

Briefing

Enabling departure of New Zealand-domiciled aircrew from managed quarantine based on a public health risk assessment

Date due to MO: 11 June 2021 **Action required by:** 14 June 2021

Security level: IN CONFIDENCE **Health Report number:** 20211320

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

Copy to: Rt Hon Jacinda Ardern, Prime Minister
 Hon Andrew Little, Minister of Health
 Hon Kris Faafoi, Minister of Justice
 Hon Michael Wood, Minister of Transport

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 Withdrawn | |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:

Enabling departure of New Zealand-domiciled aircrew from managed quarantine based on a public health risk assessment

Security level: IN CONFIDENCE **Date:** 11 June 2021

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

Purpose of report

1. The purpose of this report is to request that you consult with the Prime Minister and your Ministerial colleagues on an amendment to the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 (the Isolation and Quarantine Order) provisions for departures from managed isolation and quarantine (MIQs) for New Zealand-domiciled aircrew.

Summary

2. As our response to the pandemic has evolved, the Isolation and Quarantine Order has been amended several times so that we can apply a best practice public health response that enables certain low-risk people to depart MIQ in less than 14 days. Our evolving approach to managing New Zealand-domiciled aircrew, and to MIQ, is necessary to ensure that our COVID-19 response considers the interface between public health and the rights of affected people under the New Zealand Bill of Rights Act 1990 (NZBORA).
3. Currently, approximately one unwell New Zealand-domiciled aircrew member per week is directed to managed quarantine (where they undergo a COVID-19 test). The local public health unit (usually Auckland Regional Public Health Service (ARPHS)) then undertakes a further risk assessment of the person, and if they consequentially determine they meet low-risk indicators, including a negative COVID-19 test result, they are later released. We note that only three returning New Zealand-domiciled aircrew have tested positive for COVID-19. All were picked up by surveillance testing.
4. In engaging with ARPHS on the operating of the isolation and quarantine regime, we have identified that the Isolation and Quarantine Order does not align with current practice. Legal has advised that, as the misalignment was not intended, this is a technical matter. As such, the Parliamentary Counsel Office has drafted a recommended amendment that enables the release of these aircrew in less than 14 days, subject to a public health risk assessment.
5. If agreed, will come into effect at 11:59pm on Tuesday 15 June. It is at [Appendix One](#) for your review and approval, and to enable consultation with the Prime Minister and your

Ministerial colleagues. To support this process, it has already been consulted with agencies.

6. Requiring these aircrew to remain in managed quarantine for the full 14 days, where it was not necessary, would raise issues under the New Zealand Bill of Rights Act 1990 (NZBORA). This is because there are a range of additional controls to mitigate the risk of these aircrew, including the Key Safety Standards (Standards) and surveillance testing, different to travellers generally. The Standards set out the risk management controls that aircrew must comply with in-flight and while overseas.
7. Officials are also concerned that if the affected aircrew were subject to the full 14 day period of managed quarantine, they may become less open with their employer and ARPHS about any illnesses or COVID-19-like symptoms they might develop while overseas. This would create a new risk.

Recommendations

We recommend you:

- a) **Note** that a proportionate public health response should enable certain low-risk people, such as New Zealand-domiciled aircrew, to be released from managed isolation and quarantine facilities sooner than the standard 14 day period applied to travellers **Noted**
- b) **Note** that due to a technical drafting issue, the full 14 day period is imposed on New Zealand-domiciled aircrew who are referred to managed isolation after arriving in New Zealand with COVID-19-like symptoms, but are then tested and determined to be low-risk by a Medical Officer of Health **Noted**
- c) **Agree** either to:
 - I. amend the to the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 to enable low-risk aircrew to depart managed quarantine base on a public health risk assessment (**recommended**) **Yes/No**
 - OR **Yes/No**
 - II. maintain the current provisions in the Isolation and Quarantine Order so that affected New Zealand-domiciled aircrew must complete the full 14 day managed quarantine
- d) **Note** that officials have consulted with key stakeholders on the recommended amendment to the Isolation and Quarantine Order, and the need to ensure we have the appropriate legal foundation to reflect a proportionate approach **Noted**
- e) **Agree** the recommended amendment to the Isolation and Quarantine Order at Appendix One that will enable the release of New Zealand-domiciled aircrew from managed isolation based on a risk assessment made by a Medical Officer of Health **Yes/No**
- f) **Agree** to consult with the Prime Minister, and the Ministers of Health, Justice and Transport on the attached recommended amendment to the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020, requesting feedback by Monday 14 June **Yes/No**

- g) **Note** that, subject to any feedback received, you will be provided with a further Health Report seeking your approval of the attached recommended amendment on Tuesday 15 June **Noted**
- h) **Note** that if agreed, the recommended amendment will come into effect after it has been notified in the New Zealand Gazette, and at this time Public Health Units will also be notified of the amendment. **Noted**



Dr Ashley Bloomfield
Te Tumu Whakarae mō te Hauora
Director-General of Health

Date: 11/06/2021



Hon Chris Hipkins
Minister for COVID-19 Response

Date: 15/6/2021

PROACTIVELY RELEASED

Enabling departure of New Zealand-domiciled aircrew from managed quarantine based on a public health risk assessment

Background to our approach to manage isolation and quarantine

8. The purpose of the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 (the Isolation and Quarantine Order) is to prevent and limit the risk of COVID-19 through setting out isolation and quarantine requirements. Travellers spend 14 days in either managed isolation or quarantine facilities (MIFQ), depending on the risk and symptoms they present on arrival or after undergoing an initial COVID-19 test, unless they are otherwise exempt (such as diplomats and consular officials).
9. As our response to the pandemic has evolved, the Isolation and Quarantine Order has been amended several times so that we can apply a proportionate public health measures that enable certain low-risk people to depart isolation or quarantine early.¹ This includes New Zealand-domiciled aircrew as it supports the maintenance of transport routes and supply chains to and from New Zealand.
10. Our evolving approach, and the ability for certain people to depart isolation or quarantine early is necessary to ensure that our COVID-19 response considers the interface between public health and the rights of affected people under the NZBORA. As you are aware, managed isolation and quarantine is just one of a suite of legislative tools that manage the risk of COVID-19.
11. In the case of New Zealand-domiciled aircrew, tools include the COVID-19 Public Health Response (Air Border) Order 2020 (Air Border Order), the COVID-19 Public Health Response (Required Testing) Order 2020 (Testing Order) and the Key Safety Standards (the Standards). Aircrew comply with the Standards in-flight and while overseas, and are subject to seven-day surveillance testing on return to New Zealand.

Giving appropriate legal effect to our public health approach to MIQ

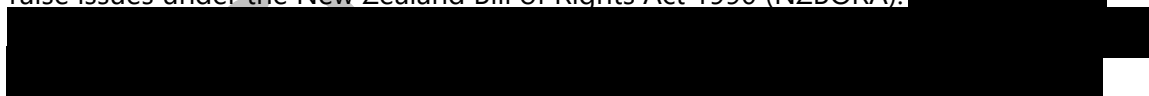
12. Considering the tools and controls applied to New Zealand-domiciled aircrew, they are only subject to MIQ if they return to New Zealand and are considered to be at risk of transmitting COVID-19. Some, travelling on higher risk routes, are currently subject to self-isolation obligations (about which we are making recommendations in another briefing HR 20211320).
13. Approximately one unwell aircrew member per week is directed to managed quarantine in this circumstance (where they undergo a COVID-19 test). This is the result of a legislative provision in the Air Border Order. The local public health unit (usually ARPHS)

¹ This includes scheduled departers, and overseas based aircrew and medical attendants leaving New Zealand.

then undertakes a further risk assessment of the person, and if they consequentially determine that crew member meets low-risk indicators, they are released. They remain subject to seven-day surveillance testing.

14. The current approach to managing New Zealand-domiciled aircrew supports the effective management of the risk they may represent, taking a proportionate public health approach. It is consistent with the intent of decisions made on the Isolation and Quarantine Order and in relation to these aircrew. However, in engaging with ARPHS on the operating of the isolation and quarantine regime, we have identified that the Isolation and Quarantine Order does not align with current practice. This is an oversight that we recommend is addressed through an amendment to the Order.
15. The Ministry's Legal and Public Health teams have advised that as the misalignment was not intended, this is a technical matter that can be addressed by an amendment to clause 11 of the Isolation and Quarantine Order that deals with early departures. As such, the Parliamentary Counsel Office has drafted the recommended amendment and it is at Appendix One for your review and approval. If you agree, it will enable consultation with the Prime Minister and your Ministerial colleagues. To support this process, it has already been consulted with agencies.

Implications of maintaining the status quo

16. The public health advice is that requiring New Zealand-domiciled aircrew to remain in managed quarantine for 14 days would be disproportionate to the risk they represent. Continuing the current approach meets the needs to manage these aircrew, as it enables a risk-based decision about how long they need to remain in managed quarantine. We note that only three returning New Zealand-based aircrew have tested positive for COVID-19. All were picked up by surveillance testing.
17. The public health advice considers the controls already in place to mitigate the risks relating to the affected aircrew. This includes the Air Border Order, Required Testing Order and their compliance with the Key Safety Standards. Requiring these aircrew to remain in managed quarantine for the full 14 days, where it was not necessary, would raise issues under the New Zealand Bill of Rights Act 1990 (NZBORA). s 9(2)(h)

18. Without the recommended amendment, ARPHS would not be able to continue its current proportionate public health approach to managing New Zealand-domiciled aircrew. If ARPHS were to amend its current practice to comply with the Isolation and Quarantine Order, the affected aircrew members would be required to remain in isolation or quarantine for the full 14-day period even where it was not necessary for them to do so.
19. Officials are also concerned that if the affected aircrew were subject to the full 14 day period of managed quarantine, they may become less open with their employer and ARPHS about any illnesses or COVID-19-like symptoms they might develop while overseas. Currently, they report illness to their employer, Air New Zealand, which wherever possible reports it to the relevant Public Health Unit prior to the aircrew member arriving in New Zealand. The aircrew member also declares their symptoms on the aircrew arrival card. Maintaining the integrity of this approach is important to mitigating risk of aircrew.

20. Officials are also alert to the welfare of the affected crew, and the potential rostering implications for AirNZ which might disrupt current travel and supply routes. There would also be cost implication as AirNZ would be liable for MIQ fees.

Obligations when making an amendment to an Order

21. Under section 15(4) of the COVID-19 Health Response Act 2020 (the Act), to make an amendment to an Order, you must:
- 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 the Prime Minister, the Minister of Justice and the Minister of Health, and any other Minister thought fit
 - e. be satisfied that the amendment is appropriate to achieve the purpose of the Act.

Public health justifications

22. You are receiving ongoing advice about the risks associated with COVID-19. In accordance with section 9(2) of the Act, you may have regard to that advice without it being repeated in this briefing. Our advice is that the recommended amendment is needed to maintain the current practice that enables a best practice public health response to New Zealand-domiciled aircrew who report illness on return to New Zealand.

Consistency with the New Zealand Bill of Rights Act 1990

23. The power to make an amendment to an Order under sections 9 and 11 of the Act must be exercised consistently with NZBORA. The Isolation and Quarantine Order is part of a bespoke legal framework for managing the public health risks posed by COVID-19. It supports the Government's Elimination Strategy and has the purpose of preventing COVID-19 reaching and being transmitted in our community. Isolation and quarantine engages the following rights:
- a. freedom of expression
 - b. freedom of peaceful assembly
 - c. freedom of association
 - d. freedom of movement
 - e. liberty of the person (against arbitrary detention)
 - f. respect and dignity in detention.
24. The proposed amendment is necessary to support the Isolation and Quarantine Order and its operation to maintain consistency with the NZBORA. It is not the intent that

aircrew are subject to isolation or quarantine longer than is necessary and justified from a public health perspective.

Next steps

25. This briefing, and the amendment has been consulted with key government stakeholders including the Department of the Prime Minister and Cabinet, and the Ministries of Justice and Transport, and the Ministry of Business, Innovation and Employment along with the light regulatory impact statement at Appendix Two. These agencies support our recommendation that you agree to the recommended amendment and consult with the Prime Minister and your Ministerial colleagues on the draft at Appendix One.
26. If you agree, we recommend that you share this briefing and the amendment at Appendix One with the Prime Minister, Minister of Justice and Minister of Transport. We recommend that you request an urgent response, by Monday 14 June. Subject to any feedback received, you will be provided with a further Health Report seeking your approval of the amendment on Tuesday 15 June. This will enable it to come into effect at 11:59pm and be notified in the New Zealand Gazette.

ENDS.

PROACTIVELY RELEASED

Appendix One: Amendment to the Isolation and Quarantine Order

The Order is publicly available at: <https://www.legislation.govt.nz/regulation/public/2021/0163/latest/whole.html#LMS511310>

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Appendix Two: Early departure of New Zealand-domiciled aircrew from managed quarantine

Summary of the proposed changes

1. As our response to the pandemic has evolved, the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 (the Isolation and Quarantine Order) has been amended several times so that we can apply a proportionate public health response that enables certain low-risk people to depart isolation or quarantine early. Our evolving approach, and the ability for certain people to depart isolation or quarantine early, is necessary to ensure that our COVID-19 response considers the interface between public health and the rights of affected people under the New Zealand Bill of Rights Act 1990 (NZBORA).
2. Currently, approximately one unwell aircrew member per week is directed to managed quarantine (where they undergo an additional COVID-19 test). The local public health unit (usually Auckland Regional Public Health Service (ARPHS)) then undertakes a further risk assessment of the person, and if they consequentially determine they meet low-risk indicators, they are later released.
3. In engaging with ARPHS on the operating of the isolation and quarantine regime, we have identified that the Isolation and Quarantine Order does not align with current practice. Legal has advised that as the misalignment was not intended, this is a technical matter. As such, the Parliamentary Counsel Office has drafted the recommended amendment that enables the early release of these aircrew.
4. Requiring these aircrew to remain in managed quarantine for the full 14 days, where it was not necessary, would raise issues under the New Zealand Bill of Rights Act 1990 (NZBORA). Officials are also concerned that if the affected aircrew were subject to the full 14 day period of managed quarantine, they may become less open with their employer and ARPHS about any illnesses or COVID-19-like symptoms they might develop while overseas.

Analysis

| Question | Assessment |
|---|--|
| What is the problem being addressed? What will happen if this is not tackled? | We may hold affected aircrew in managed quarantine longer than is necessary to address the public health risk they present. |
| What is your preferred option to tackle this issue? What is the intended impact of your option? | We propose amending the Isolation and Quarantine Order to enable the early release of affected aircrew where they meet low-risk criteria. This will enable them to be released after a risk assessment undertaken by a suitably qualified health professional. |
| What are the potential unintended consequences | There are no unintended consequences associated with the proposed amendment, as it addresses an unintended oversight of drafting. |

| Question | Assessment |
|--|---|
| of your option? How do you propose to mitigate these risks? | |
| Who have you discussed your approach with? What advice did you receive? | Legal Services and the Parliamentary Council Office, along with key government agencies – Department of Prime Minister and Cabinet, the Treasury, the Ministry of Justice and the Ministry of Transport. |
| How will you introduce the change? How will you inform others? | The amendment will come into effect when approved by the Minister. The Ministry will support its introduction by reviewing, and updating where necessary, current guidance. |
| What tools will you use to monitor the impact? How will you use this evidence to adapt your future policy choices? | The regular surveillance testing of New Zealand-domiciled aircrew enables the Ministry to monitor the effect of the controls in place to reduce the risk that they will contract COVID-19 and transmit it into the New Zealand community. |

PROACTIVELY RELEASED