

# Briefing

## COVID-19 Public Health Response (Air Border) Order (No 2) Amendment Order (No 10) designating Fiji and Indonesia as very high risk - final order for signature

**Date due to MO:** 12 August 2021      **Action required by:** 12 August 2021

**Security level:** IN CONFIDENCE      **Health Report number:** 20211851

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

### Contact for telephone discussion

Name	Position	Telephone
<b>Dr Ashley Bloomfield</b>	Director-General of Health	s 9(2)(a)
<b>Laura Miller</b>	Acting Group Manager, COVID-19 Policy Response	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 Withdrawn |  |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:

# COVID-19 Public Health Response (Air Border) Order (No 2) Amendment Order (No 10) designating Fiji and Indonesia as very high risk - final order for signature

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**Security level:** IN CONFIDENCE      **Date:** 12 August 2021

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

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## Purpose of report

1. This report provides you with a final COVID-19 Public Health Response (Air Border) Order (No 2) Amendment Order (No 10) 2021 (the amendment order) for your signature. The amendment order designates Fiji and Indonesia as very high risk countries.

## Summary

2. On 10 August 2021, the *Reconnecting New Zealanders* Ministerial Group agreed to designate Fiji and Indonesia as very high risk (VHR) countries [DPMC-2021/22-105 refers], based on public health advice from the Ministry of Health.
3. Adding Fiji and Indonesia to the VHR country list will limit arrivals into New Zealand from those countries to:
  - a. New Zealand citizens, their partners and/or dependent children, and parent(s) of a dependent child who is a New Zealand citizen (together with any children of those parents who are not New Zealand citizens)
  - b. those granted a humanitarian exemption, aircrew, foreign diplomats and their dependents, and New Zealand Defence Force personnel returning from overseas service.
4. Travellers who arrive from Fiji but are transiting through New Zealand will still be permitted.
5. The amendment order expands the existing exemption for New Zealand citizens and related persons to include certain other dependent children.
6. To ensure that medical transfers (medevac) can continue for urgent health care from Fiji, the amendment order contains an exemption for any individuals approved under a medical transfer, including medical transfer patients and support people.

7. You undertook Ministerial consultation, and this was completed on Wednesday 11 August 2021.
8. This report attaches the amendment order for your signature. Once signed, it will be gazetted by 5pm Friday 13 August 2021 and come into force at 11:59pm Sunday 15 August 2021.

## Recommendations

We recommend you:

- a) **Note** that on 10 August 2021, the *Reconnecting New Zealanders* Ministerial Group agreed to designate Fiji and Indonesia as very high risk (VHR) countries. **Noted**
- b) **Note** that, to give effect to the change above, a section 11 Order will be used. **Noted**
- c) **Note** my public health advice that the attached COVID-19 Public Health Response (Air Border) Order (No 2) Amendment Order (No 10) 2021 is in line with the purpose of the COVID-19 Public Health Act 2020, which is to prevent and limit the risk of, the outbreak or spread of COVID-19. **Noted**
- d) **Sign** the attached COVID-19 Public Health Response (Air Border) Order (No 2) Amendment Order (No 10) 2021.  **Yes/No**
- e) **Note** if you sign the attached amendment order, it will be gazetted by 5pm Friday 13 August 2021 and come into force at 11:59pm Sunday 15 August 2021. **Noted**
- f) **Note** that the decision to designate Fiji and Indonesia as VHR will be reviewed through the usual monthly review process for all VHR countries. **Noted**



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

Date:



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

Date: 13/8/21

# COVID-19 Public Health Response (Air Border) Order (No 2) Amendment Order (No 10): Final Order for Signature

## Background

1. On 10 August 2021, the *Reconnecting New Zealanders* Ministerial Group (RNZMG) agreed that Fiji and Indonesia should be designated as very high risk (VHR) countries [DPMC-2021/22-105 refers].
2. This means that travellers from Fiji and Indonesia will be temporarily restricted to:
  - a. New Zealand citizens, their partners and/or dependent children, and parent(s) of a dependent child who is a New Zealand citizen (together with any children of those parents who are not New Zealand citizens)
  - b. those granted a humanitarian exception, aircrew, foreign diplomats and their dependents, and New Zealand Defence Force personnel returning from overseas service.
3. Permitted travellers from Indonesia will be required to provide evidence of a negative PCR test from an accredited laboratory 72 hours prior to travel. This will replace the usual pre-departure test requirement in place for high risk countries. I will gazette the specific type of test, and list of accredited laboratories in Indonesia separately if you sign the attached COVID-19 Public Health Response (Air Border) Order (No 2) Amendment Order (No 10) 2021 (the amendment order).
4. Travellers from Fiji are currently exempt from pre-departure testing requirements and this exemption will remain in place despite Fiji's VHR designation. This decision was made in part because people in Fiji have limited access to tests and face delays in receiving results, both of which would inhibit their ability to travel. Additionally, requiring testing would create a potential exposure risk for individuals, and thus raise the prospect of Fiji's limited health resources being diverted to respond to an outbreak. However, Fiji is currently requiring all outgoing travellers to have a negative PCR/Gene test within 72 hours before entry into Nadi International Airport.

## Process for amending a section 11 Order

5. Under the COVID-19 Public Health Response Act 2020 (the COVID-19 Act), an Order may be made if either:
  - a. a state of emergency has been declared (under the Civil Defence Emergency Management Act 2002);
  - b. an Epidemic Notice is in force (under the Epidemic Preparedness Act 2006); or
  - c. it has been authorised by the Prime Minister.
6. There is currently an Epidemic Notice in place, which allows Orders to be made under section 11 of the COVID-19 Act.

7. As the Minister for COVID-19 Response, you may make an Order under section 11 of the COVID-19 Act.
8. To make an Order under section 11 you must:
  - a. have received advice from the Director-General about –
    - i. the risks of the outbreak or spread of COVID-19; and
    - ii. the nature and extent of measures that are appropriate to address those risks; and
  - b. have regard to any decision by the Government on how to respond to those risks and avoid, mitigate or remedy the effects of the outbreak or spread of COVID-19 (including considering any social, economic or other factors)
  - c. be satisfied that the proposed Order does not limit, or is a justified limit, on the rights and freedoms in the New Zealand Bill of Rights Act 1990
  - d. have consulted the Prime Minister, the Minister of Justice and Health and any other Ministers you think necessary, and
  - e. be satisfied that this Order is appropriate to achieve the purpose of the COVID-19 Act.

## **Contents of the amendment order**

### **Fiji and Indonesia designated as very high risk**

9. The amendment gives effect to the decision to designate Fiji and Indonesia as VHR countries by adding Fiji and Indonesia to Schedule 3 of the Air Border Order.
10. In designating Fiji as VHR, it has been removed as a low risk destination for the purpose of the quarantine-free travel prerequisites relating to aircrew.

### **Dependent child**

11. The amendment expands the existing exemption for New Zealand citizens and related persons to include certain other dependent children. This will enable dependent non-citizen children who have a New Zealand citizen sibling, but whose parent is not a citizen, to return to New Zealand.

### **Transit passengers from Fiji**

12. The amendment order will permit travellers from Fiji to transit through New Zealand subject to existing transit arrangements (ie travellers must stay airside of all airports they transit through).

### **Medical transfers between New Zealand and Fiji**

13. To ensure that medevacs can continue for urgent health care from Fiji, the amendment order provides an exemption for:
  - a. patients who are being medically transferred from Fiji to New Zealand

- b. medical attendants assisting with a medical transfer between New Zealand and Fiji, including a medical assistant returning from a medical transfer from New Zealand to Fiji who is ordinary resident in New Zealand
- c. persons accompanying a patient who is being medically transferred.

## Consultation

- 14. Under section 9(1)(c) of the COVID-19 Act you are required to consult with the Prime Minister, Minister of Justice and Minister of Health before making a COVID-19 order.
- 15. The Prime Minister is part of the RNZMG and her involvement in the decision to classify Fiji and Indonesia as a VHR country meets the requirement to consult with her.
- 16. You consulted with the Ministers of Health and Justice separately, and this was completed on Wednesday 11 August 2021.
- 17. s 9(2)(g)(i) [REDACTED]

## Public health rationale

- 18. You have previously been provided with detailed public health rationale for the amendment order [DPMC-2021/22-105 refers].
- 19. The public health risk assessments for Fiji and Indonesia concluded that both countries are considered to be very high risk. The assessments took into account a range of factors, including case rates, testing rates and positivity, the predominant variant circulating and our confidence in the data that we are accessing.

## New Zealand Bill of Rights Act 1990

- 20. A matter for you to consider each time an order is proposed under the COVID-19 Public Health Response Act 2020 is whether the exercise of such powers will be appropriate. The power to make an order under section 11 of the Act must be exercised consistently with the New Zealand Bill of Rights Act 1990 (NZBORA).
- 21. Any COVID-19 order giving effect to a travel suspension requires a NZBORA assessment for proportionality, particularly due to the impact that any suspension will have for returning New Zealanders.
- 22. s 9(2)(h) [REDACTED]
- [REDACTED]
- 23. [REDACTED]

## **Equity**

24. There is potential for the impact of these restrictions to be more significantly experienced by New Zealanders who originate from Fiji and Indonesia at this time. Given that the limitations on travel to New Zealand is only intended to be a temporary measure, we do not consider the equity concerns to be sufficient to prohibit making this amendment order.

## **Next steps**

25. If you are satisfied that the grounds for amending and order are met and it is appropriate to achieve the purposes of the COVID-19 Act, you may sign the amendment order.
26. The designation of Fiji and Indonesia as VHR countries will be reconsidered by the RNZMG in a month's time, as part of the regular monthly review of VHR countries.
27. If you sign the amendment order, it will be gazetted by 5pm Friday 13 August 2021 and come into force at 11:59pm Sunday 15 August 2021.

**ENDS.**

PROACTIVELY RELEASED

PROACTIVELY RELEASED

## **COVID-19 Public Health Response (Air Border) Order (No 2) Amendment Order (No 10) 2021**

This order is made by the Minister for COVID-19 Response under sections 11 and 15(1) of the COVID-19 Public Health Response Act 2020 in accordance with section 9 of that Act.

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### **Schedule**

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#### **New Part 7 inserted into Schedule 1**

### **Order**

#### **1 Title**

This order is the COVID-19 Public Health Response (Air Border) Order (No 2) Amendment Order (No 10) 2021.

#### **2 Commencement**

This order comes into force at 11.59 pm on 15 August 2021.

#### **3 Principal order**

This order amends the COVID-19 Public Health Response (Air Border) Order (No 2) 2020.

**4 Clause 18A amended (New Zealand citizens and certain related persons)**

After clause 18A(1)(d), insert:

- (e) any other dependent child of a parent described in paragraph (d).

**5 New clauses 18F and 18G inserted**

After clause 18E, insert:

**18F Arrivals from Fiji transiting through New Zealand**

A person arriving by air in New Zealand from Fiji is exempt from clause 8A if they are in transit to another overseas destination and are not intending to enter or remain in New Zealand.

**18G Medical transfers between Fiji and New Zealand**

The following persons arriving by air in New Zealand from Fiji are exempt from clause 8A:

- (a) a person who is assisting, as a medical attendant, with a medical transfer from Fiji to New Zealand;
- (b) a person who is arriving to assist, as a medical attendant, with a medical transfer from New Zealand to Fiji;
- (c) a person who is returning from assisting, as a medical attendant, with a medical transfer from New Zealand to Fiji and who is ordinarily resident in New Zealand;
- (d) a patient who is being medically transferred from Fiji to New Zealand;
- (e) a person accompanying a patient described in paragraph (d) for the purpose of providing support to the patient.

**6 Schedule 1 amended**

In Schedule 1,—

- (a) insert the Part set out in the Schedule of this order as the last Part; and
- (b) make all necessary consequential amendments.

**7 Schedule 2 amended**

In Schedule 2, clause 7(3), definition of **low-risk destination**, revoke paragraph (d).

**8 Schedule 3 amended**

In Schedule 3, insert in their appropriate alphabetical order:

Fiji

Indonesia

**Schedule**  
**New Part 7 inserted into Schedule 1**

cl 6

**Part 7**

**Provision relating to COVID-19 Public Health Response (Air Border) Order (No 2) Amendment Order (No 10) 2021**

**6 Flights departing before commencement of Amendment Order**

(1) Clause 18A and Schedule 3 of this order, as in force immediately before the commencement of the Amendment Order, continue to apply to persons arriving in New Zealand on an aircraft that departed before the commencement of the Amendment Order.

(2) In this clause, **Amendment Order** means the COVID-19 Public Health Response (Air Border) Order (No 2) Amendment Order (No 10) 2021.

Dated at Wellington this 13<sup>th</sup> day of August 2021.



Minister for COVID-19 Response.

**Explanatory note**

*This note is not part of the order, but is intended to indicate its general effect.*

This order amends the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 (the **principal order**) and comes into force at 11.59 pm on 15 August 2021.

The amendments relate to clause 8A of the principal order, which provides that a person must not arrive in New Zealand if they have been in a very high risk country in the preceding 14-day period. Several classes of persons are, however, exempt from this restriction.

The amendments—

- designate Fiji and Indonesia as very high risk countries (in addition to Brazil, India, Pakistan, and Papua New Guinea, which are currently designated as very high risk countries and listed in Schedule 3 of the principal order);
- extend the existing exemption for New Zealand citizens and related persons to include certain other dependent children:

**COVID-19 Public Health Response (Air Border) Order  
(No 2) Amendment Order (No 10) 2021**

Explanatory note

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- provide a new exemption for persons who arrive from Fiji but are transiting through New Zealand to another overseas destination and do not intend to enter or remain in New Zealand:
- provide a new exemption for persons involved in medical transfers between Fiji and New Zealand:
- remove Fiji as a low-risk destination for the purpose of the quarantine-free travel (QFT) prerequisite in clause 7 of Schedule 2 of the principal order, so that an aircrew member who has undertaken any flight to or from Fiji in the 14-day period before their arrival in New Zealand on a QFT flight must have had a negative result from a test for COVID-19 in accordance with the requirements of that clause.

This order must be approved by a resolution of the House of Representatives before the end of the relevant period described in section 16(2) of the COVID-19 Public Health Response Act 2020. If that does not happen, the order is revoked at the end of that period.

Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*:  
This order is administered by the Ministry of Health.