territory); or
 - b. vary the conditions of air services licences to require airlines to ensure their passengers wear face coverings whenever on a flight to New Zealand. Airlines may implement this by making wearing a face covering a condition of carriage. To vary a licence requires either the Minister of Transport (in the case of Air NZ) or the Secretary for Transport (for other airlines) to determine whether the variation is necessary or desirable in the public interest.
21. A brief analysis of the implications of these options is provided in **Appendix One**.

Recommendation for 'Green Zone' flights

22. There are pros and cons associated with both options. While option (1) (using a section 11 Order) is simpler, it would be more limited in scope as it would only apply in New Zealand's jurisdiction. This means the primary health objective, of ensuring face coverings are worn on flights at all times to reduce risk of COVID-19 transmission during flights, cannot be delivered. For this reason, this option is not recommended.
23. Option (2) (changing air services licences to require airlines to ensure their passengers wear face coverings whenever on a flight to New Zealand) would apply outside of New Zealand and therefore would have a firmer legal footing. But, it would not be able to be implemented for 21 days, and could have the effect of disincentivising international airlines from undertaking cargo and passenger flights to New Zealand.
24. A requirement to wear face coverings on 'Green Zone' flights would align with the public health rationale for requiring the use of face coverings on domestic flights, and will align with Australia's requirement for the use of face coverings on international flights. It will also align with requirements that passengers arriving on 'Green Zone' flights and domestic flights within New Zealand are required to wear a face covering while airside in the airport at which they arrived.
25. Additionally, a requirement to wear face coverings could be seen to balance the perceived risk posed by the removal of other Infection Prevention Control measures for 'Green Zone' flights, such as removal of the requirement to undergo Managed Isolation upon arrival in New Zealand.
26. Therefore, we are recommending that you discuss with the Minister of Transport and the Secretary for Transport whether it is appropriate to make a variation to air services licences for airlines to ensure their passengers wear face coverings whenever on 'Green Zone' flight to New Zealand.
27. The Ministry of Transport, which has responsibility for advising on variations to air services licences, has expressed concerns about this approach.

28. s 9(2)(h) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

ENDS.

Appendix One: Analysis of options for mandating use of face coverings on 'Green Zone' international flights

s 9(2)(g)(i), s 9(2)(h)

